

Chapter 4

LAW AND ORDER

	<i>Page No.</i>
4.1	Police 82
4.1.1	Criminal Investigation 82
4.1.2	Traffic Control 83
4.1.3	Support Services 84
4.1.4	Crime Prevention 85
4.1.5	Recruitment and Training 85
4.1.6	Community Relations 86
4.2	Courts 87
4.2.1	Supreme Court 88
4.2.2	Lower Courts 88
4.2.3	Commonwealth Courts 90
4.3	Sentences 91
4.3.1	Fines 91
4.3.2	Prison 92
4.3.3	Probation and Parole 93
4.4	References 93

Chapter 4

LAW AND ORDER

Although law is not the only source of social cohesion, it is an indispensable regulator of human life and social activity. Rules of conduct however, irrespective of source are insufficient in isolation; they need the backing of legitimacy and authority and the support of institutions of enforcement; the police, courts and a system of penalties.

Tasmania's laws, its legal system and institutions are derived from Britain. Indeed, for a time, English law directly applied to the colony and, by Federation in 1901, all Australian States had a legal system firmly based on the Common Law of England. With federation, Tasmanians also became subject to Commonwealth laws enforced by administratively separate institutions.

The legal system is based on the political and philosophical ideal called *the rule of law*. This means a person's relations with other people and the State are governed by law, not by force or arbitrary power. The Parliament enacts the law and officers who administer the law are responsible, through parliament, to the people.

Another principle of the rule of law is that no person should be deprived of his life, liberty or property except by fair trial in open court presided over by impartial judges. In law, all people are equal.

Australia has two sources of law, case law and legislation or statute law. Case law, also called common law, consists of rules resulting from the decisions of the courts. When a case comes before the courts, the judges generally apply the law as laid down or interpreted by earlier courts that decided similar cases.

The Commonwealth and State parliaments make Australia's laws within powers set out in the Constitution. Often legislation gives power to the Governor-General, Governor or a Minister to make rules of law. Such laws, called subordinate, or delegated, legislation are an important part of the law.

State, and Commonwealth, police are charged with enforcing the law. The police have broad powers to investigate breaches of the law and to arrest people suspected of crimes. Usually, it is

the police who institute criminal proceedings. Each State as well as the Commonwealth has its own police force.

When formal charges are laid, guilt or innocence is determined through trial in a court. In Tasmania, this is either the Supreme Court or, for less serious matters, a lower court, with each having jurisdiction in civil, as well as criminal, matters. In civil trials and in criminal matters in the lower courts the verdict is generally determined by a magistrate or a judge. In the Supreme Court criminal matters are decided by a jury.

Tasmanian legislation regulating juries seems to have been first passed in 1830 although the *Hobart Town Gazette* shows that juries had been employed in the colony for the trial of criminal cases from the establishment of the Supreme Court in 1824. Juries remain as the tribunal for trying indictable criminal cases and there is limited right to a jury in civil actions, although in 1935 they were abolished for the purpose of trying motor accident cases.

Although the Tasmanian jury system is based on the English system it has, since 1934, embodied the principle of allowing majority decisions in certain circumstances instead of requiring the unanimous decisions once characteristic of juries in England. In criminal cases, a 10-2 decision is accepted in lieu of 12-nil after stipulated periods of deliberation. In the case of murder, 12-nil is necessary to convict, but 10-2 can bring in a verdict of not guilty, or not guilty of murder but guilty of a lesser crime.

Civil cases have a seven-member jury and, if after three hours deliberation a seven-nil decision cannot be reached, a five-two decision is accepted. If the minimum five-two decision cannot be reached after four hours, the jury may be discharged.

At present, all people listed on the electoral roll below the age of 65 are liable for service as jurors. However, persons convicted of an offence, bound by a recognizance or subject to a work order or probation are disqualified from service.

Within limits prescribed in legislation, the presiding officer of the court imposes a sentence; a fine or imprisonment, each of which may be suspended on a condition of good behaviour, probation, or work order.

In 1984-85 88 000 offences were recorded by police. Five charges of murder and one of attempted murder were proven in the courts. Most offences involved motor vehicles, breaking and entering or theft.

4.1 POLICE

Directed by a Police Commissioner answerable to the Minister of Police, the Police Department is composed of a force of 1 017 officers (one per 438 persons) plus support personnel. It consists of four main branches; criminal investigation, traffic control, recruitment and training and support services.

The duty of a police officer is to serve the community by protecting life and property, preserving the peace and detecting and apprehending offenders. There are few limits however to the variety of tasks police officers are called on to perform; Tasmania Police provides a twenty-four hour a day, seven day a week public service.

Crime Frequency	
Property crimes	— One offence every 24.00 mins.
Theft (excluding motor vehicle theft)	— One offence every 44.4 mins.
Breaking and entering	— One offence every 84.9 mins.
Fraud, forgery, misappropriation	— One offence every 503.4 mins.
Motor vehicle theft	— One offence every 610.4 mins.

4.1.1 Criminal Investigation

Tasmania Police has Criminal Investigation Branches in their Divisional Headquarters at Hobart, Launceston and Burnie. The task of each branch is to detect and investigate crime and to offer the public advice on how to prevent crime.

Although it is Australia's smallest State force, Tasmania Police employs modern methods of criminal investigation and has a reputation for

Reported Serious Crime Per Head of Population	
1976-77	1 crime per 2.93 persons
1980-81	1 crime per 3.86 persons
1984-85	1 crime per 4.48 persons

consistently producing a high rate of reported crime being 'cleared up'. In the period 1984-85, the clear-up rate of crime increased by 2.4 per cent.

Uniform officers from city, suburban and country police stations are often the first on the 'scene of a crime' and their reports are sent to the Divisional CIB for specialist attention. Each crime report is examined by senior officers and allocated to a detective. Then can follow hours of telephone calls, general enquiries, interviews, examination of statements and forensic reports in an effort to track down offenders.

4.1 Offences Recorded by Tasmania Police, 1984-85

Offences	1984-85
Assault and like offences	1 272
Homicide	14
Crimes of indecency and like offences	112
Other offences against the person	35
Offences against property	21 896
Fraud and similar offences	1 044
Miscellaneous police offences	3 319
Licensing Act offences	1 690
Racing and Gaming Act offences	192
Traffic and road safety offences	53 675
Miscellaneous Acts and offences	3 599

Several specialist squads have been formed within the Criminal Investigation Branch.

The Major Crime Unit

The Major Crime Unit was formed in August 1984 and it investigates serious crime such as murder and manslaughter. Each detective in the Unit has a particular task. When working on a case, the Unit is divided into two teams for investigative work; plus an Exhibits Officer who collects and records all exhibits connected with the crime and a Running Sheet Officer who records and collates information relating to the investigation.

The Drug Bureau

Drug Bureau members gather, receive, collate and act on information relating to illicit importation trafficking and usage of narcotics.

In recent times, drug trafficking has spread throughout the world. Since 1984, additional personnel have been seconded to the Drug Squad for assistance to deal with security of the poppy industry during the growing and harvesting season. The Tasmanian Government has national and international responsibilities under the 1961 Single Convention on Narcotic Drugs. In Tasmania this responsibility is exercised by close co-ordination of the work of the Poppy Advisory Control Board and the Police Department.

The Vice Squad

The detectives of the Vice Squad are responsible for the investigation of crimes against the person as well as the investigation of all matters that have sexual overtones. They are also responsible for policing the *Classification of Publications Act*, the *Child Protection Act* and certain aspects of the *Child Welfare Act*.

The Fraud Squad

This Squad was formed to combat white collar crime. These crimes can vary from a simple dishonoured cheque to a complicated company embezzlement. A thorough knowledge of banking systems and contract law is essential for detectives working in this Squad.

The State Arson Squad

The State Arson Squad investigates fires involving arson and fires for which a cause cannot be readily determined. Detectives liaise with the State Fire Services, Hydro-Electric Commission, Government Analyst and other authorities which may be able to help in the investigation.

During the summer months, the Squad is also charged with the responsibility for the investigation of unlawfully lit rural fires and offences against the provisions of the *Fire Services Act 1979*. They then liaise with the Forestry Commission, the National Parks and Wildlife Service, volunteer fire services and various councils and commissions.

The Breaking Squad

Detectives in this Squad investigate all burglaries and related crimes such as stealing, receiving and possession of stolen property. The control of second-hand dealers and shop licences is also their responsibility. The investigation of theft which does not involve breaking into premises and the investigation of property damage is the work of the General Squad.

The Anti-Stock Stealing Squad

Detectives in this Squad investigate all stock thefts, check the transportation of stock, attend stock sales and assist RSPCA and National Parks and Wildlife personnel in their investigations.

Corporate Affairs

The officers of this Squad are on permanent secondment to the Corporate Affairs Office in Hobart and work statewide in liaison with the Corporate Affairs Commission. They investigate corporate and related fraud and offences relating to the *Companies Act*.

The Gaming Branches

Officers in these Branches are responsible for the surveillance and investigation of persons associated with unlawful gaming.

4.1.2 Traffic Control

Tasmania Police is a highly mobile force. The patrol officer in a car or on a motorbike is possibly the best known police figure today. Traffic police enforce traffic laws, facilitate traffic flow, investigate accidents and attempt to minimize their number and severity.

Traffic Patrol

The aim of Tasmania Police Traffic Patrol is to keep traffic moving safely on our Tasmanian roads. They detect traffic offenders, illegal parking, control the streets during parades, provide escorts for VIP visitors and overwidth vehicles and assist at accident scenes.



The BMW K100s used by the Force are specially modified for police work. They have a top speed of 215 kmph and their low mass and centre of gravity give them safe handling, even at these high speeds.

Radar Speed Gun and Amphometer: The radar speed gun and the amphometer are used by mobile patrol officers to detect speeding motorists. The speed gun is hand-held by the officer. The amphometer usually is used in areas of heavy traffic flow; it is a static device which measures the speed of a vehicle as it travels between two tapes attached to the road surface.

Accident Risk and Speed Reduction Program: This Program was introduced in December 1984 with the aim of preventing serious and fatal accidents on highways and roads which have a high accident rate. Transport Tasmania provided accident data such as position on the road, days of the week, time of the day and direction of travel, which enabled police to concentrate their traffic control measures on the high risk areas.

Accident Investigation Squad: The Accident Investigation Squad attends all fatal and serious accidents where serious charges are likely to arise. It is the duty of the first police officer on the scene of an accident to ensure it remains undisturbed until the arrival of the Squad. It is also his duty to ensure all the drivers of the vehicles involved are given a breath analysis, even if they have been taken to hospital. The officer also has the sad task of ensuring next of kin are notified and of completing the initial Coroners Form.

1980	1 571
1981	1 629
1982	1 321
1983	1 100
1984	1 445
1985	1 495

Road Traffic Accidents Involving Casualties

The Road Toll

This has stabilized over the last few years, but unfortunately has not been significantly reduced. Major factors contributing to fatal road accidents are alcohol, speed, pedestrian fault, failure to keep to the left and failure to give right of way.

4.2 The Road Toll, Tasmania (Number)

Period	Persons killed	Persons injured	Total
1980	100	2 133	2 233
1981	111	2 273	2 384
1982	96	1 871	1 967
1983	70	1 473	1 543
1984	84	2 015	2 099
1985	78	2 070	2 148

4.1.3 Support Services

In fulfilling their role as crime fighters and protectors of the community, Tasmania Police is assisted by various support services which are administered and developed by the Management Services District.

The District has six specific areas of operation: Planning and Research Section; Search and Rescue Section; Transport Section; Communications (Technical) Section; Information Bureau; and Scientific Bureau. Of special assistance to Criminal Investigation and Traffic Branches is the Scientific Bureau.

The Scientific Bureau

The Scientific Bureau is divided into four main areas; Photographic, Fingerprints, Ballistics and Questioned Documents. Members of the Bureau

Random Breath Testing

Random Breath Testing (RBT) began in Tasmania in February 1983, following the lowering of the legal blood alcohol limit from .08 to .05. In September 1984, three 'Mobile Breath Analysis Units' were introduced; one each was stationed at Hobart, Launceston and Burnie. The Units were specially designed and built for Tasmania Police and are equipped with shower, toilet and kitchen facilities for the RBT Squad members who work late into the night. The public testing area is also well equipped, comfortable and practical.

Motorists are selected at random and requested to undergo a breath test by blowing into the Drager portable digital readout screening device; new mouthpieces are used each time. If the result of the test is negative, the motorist can drive on. If positive or borderline, a full breath analysis on a Breathalyser machine may be required and will be conducted in the Unit or at a city police station.



A familiar sight on Tasmanian roads, the Mobile Breath Analysis Unit conducting random breath tests.

are highly qualified in their respective fields, and work closely together in their efforts to prove the guilt or innocence of persons suspected of having committed crime. Their forensic duties are performed in co-operation with the Government Pathologist and Analyst.

Photographic Section: Police photographers produce high quality, evidentiary photographs of motor vehicle accidents, murders, animal cruelty, vandalism, burglaries and stealings. Should an offender be charged, these photos are then used as official court exhibits.

Amongst the sophisticated equipment used by officers of the Section, is the 'Wild' stereometric camera which produces a three dimensional photograph. These photographs are then transferred by a qualified photogrammetrist to a

detailed scale plan. The camera, and ultimately the plans, are used mainly to gather evidence in such events as murders and serious or fatal motor vehicle accidents.

Fingerprint Section: Fingerprinting is a precise science in criminal detection. No two fingerprints are the same; therefore each individual can be identified by their fingerprint. Officers study for five years to qualify as an acknowledged 'fingerprint expert'. Over 50 000 sets of prints are held in the records system and the Fingerprint Section has close links with Sections in other States and also with Interpol and the Central Fingerprint Bureau in Sydney.

Questioned Documents Section: The Questioned Documents Section is responsible for the examination and comparison of handwriting and typewriting to identify alterations, obliterations and erasures from documents. Section members are usually called in to examine documents relating to fraud, false pretences, corporate crime, threatening letters or documents where the author is unknown or suspect.

Staff also compile photofits from descriptions given by witnesses and victims of crime. The photofit kit contains hundreds of different facial features: eyes, noses, mouths, beards, eyebrows, hairstyles, chins and ears.

Ballistics Section: Tasmania Police ballistics experts handle, test and assess weapons and types of ammunition. It is not a job for the nervous or careless. Fortunately in Tasmania, violent crime involving firearms is rare. However, it is essential for every police force to have ballistics experts, because no firearm leaves marks on bullets identical to those fired by another gun.

The Ballistics Section is responsible for the maintenance of departmental firearms. They also inspect new and existing pistol ranges, checking for acceptable safety standards, and provide expert tuition for recruit and in-service courses at the Police Academy. The Section maintains a ballistics reference library and museum of antique, modern and 'home-made' firearms.

Search and Rescue

The life in this Section is always varied and officers are always ready to respond to a call for a land, inland water or sea search.

The Rescue Squads throughout the State hold regular training days to keep themselves and their equipment fully prepared. Bushcraft, cliff rescue and diving are skills demanded of police rescue in Tasmania's varied and often dangerous terrain.

A feature of many rescues from inaccessible spots or when medical reasons demand the swiftest response possible is the Search and Rescue helicopter. The Westpac Banking Corporation helps to contract a helicopter, which is on a thirty minute call for use by Tasmania Police.

Over the 1984-85 summer season, 17 stranded canoeists and rafters were winched from the dangerous gorges of the Franklin River.



Search and Rescue Squad members prepare for take-off on 4 January 1985 for the snows of Cradle Mountain to rescue a bushwalker who had broken his ankle.

4.1.4 Crime Prevention

A vigilant, well informed public can take an active role in crime prevention. Making people responsible for their own safety and the security of their property is the aim of officers who work in the Crime Prevention Bureaux of Tasmania Police.

Their advice is readily available to householders, businesses, government and other police officers. Many lectures and workshops are given every year to schools, service clubs and businesses. They also test the many anti-crime devices offered by commercial firms, such as locks and payroll protection.

The media is used by the Police to get their message across and brochures with such titles as 'Protect Your Car' and 'Safety for Senior Citizens' are widely distributed. Promotional material, stickers and films are always popular. The National Mutual Insurance Company has long been the sponsor of the famous 'Stranger Danger' campaign for young children.

4.1.5 Recruitment and Training

Standing on a 29 hectare site at Rokeby, 17 kilometres from Hobart the Tasmania Police Academy was opened by the then Premier, the Honourable Bill Neilson, on March 6, 1976.

Over the years, the recruitment practices and the curriculum have changed to meet the manpower requirements of the Force. The Police

Cadet system ended in 1983. The Academy has also been the venue for police in-service and staff development courses. Today, adult (age 18-33) recruit courses, police in-service courses and courses for officials of other agencies who have a law enforcement role, are conducted at the Academy. The fine facilities are also used by many groups as a conference, seminar and concert venue.

Basic requirements for entry to the force are Australian or British citizenship, age, education, health and physique. Entrants must pass an exam and physical fitness test. The candidates are interviewed by a selection board and medically examined before a final selection of recruits is made.

The 44 week, fully residential training course for recruits is a hectic one. There is a full study schedule of academic and practical subjects, and physical training and sport. Recruits get a chance to work in police stations, with community groups and to develop survival skills in the bush.

The curriculum is based on the modern thematic modular approach to specific problem areas which face police officers. Legal procedures, social and practical policing techniques of each area are taught at the same time.

Nearly 2000 police officers and members of other agencies attend over 70 in-service courses a year at the Academy. Topics range from police subjects such as criminal investigation, bomb squad and legal procedures to domestic crises intervention and small boat handling.

4.1.6 Community Relations

Tasmania Police is very aware of the importance of effectively and accurately telling the public about its activities. There are sections of the Force, however, who are specialists in aspects of community involvement. The Public Relations Bureau, the School Lecture Squad, the Police Pipe Band, Police & Citizens Youth Clubs and the Blue Light Disco all play a role beyond the policing of society.

Media liaison is the major task of the Public Relations Officer. Reporters call in daily for details of police operations and opinions which make news. School lectures and tours of the Police Academy are provided by Public Relations Officers at the Police Academy. Officers from the Academy also regularly travel the State visiting schools and attending Career Evenings.

Promotions such as displays at agricultural shows and 'Police Week' are always popular and give people a chance to see police equipment and speak to officers in friendly surroundings.

'Police 5', the weekly statewide round-up of unsolved crime is seen on Tas-TV. The public are invited to call a special police number with

information about the cases and their information has provided many valuable leads for detectives.

Each year films are made for the Police Department by the Tasmanian Film Corporation. Recent films have been 'Walkaway Prices' about juvenile shop stealing, 'Bomb Threat', and 'Your Turn Next ...?' about the dangers of drink driving.

There are 16 Police & Citizens Youth Clubs around the State, with a total combined membership of over 5000 children. Membership is open to all young people over the age of seven and the Clubs provide a wide range of physical, cultural and recreational activities. As well police officers and their local communities voluntarily organise Blue Light Discos, which provide fun for teenagers and benefit local charities.

The Tasmania Police Pipe Band

The Pipe Band is justly famous around the State and overseas for its fine performances. The Tasmania Police Pipe Band wears the tartan of Fletcher Dunans. It was chosen in honour of the Commissioner of Police who was in office when the Band was formed in 1969. The driving force for the establishment of the Band came from Inspector Frank Fletcher, brother of the Commissioner. Through his persistence, a group of police officers came together and formed the nucleus of what was to become a fine pipe band.

The Police Pipe Band was the only Australian Band to attend the Edinburgh Military Tattoo in August/September 1984. The Band and their supporters raised over \$70 000 for the trip, including generous support from the State Government, TAA and Qantas.

In addition to their Tattoo performances, the band made history when they were the only band ever to be invited to take part in a Festival street parade with the Edinburgh Pipe Band. They also participated in a parade in Glasgow and a charity performance at a hospital.



The Tasmania Police Pipe Band on parade.

4.2 COURTS

Courts are tribunals set up to hear arguments to resolve allegations that offences have been committed and to resolve disputes. Where matters are proven the courts impose a penalty or penalties; where matters in dispute are decided the court can impose appropriate conditions of settlement.

As in the other Australian States, Tasmanian courts derive from British traditions. Thus the basic hierarchy of courts is similar between States, except that in Tasmania there are no intermediate courts. The Higher courts are titled Supreme Courts and deal with matters of a major nature. Cases brought before the Supreme Court will usually be heard by a judge and jury. It also hears appeals from lower courts at which the case will be heard by several judges and be referred to as the Full Court of the Supreme Court or the Court of Criminal Appeal.

Lower courts in Tasmania are known as Courts of Petty Sessions or Magistrates Courts which deal with minor civil or criminal matters. Civil matters involving amounts of less than \$5000 are heard in Courts of Requests.

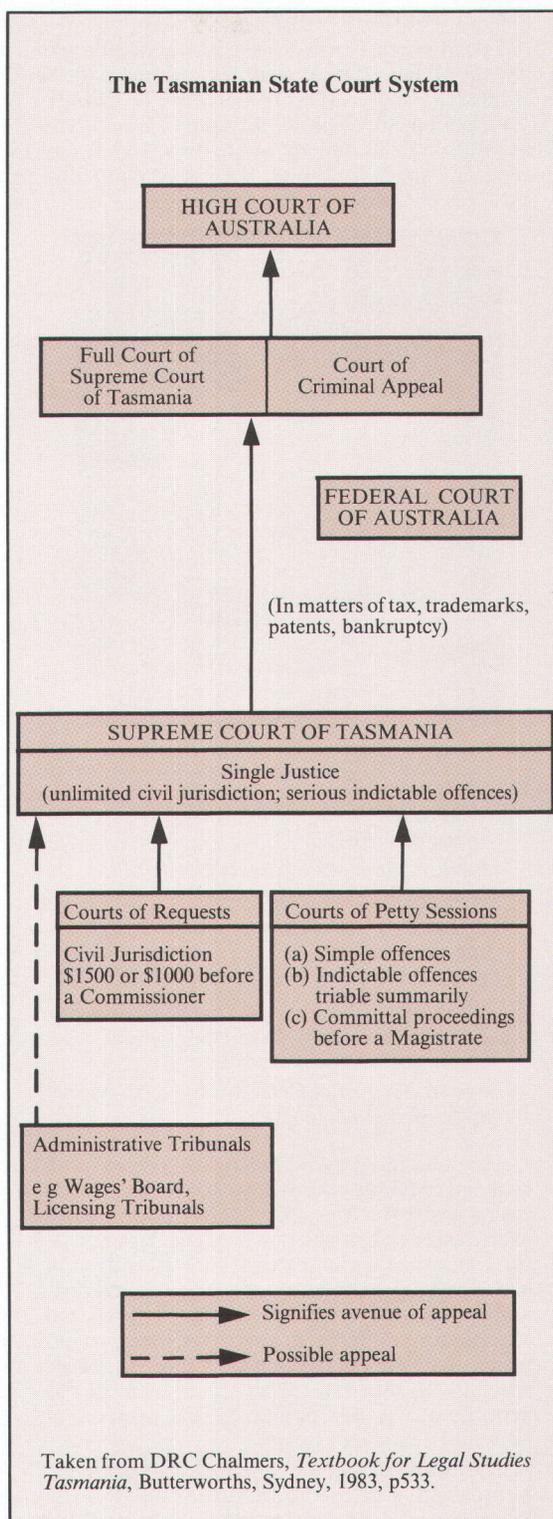
Cases involving children are heard by the Children's Courts and may involve either a criminal matter or an allegation under child or community welfare legislation relating to a child being in need of care, control or protection.

In addition, inquests concerning certain deaths or the cause of fires are held as required in Coroners Courts.

Although not strictly courts, there are also a number of tribunals set up under particular statutes to act as specialised courts. An example is the Wardens' Court constituted under the *Mining Act* 1929 to hear matters involving mining licences.

Alongside the State courts, Tasmanians, like the residents of the other States, are subject to Commonwealth laws, for which there is a system of Commonwealth Courts. The most prestigious is the High Court of Australia constituted by the Chief Justice and six other Justices to resolve inter-state disputes and disputes between the Commonwealth and the States. If there is sufficient business, the High Court may sit in Hobart.

With the passing of the *Family Law Act*, in 1975, the Family Court of Australia was established to deal with divorce and the custody of children. The sole ground for divorce became irretrievable breakdown of marriage.



4.2.1 Supreme Court

The Supreme Court of Tasmania is constituted by the Chief Justice and six puisne judges. Regular sittings of the court are held at Hobart, Launceston and Burnie, although the court is authorised to sit and act at any time and at any place in the exercise of the jurisdiction and business of the court.



Chief Justice — The Hon. Sir Guy Green appointed 1973

Puisne Judges —

The Hon. Mr Justice Francis Neasey, appointed 1963.

The Hon. Mr Justice Robert Nettlefold, appointed 1971.

The Hon. Mr Justice Henry Cosgrove, appointed 1977.

The Hon. Mr Justice William Cox, appointed 1982.

The Hon. Mr Justice Peter Underwood, appointed 1984.

The Hon. Mr Justice Cecil Brettingham-Moore appointed 1984.

The court has jurisdiction over all causes, both civil and criminal, except those reserved for other courts under the Australian Constitution. It also exercises federal jurisdiction in particular matters. Its civil jurisdiction extends to all causes of action, whatever the amount involved may be, and its criminal jurisdiction includes the trial of all indictable offences. In civil cases, the court has power to call in the aid of one or more assessors specially qualified to assist in the trial of the actions, but is not bound by the opinion or advice of any such assessor.

The jurisdiction of the court is usually exercised by one judge of the court. From his decision there is a right of appeal to the Full Court of the

Supreme Court of Tasmania. A Full Court usually consists of three or more judges of the court. The Full Court is also a Court of Criminal Appeal under the Criminal Code. Appeals may be brought by the Crown or by an accused person from all inferior courts where an indictable offence is involved as well as from many statutory tribunals. In some cases, there is an appeal as of right, in other cases, leave is required.

Unlike a Children's Court the Supreme Court is in no way inhibited in imposing a penalty on a child. In addition to its ordinary sentencing powers, it may make supervision or wardship orders, and commit a child to an institution. If a child is sentenced to imprisonment, the responsible Minister may direct that the sentence be served in a place other than a gaol.

4.3 Offences Finalised and Proven in the Tasmanian Supreme Court, 1985

Offence	Finalised	Proven
Offences against the person	245	201
Robbery and extortion	23	23
Breaking and entering, fraud and other offences involving theft	639	545
Property damage and environmental offences	34	25
Offences against good order	56	36
Drug offences	43	37
Motor vehicle, traffic and related offences	13	12
Total	1 053	879

In 1985, 83 per cent of matters finalised in the Supreme court were proven. Most of the matters finalised, 85 per cent, involved males.

4.2.2 Lower Courts

The lower courts are presided over by magistrates or justices of the peace and exercise both criminal and civil jurisdiction in minor matters. Both jurisdictions are kept separate although the same magistrate or Justice may preside over both types of case.

Civil cases include minor disputes in the 'common law' area such as landlord and tenant disputes and hire purchase; magistrates generally try cases alone, without a jury. In their criminal jurisdiction the courts have power to try and impose sentence in summary offences. Some magistrates preside over Children's Courts.

Courts of Petty Sessions

There is a Court of Petty Sessions sitting in Hobart, Launceston, Devonport, Burnie and elsewhere. The court is constituted by a magistrate (who must have been a legal practitioner or barrister for not less than five years) or by two or more lay justices. In major centres of population,

a court sits regularly; in smaller centres a court sits less frequently or is convened as occasion requires.

A Court of Petty Sessions has jurisdiction over all summary offences and also over certain indictable offences at the option of the defendant including:

- escape or rescue, facilitating escape of a prisoner or harbouring an offender; assisting escape of a criminal lunatic; rescuing goods legally seized; making a false declaration (or statement);
- stealing; killing an animal with intent to steal; unlawfully branding an animal; obtaining goods by false pretence; cheating; fraud in respect of payment of work; receiving stolen property, (in all cases the value of the property concerned must exceed \$500 but not \$5 000. If the value does not exceed \$500 the defendant will be tried summarily. If it exceeds \$5 000 he will be committed for trial in the Supreme Court);
- breaking into a building other than a dwelling-house, (it is necessary for the defendant to be committed to the Supreme Court for trial where it is alleged that in the commission of the offence: property to the value of more than \$5 000 has been stolen; violence has been used or offered to any person in or about the building; the person had in his possession a gun, pistol, dagger, cosh, or other offensive weapon; explosives were used; or the defendant intended to commit a crime other than stealing);
- forgery and uttering where the complaint must be for an offence in respect of a cheque for not more than \$5 000.

Courts of Request

These are constituted as courts with civil jurisdiction for particular municipalities in accordance with the authority given by the *Local Courts Act* 1896. Courts are held before a commissioner who is usually a magistrate. Every court has jurisdiction throughout the State but a plaintiff may have his action struck out if he brings it in a court other than the court nearest to which the cause of action arose. In such circumstances the plaintiff may lose costs.

The current jurisdiction of a Court of Requests covers all personal actions where the debt or damage claimed does not exceed the maximum amount fixed under the Act. Legislation which took effect on 15 September 1985 has increased the jurisdiction of the Court of Requests to \$5 000, and abolished the distinction between liquidated and unliquidated claims in so far as that distinction affected the institution of actions.

The commissioner alone determines all questions of fact as well as of law and his decision is

the judgement of the court, unless a jury is required. The general practices of the Supreme Court are adopted and applied in cases not expressly provided for in the Act or Rules.

In September 1985, there was a Small Claims Division formed within the Court of Requests structure to handle, generally speaking, claims up to \$2 000. A Special Commissioner was appointed to handle such matters. His primary function is to attempt to bring the parties to a dispute to an acceptable settlement but, if he cannot do so, he may determine the matter in dispute. Proceedings in this jurisdiction are private, straightforward and informal. Legal practitioners are excluded as a general rule, and the Special Commissioner may proceed as he sees fit.

4.4 Offences Finalised and Proven in Tasmanian Lower Courts, 1985

<i>Offence</i>	<i>Finalised Proven</i>	
Offences against the person	645	522
Robbery and extortion	2	1
Breaking and entering, fraud and other offences involving theft	5 275	4 956
Property damage and environmental offences	1 307	1 239
Offences against good order	5 590	5 094
Drug offences	1 777	1 660
Motor vehicle, traffic and related offences	6 393	6 299
Other offences	35	33
Total	21 024	19 804

Matters finalised in the lower court may be finalised by referral to the Supreme Court. In 1985, 78 matters were finalised by this method. Most were in relation to the more serious crimes of offences against the person and breaking, entering, fraud and other theft. About 87 per cent of matters finalised involved males, a slightly higher percentage than for higher courts. In terms of age the majority of matters coming before the courts relate to young offenders; males in the age bracket 15–24 account for about 55–60 per cent of male matters finalised. (Males in this age group comprise only 24 per cent of the male population aged 15 years and over.) A similar high proportion of female matters finalised relate to women in this same age bracket.

Children's Courts

A 'child' in this jurisdiction is one under the age of 17 years. The court before finally disposing of the case, must receive a report from a child welfare officer, (the representative of the Director of Community Welfare), unless the court considers the offence trivial or the Director decides not to provide one. A child's parent has the right to be heard and to examine and cross-examine

witnesses, or to be represented by counsel; also a parent can be compelled to attend the hearing if this imposes no unreasonable inconvenience.

In summary proceedings, the court is compelled not to enter a conviction against a child unless it imposes a sentence of imprisonment or there are special circumstances which indicate that a conviction should be recorded.

Children under 16 years cannot be sentenced to imprisonment and children of 16 years cannot be sentenced for more than two years, in aggregate. Minimum penalties imposed by statute do not apply to children; for those under 14 years the maximum fine is \$20, and for those over 14 years, \$100. The court may impose a supervision order to bring the child under the guidance of a child welfare officer or, if over 15 years, of a probation officer. Alternatively, the court may declare the child a ward of the State, placing him or her under the control of the Director for Community Welfare until his or her eighteenth birthday, unless released sooner; it may also direct that a ward be committed to an institution. In cases where further investigation appears necessary the Court may issue a remand for an observation order before it makes a final decision. Remands for observation orders are for short periods and usually provide for intensive supervision. (In the case of delinquency the maximum period for such an order is three months.)

Neglected or uncontrolled children are in the Court's jurisdiction. It may make a supervision order, an interim order (similar to a remand for observation order, the effect being to defer the transfer of guardianship until it is apparent that there is no suitable alternative), or impose wardship or bind the parents over to provide proper care and control, and comply with other directions. If parents have contributed to a child's offence by failing to control the child they may also be charged, convicted, fined, ordered to pay for damage and obliged to enter into a recognisance for the good behaviour of the child for up to 12 months.

4.5 Offences Finalised and Proven in Tasmanian Children's Courts, 1985

Offence	Finalised	Proven
Offences against the person	107	100
Robbery and extortion	3	3
Breaking and entering, fraud and other offences involving theft	1 729	1 697
Property damage and environmental offences	188	183
Offences against good order	1 198	1 125
Drug offences	25	25
Motor vehicle, traffic and related offences	73	72
Total	3 323	3 205

Coroner's Court

Coroners are appointed by the Governor and have jurisdiction throughout the State. Under the *Coroners Act* 1957, a coroner may hold an inquest:

- concerning the manner of death of any person who has died a violent or unnatural death, who died suddenly without cause being known, or from 'sudden infant death syndrome' or 'cot death', or who died in a prison, or mental institution. At the direction of the Attorney-General, he may also be required to hold an inquest concerning any death;
- concerning the cause of any fire if the Attorney-General has directed, or has approved a request by the owner or insurer of the property; or at the request of the State Fire Authority or the Rural Fires Board.

The duty of the court is to determine who the deceased was, and the circumstances by which death occurred. Medical practitioners and other persons may be summoned to give evidence. In the case of the death of an infant in a nursing home, the coroner may also inquire generally into the conditions and running of the institution. On the evidence submitted at the inquest, the coroner can order a person to be committed to the Supreme Court and can grant bail. In the case of murder, a coroner can issue a warrant for apprehension.

The coroner, in holding an inquest, usually acts alone, but either the Attorney-General or the relatives of the deceased may request that a four or six-person jury be empanelled. After considering a post-mortem report the coroner may dispense with an inquest, unless the circumstances of death make an inquest mandatory under the Act.

The *Coroners Amendment Act* 1985, which took effect on 21 August 1985, brought forward two significant innovations; the tape recording of depositions to speed up the hearing of inquests, and new provisions dealing with the care, custody and control of exhibits which may prove useful to those persons who need the use of exhibits pending the hearing of inquests or who seek possession of exhibits when the inquest is over.

4.2.3 Commonwealth Courts

The High Court of Australia

The High Court has original jurisdiction under the *Commonwealth of Australia Constitution Act* 1901 in cases concerning treaties, consuls, the Commonwealth of Australia as a party, residents in different States and matters arising under the Constitution. The most recent case involving Tasmania arose when Premier Robin Gray, on behalf of Tasmania, filed a writ seeking a declaration from the Court that regulations

gazetted by the Commonwealth Government to stop work on the Gordon-below-Franklin dam were invalid. The Court upheld the Commonwealth's regulations.

The High Court is the final court of appeal for Commonwealth and State Courts; it hears appeals from State Supreme Courts and the Federal Court of Australia, and in some circumstances, from the Family Court of Australia. It is also an arbiter on disputes concerning the Australian Constitution.

The Federal Court of Australia

Established in 1976 to replace the former Australian Industrial Court and the Federal Court of Bankruptcy, it sits in two divisions, Industrial and General.

The Family Court

The Family Court of Australia was set up by the *Family Law Act* 1975. It hears petitions for divorce and has jurisdiction in the welfare and custody of children and in disputes as to maintenance and property of marriage. In Tasmania, the Court has two judges, Mr Justice Wood based in Hobart, and Mr Justice Butler located in Launceston.

In 1985, 1 169 divorces were granted, a decrease of 16 on the number granted in the previous year. Consistently, about 60 per cent of the petitioners are females.

4.6 Divorces Granted by Sex of Petitioner

Year	Males	Females	Total
1980	512	773	1 285
1981	423	716	1 139
1982	542	849	1 391
1983	497	862	1 359
1984	431	754	1 185
1985	450	695	1 169 (a)

(a) Includes 24 joint applications.

4.3 SENTENCES

Statutes creating offences in criminal law often prescribe a penalty for the crime. It is, however, a maximum penalty. The magistrate or judge may exercise discretion in deciding what is appropriate taking into consideration the particular offender, and the circumstances of the offence.

An early theory of punishment was a concept of retribution, an eye for an eye. Its most severe form is in capital punishment. The death sentence was abolished in Tasmania in December 1968 having last been imposed in 1946.

Punishment has also been regarded as preventive, exercised to avoid further trouble from the offender. Capital punishment was at least effective, if perhaps at times extreme and transporta-

tion exported the offender and the trouble. Prevention is also effected by imprisonment, at least for the time of incarceration. In all these forms of punishment, deterrence, by imposing severe sentences on the offender as an example to the community, is a strong element.

Although fines and terms of imprisonment remain frequently imposed penalties, the modern trend has been toward reforming the offender. This is the basis for such sentences as community service orders, probation, and work orders.

4.7 Frequency of Sentences Imposed by Tasmanian Courts, 1985 (%)

Penalty	Children's courts	Lower courts	Supreme Court
Detention/care of Welfare Dept.	17.7	6.5	68.3
Community service order	2.8	5.2	3.1
Recognisance/bond/probation	17.2	13.4	24.8
Loss/suspension of driver's licence	2.1	18.2	1.5
Fines/compensation	15.4	44.5	2.1
Nominal penalty	44.8	12.2	0.3
Total (no.)	3 590	26 886	1 021

4.3.1 Fines

A fine is the most frequently imposed penalty by the courts. In 1985 fines provided just on 37 per cent of all penalties imposed by all courts, with the majority being handed down by magistrates.

4.8 Number of Fines Imposed by Tasmanian Courts, 1985

Offence	Children's courts	Lower courts	Supreme Court
Offences against the person	8	184	4
Robbery and extortion	—	1	—
Breaking and entering, fraud and other offences involving theft	70	865	2
Property damage and environmental offences	15	829	—
Offences against good order	229	3 434	—
Drug offences	8	876	—
Motor vehicle and traffic related offences	28	5 104	—
Other offences	—	27	—
Total	358	11 320	6

More than three quarters of all fines imposed related to just two offence categories, motor vehicle offences and offences against good order.

Most fines imposed are for amounts of less than \$100; almost 65 per cent of fines in 1984. Only five per cent of fines are for amounts in excess of \$250.

Number of Fines Imposed for 'Most Serious Matters', Tasmania, 1985

Value of fines (\$)	Children's court			Lower courts			Supreme Courts		
≤ 100	239	6082	—						
101-250	3	2646	—						
251-500	3	278	2						
501-1000	—	10	—						
> 1000	—	13	—						
Total (no.)	242	9029	2						

4.3.2 Prisons

Tasmania's main prison is at Risdon, near Hobart, which has, as an outstation, a prison farm at Hayes in the Derwent Valley. A prison at the Police Headquarters building in Launceston is a temporary holding centre where prisoners are held prior to being transferred to Risdon.

Approximately 95 per cent of people sentenced to gaol are males. In 1984-85, 641 prisoners were received comprising 619 males and only 22 women. Of the male prisoners received around 25-30 per cent were aged 20 years or under. The age group 21-24 normally accounts for a further 25 per cent of male prisoners received while around 20 per cent are in the age range 25-29 years. For women, ages up to 24 years normally make up about half the females received into prison.

4.10 Number of Prisoners Received by Age, Tasmania, 1984-85

Age (years)	Prisoners received	
	Males	Females
Under 19	84	4
19, 20	79	3
21-24	146	3
24-29	110	5
30-34	74	2
35-39	46	2
40 and over	78	3
Not known	2	—
Total	619	22

However, there was a total of 697 imprisonments, the total number of admissions to prison, during the period. A number of prisoners, almost

entirely males, therefore had more than one prison sentence during the year.

4.11 Number of Imprisonments by Age Tasmania, 1984-85

Age (years)	Imprisonments	
	Males	Females
Under 19	99	4
19, 20	90	3
21-24	157	4
24-29	115	5
30-34	79	2
35-39	48	2
40 and over	84	3
Not known	2	—
Total	674	23

More than half the people sentenced to gaol had been imprisoned in previous years. In fact, of the 363 people (57 per cent) with previous prison sentences, 53 per cent had been to prison at least three times before.

The biggest proportion of imprisonments were for breaking and entering, fraud and other offences involving theft. Offences relating to motor vehicles and traffic were also relatively high.

4.12 Imprisonments by Most Serious Offence Tasmania, 1984-85

Most serious offence (a)	Imprisonments	
	Number	Per cent
Offences against the person	71	10.2
Robbery and extortion	5	0.7
Breaking and entering, fraud and other offences involving theft	232	33.3
Property damage and environmental offences	25	3.6
Offences against good order	135	19.4
Drug offences	29	4.2
Motor vehicle, traffic and related offences	198	28.4
Other offences	1	0.1
Not known	1	0.1
Total	697	100.0

(a) Where a prisoner is sentenced for more than one offence, the most serious offence has been counted. This is the offence resulting in the longest sentence.

Only a small proportion (about 10 per cent) of gaol sentences are for periods of one year or more. In 1984-85 seven persons received life sentences, all for homicide offences. Most prison sentences were for a period of one to three months.

4.13 Length of Sentences, Tasmania, 1984-85

Length of sentence	Percentage of imprisonments
Life	1.0
10 years or more	0.1
2 to under 5 years	2.7
1 to under 2 years	8.0
6 months to under 1 year	19.5
3 months to under 6 months	21.2
1 month to under 3 months	22.0
8 days to under 1 month	18.2
7 days or less	7.2

4.3.3 Probation and Parole

Although fines and imprisonment are the most common sentences for offences, there has been a growing view that harsh punishments are not necessarily effective in reducing offences. The result is a growing move towards imposing custodial sentences that aim to reform the offender such as probation orders with supervision, and work orders. In Tasmania, the Probation and Parole Service is responsible for administering these sentences.

The service has a total complement of 60 permanent officers, 43 of whom are Probation and Parole Officers. The remainder are Work Order Co-ordinators, clerical and support staff. The Head office is at Hobart and District offices are located at Burnie and Launceston. Branch offices are to be found at Glenorchy, Rosny Park, Gagebrook, Georgetown, Devonport and Queenstown. Smaller offices, manned on a part-time basis have been established at New Norfolk, Huonville, Scottsdale, Ulverstone and Railton.

The Service works closely with officers of the Mental Health Services Commission, the Department of Community Welfare, the Prison Service and the Police. It is essentially a community-based operation involving close liaison with families, private relief agencies, public departments concerned with human problems and law enforcement. While there is a significant component of welfare work involved, the Service conducts over 200 prosecutions annually against persons failing to discharge satisfactorily, the conditions and obligations set down in their Supervision or Work Orders.

As at 30 June 1985, 1 600 persons were subject to supervision orders, and 278 persons were discharging their work orders. For the year 1984-85, the Service prepared 1 272 court reports and 80 pre-release reports for the Parole Board. Of the total supervision case-load, approximately 10 per cent (170) were females and 5 per cent (76) were parolees. Over recent years the total case load has been fairly stable.

4.14 Probation and Parole Supervised Cases and Work Orders, Tasmania

Year ended 31 December	New cases	Completed	Under supervision 31 December
<i>Probation and Parole</i>			
1981	1 018	1 177	1 645
1982	1 076	1 223	1 480
1983	1 143	1 041	1 582
1984	1 111	1 071	1 616
1985	1 083	1 114	1 576
<i>Work Orders</i>			
1981	433	366	(a) 347
1982	589	519	(a) 377
1983	672	636	(a) 366
1984	690	616	(a) 400
1985	688	610	(a) 433

(a) Includes absconders

4.4 REFERENCES

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