

# Chapter 4

## LAW AND ORDER

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# Chapter 4

## LAW AND ORDER

Law represents the formalised customs and rules which provide social cohesion in modern human society. The authority of the law is derived from several sources; the enforcement agencies such as the police and the courts; the deterrence derived from the prominence of these institutions and the penalties they apply; and more generally, the historical success of the legal system. The effect of this authority can be measured partly by rates of conviction and reported lawbreaking and also by surveys of people's experience of crime.

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.

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.

## 4.1 POLICE

**Directed by a Police Commissioner answerable to the Minister of Police, the Police Department is composed of a force of 1 021 officers (one per 437 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.

### Crime Frequency, 1985-86

Property crimes	— One offence every 23.2 mins.
Theft (excluding motor vehicle theft)	— One offence every 43.9 mins.
Breaking and entering	— One offence every 107.1 mins.
Fraud, forgery, misappropriation	— One offence every 512.7 mins.
Motor vehicle theft	— One offence every 718.0 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
1985-86	1 crime per 4.85 persons

consistently producing a high rate of reported crime being 'cleared up'. In the period 1985-86, the clear-up rate of indictable criminal offences reported was 24.7 per cent compared with 31.2 per cent for 1984-85.

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 Criminal Investigation Branch (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, 1985-86

Offences	1985-86
Assault and like offences	1 397
Homicide	27
Crimes of indecency and like offences	107
Other offences against the person	40
Offences against property	22 638
Fraud and similar offences	1 025
Miscellaneous police offences	3 542
Licensing Act offences	2 164
Racing and Gaming Act offences	169
Traffic and road safety offences	57 621
Miscellaneous Acts and offences	3 151

Several specialist squads have been formed within the CIB.

The Major Crime Unit which was formed in August 1984, investigates serious crime such as murder and manslaughter.

The Drug Bureau gathers, receives, collates and acts on information relating to illicit importation, trafficking and usage of narcotics and other drugs.

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 is responsible for the investigation of crimes against the person as well as the investigation of all matters that have sexual overtones. It is also responsible for policing the *Classification of Publications Act*, the *Child Protection Act* and certain aspects of the *Child Welfare Act*.

The Fraud 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 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*.

The Breaking Squad investigates 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 its 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.

Detectives in the Anti-Stock Stealing 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.

Officers of the Corporate Affairs 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*.

Gaming Branch officers are responsible for the surveillance and investigation of persons associated with unlawful gaming.

#### 4.1.2 Traffic Control

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

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 the duty of the officer 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. In 1986 there were 1 468 road traffic accidents on Tasmanian roads that involved casualties.

#### The Road Toll

The number of people killed or injured on the roads 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

Period	Persons killed	Persons injured	Total
1981	111	2273	2384
1982	96	1871	1967
1983	70	1473	1543
1984	84	2015	2099
1985	78	2070	2148
1986	91	2060	2151

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

In recent times, drug trafficking has spread throughout the world. Since 1984, additional personnel 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 a crime. Their forensic duties are performed in co-operation with the Government Pathologist and Analyst.

#### 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.

##### *Neighbourhood Watch*

Neighbourhood Watch started in Tasmania in March, 1986.

The objective of the Neighbourhood Watch Program is to reduce preventable crime, particularly burglary, by residents in a defined area being alerted to unusual activities in that area.

The scheme is similar to that operating in other Australian States and is based on a scheme which originated in Canada.

The defined area for a Neighbourhood Watch Program normally contains about 600 households. It is set up after there is demonstrable community interest and if the area has a significant crime rate, especially burglary.

It is implemented after a public meeting is held and 30 to 40 geographic zones containing a certain number of households are set up. Each zone elects a leader who in turn elects an area co-ordinator.

Police attend meetings and provide information on local crime rates and provide other help where needed.

In Tasmania there are currently eight Neighbourhood Watch areas.

The basic requirements for entry to the police 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. In 1986, 34 recruits were inducted into the force.

The training course for recruits is a 44 week fully residential course conducted at the Police Academy at Rokeby, near Hobart. 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.

## 4.2 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.

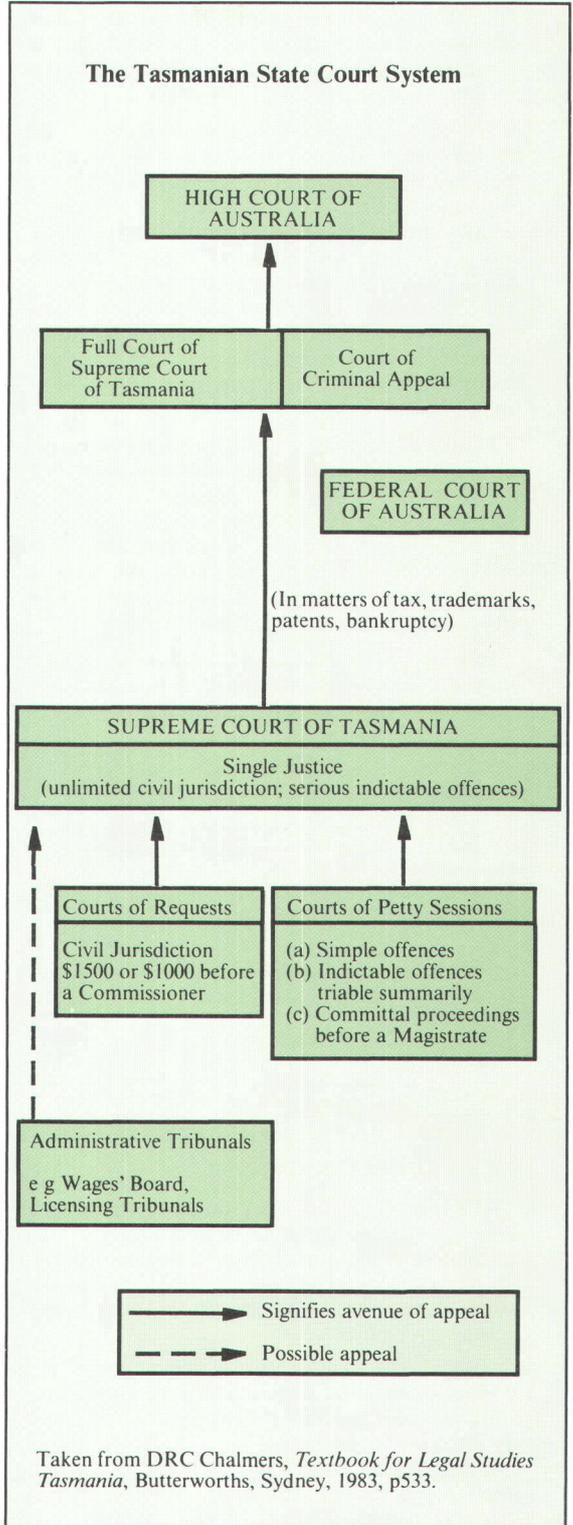
With the passing of the *Family Law Act*, in 1975, the Family Court of Australia was established to deal with divorce and the custody of children. The sole ground for divorce became irretrievable breakdown of marriage.

**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.

- 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 Christopher Wright, appointed 1986.

The court has jurisdiction over all cases, 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 cases 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.

In 1986, 77 per cent of matters finalised in the Supreme Court were proven. Most of the matters finalised, 87 per cent, involved males.

#### 4.3 OFFENCES, TASMANIAN SUPREME COURT, 1986

<i>Offence</i>	<i>Finalised</i>	<i>Proven</i>
Offences against the person	366	272
Robbery and extortion	17	15
Breaking and entering, fraud and other offences involving theft	1 346	1 050
Property damage and environmental offences	26	20
Offences against good order	28	22
Drug offences	23	17
Motor vehicle, traffic and related offences	18	15
Total	1 824	1 411

#### 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 of the peace 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 are Courts of Petty Sessions sitting in Hobart, Launceston, Devonport and Burnie, as well as temporary courts in other country centres. 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, facilitating escape and related offences; stealing, fraud and receiving stolen property of a value between \$500 and \$5 000; unarmed breaking into a building other than a dwelling where the value of the property involved does not exceed \$5 000; and forgery and uttering 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.

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.

Matters finalised in the lower court may be finalised by referral to the Supreme Court. In 1986, 129 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 86 per cent of matters finalised involved males, a similar percentage to that 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 23 per cent of the male population aged 15 years and over.) A similarly high proportion of female matters finalised relate to women in this same age bracket.

#### 4.4 OFFENCES, TASMANIAN LOWER COURTS, 1986

Offence	Finalised	Proven
Offences against the person	820	656
Robbery and extortion	8	2
Breaking and entering, fraud and other offences involving theft	6 048	5 453
Property damage and environmental offences	1 532	1 414
Offences against good order	7 157	6 409
Drug offences	1 692	1 633
Motor vehicle, traffic and related offences	6 312	6 193
Other offences	39	39
Total	23 608	21 799

#### 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, TASMANIAN CHILDREN'S COURTS, 1986

Offence	Finalised	Proven
Offences against the person	143	135
Robbery and extortion	-	-
Breaking and entering, fraud and other offences involving theft	2 158	2 098
Property damage and environmental offences	223	216
Offences against good order	1 697	1 629
Drug offences	27	27
Motor vehicle, traffic and related offences	87	86
Other offences	6	6
Total	4 341	4 197

#### 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.

It 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.

##### *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 1986, 1245 divorces were granted, an increase of 76 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
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)
1986	464	736	1 245 (b)

(a) Includes 24 joint applications.

(b) Includes 45 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. In all forms of punishment, deterrence,

#### 4.7 FREQUENCY OF SENTENCES IMPOSED BY TASMANIAN COURTS, 1986 (%)

Penalty	Children's courts	Lower courts	Supreme Court
Detention/care of Welfare Dept.	15.0	7.6	64.9
Community service order	2.4	4.0	2.8
Recognisance/bond/probation	15.5	13.9	28.6
Loss/suspension of driver's licence	2.1	16.2	1.1
Fines/compensation	17.6	44.8	2.3
Nominal penalty	42.0	13.6	0.2
Total (no.)	4766	30805	1602

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.

#### 4.3.1 Fines

A fine is the penalty most frequently imposed by the courts. In 1986 fines provided just on 35 per cent of all penalties imposed by all courts, with the majority being handed down by magistrates.

#### 4.8 FINES IMPOSED BY TASMANIAN COURTS, 1986

Offence	Imprisonments		
	Children's courts	Lower courts	Supreme Court
Offences against the person	13	237	8
Breaking and entering, fraud and other offences involving theft (a)	65	867	3
Property damage and environmental offences	13	945	-
Offences against good order	379	4 614	-
Drug offences	2	939	-
Motor vehicle and traffic related offences	42	4 968	3
Other offences	-	32	-
Total	514	12 602	15

(a) Includes robbery and extortion.

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 67 per cent of fines in 1986. Only five per cent of fines are for amounts in excess of \$250.

#### 4.3.2 Imprisonment

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 96 per cent of people sentenced to gaol are males. In 1985-86, 665 prisoners were received comprising 637 males and only 28

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.

However, there was a total of 729 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.

#### 4.9 IMPRISONMENTS, TASMANIA, 1985-86

Age (years)	Imprisonments	
	Males	Females
Under 19	99	7
19, 20	112	4
21-24	155	7
24-29	132	7
30-34	76	2
35-39	46	3
40 and over	72	6
Not known	1	-
Total	693	36

Half the people sentenced to gaol had been imprisoned in previous years. Of the 332 people (50 per cent) with previous prison sentences, 46 per cent had been to prison at least three times before.

#### 4.10 IMPRISONMENTS BY MOST SERIOUS OFFENCE, TASMANIA, 1985-86

Most serious offence (a)	Imprisonments	
	Number	Per cent
Offences against the person	96	13.2
Robbery and extortion	8	1.1
Breaking and entering, fraud and other offences involving theft	241	33.1
Property damage and environmental offences	17	2.3
Offences against good order	129	17.7
Drug offences	33	4.5
Motor vehicle, traffic and related offences	203	27.8
Other offences	2	0.3
Not known	-	-
Total	729	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.

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

Only a small proportion (about 10 per cent) of gaol sentences is for periods of one year or more. In 1985-86 five persons received life sentences, all for homicide offences. Most prison sentences were for a period of one to three months.

#### 4.11 LENGTH OF SENTENCES, TASMANIA, 1985-86

Length of sentence	Percentage of imprisonments
Life	0.7
10 years or more	0.7
5 to under 10 years	0.3
2 to under 5 years	3.6
1 to under 2 years	6.7
6 months to under 1 year	16.6
3 months to under 6 months	23.3
1 month to under 3 months	25.8
8 days to under 1 month	14.5
7 days or less	7.8

#### 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 55 permanent officers, 36 of whom are field 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 1987, 1 525 persons were subject to supervision orders, and 344 persons were discharging their work orders. For the year 1985-86, the Service prepared 1 202 court reports and 65 pre-release reports for the Parole Board. Of the total supervision case-load, approximately 13 per cent (204) were females and 4 per cent (59) were parolees. Over recent years the total case load has been fairly stable.

#### 4.12 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>			
1983	1 143	1 041	1 582
1984	1 111	1 071	1 616
1985	1 083	1 114	1 576
1986	1 015	1 040	1 521
1987	1 056	1 037	1 514
<i>Work Orders</i>			
1983	672	636	(a) 366
1984	690	616	(a) 400
1985	688	610	(a) 433
1986	712	641	(a) 348
1987	705	596	(a) 356

(a) Includes absconders

#### 4.4 REFERENCES

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