



SUPREME COURT OF TASMANIA

George the Fourth by the Grace of God
To all to Whom
Whereas
Now knowe
And we do
And we do
And we do

ANNUAL REPORT
2022 / 2023

The Chief Justice's
Annual Report
For the Supreme Court of Tasmania

2022-23

This report is submitted in accordance with section 194H of the *Supreme Court Civil Procedure Act 1932*, pursuant to which the Chief Justice is to provide a report to Parliament. This report is to include details as to the administration of justice in the Court during the current year and any other matters that the Chief Justice considers appropriate.

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From the Chief Justice	2
Year at a glance	4
Caseload Summary	4
Our Structure & Jurisdiction	5
Our Registries	6
Our People	7
Our Budget	7
Our Judges	8
Judicial Activity	9
Education & Community Engagement	12
Legislative Amendments	12
Operations	14
Criminal	14
Information Technology	15
Civil	16
Mediations	16
Sheriff and Admiralty	17
Court Security	18
Professional Regulation	18
Appendices	19
Finance	19
Human Resources	20
Criminal Performance Data	21
Sexual Offence Cases with Child Complainants	29
Civil Performance Data	34
Appeals (FCA and LCA)	37
Admissions to Practice	40
Probate Jurisdiction	40
Mediations	42
Location & Contacts of Courts	44

CONTENTS

From the Chief Justice



THE SUPREME COURT OF TASMANIA IN 2022/2023: SOME OBSERVATIONS

During the reporting year the challenges resulting from the COVID-19 pandemic became less significant, but the backlog of criminal cases and the volume of judicial work remained as major challenges faced by the Court.

THE COVID-19 PANDEMIC

Jury trials proceeded uninterrupted during the reporting year. From time to time COVID-related precautions were relaxed. As the traditional church service for the Opening of the Legal Year had been cancelled in January 2022, a substitute service was held at St David's Cathedral on 29 July, with a reception afterwards at the Court. I was not able to attend because I had COVID.

With effect from 7 September 2022, people attending the Supreme Court were no longer asked to reveal their

vaccination status or to provide proof of their vaccinations and, as a general rule, people entering Supreme Court buildings were no longer asked any screening questions or required to undergo temperature checks. Face masks remained compulsory, subject to the discretion of presiding judges. Accused persons were required to remove their masks so that juries could observe them during their trials. Social distancing arrangements remained in place as far as practicable.

As from 13 October 2022 the wearing of face masks was optional. As a general rule, social distancing arrangements for jurors continued in place.

In early March 2023 Court 1 in Launceston was restored to its pre-COVID configuration. It had been extensively modified for social distancing purposes.

The judges continued to permit counsel, accused persons, litigants and witnesses to participate in proceedings by audio-visual link or by telephone from time to time on an ad hoc basis.

OTHER CHALLENGES

The Court's greatest challenge remained the backlog of first instance criminal cases. In the reporting year the clearance rate decreased from 115.8% to 90.4%. However the figure of 115.8% is deceptive. It reflects the fact that legislation that commenced on 1 July 2021 resulted in a temporary reduction in the number of cases being committed for trial.

On a number of occasions during the reporting year judges were unable to hear cases because of illnesses, including COVID. Acting judges of the Court replaced them on very short notice several times.

DEPARTURES

The commissions of two part-time acting judges of this Court expired on 30 June 2023, the Government having decided not to arrange for their appointments to be renewed. They were the Hon Acting Justice Brian Martin AO KC and the Hon Acting Justice Shane Marshall AM. Both had served as acting judges of the Court since January 2017. Both made very valuable and substantial contributions to the disposition of the Court's business. As at 30 June 2023 each of them had heard or commenced hearing some matters that had not been finally determined. Each has the power to complete those matters pursuant to s 3(1C) of the *Supreme Court Act 1887*.

The Registrar of the Court, Mr Jim Connolly, retired on 30 September 2022. He had provided very valuable service to

the Court as its Registrar since 7 May 2012. He was the 17th Registrar of the Court. He graduated from the University of Tasmania with combined degrees of Bachelor of Arts and Bachelor of Law with Honours, and was admitted as a legal practitioner in 1985. Most of his career was spent in the Department of Justice. He was the Administrator of the Magistrates Court of Tasmania from 1998 until 2012. He was an experienced and talented court administrator and mediator.

APPOINTMENTS

Ms Penelope Ikedife was appointed as the 18th Registrar of the Court with effect from 7 November 2022. She graduated from the University of Tasmania with the degrees of Bachelor of Arts and Bachelor of Laws in 1996 and was admitted as a legal practitioner in 1998. She worked in a Hobart legal firm from then until 2013, becoming a partner in 2006. From August 2013 to December 2016 she was the Deputy Registrar of this Court. She was the Acting Registrar from July to November 2015. She was the Administrator of the Magistrates Court of Tasmania from December 2016 until her appointment as our Registrar. She too is an experienced administrator and mediator. The Court is fortunate to have obtained her services.

On 1 November 2022 the judges appointed ten legal practitioners and five lay persons to be members of the Disciplinary Tribunal under s 610 of the *Legal Profession Act* 2007. The legal practitioners were Mr Michael O'Farrell SC (Chairperson), Mr David Wallace (Deputy Chairperson), The Hon Robert Benjamin AM SC, Mr Rohan Foon, Mr Simon Gates, Ms Julia Ker, Ms Leigh Mackey, Mr Craig Mackie, Mr Patrick O'Halloran, and Mr Phillip Zeeman. The five lay members, who were nominated by the Attorney-General, were Mr Max Kitchell, Mr Dale Luttrell, Ms Eliza Jones, Mr Martin Shirley, and Ms Angela Hucker.

There were no appointments of senior counsel during the reporting year.

OTHER DEVELOPMENTS

During the reporting year the Court commenced to conduct judge-alone criminal trials pursuant to s 361AA of the *Criminal Code*, which took effect during June 2022. Only three such trials were conducted during the year.

On 18 March 2023 the Attorney-General announced that a property at 100-106 Wilson Street, Burnie had been selected as the site of the new Burnie courthouse. That site is close to the Burnie police station. The announcement followed a period of public consultation in relation to three possible sites

in the Burnie CBD. Judges, magistrates and staff continue to be involved in the planning of the new courthouse. A proposal for the building of a new complex at a site in Mooreville Road, which was not in the Burnie CBD, was abandoned. The decision to locate the new courthouse in the CBD was a very appropriate one. As a matter of principle, it is highly desirable that courts should be located in city centres because of the importance of the work of the courts and the need for court buildings to be as accessible to the public as possible.



The Hon Alan Blow AO
Chief Justice of Tasmania
November 2023

Year at a glance

CASELOAD SUMMARY

The following tables provide summaries of the Court's caseload in the 2022-23 year.

A detailed review of the operations and performance of the Court to 30 June 2023 is contained within this report.

Jurisdiction	Lodgements	Appeals	Finalised First Instance	Finalised Appeals	Bail Applications
Criminal	612	19	553	13	296
Civil	652	56	646	35	n/a
Total	1,264	75	1,199	48	296

Jurisdiction	Lodgements	Caveat	Application for Reseal	Total
Probate	2,568	42	43	2,653

Jurisdiction	Conducted	Settled at Conference	Settled after Conference (within 30 days)	Total Settled
Mediation	206	78	108	186

OUR STRUCTURE AND JURISDICTION

STRUCTURE

The Supreme Court of Tasmania, created by the *Charter of Justice* 1823, forms part of a multi-layered court system which exercises both Federal and State jurisdictions. The Supreme Court is the superior court of the State; it is equal in status to, but independent of, the Legislature and the Executive.

Unlike many other Supreme Courts, the Court is not divided into divisions. All judges hear matters at first instance and on appeal, in both the criminal and civil jurisdictions.

Australian court systems are hierarchical with most States having three levels of courts:

- Supreme Courts
- District (or County) Courts
- Magistrates (or Local) Courts

In Tasmania, there are only two levels in the court hierarchy: the Supreme Court and the Magistrates Court.

JURISDICTION

The jurisdiction of the Supreme Court falls into two categories:

- Matters in which it exercises original jurisdiction; and
- Matters in which it has an appellate jurisdiction.

ORIGINAL JURISDICTION

Original jurisdiction means that a matter comes before the court for decision for the first time.

CRIMINAL LAW MATTERS

People accused of serious offences, called crimes or indictable offences, are dealt with in the Supreme Court. Preliminary hearings are conducted in the Magistrates Court.

If the defendant pleads guilty to a serious offence in the Magistrates Court they are ordered to appear in the Supreme Court for sentencing by a judge. If the defendant pleads not guilty and there is to be a trial, they are ordered to appear in the Supreme Court for trial, with a jury of twelve people, in a court presided over by a judge. Those found guilty by the jury are then sentenced by the judge.

When the Supreme Court deals with criminal matters it is often referred to as the Criminal Court.

CIVIL MATTERS

Whilst the Supreme Court has jurisdiction in all civil matters, normally only those matters involving a dispute over a sum in excess of \$50,000 are dealt with in this Court. These cases are usually tried by a judge alone but, in some cases, a party may choose to be tried by a jury of seven people.

APPELLATE JURISDICTION

In its appellate jurisdiction the Court determines appeals from single judges, from the Magistrates Court and from tribunals where there is a right of appeal to the Supreme Court. There is a right of appeal to the Supreme Court from the decision of a magistrate and from most tribunals although, in some cases, only on questions of law and not on questions of fact.

CRIMINAL MATTERS

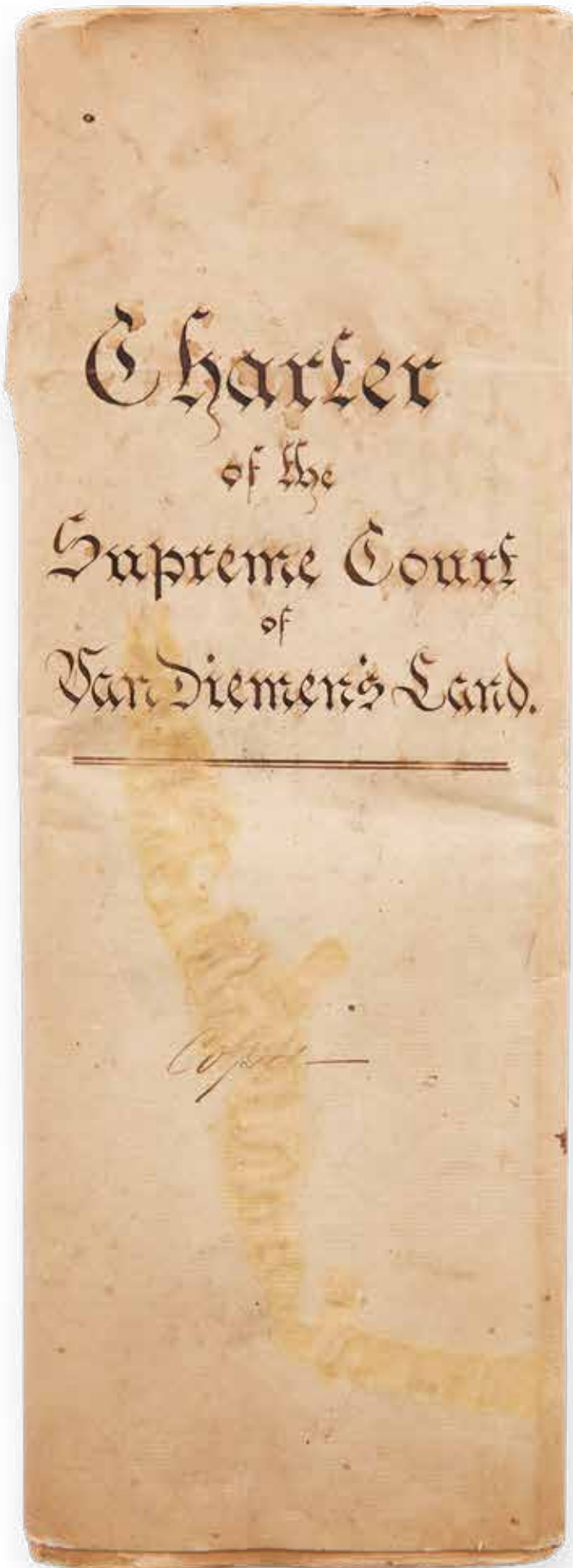
Appeals from the decision of a Supreme Court judge and jury are usually heard by a court consisting of three Supreme Court judges called the Court of Criminal Appeal. A convicted person may appeal either their conviction or the sentence imposed. See s 407 of the *Criminal Code*.

CIVIL MATTERS

Where a civil matter has been determined by a single judge of the Supreme Court, or a judge and jury, a party has a right of appeal to a court usually consisting of three Supreme Court judges. This is called the Full Court of the Supreme Court. See r 659 of the *Supreme Court Rules* 2000.

HIGH COURT

Appeals from the Court of Criminal Appeal and the Full Court are heard in the High Court of Australia.



OUR REGISTRIES

CRIMINAL REGISTRY

The Criminal Registry receives and processes:

- documents lodged by the Director of Public Prosecutions (Tasmanian and Commonwealth), which initiate criminal proceedings, and lists criminal trials, sentencing and other hearings
- appeals and applications for leave to appeal and prepares appeal documentation for use by the Court of Criminal Appeal.

CIVIL REGISTRY

The Civil Registry receives and processes:

- all documents lodged in the civil jurisdiction of the Court
- applications to review decisions from the Magistrates Court and statutory tribunals
- appeals to the Full Court and single judge appeals.

It is also:

- the first point of reference for enquiries from the public and the legal profession
- responsible for managing the Court's records, and the listing and case management functions for the Court's civil and appellate jurisdictions.

PROBATE REGISTRY

The Probate Registry issues grants appointing legal personal representatives (executors or administrators) to administer the estates of deceased persons.

DISTRICT REGISTRIES

The Court maintains district registries in Launceston and Burnie to deal with civil and criminal matters.

OUR PEOPLE

- 7 permanent Judges
- 3 Acting Judges (part-time)
- 1 Associate Judge
- 1 Registrar
- 12 Registry staff
- 32 Judicial Support Staff
- 7 Corporate Support Staff

OUR BUDGET

- \$12.118M revenue
- \$9.642M expenditure



Our Judges



L-R: Justice Gregory Peter Geason, Justice Robert William Pearce, Justice Helen Marie Wood, Chief Justice Alan Michael Blow AO, Justice Stephen Peter Estcourt AM, Justice Michael Joseph Brett, Justice Tamara Kaye Jago.

Judges of the Supreme Court are appointed by the Governor on the advice of the Executive Council (comprising the Premier of Tasmania and State Ministers) from the ranks of barristers and solicitors with at least ten years' standing in their profession.

The bench of the Supreme Court consists of the Chief Justice and a number of other judges, known as puisne (subordinate) judges. In 2022-23 there were six full-time puisne judges and three part-time acting judges.

The Governor appoints the Associate Judge of the Supreme Court in the same manner as a judge. The Associate Judge:

- assists the judges in conducting the civil jurisdiction of the Court
- deals with interlocutory (procedural) applications in civil matters before they come on for trial
- can hear and determine many cases that formerly could only be heard by a judge. This legislative change has helped the Court manage its caseload.

Section 2 of the *Supreme Court Act 1887* provides that the Court consists of a maximum of seven judges (excluding acting judges). The Court currently has the following judicial officers:

THE CHIEF JUSTICE:

- The Honourable Alan Michael Blow AO

THE PUISNE JUDGES:

- The Honourable Helen Marie Wood
- The Honourable Stephen Peter Estcourt AM
- The Honourable Robert William Pearce
- The Honourable Michael Joseph Brett
- The Honourable Gregory Peter Geason
- The Honourable Tamara Kaye Jago

THE ACTING JUDGES:

- The Honourable Brian Ross Martin AO KC
- The Honourable Shane Raymond Marshall AM
- The Honourable David James Porter AM KC

THE ASSOCIATE JUDGE:

- The Honourable Stephen James Holt

ACTIVITIES

The Chief Justice and judges participated in the following extra-curricular activities during the reporting year.

CHIEF JUSTICE BLOW

During the year ended 30 June 2023 Chief Justice Blow engaged in the following activities:

- He administered the State of Tasmania as Lieutenant Governor for 13 days in September 2022, six days in November 2022, and three weeks in May 2023
- He attended meetings of the Council of Chief Justices of Australia and New Zealand in Perth in October 2022 and in Brisbane in April 2023
- He attended the annual colloquium of the Australian Judicial Officers Association in Hobart in October 2022. At that colloquium he was made a life member of that association. He attended meetings of the Governing Council of that association during that colloquium and in Melbourne in March 2023, as well as attending online meetings of the association's Executive Committee
- During July 2022 he inspected the new Remand Centre at the prison at Risdon
- On 25 August 2022 he spoke at a seminar relating to criminal appeals conducted by the Australian Academy of Law in Adelaide
- On 17 October 2022 he attended the swearing in of the Honourable Justice Jayne Jagot as a judge of the High Court of Australia in Canberra
- On 5 October 2022 he delivered the opening address at a program entitled 'Writing Better Judgments' conducted by the National Judicial College of Australia in Hobart. On 8 March 2023 he presented a keynote speech when that program was again presented in Hobart
- On 13 October 2022 he delivered a lecture to students and staff at the Faculty of Law at the University of Tasmania
- On 14 October 2022 he attended a program relating to cultural awareness arranged by the Magistrates Court of Tasmania
- On 26, 27 and 28 October 2022 he attended a program entitled 'Reflections on Being a Judge' presented by the National Judicial College of Australia in Sydney. He was a member of the committee that organised that program

- On 12 November 2022 he conducted a public tour of the Supreme Court's buildings in Hobart together with the architect who designed them, Peter Partridge, as part of the Open House Hobart weekend
- In January 2023 he attended the Supreme and Federal Courts Judges' Conference in Christchurch, New Zealand
- On 31 March 2023 he attended a ceremonial sitting of the Federal Court of Australia in Sydney on the occasion of the retirement of the Honourable James Allsop AC as Chief Justice of that Court
- On 28 April 2023 he spoke at a conference relating to property law organised by the Law Society of Tasmania in Hobart
- On 16 May 2023 he presented the keynote speech launching Law Week at the University of Tasmania. On 18 May 2023 he conducted a sentencing workshop as a Law Week activity
- He conducted advocacy exercises as part of the Supreme Court module of the Tasmanian Legal Practice Course
- He participated as a member of a committee convened by the Australian Academy of Law and other organisations to plan a conference in September 2023 to mark the bicentenary of the granting of Charters of Justice for the Supreme Courts of Van Diemen's Land and New South Wales.

JUSTICE WOOD

During the year ended 30 June 2023 Justice Wood engaged in the following activities:

- As a Board member of the Tasmania Law Reform Institute, her Honour attended four Board meetings
- Her Honour presented the 'Cultural Diversity and Working with Interpreters Module' to students of the Tasmanian Legal Practice Course on 6 July 2022
- As a Committee member of the Australian Association of Women Judges (AAWJ), her Honour attended on-line committee meetings and the Annual General Meeting on 15 June 2023
- Attended the NAIDOC Week flag raising event and walking tour of Hobart, takara nipaluna, organised for the Supreme Court judges

- On 17 September 2022, her Honour presented the biennial Tasmanian Women Lawyers Achievement Award at the Tasmanian Women Lawyers gala dinner in Hobart
- On 1 October 2022, her Honour spoke as a panellist at the Asian Australian Lawyers Association's National Cultural Diversity Summit delivered via Zoom on the topic 'Superdiversity in Australia – Access to justice for culturally diverse litigants'
- As a member of the Australasian Institute of Judicial Administration Council (AIJA), her Honour attended Council meetings and the Annual General Meeting on-line and a Council dinner in connection with a meeting attended in person on 25 February in Melbourne
- As a member of the AIJA Education Sub-Committee, her Honour attended on-line meetings
- On 7 October 2022 and 8 October 2022, her Honour attended the National Australian Judicial Officers Conference in Hobart
- In connection with the National Conference, her Honour organised and ran a silent auction for the international campaign supported by the Australian Association of Women Judges to raise money for the plight of Afghan women judges
- As a member of the Judicial Council on Cultural Diversity, her Honour attended an on-line meeting of the Council with speakers on 14 October 2022 and in Sydney on 12 May 2023
- As a member of the Diversity and Inclusion Justice Network, her Honour attended an on-line meeting on 13 October 2022 and a meeting in Sydney on 11 May 2023
- On 16 November 2022, her Honour presented at an AIJA-sponsored event to the Western Australian Bar Association on the topic of 'recognising and responding to coercive control'
- Her Honour attended the National Indigenous Legal and Health Justice Conference in Hobart on 5 December 2022 and 6 December 2022
- On 8 February 2023 and 9 February 2023, her Honour presented on to topic of 'vulnerable litigants and witnesses' to students of the University of Tasmania Advocacy Course Summer Programme
- Her Honour hosted an in-house training session for staff of the Supreme Court on working with interpreters on 27 February 2023
- On 8 March 2023 her Honour spoke at a film night and screening of the *The Judge*, for International Women's Day hosted by the Tasmanian chapter of the Asian Australian Lawyers Association and the Tasmanian Women Lawyers Association
- As alumni of the University of Tasmania, her Honour attended a Tasmanian University Law Society and University of Tasmania Law Career Conversation Event for law students on 10 May 2023.

JUSTICE ESTCOURT

During the year ended 30 June 2023 Justice Estcourt engaged in the following activities:

- Women and the Law in Tasmania – article published in the Australian Law Journal in July
- As the author of Chapter 4 'Smart Legal Contracts' published by Oxford University Press
- He delivered a paper to the Clinical Education Unit, University of Tasmania Law School in August
- In September he curated the rear page of the Australian Law Journal, written and designed for 12 monthly editions of the Journal featuring photographs related to the 200 year history of the Court
- He conducted an Open House tour of the Supreme Court in Hobart in November
- In December he authored an article on Justice Giblin – Law Society of Tasmania journal
- He attended the National Indigenous Conference on Law and Health in Hobart in December
- In February he wrote a paper on Cross-Examination delivered to the University of Tasmania Summer School
- He authored a paper on Advocacy and Ethics delivered to the University of Tasmania Clinical Legal Education Unit in April
- He delivered the keynote address to the Law Society continuing professional development session on the book 'Smart Legal Contracts' in April
- In May he conducted a Law Week tour of the Hobart Supreme Court
- Justice Estcourt also is a member of the Steering Committee of the Justice Connect Project, attending monthly meetings.

JUSTICE PEARCE

During the year ended 30 June 2023 Justice Pearce engaged in the following activities:

- Attended meetings of the Board of Legal Education as Chair
- Attended quarterly meetings of the Australian Law Admissions Consultative Committee as Tasmanian representative
- Attended meetings of the sub-committee on possible establishment of a Judicial Commission
- Attended meetings of the judicial sub-committee considering the proposed new Burnie Court complex
- In April 2023 attended the opening of the Federal Court in Launceston
- In May 2023 gave a presentation at Tasmania Legal Aid Criminal Law Talk.

JUSTICE BRETT

During the year ended 30 June 2023 Justice Brett engaged in the following activities:

- Attended meetings of the Board of the Centre for Legal Studies, acting as judicial observer
- Acted as the coordinator of the Supreme Court module for the Tasmanian Legal Practice Course, and participated in sessions of the module for the course
- Attended meetings of the National Organising Committee of the Supreme and Federal Courts Judges Conference (SFCJC) and acted as Treasurer of the Committee
- Attended the SFCJC conference in Christchurch, as a member of the organising committee, and convened a session entitled: 'The courts in a post truth world'
- Attended an event at Government House to celebrate the coronation of King Charles III
- Presented a paper to the Law Society's Criminal Law Conference 2023 entitled 'Tendency Evidence and Uncharged Acts'
- Coordinated Supreme Court involvement in a joint training session with magistrates on 'Unconscious Bias', and attended session.

JUSTICE GEASON

During the year ended 30 June 2023 Justice Geason engaged in the following activities:

- Participated in the provision of advocacy training to the Tasmanian Legal Practice Course.

JUSTICE JAGO

During the year ended 30 June 2023 Justice Jago engaged in the following activities:

- Presented as part of Law Society continuing professional development program - October 2022 - 'Weiderman & Intoxication: Still Good Law in Tasmania'.

EDUCATION AND COMMUNITY ENGAGEMENT

With the relaxation of the COVID regulations, and the use of technology, the Court has been able to return to most, if not all, of its normal community and education activities:

- School tours have resumed, with students of various ages seeing the courtrooms, custody cells, joining interactive discussions, and sitting in on cases as they are conducted
- Webcasts of the admission of graduates into the legal profession have continued. This benefits the applicants, and their friends and families, so that all may view the admission ceremony, regardless of their location
- In Law Week (May 2023):
 - The Andrew Inglis Clark Library organised and presented an online guide to assist in using the free resources available to the public (including navigating the judgment and sentencing database and links to self-help material)
 - The Supreme Court gave a free tour of its building in Hobart
 - The Chief Justice, Registrar and Deputy Director of the Centre for Legal Studies gave a sentencing workshop, 'You Be the Judge' involving a role play scenario of a fictitious case by judge, prosecution and defence counsel, together with an outline of sentencing principles and procedures. Participants were then invited to discuss and impose an appropriate sentence
- The Court continued its involvement with the Centre for Legal Studies, coordinating a Supreme Court module for the Legal Practice Course (LPC), with judges participating in sessions of the module for the course, acting as judicial observer at meetings of the Board of the Centre for Legal Studies and conducting advocacy exercises for the LPC
- The judges have also:
 - continued to deliver papers and lectures to various educational units, such as the Clinical Legal Education Unit of the University of Tasmania Law School, the University of Tasmania Summer School, and the law undergraduates of the University of Tasmania Law School
 - been part of the organisational committees of various conferences (such as the Australian Academy of Law Bicentenary Conference and the Supreme and Federal Courts Judges Conference)

- continued to make keynote speeches and present papers to conferences (such as the Law Society's Criminal Law Conference and Property Law Conference, the Australian Academy of Law's seminar on Criminal Appeals, and the National Judicial College of Australia's program on Writing Better Judgments) and take part in training sessions with other courts; and
- published articles about the law, the Court and its history in newspapers, law journals and academic journals, as well as authoring chapters in books and curating the back page of the Australian Law Journal featuring photographs of the 200 year history of the Supreme Court.

LEGISLATIVE AMENDMENTS

In the reporting year the *Legal Profession Amendment Act 2022* came into effect. It inserted s 464A regarding Federal diversity jurisdiction into the *Legal Profession Act 2007*.

Where the Legal Profession Board considers that there is doubt whether it has the jurisdiction to make a determination in relation to a complaint because it may involve the exercise of jurisdiction of the kind referred to in s 75 or s 76 of the Commonwealth Constitution, it may dismiss the complaint. If it does so under this section it may make an application to the Disciplinary Tribunal for the hearing and determination of the complaint.

If the Tribunal dismisses the complaint for the same reasons, a person may make an application to the Supreme Court under s 486 to hear and determine a complaint in relation to the matter to which the dismissed complaint related.

In the first six months of 2023 the *Child and Youth Safe Organisations Act 2023* was passed, to come into operation on 1 July 2023.

Relevant bodies must comply with the Child and Youth Safe Standards listed in Schedule 1 of the Act. They must also comply with the Reportable Conduct Scheme (Division 2, ss 32-37) and disclose any reportable allegations and worker convictions to the Regulator of the Scheme.

The *Justice and Related Legislation (Further Miscellaneous Amendments) Act 2023* made changes to the jurisdiction of the Supreme Court.

It inserted s 3B into the *Coroners Act 1995*, allowing persons aggrieved by a decision as to who is the senior next of kin

of a deceased person to appeal to the Supreme Court, which can either affirm or quash the decision, and make any further orders as it thinks fit.

It also amended s 34 (2) of the *Dangerous Criminals and High Risk Offenders Act 2021* by allowing the Supreme Court to make a variety of orders when it receives an application in relation to an offender. This now allows for orders that:

- the Chief Psychiatrist provide to the Court a report prepared by a psychiatrist, psychologist or medical practitioner as to the likelihood of the offender committing another serious offence unless a high risk offender order is made against them
- if a behavioural report was provided to the Director of Public Prosecutions, an updated behavioural report or management report be provided to the Court
- if no such report was provided, then either a behavioural or a management or both reports be provided to the Court by a date specified in the order.

Director of Public Prosecutions v Oh Marris [2023] TASCCA 1

Mr Oh Marris was charged with three counts of rape and one count of indecent assault. At trial, a jury found him guilty of one count of rape and of indecent assault, and not guilty on the other two counts of rape. The trial judge, Justice Estcourt, sentenced Mr Oh Marris separately on both counts. For the crime of rape, Mr Oh Marris was sentenced to a home detention order for a period of 18 months, and a community correction order requiring him to perform 240 hours of community service. For the crime of indecent assault, Mr Oh Marris was sentenced to a term of imprisonment of 15 months, wholly suspended.

The prosecution appealed the sentence on the rape charge on the ground that it was manifestly inadequate in the circumstances.

The Court of Criminal Appeal held that the sentences imposed were erroneously lenient, considering the inherent seriousness of the crime of rape and the specific circumstances of the offence. The Court held that the physical, emotional and psychological impacts of rape on the complainant are such that a corresponding sentence needs to address not only the need for punishment, denunciation and retribution, but also general deterrence. The Court drew attention to the additional impacts of Mr Oh Marris not wearing a condom, the fact that he was trusted by the complainant and had been invited into her home, and to Mr Oh Marris's limited display of remorse.

The issue of honest and reasonable mistake as to consent was raised at trial. Mr Oh Marris was in a state of self-induced intoxication at the time of the incident – in his words, he was ‘blind drunk’ – and contended that he was mistaken as to consent as a result. The trial judge held that Mr Oh Marris's mistake was honest but not reasonable, as it was one he would not have made had he not been intoxicated. On appeal, the Court reiterated the limited relevance of self-induced intoxication in sentencing of serious sexual offences, noting that while it may explain the conduct, it does nothing to reduce the moral culpability of the offender. The Court held that there was again a need for general deterrence, ‘to make clear to men, especially young men, that their criminal responsibility and liability to punishment for sexual acts will not be reduced even if they acted in a way they may not have acted in if not affected by alcohol or drugs’.

The Court allowed the appeal, and re-sentenced Mr Oh Marris to a period of imprisonment of 21 months. The Court ordered that Mr Oh Marris not be eligible for parole until having served half of that term. The sentence imposed by the trial judge for the count of indecent assault was not subject to the appeal and therefore was unaffected, with the effect that Mr Oh Marris remained subject to the suspended term of imprisonment in addition to the actual time to be served.

CASE STUDY

Operations

CRIMINAL

Criminal matters are those in which an accused person is charged with an indictable offence. Upon entry of a plea of not guilty, an indictable offence is tried by a judge and a jury of 12 people, except if an order is made for a judge-alone trial.

FIRST INSTANCE

Lodgements	2018-19	2019-20	2020-21	2021-22	2022-23
Burnie	161	172	162	77	152
Hobart	332	309	271	243	320
Launceston	174	166	146	129	140
Total	667	647	579	449	612

Finalisations	2018-19	2019-20	2020-21	2021-22	2022-23
Burnie	112	143	96	148	141
Hobart	244	289	267	255	271
Launceston	124	164	160	117	141
Total	480	596	523	20	553

APPEALS (COURT OF CRIMINAL APPEAL)

	2018-19	2019-20	2020-21	2021-22	2022-23
Total Lodgements	32	28	21	23	19
Total Finalisations	29	28	18	27	13

BAIL

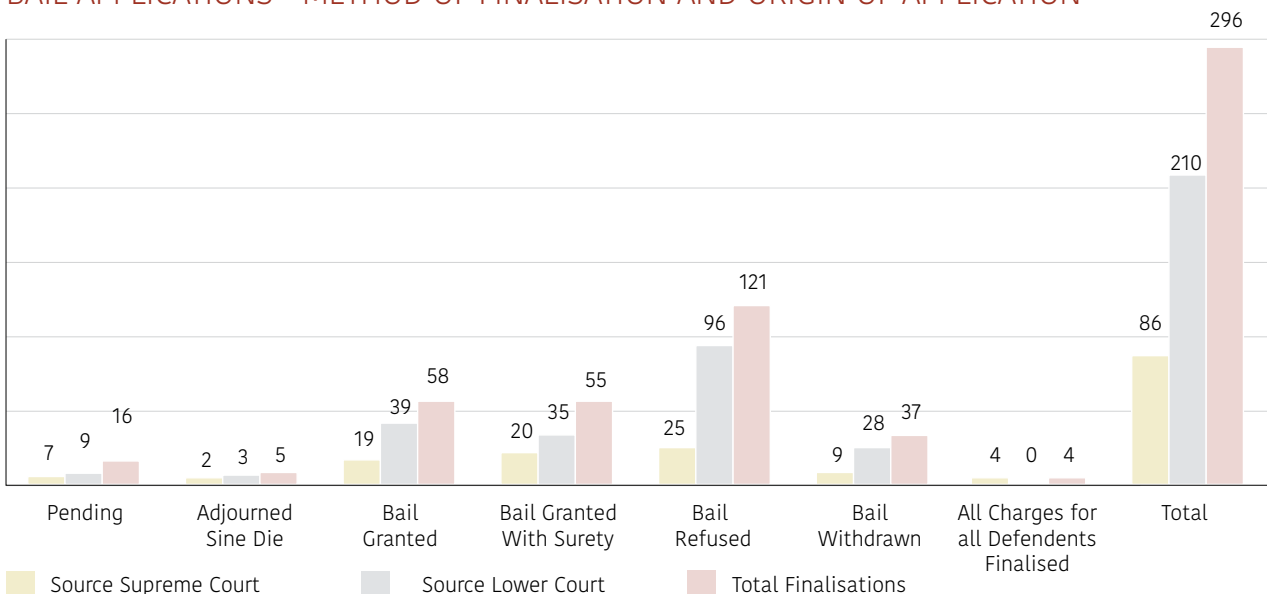
	2018-19	2019-20	2020-21	2021-22	2022-23
Applications	384	461	333	223	296

2022-23 Method of Finalisation - and initiation	Source Supreme Court	Source Lower Court	Total
Pending	7	9	16
Bail Adjourned Sine Die	2	3	5
Bail Granted	19	39	58
Bail Granted with Surety	20	35	55
Bail Refused	25	96	121
Bail Withdrawn	9	28	37
All Charges for all Defendants Finalised	4	0	4
Total	86	210	296

Of the 296 bail applications, 71% (210) originated from appeals against orders refusing bail in the Magistrate Court (Lower Court). Of the 210 appeals from the Magistrates Court, 28% (59) of the applications were granted bail.

Supreme Court bail applications represented 29% (86) of total applications of which 22% (19) were successful in being granted bail.

BAIL APPLICATIONS - METHOD OF FINALISATION AND ORIGIN OF APPLICATION



INFORMATION TECHNOLOGY

DEVELOPMENT

The Supreme Court continues to focus on improving its information and communications technology to ensure a contemporary approach to the administration of justice. The focus is on providing a high level of service to the judiciary, practitioners and other users of the Court.

A new jury management system has been implemented, with numerous advantages to both jurors and the Court. Many processes are now automated (for example jurors using a barcode to scan when they attend Court for the first time, and claims for expenses can be submitted online).

The Supreme Court has finalised a project to upgrade the in-court audio-visual technology in its Burnie courtroom, and Hobart criminal courtrooms. This will improve the performance and reliability of the video-conferencing, audio-enhancement and voice recording functions, and bring these courts to the same standard as the other courtrooms.



CIVIL

Civil matters are those where the Court determines disputes involving sums in excess of \$50,000 and other non-monetary disputes. The trials are usually conducted by a judge sitting alone, although there is provision for some cases to be tried with a jury of seven.

The table below shows the lodgements and finalisations for civil first instance matters:

	2018-19	2019-20	2020-21	2021-22	2022-23
Total Lodgements	580	471	460	539	652
Total Finalisations	669	733	612	570	646
Clearance Rate	115%	156%	133%	106%	99%

APPEALS (FULL COURT & LOWER COURT)

	2018-19	2019-20	2020-21	2021-22	2022-23
Total Lodgements	55	54	75	59	56
Total Finalisations	77	59	72	55	35

Probate

The table below shows the lodgements and finalisations for probate:

	2018-19	2019-20	2020-21	2021-22	2022-23
Probate Lodgements	2,069	2,366	2,257	2,663	2,653
Probate Grants	2,309	2,418	2,290	2,528	2,502

MEDIATIONS

Mediation continues to be an effective method of dispute resolution in civil cases. The Court has the power to direct that a case be referred to mediation before it will be listed for trial. It creates an opportunity for an expedited resolution of the matter that is arrived at by the parties, and saves costs. It is fully accepted by the legal profession as an essential step in proceedings. Without it, the Court would not be able to cope with its caseload.

Only a very small percentage of civil cases require resolution by a hearing in the Court. Far more civil cases settle at mediation, or by negotiation between the parties.

The mediators are the Registrar, other court officers, and where necessary, selected legal practitioners who are experienced mediators.

Financial Year	2018-19	2019-20	2020-21	2021-22	2022-23
Mediations Conducted	124	140	189	190	206
Matters Settled at Mediation	31	35	60	37	78
Percentage of Matters Settled at Mediation	25%	25%	32%	19%	38%
Total Matters Settled within 30 days of Mediation	45	53	93	73	108
Percentage of Total Matters Settled within 30 days of Mediation	36%	38%	49%	38%	52%
Percentage of Matters settled at, or within 30 days of Mediation	61%	63%	81%	58%	90%

The number of mediations conducted in the 2022-23 year increased slightly (8%) on the previous year. The percentage of mediations settled at, or within 30 days of mediation increased significantly by 32% on the 2021-22 year.

SHERIFF AND ADMIRALTY

The Office of the Sheriff in Tasmania was created by the Charter of Justice published by Letters Patent in 1823 (which also established the Supreme Court). The Sheriff is a statutory officer appointed pursuant to the *Sheriff Act* 1873. The Sheriff also currently holds office as Registrar of the Supreme Court. The Charter of Justice enables the Sheriff to appoint deputies, and the Sheriff is represented at the Principal and District Registries by her deputies.

The functions of the Sheriff are prescribed by statute and include:

- administration of the *Juries Act* 2003
- service and execution (enforcement) of court orders and judgments
- court security

JURIES

Juries are an integral part of the judicial system. By providing trial by one's peers, they form the link between the community and the criminal justice system.

Jury service is a vital component of civic participation in our democracy and the criminal justice system. For many people it is the most direct contact they will have with the justice system. In Tasmania, juries are used almost exclusively in criminal trials of serious indictable offences. Juries are only occasionally empanelled in civil trials in Tasmania.

The Sheriff is responsible for the administration of juries in accordance with the *Juries Act* 2003. This involves:

- maintaining the roll of potential jurors
- determining each registry's jury districts from which jurors are drawn
- issuing juror summonses
- determining applications for exemption or deferral
- instructing jurors on their role within the justice system
- administering juror expense claims
- handling general enquiries

The Court's jury list is sourced from the electoral roll maintained by the Tasmanian Electoral Commission, and jurors are selected at random by computer. Juror summonses are issued which require jurors to attend Court unless they are exempted or have their jury service deferred. Failure to comply with a jury summons may result in a fine, or imprisonment.

JURY STATISTICS 2022-23

Registry	Jurors summonsed	Jurors attended	Jurors empanelled	Number of Trials
Hobart	4931	1099	397	34
Launceston	6050	1128	310	29
Burnie	5464	1038	353	28
Total	16,445	3,265	1,060	91

This year juries were empanelled in 91 trials (an increase from 61 in the previous financial year). No civil trials were conducted.

ENFORCEMENT OF COURT ORDERS

Writs to enforce judgments and orders of the Court are received by the Sheriff for execution.

Execution of court orders outside the localities of the Hobart, Launceston and Burnie registries is usually entrusted to bailiffs (who are often Tasmania Police officers) by rule 903 of the *Supreme Court Rules* 2000.

If circumstances require, the Sheriff or her officers may execute any writ of execution within the State. The number of writs of execution filed with the Court has decreased this year from 12 in 2021-22 to 10.

- 7 were writs of possession (up from 4 last year)
- 3 were writs of fieri facias - (down from 5 last year)
- 0 writs of venditioni exponas (same as last year)

Note that the figures above represent actual filings at the Supreme Court. Applications filed do not always end up being executed by the Sheriff as the judgment debtor may make arrangements with the creditor.

This year there were 55 applications for orders for possession of premises for mortgagees and landlords, pursuant to s 146 of the *Land Titles Act* 1980, up from 53 in 2021-22.

Clark v Tasmania [2023] TASCCA 3

Joshua Clark was an experienced woodcutter. On 22 August 2015, Mr Clark drove with his partner and her children to go and cut down a tree. He parked nearby, and his partner and her children stayed in the car. On this occasion, Mr Clark parked closer to the tree he planned to fell than he usually would, and failed to cut a wedge out of the tree, as was his usual practice, to enable him to control its fall. The tree fell on the car, hitting his partner's 7 year old son. The child died the next day.

Mr Clark was charged with manslaughter on the basis of criminal negligence. He was found guilty of manslaughter by a jury and sentenced on 17 November 2022. Justice Estcourt sentenced Mr Clark to four years and nine months' imprisonment backdated to 6 September 2022, with a non-parole period of 28½ months. Mr Clark appealed against the sentence.

Mr Clark contended that the sentence imposed by Justice Estcourt was manifestly excessive in the circumstances; that Justice Estcourt did not give sufficient weight to his personal circumstances; and that the delay in bringing the matter to trial was not given sufficient weight.

On 16 March 2023, the Court of Criminal Appeal unanimously dismissed the appeal. The Court held that the trial judge took all Mr Clark's relevant personal circumstances into account to the appropriate degree, including Mr Clark's remorse and the post-traumatic stress disorder he developed as a result of the incident. The Court rejected the appellant's submission that general deterrence was not relevant in the circumstances, stating 'It is hard to imagine any case where general deterrence will not be relevant when a guilty verdict is given in a case involving manslaughter by culpable negligence.' The Court considered that the impact on Mr Clark's partner and her other children of witnessing the incident 'cannot be understated', and that the impact on the deceased child's father, too, was a very significant consideration.

The Court held that the delay in bringing the matter to trial was also appropriately taken into consideration by the trial judge. As to the culpability of Mr Clark, the Court held that the relevant question was the degree of foreseeability of the harm. Mr Clark's level of culpability was held to be 'at the high end of the scale'.

In all the circumstances, the sentence was held not to be manifestly excessive and the appeal was dismissed.

CASE STUDY

COURT SECURITY

Court security officers continue to provide support to the Court to ensure the safety and security of everyone who attends court.

Security officers are appointed as authorised officers (pursuant to s 4 of the *Court Security Act 2017*) with powers to:

- request identification from people entering the Court
- request people entering the Court to deposit with the officer any item that falls within the definition of a prohibited item under the *Court Security Act*
- request people entering the Court to submit to a search of their person or belongings
- direct someone to leave or not enter the Court, or remove someone from the Court
- arrest any person on Court premises committing an offence under the *Court Security Act*.

Security monitoring devices used in the Court include walkthrough metal detectors, hand-held metal detectors, X-ray baggage machines at court building entrances, and closed-circuit television surveillance equipment

PROFESSIONAL REGULATION

Admission to the legal profession in Tasmania is by order of the Supreme Court of Tasmania. To gain admission the Court must be satisfied that the applicant is:

- eligible for admission (which must be certified by the Tasmanian Board of Legal Education), and
- suitable for admission

To be eligible for admission one must have:

- appropriate academic qualifications (generally meaning a law degree that includes certain core subjects from an approved institution); and
- appropriate practical legal training (generally meaning practical legal training from an approved facility or of an acceptable type)

The table below shows the number of admissions of legal practitioners in the Supreme Court of Tasmania:

	2018-19	2019-20	2020-21	2021-22	2022-23
Total	70	66	79	96	54

Appendices

FINANCE

RECEIPTS	FY21/22	FY22/23
Recurrent appropriation	7,046,386	6,864,454
Registry fees	562,657	441,605
Provision of transcript	23,198	11,002
Probate fees & charges	3,017,979	3,407,173
Mediation fees	98,550	103,852
Sheriff's fees	8,029	9,048
Court reporting	1,475	5,946
Other receipts	1,734,864	1,275,605
TOTAL RECEIPTS	12,493,138	12,118,685

EMPLOYEE-RELATED EXPENDITURE	FY21/22	FY22/23
Salaries & wages	4,713,491	4,812,017
Fringe Benefits Tax	133,097	148,674
Payroll tax	0	0
Superannuation	629,377	694,609
Workers compensation insurance	195,355	214,944
Training	21,135	17,563
Other employee related expenses	88,867	114,279
TOTAL EMPLOYEE-RELATED EXPENDITURE	5,781,322	6,002,087

ADMINISTRATIVE & OTHER EXPENDITURE	FY21/22	FY22/23
Fuel, light & power	300,996	242,873
Advertising & recruitment	6,290	20,525
Rental	7,964	6,688
Communications	73,329	75,566
Travel	388,616	349,770
Consultancies	73,427	160,647
Printing & stationery	70,063	90,058
Rates	179,812	213,044
Repairs & maintenance	681,702	496,624
Minor equipment	36,463	25,801
Library materials	587,712	607,262
Computers & IT	533,116	518,860
Expenses of witnesses	93,838	176,598
Expenses of Jurors	421,901	634,746
Other administrative expenses	1,073,580	1,376,877
TOTAL OTHER EXPENDITURE	4,528,809	4,995,937

RESERVED BY LAW	FY21/22	FY22/23
Salaries & other entitlements of judges	4,183,314	4,204,732
Salaries & other entitlements of the Associate Judge	433,026	441,000
TOTAL RESERVED BY LAW EXPENDITURE	4,616,340	4,645,732

OVERHEAD CONTRIBUTION TO THE DEPARTMENT OF JUSTICE	1,347,534	2,194,417
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HUMAN RESOURCES

STAFFING	2018-19	2019-20	2020-21	2021-22	2022-23
Judiciary and Support:					
Judges and Associate Judge	8.3	7.8	7.9	8.1	8.9
Judges' Library	0.6	0.6	0.5	0.6	0.5
Judicial Support	16.6	17.4	15.7	14.8	13.7
Registry:					
Civil	6.9	4.5	4.5	5.5	5.8
Criminal	5.8	4.4	4.5	4.7	5.9
Probate	3.0	2.4	2.4	2.3	2.3
Mediators	0.4	0.4	0.4	0.4	0.4
Office of the Sheriff	10.2	8.4	10.2	8.5	7.7
Corporate Services:					
Information Communication Technology	1.3	1.4	1.4	1.4	1.0
Transcription Services	9.8	8.6	7.9	6.3	7.1
First Line Support Staff	2.7	5.3	5.4	5.8	7.2
Total	65.6	61.1	60.8	58.4	60.5

CRIMINAL PERFORMANCE DATA

INTRODUCTION

The *Supreme Court of Tasmania Annual Report 2022-23* is a statistical report providing details of the Court's caseload and statistical performance for the 2022-23 financial year reporting period.

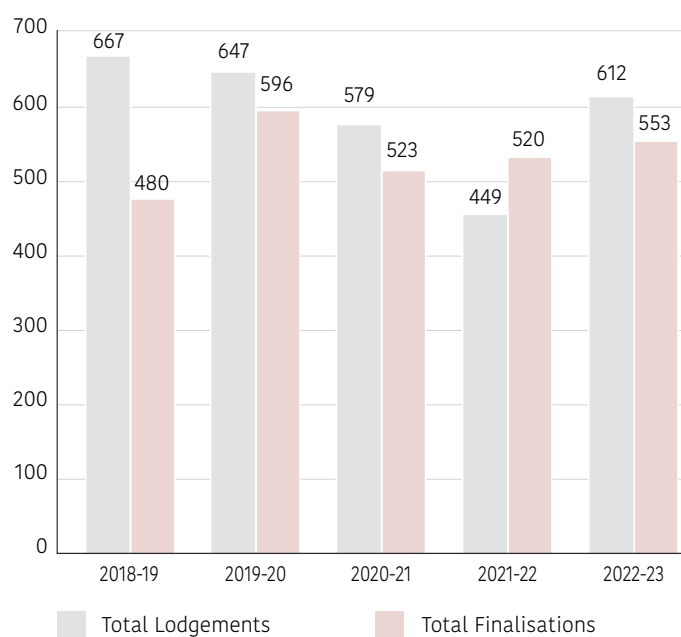
It consists of various reporting components that cover the Court's criminal, civil, appeal and probate jurisdictions, along with statistics on bail applications and mediations.

DATA

The data used in the preparation of this report is as at 30 June 2023 and provides information for the 2022-23 financial year unless otherwise stated. It is important to note that data matures over time as matters progress. Therefore if data extractions occur at different times, slight variation in numbers and outcomes may result.

The data is extracted from the Civil Registry Management System (CRMS), the Criminal Case Management System (CCMS) and the Court's Jury Management System.

CRIMINAL (FIRST INSTANCE) LODGEMENTS & FINALISATIONS - 5 YEAR TREND

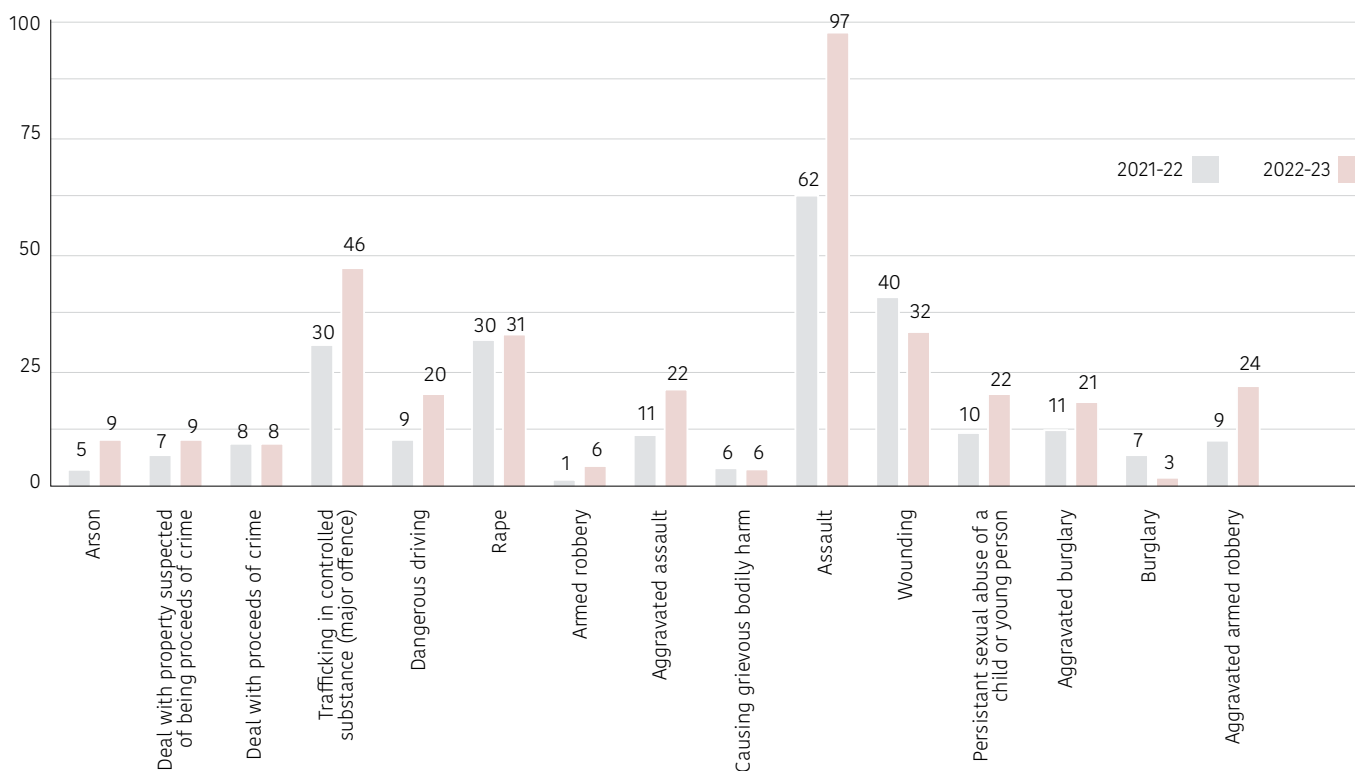


Lodgements	2018-19	2019-20	2020-21	2021-22	2022-23
Burnie	161	172	162	77	152
Hobart	332	309	271	243	320
Launceston	174	166	146	129	140
Total	667	647	579	449	612

Finalisations	2018-19	2019-20	2020-21	2021-22	2022-23
Burnie	112	143	96	148	141
Hobart	244	289	267	255	271
Launceston	124	164	160	117	141
Total	480	596	523	520	553



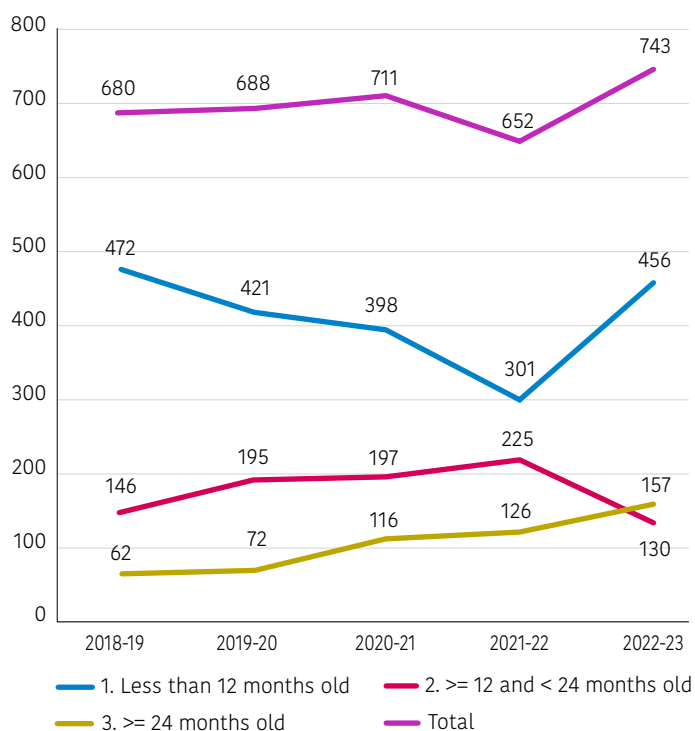
CRIMINAL CASE LODGEMENT BY OFFENCE CATEGORY 2021-22 v 2022-23



There was a significant increase in several crimes, and a reduction in the crimes of burglary, wounding and deal with the proceeds of crime.

Code	ANZSOC Breakdown By Group	2021-22	2022-23	Variation	% change
611	Armed robbery	1	6	5	+500%
611	Aggravated armed robbery	9	24	15	+167%
412	Dangerous driving	9	20	11	+122%
311	Persistent sexual abuse of a child or young person	10	22	12	+120%
212	Aggravated assault	11	22	11	+100%
711	Aggravated burglary	11	21	10	+91%
1211	Arson	5	9	4	+80%
213	Assault	62	97	35	+56%
1021	Trafficking in controlled substance (major offence)	30	46	16	+53%
831	Deal with property suspected of being proceeds of crime	7	9	2	+29%
	Others	203	256	53	+26%
311	Rape	30	31	1	+3%
211	Causing grievous bodily harm (GBH)	6	6	0	0%
831	Deal with proceeds of crime	8	8	0	0%
711	Burglary	7	3	-4	-57%
211	Wounding	40	32	-8	-20%
	Total	449	612	163	+36%

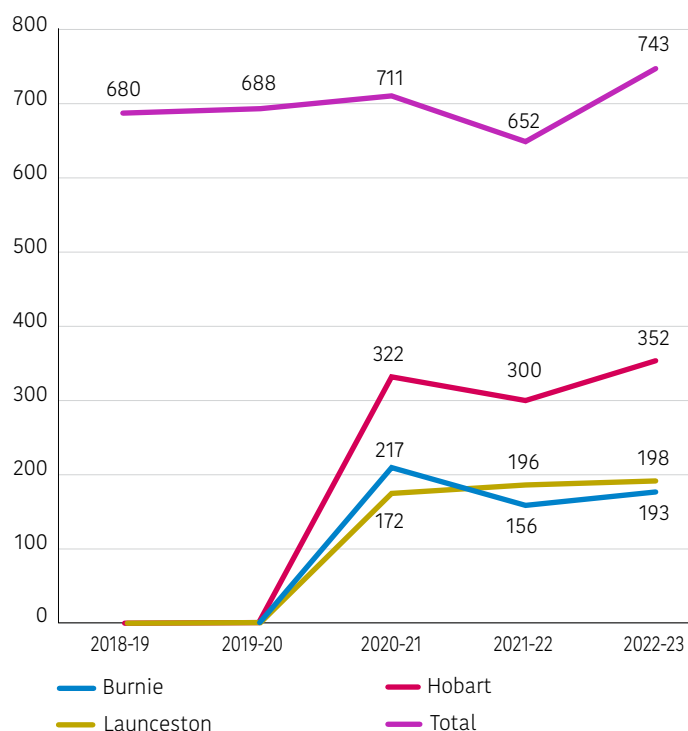
CRIMINAL PENDING - 5 YEAR TREND



Criminal Pending	2018-19	2019-20	2020-21	2021-22	2022-23
1. < 12 months	472	421	398	301	456
2. >= 12 and < 24 months	146	195	197	225	130
3. >= 24 months	62	72	116	126	157
Total	680	688	711	652	743

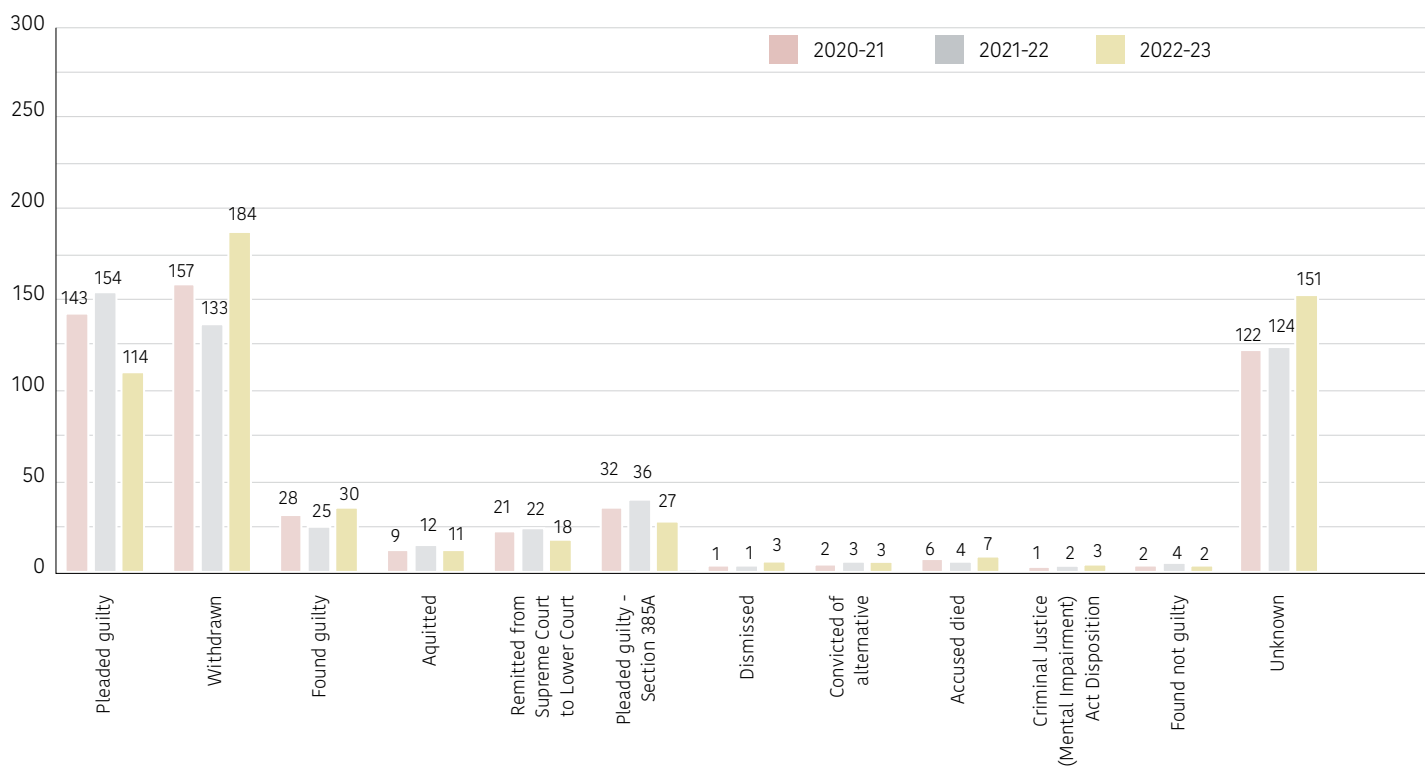
The criminal (non-appeal) pending caseload (also referred to as backlog) has increased by 14% during the reporting year, from 652 in 2021-22 to 743 in 2022-23.

CRIMINAL PENDING BY REGION - 5 YEAR TREND



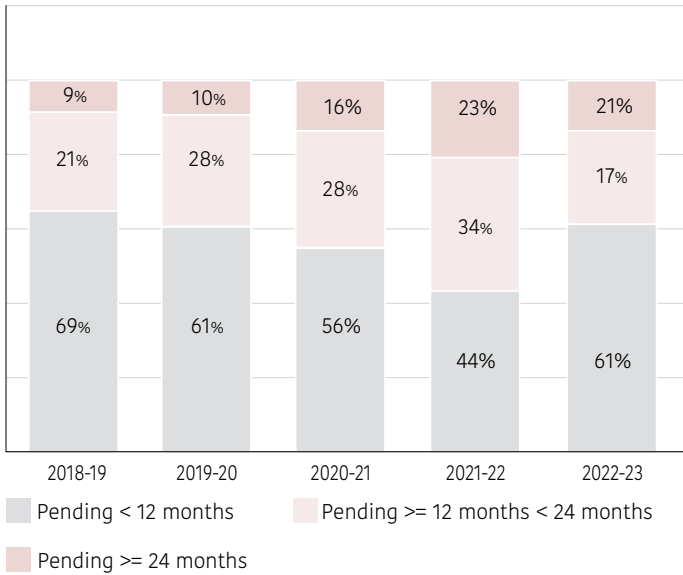
Criminal Pending	2018-19	2019-20	2020-21	2021-22	2022-23
Burnie	N/A	N/A	217	156	193
Hobart	N/A	N/A	322	300	352
Launceston	N/A	N/A	172	196	198
Total	680	688	711	652	743

METHOD OF FINALISATION (MOST SERIOUS CHARGE)



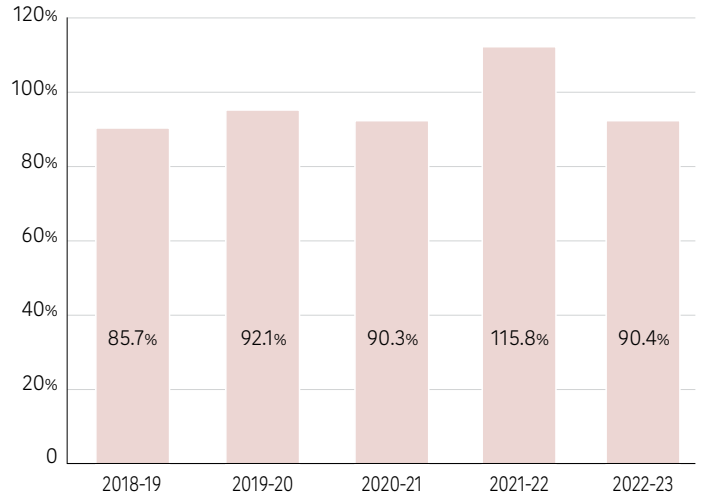
Method Finalised	Total 2020-21	Total 2021-22	Total 2022-23
Pleaded guilty	143	154	114
Withdrawn	157	133	184
Found guilty	28	25	30
Acquitted	9	12	11
Remitted from Supreme Court to Lower Court	21	22	18
Pleaded guilty - Section 385A	32	36	27
Dismissed	1	1	3
Convicted of alternative	2	3	3
Accused died	6	4	7
Criminal Justice (Mental Impairment) Act disposition	1	2	3
Found not guilty	2	4	2
Unknown	121	124	151
Grand Total	523	520	553

BACKLOG INDICATOR: CRIMINAL



	2018-19	2019-20	2020-21	2021-22	2022-23
Pending < 12 months	69%	61%	56%	44%	61%
Pending >= 12 months and < 24 months	21%	28%	28%	34%	17%
Pending >= 24 months	9%	10%	16%	23%	21%

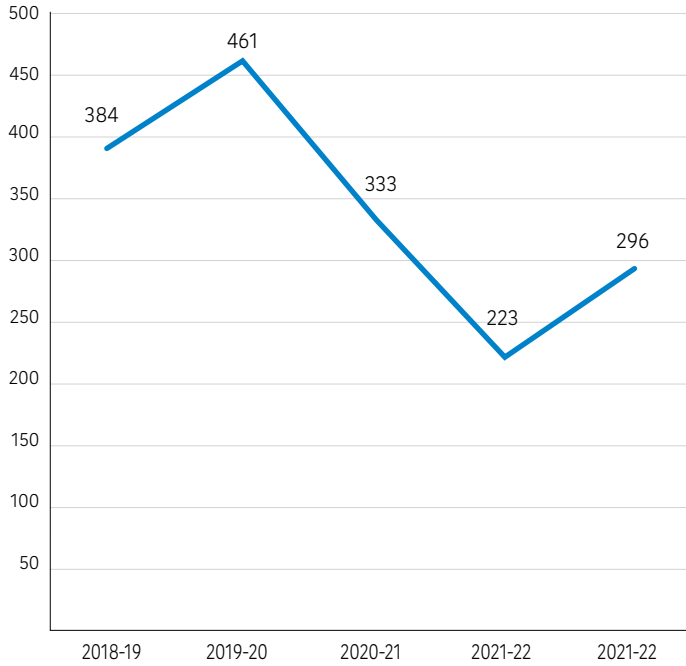
CRIMINAL CASE (FIRST INSTANCE) CLEARANCE RATES



	2018-19	2019-20	2020-21	2021-22	2022-23
First Instance Clearance Rate	85.7%	92.1%	90.3%	115.8%	90.4%

Criminal (non-appeal) lodgements for the 2022-23 year increased considerably, reaching a total of 612, compared to the 2021-22 total of 449 (a 36% increase). There was an increase in the number of finalisations compared to the previous year, however overall, the clearance rate declined significantly over the previous year to 90.4% from 115.8% in 2021-22.

BAIL APPLICATIONS - 5 YEAR TREND



	2018-19	2019-20	2020-21	2021-22	2022-23
Total	384	461	333	223	296

Bail applications have increased by 33% from the 2021-22 year.

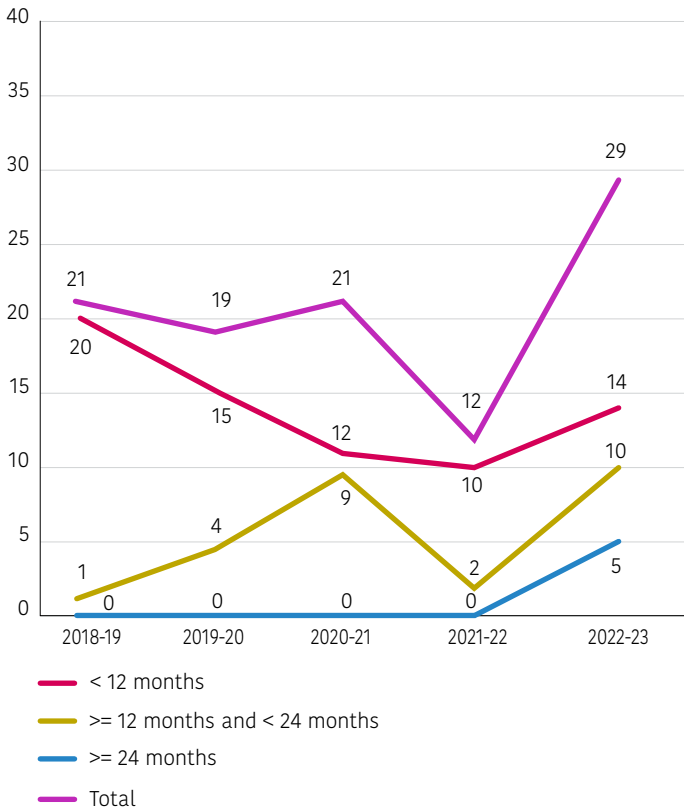
APPEALS (COURT OF CRIMINAL APPEAL)

COURT OF CRIMINAL APPEAL LODGEMENTS & FINALISATIONS - 5 YEAR TREND



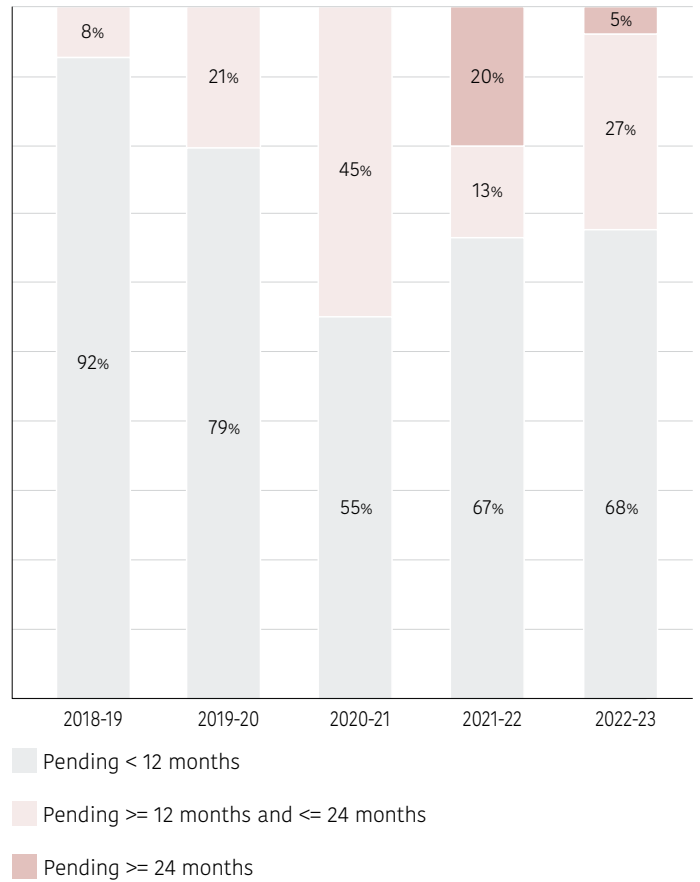
	2018-19	2019-20	2020-21	2021-22	2022-23
Total Lodgements	32	28	21	23	19
Total Finalisations	29	28	18	27	13

COURT OF CRIMINAL APPEAL PENDING - 5 YEAR TREND



Age	2018-19	2019-20	2020-21	2021-22	2022-23
1. < 12 months	20	15	12	10	14
2. >= 12 months and < 24 months	1	4	9	2	10
3. >= 24 months	0	0	0	0	5
Total	21	19	21	12	29

BACKLOG INDICATOR: COURT OF CRIMINAL APPEAL



	2018-19	2019-20	2020-21	2021-22	2022-23
Pending < 12 months	92%	79%	55%	67%	68%
Pending >= 12 months and < 24 months	8%	21%	45%	13%	27%
Pending >= 24 months	0%	0%	0%	20%	5%

SEXUAL OFFENCE CASES WITH CHILD COMPLAINANTS

CASE MANAGEMENT PILOT

The Supreme Court has jurisdiction in relation to sexual crimes under the *Criminal Code* including crimes such as rape, persistent sexual abuse of a child, penetrative sexual abuse of a child and indecent assault. Some of the charges heard and determined by the Supreme Court involve complainants who are children. In late 2018 the judges of the Supreme Court resolved to implement a case management pilot program to target these cases. The purpose of the pilot was to expedite the cases and in particular to expedite the evidence of child complainants so that their evidence is given at a much earlier time in proceedings. The resolution was driven by concerns held by the judges about the impact of delay on young complainants. These concerns were informed by the experience of the judges in trials and sentencing hearings. It is usual in sentencing hearings for victim impact statements to be provided to the Court and, in the case of children, these often refer to the stress produced by delay and demonstrate the harmful effects of that delay upon young people at a formative stage of their lives. These harmful effects of delay are suffered regardless of the outcome of the proceedings.

The decision of the judges to actively case manage these matters was also informed by the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. In 2017 the Royal Commission released its Criminal Justice Report which dealt with criminal justice responses to child sexual abuse and made recommendations for police and prosecutors, and for improvements to court processes. These included recommendations to reduce delays and to develop measures to encourage case management and the determination of preliminary issues before trial.¹

It should be noted that efficiencies in relation to these cases also benefit accused and do not lead to any disadvantage.

¹ Recommendation 72 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Criminal Justice Report (August 2017).

CASES IDENTIFIED FOR CASE MANAGEMENT

The targeted case management approach for sexual offence cases with a child complainant began in February 2019. The case management pilot targets cases that satisfy the following criteria:

- Sexual offence
- Committed to the Supreme Court for trial (i.e. after plea of not guilty)
- Complainant aged under 18 at the date of the accused's first appearance in the Supreme Court

Historical cases and cases where the complainant was a child at the time of the offence but is an adult when the matter reaches the Supreme Court do not fall within the pilot. However, they do attract various legislative measures (set out below) to enable vulnerable witnesses give their best evidence.

CASE MANAGEMENT APPROACH

The case management approach is to have a single judge retain management of a particular case (the 'docket' system). That judge manages the case with the objective of having the child complainant give their evidence at a 'special hearing' as soon as practicable after the matter is first listed in the Supreme Court. At directions hearings convened by the judge, timetables are imposed to progress the matter and to reduce delay.

In March 2014 Tasmanian legislation² was amended to permit a special witness, which includes a child, to give evidence before the jury is empanelled and to have that evidence video-recorded and played at the trial. This pre-recording of the evidence is called a 'special hearing'. If a special hearing is conducted the witness is not required to give evidence at trial.

While the objective of the pilot is to enable child complainants to give their evidence as soon as possible, the Court must also ensure that the accused is not prejudiced and has a fair trial. Before the special hearing can commence there are steps that must be taken to ensure the process is fair. The indictment and Crown Papers must be filed and there must be full disclosure of all documents relied upon by the State at trial. Preliminary arguments, which may affect the cross-examination of the complainant about matters such as the admissibility of tendency evidence, must be resolved. If these steps are not undertaken before the special hearing the witness may need to be recalled to give additional evidence.

² *Evidence (Children and Special Witnesses) Act 2001*

The judge to whom the matter is allocated holds a number of directions hearings to set a timetable for these steps to be undertaken, to enable the special hearing to be expedited. There is no fixed guideline for how long these steps must take. Rather, the approach of the judges in case managing these matters has been to progress each matter as much as possible, allowing for the particular circumstances of each case. In some cases, delay has been necessary in order to accommodate a child's particular needs.

In March 2021 the *Evidence (Children and Special Witnesses) Act 2001* was amended by the insertion of Part 2A. That Part makes provision for the Court to appoint witness intermediaries, who provide assistance to enable vulnerable witnesses to communicate so they can give their best evidence. The legislation empowers a judge to order a report by a witness intermediary to assess a witness's particular communication needs. Judges hold a ground rules hearing to consider the report and make appropriate directions to enable the child to understand the questions and to help them communicate their answers. These directions may relate to the form or complexity of questions, the need for breaks and the use of aids such as timelines. These procedures now form an integral part of the case management undertaken by the judges.

COMMENTS

The Supreme Court has the opportunity to case manage a matter once an accused first appears in the Supreme Court, having been committed by the Magistrates Court. The first appearance is likely to be months after the accused first appeared in the Magistrates Court, however the Supreme Court has no control over any processes that occur before the first appearance in the Supreme Court.

The pilot is concerned with managing a relatively small number of matters and one case involving multiple child complainants may represent a significant percentage of such cases in any one financial year and yet not be representative of trends in relation to the management of cases.

It has taken time for the benefit of the pilot to be reflected in the figures. For some time the pending case load included matters which pre-dated the commencement of the pilot and which had not been case managed. Also, initially not all cases involving child complainants were detected whereas now most cases have had the benefit of the pilot from first appearance.

It can be seen that the number of cases involving pre-recordings has steadily increased and is now the norm: Table 2. It may be noted that there was a significant increase in pre-recordings in the 2020-2021 financial year which was during the COVID-19 lockdown period when trials were suspended but the courts kept operating and were able to conduct pre-recordings.

The Court will review the recommendations of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (August 2023) to identify areas of focus for the Supreme Court.

DATA

The data relied upon for the figures in this report relates to matters with a first appearance in the Supreme Court in the financial years 2015-16 to 2022-23. The Court's case management approach began during the 2018-19 financial year, in February 2019. The numbers of matters in the current data set are small, so a single case may have a significant impact on the data.

TABLE 1: ALL SEXUAL OFFENCE LODGEMENTS WITH A CHILD COMPLAINANT

Year	Lodgements of Sexual Offences with Child Complainants [#]
2015-16	14
2016-17	20
2017-18	23
2018-19	19
2019-20	29
2020-21	18
2021-22	18
2022-23	26
Total	167

[#]Source: CCMS Lodgements-Detail.

Table 1 counts new matters lodged in a financial year for sexual offences involving a child complainant, whether or not the matter has been finalised. A new matter is a complaint or complaints that are the subject of a committal order.

TABLE 2: TOTAL NUMBER OF PRE-RECORDINGS/EVIDENCE AT TRIAL.

Year	Pre-Recording	Evidence at Trial - No Pre-Recording
2015-16	-	-
2016-17	-	2
2017-18	3	5
2018-19 [#]	5	13
2019-20	2	9
2020-21	10	1
2021-22	13	4
2022-23	7	2
Total	40	36

[#]Case management started February 2019.

Table 2 shows the number of child complainants who gave evidence either by pre-recording, or by giving evidence at trial.

TRIALS

Not every criminal matter committed for trial to the Supreme Court results in a trial. In some cases the accused changes their plea to guilty, and sometimes the Office of the Director of Public Prosecutions does not continue the prosecution.

Table 3 shows the number of trials, noting that some trials involve more than one child complainant.

TABLE 3: NUMBER OF SEXUAL OFFENCE TRIALS INVOLVING CHILD COMPLAINANTS

Registry	2020-21	2021-22	2022-23
Hobart	2	2	3
Launceston	1	1	2
Burnie	3	4	3
Total	6	7	8

TABLE 4: OUTCOME OF COMMITTALS FOR TRIAL

Year	Found Guilty		Found Not Guilty		Pleaded Guilty		Withdrawn	
	With Pre-Rec	No Pre-Rec	With Pre-Rec	No Pre-Rec	With Pre-Rec	No Pre-Rec	With Pre-Rec	No Pre-Rec
2015-16	-	-	-	-	-	-	-	-
2016-17	-	1	-	1	-	5	-	1
2017-18	-	2	-	1	-	3	-	-
2018-19 [#]	-	3	1	5	-	4	-	7
2019-20	1	9	-	3	1	13	-	4
2020-21	4	-	1	1	-	13	-	4
2021-22	4	-	1	2	-	4	-	1
2022-23	6	1	1	-	1	17	-	1
Total	15	16	4	13	2	59	0	18

[#]Case management started February 2019.

Table 4:

- counts committals for trial, regardless of whether evidence was given by the child complainant
- records the outcome by the year in which that outcome occurred, not the year in which evidence was given
- records a mixed verdict of ‘found guilty’ and ‘found not guilty’ where there are multiple charges on an indictment, as one outcome of ‘found guilty’
- counts the number of matters rather than the number of complainants, so where there are multiple child complainants for a matter committed for trial this table records only one outcome for that indictment. For example, if an accused was found guilty of sexual offences against four children, the table records a single ‘found guilty’ outcome, rather than four findings of guilt
- if an accused pleaded guilty to one charge, and went to trial and was found guilty in relation to another child on the same indictment, that would be recorded as a ‘found guilty’ outcome

Table 4 shows that a significant number of accused who were committed for trial changed their plea to guilty after appearing in the Supreme Court, obviating the need for the child to give evidence.

TABLE 5: TIME TAKEN TO FINALISE EVIDENCE OF CHILD COMPLAINANTS

	Complainants with Pre-Recording	Complainants with No Pre-Recording
2015-16		
Total Cases	-	-
2016-17		
First appearance to evidence ≤12m	-	1
First appearance to evidence >12 ≤24m	-	1
First appearance to evidence >24m	-	-
Total Cases	-	2
2017-18		
First appearance to evidence ≤12m	1	-
First appearance to evidence >12 ≤24m	2	5
First appearance to evidence >24m	-	-
Total Cases	3	5
2018-19#		
First appearance to evidence ≤12m	3	4
First appearance to evidence >12 ≤24m	2	7
First appearance to evidence >24m	-	2
Total Cases	5	13
2019-20		
First appearance to evidence ≤12m	1	3
First appearance to evidence >12 ≤24m	1	3
First appearance to evidence >24m	-	3
Total Cases	2	9
2020-21		
First appearance to evidence ≤12m	2	-
First appearance to evidence >12 ≤24m	7	1
First appearance to evidence >24m	1	-
Total Cases	10	1
2021-22		
First appearance to evidence ≤12m	4	1
First appearance to evidence >12 ≤24m	6	2
First appearance to evidence >24m	3	1
Total Cases	13	4
2022-23		
First appearance to evidence ≤12m	2	-
First appearance to evidence >12 ≤24m	4	1
First appearance to evidence >24m	1	1
Total Cases	7	2

#Case management started February 2019.

Nazar v Hydro Electric Corporation [2022] TASFC 11

Buddy Nazar broke his leg on 25 May 2018 when he slipped off a log while out walking with his partner and dog beside the lake at Tullah. Mr Nazar was an employee of the Hydro Electric Corporation (HEC), and at the time of the accident he was temporarily based at Tullah for work. At the time he was injured, Mr Nazar was on call as part of his usual employment for HEC.

Mr Nazar claimed workers compensation from HEC, but HEC disputed liability and the matter went to hearing before the Workers Rehabilitation and Compensation Tribunal. The Chief Commissioner, Ms Clues, determined that the injury arose in the course of his employment, on the basis that the injury occurred during an interval between periods of work, in the course of an activity which HEC had induced or encouraged Mr Nazar to do. HEC appealed against the decision. On appeal, Justice Geason set aside the decision of the Tribunal, finding that there was no evidence that Mr Nazar was injured in the course of an activity induced or encouraged by HEC. Mr Nazar appealed from Justice Geason's decision to the Full Court.

The Court, made up of Chief Justice Blow, Justice Estcourt and Justice Jago, published three separate judgments, all reaching the conclusion that this was not an "interval case". Despite agreeing with Justice Geason that this was not an interval case, Chief Justice Blow found that the learned primary judge erred in discounting the need to address Mr Nazar's alternate submission, that being that he was injured while undertaking actual work. While on call, Mr Nazar was required to stay at Tullah within a limited area with mobile coverage, to be prepared to respond to a call out within 15 minutes, and was paid a daily rate to be on call. All three judges found that as Mr Nazar was on call at the time of the injury, and was observing the necessary conditions of being on call, the injury occurred while Mr Nazar was performing duties imposed by his contract with HEC. As such the injury was sustained during the course of his employment.

All three judges held that in the alternative, if the case were to be regarded as an interval case, the injury was nevertheless sustained during the course of Mr Nazar's employment. Chief Justice Blow and Justice Jago held that if it were to be classified as an interval case then it would be on the basis of place, as Mr Nazar's presence within mobile service range at Tullah was integral to the performance of his work obligations. Justice Estcourt held that if it was in fact an interval case, it was on the basis of an activity induced or encouraged by HEC, warning against taking 'too narrow an approach to the nature and terms and circumstances' of employment in such a case.

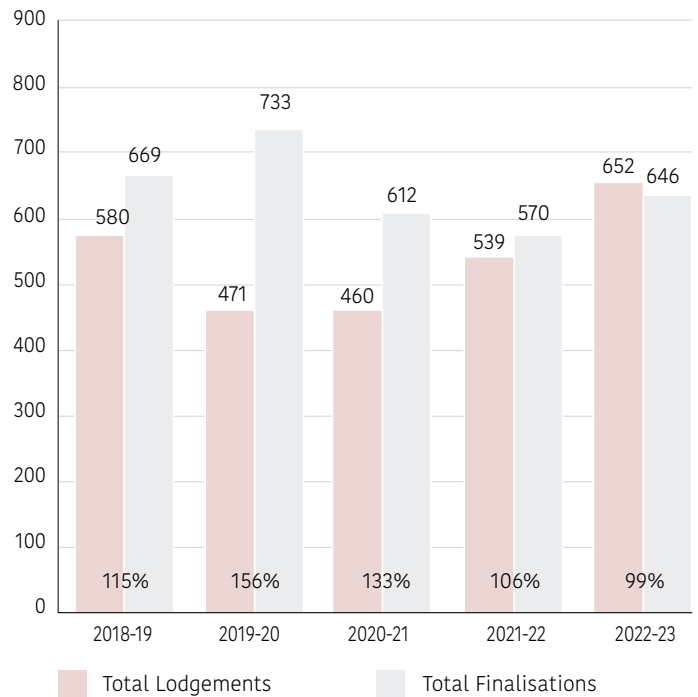
The Full Court allowed the appeal, setting aside the orders of the primary judge and substituting an order dismissing the original appeal, restoring the original determination made by the Tribunal.

CASE STUDY

CIVIL PERFORMANCE DATA

FIRST INSTANCE

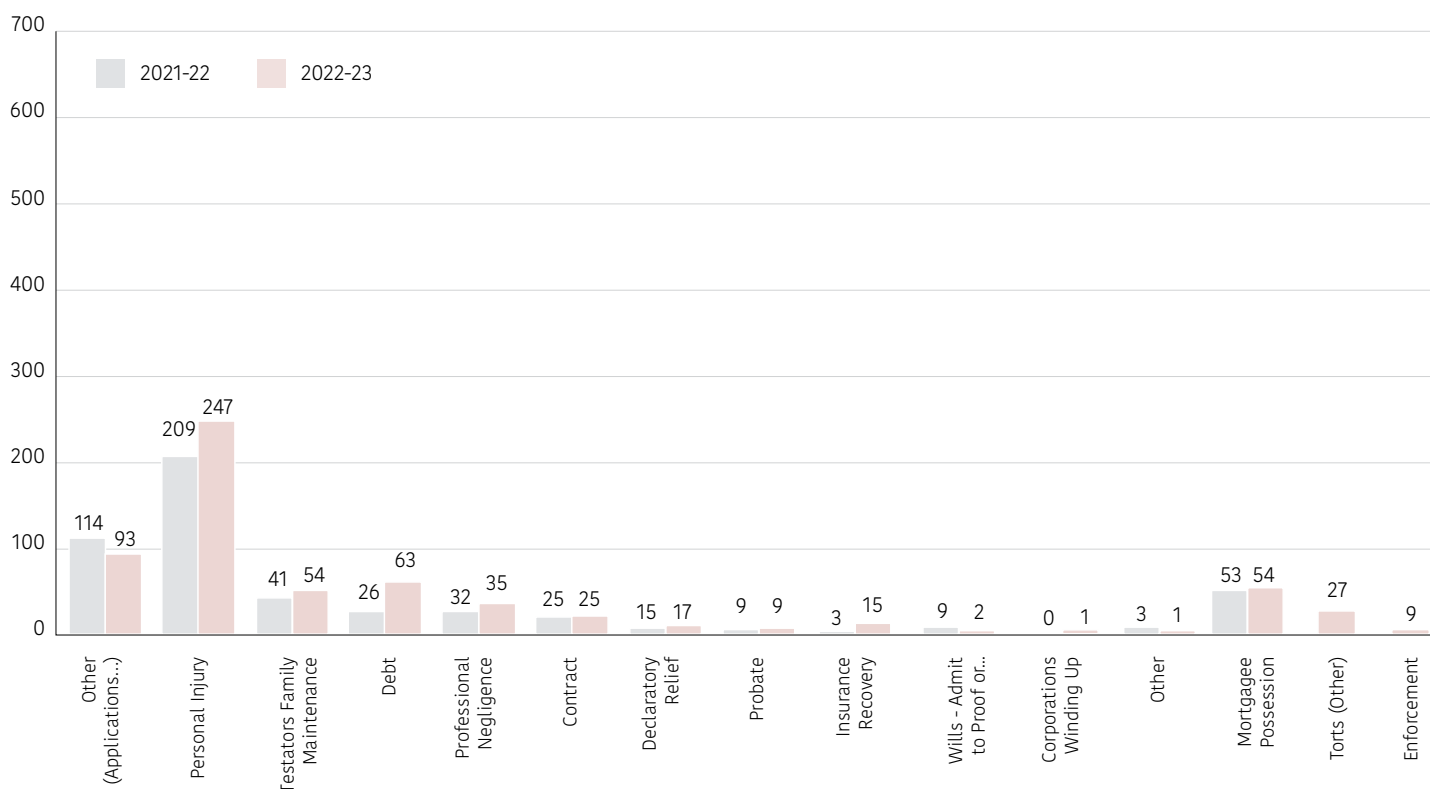
CIVIL LODGEMENTS AND FINALISATIONS - 5 YEAR TREND



	2018-19	2019-20	2020-21	2021-22	2022-23
Total Lodgements	580	471	460	539	652
Total Finalisations	669	733	612	570	646
Clearance Rate	115%	156%	133%	106%	99%

Civil (non-appeal) lodgements for the 2022-23 year increased by 21% (113) on the 2021-22 year. Finalisations increased by 13% (76) in 2022-23 from the 2021-22 year. The clearance rate decreased slightly compared to 2021-22 – to 99%.

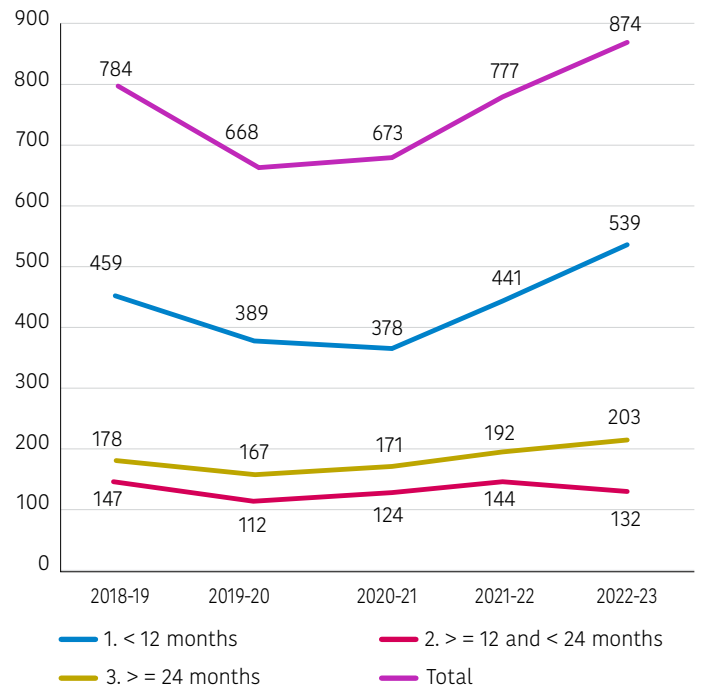
CIVIL LODGEMENTS BY FILE TYPE



Lodgement	2021-22	2022-23
Other (Applications Under Acts)	114	93
Personal Injury	209	247
Testators Family Maintenance	41	54
Debt	26	63
Professional Negligence	32	35
Contract	25	25
Declaratory Relief	15	17
Probate	9	9
Insurance Recovery	3	15
Wills - Admit to Proof or Rectification	9	2
Corporations Winding Up	0	1
Other	3	1
Mortgagee Possession	53	54
Torts (Other)	0	27
Enforcement	0	9
Total	539	652



CIVIL PENDING - 5 YEAR TREND

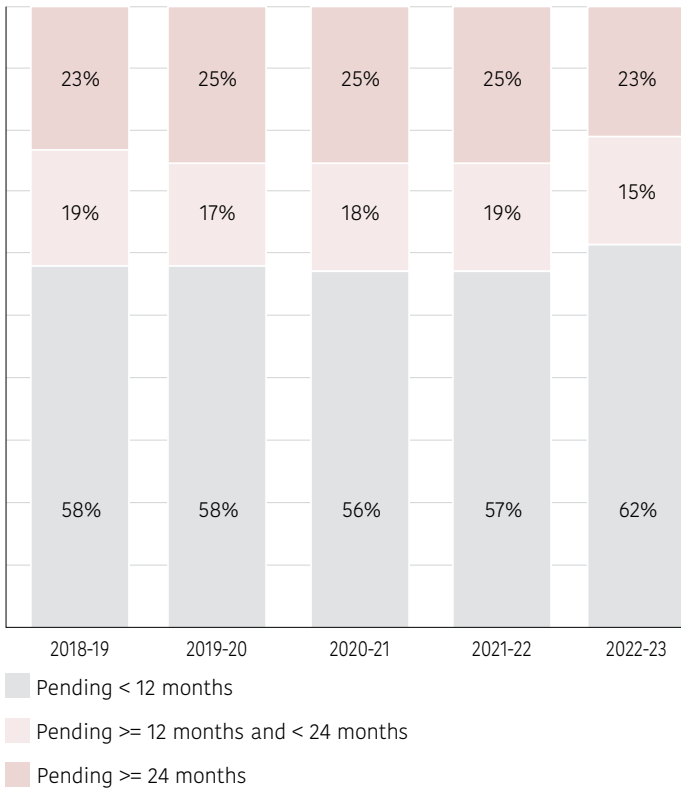


Age Months	2018-19	2019-20	2020-21	2021-22	2022-23
1. < 12 months	459	389	378	441	539
2. >= 12 months and < 24 months	147	112	124	144	132
3. >= 24 months	178	167	171	192	203
Total	784	668	673	777	874

The civil (non-appeal) pending caseload increased by 12.5% during the reporting year, from 777 in 2021-22 to 874 in 2022-23. The backlog has remained fairly steady at:

- 62% of cases aged less than 12 months;
- 15% of cases aged between 12 and 24 months; and
- 23% of cases greater than 24 months.

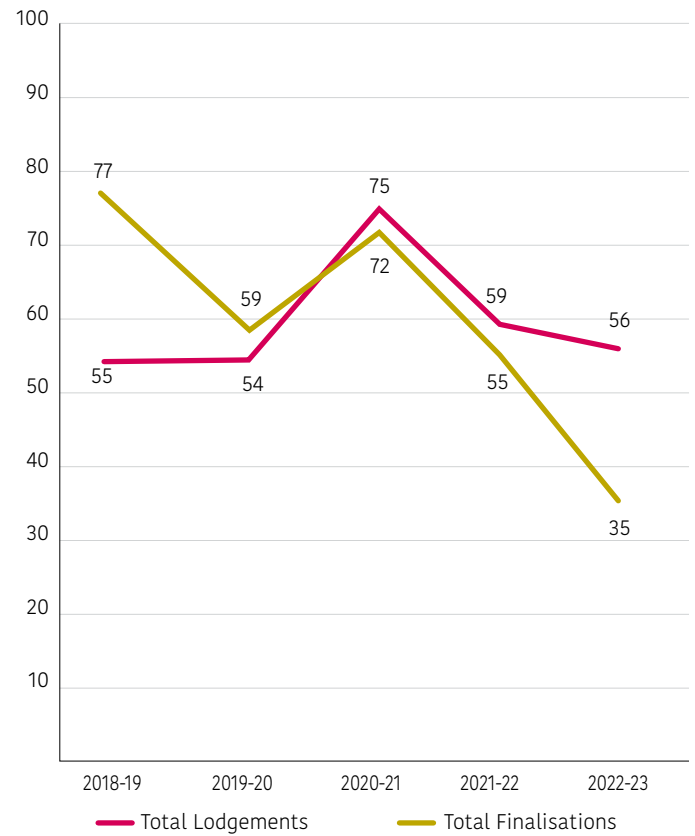
CIVIL BACKLOG INDICATOR - FIRST INSTANCE



	2018-19	2019-20	2020-21	2021-22	2022-23
Pending < 12 months	58%	58%	56%	57%	62%
Pending >= 12 months and < 24 months	19%	17%	18%	19%	15%
Pending >= 24 months	23%	25%	25%	25%	23%

APPEALS (FULL COURT & LOWER COURT)

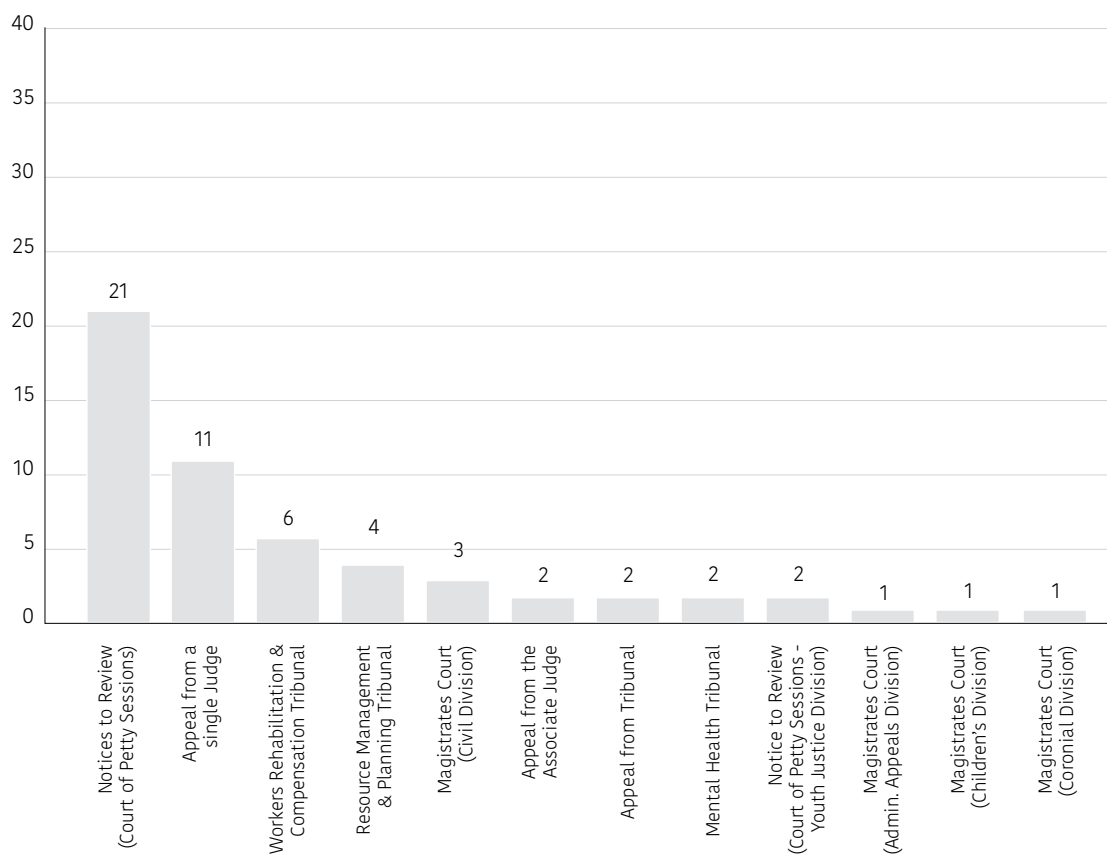
APPEAL LODGEMENTS AND FINALISATIONS - 5 YEAR TREND



	2018-19	2019-20	2020-21	2021-22	2022-23
Total Lodgements	55	54	75	59	56
Total Finalisations	77	59	72	55	35

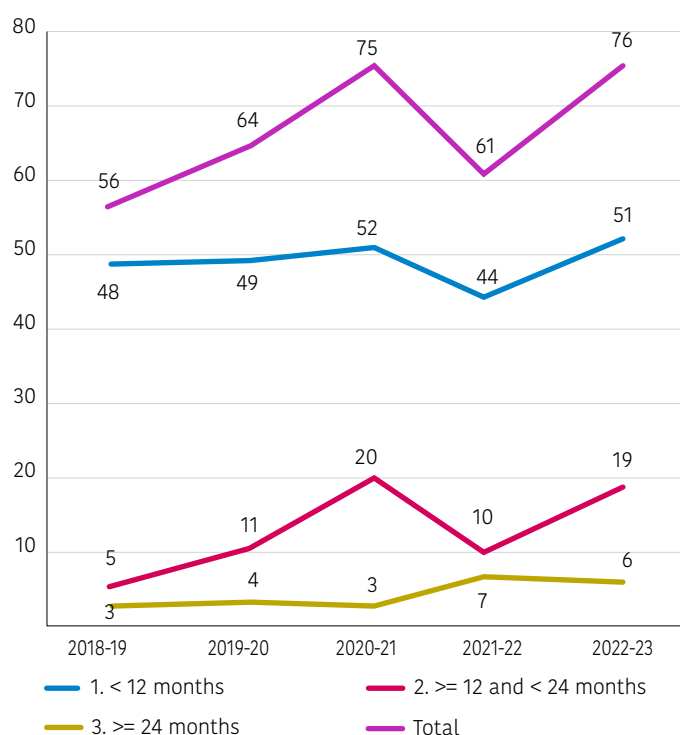
Full Court and Lower Court appeal (combined) lodgements have decreased slightly on the 2021-22 year by 5%. Finalisations have also decreased from 55 in 2021-22 to 35 in 2022-23, representing a 36% decrease.

CIVIL APPEAL (FULL COURT & LOWER COURT) LODGEMENTS BY ORIGIN



Appeal Origin	Number 2022-23
Notices to Review (Court of Petty Sessions)	21
Appeal from a Single Judge	11
Workers Rehabilitation and Compensation Tribunal	6
Resource Management & Planning Tribunal	4
Magistrates Court (Civil Division)	3
Appeal from the Associate Judge	2
Appeal from Tribunal	2
Mental Health Tribunal	2
Notice to Review (Court of Petty Sessions - Youth Justice Division)	2
Magistrates Court (Administrative Appeals Division)	1
Magistrates Court (Children's Division)	1
Magistrates Court (Coronial Division)	1
Total	56

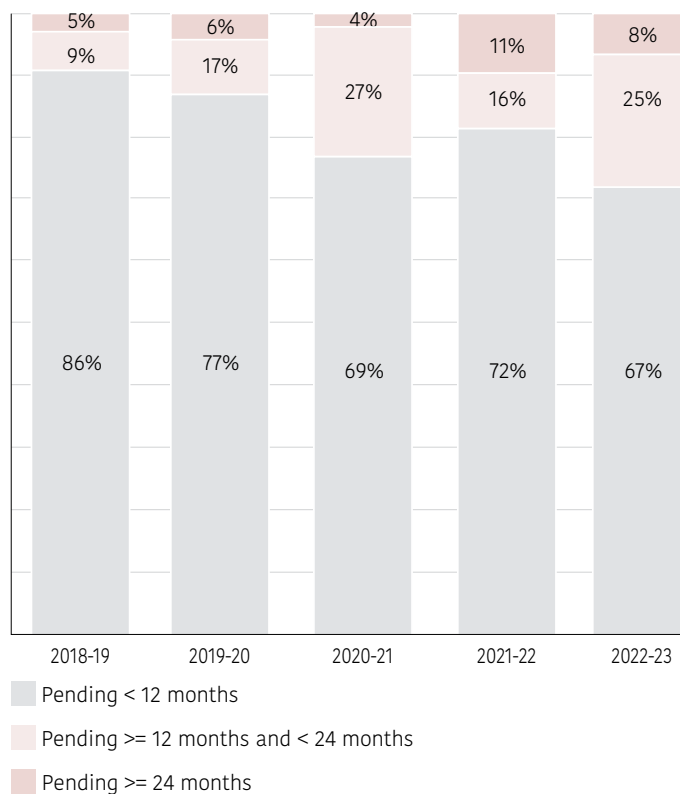
CIVIL APPEAL PENDING (FULL COURT & LOWER COURT) - 5 YEAR TREND



Age	2018-19	2019-20	2020-21	2021-22	2022-23
1. < 12 months	48	49	52	44	51
2. >= 12 months and < 24 months	5	11	20	10	19
3. >= 24 months	3	4	3	7	6
Total	56	64	75	61	76

Full Court and Lower Court appeal (combined) pending matters have increased 25% from 61 in 2021-22 to 76 in 2022-23.

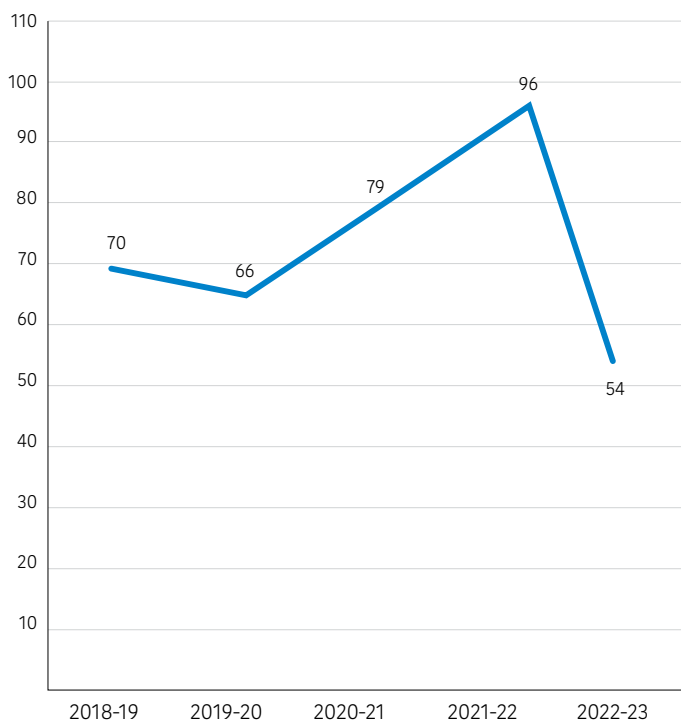
CIVIL APPEALS BACKLOG INDICATOR



	2018-19	2019-20	2020-21	2021-22	2022-23
Pending < 12 months	86%	77%	69%	72%	67%
Pending >= 12 months and < 24 months	9%	17%	27%	16%	25%
Pending >= 24 months	5%	6%	4%	11%	8%

ADMISSIONS TO PRACTICE

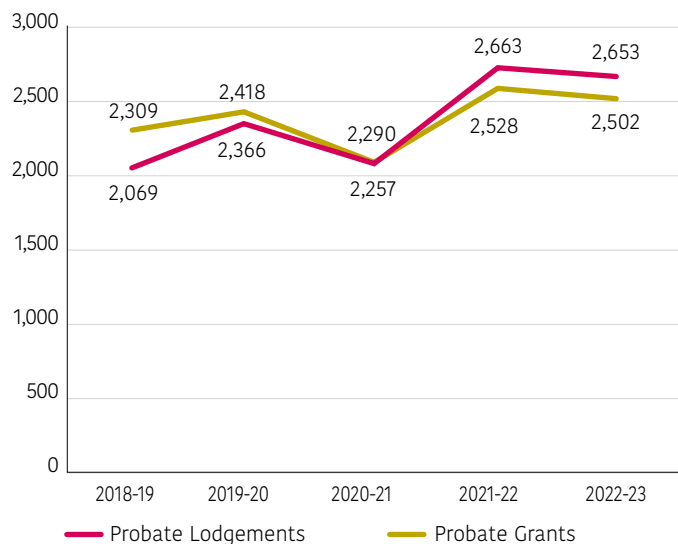
ADMISSIONS TO PRACTICE - 5 YEAR TREND



	2018-19	2019-20	2020-21	2021-22	2022-23
Total	70	66	79	96	54

PROBATE JURISDICTION

PROBATE LODGEMENTS AND GRANTS - 5 YEAR TREND

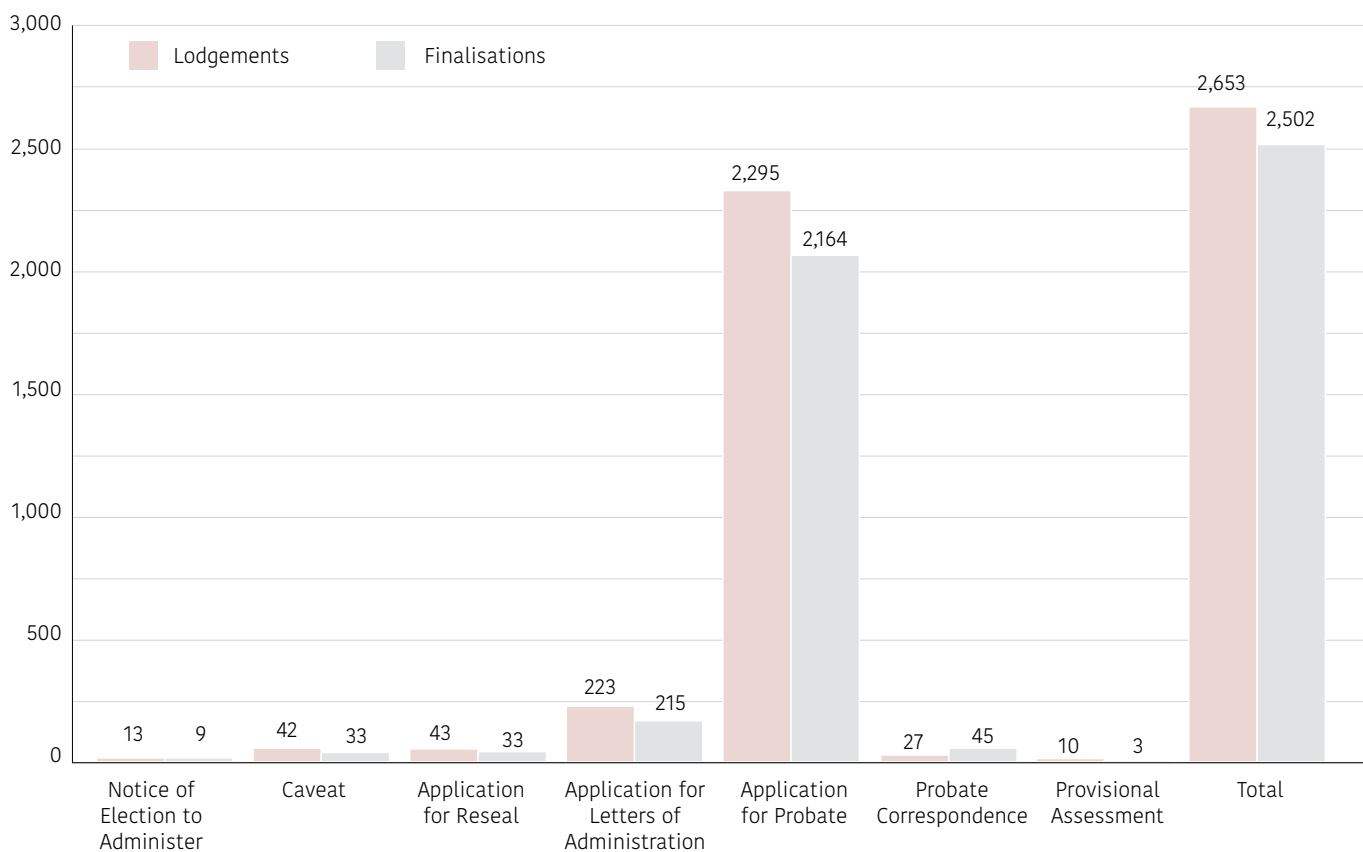


	2018-19	2019-20	2020-21	2021-22	2022-23
Probate Lodgements	2,069	2,366	2,257	2,663	2,653
Probate Grants	2,309	2,418	2,290	2,528	2,502

Probate lodgements decreased slightly by 0.3 %, from 2,663 in 2021-22 to 2,653 in 2022-23.

Grants of Probate also decreased slightly by 26 on the 2021-22 year – a 1% decrease.

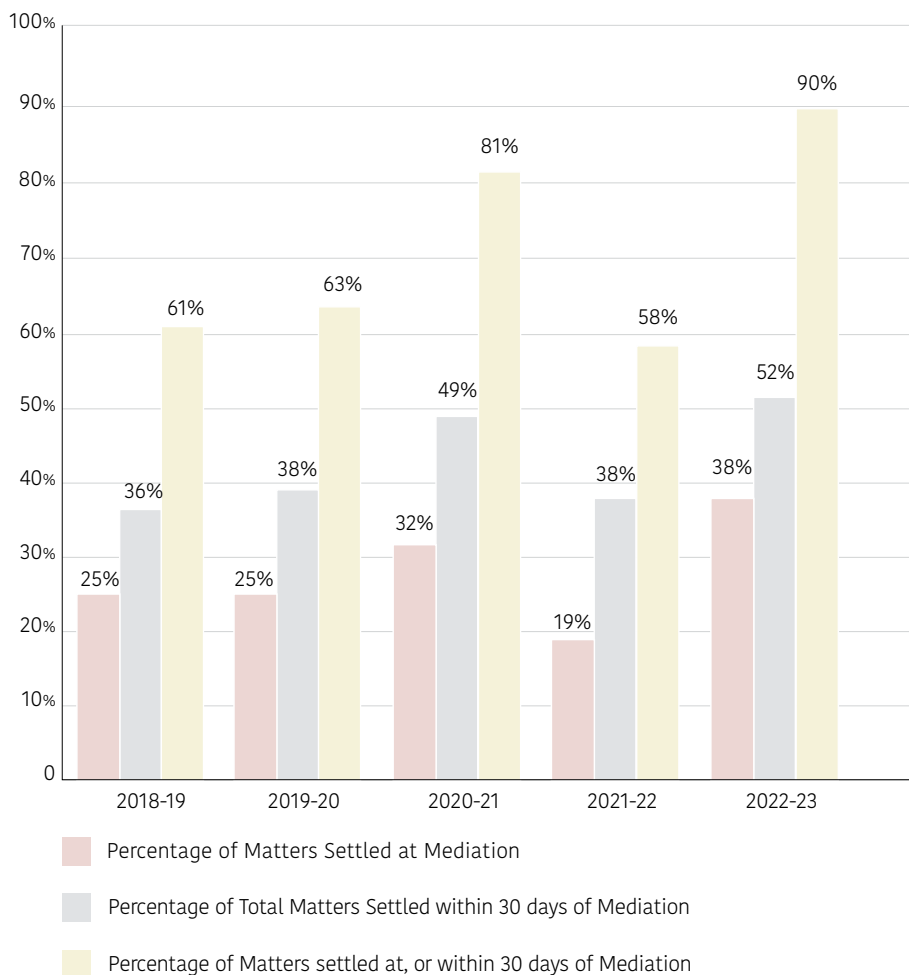
LODGEMENTS AND FINALISATIONS 2022-23



Activity Type	Lodgements	Finalisations
Notice of Election to Administer	13	9
Caveat	42	33
Application for Reseal	43	33
Application for Letters of Administration	223	215
Application for Probate	2,295	2,164
Probate Correspondence	27	45
Provisional Assessment	10	3
Total	2,653	2,502

MEDIATIONS

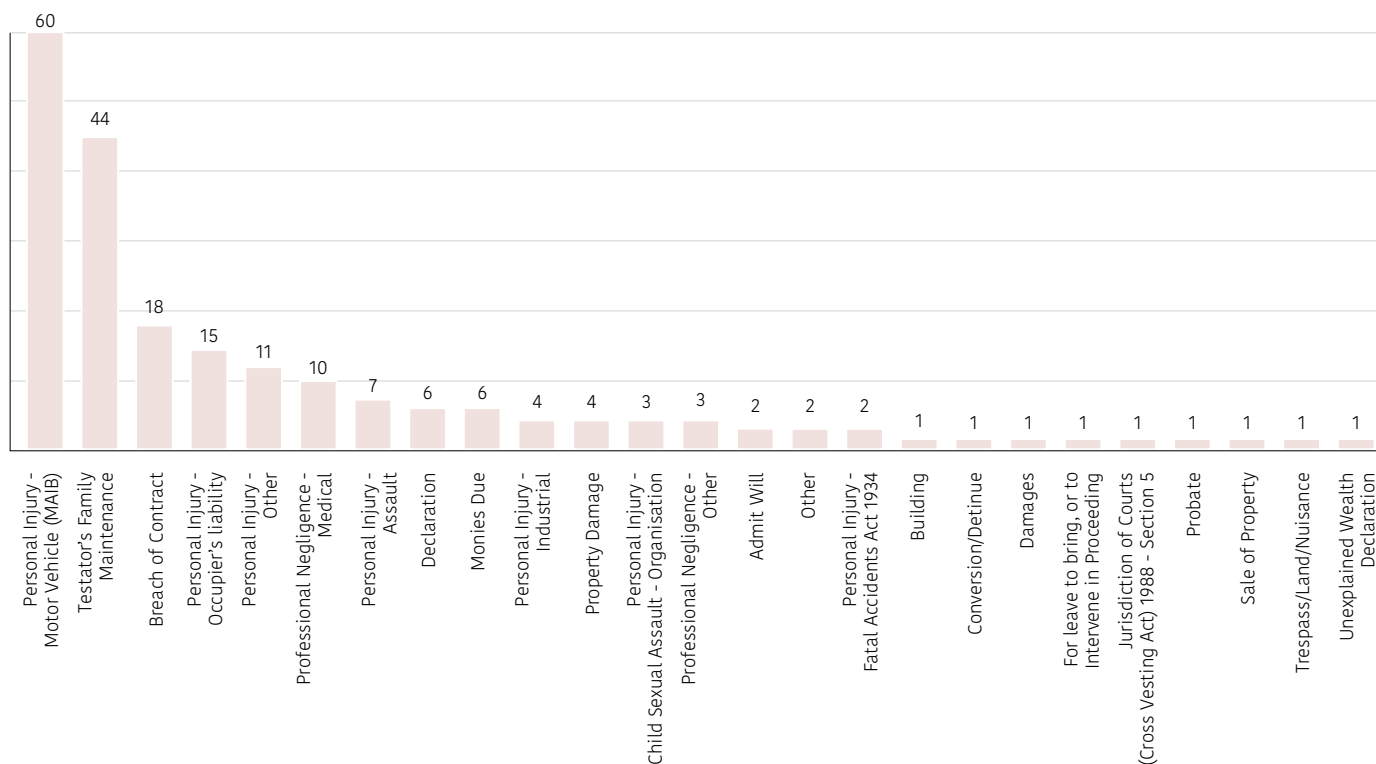
MEDIATIONS - 5 YEAR TREND



Financial Year	2018-19	2019-20	2020-21	2021-22	2022-23
Mediations Conducted	124	140	189	190	206
Matters Settled at Mediation	31	35	60	37	78
Percentage of Matters Settled at Mediation	25%	25%	32%	19%	38%
Total Matters Settled within 30 days of Mediation	45	53	93	73	108
Percentage of Total Matters Settled within 30 days of Mediation	36%	38%	49%	38%	52%
Percentage of Matters settled at, or within 30 days of Mediation	61%	63%	81%	58%	90%

The number of mediations conducted in the 2022-23 year increased 8% on the previous year. The percentage of mediations settled at, or within 30 days of mediation increased significantly by 32% on the 2021-22 year.

TOTAL CONDUCTED BY NATURE



Matter Nature	Total
Personal Injury - Motor Vehicle (MAIB)	60
Testator's Family Maintenance	44
Breach of Contract	18
Personal Injury - Occupier's liability	15
Personal Injury - Other	11
Professional Negligence - Medical	10
Personal Injury - Assault	7
Declaration	6
Monies Due	6
Personal Injury - Industrial	4
Property Damage	4
Personal Injury - Child Sexual Assault - Organisation	3
Professional Negligence - Other	3
Admit Will	2
Other	2
Personal Injury - Fatal Accidents Act 1934	2
Building	1
Conversion/Detinue	1

Damages	1
For leave to bring, or to Intervene in Proceeding	1
Jurisdiction of Courts (Cross Vesting Act) 1988 - Section 5	1
Probate	1
Sale of Property	1
Trespass/Land/Nuisance	1
Unexplained Wealth Declaration	1
Grand Total	206

LOCATION & CONTACTS OF COURTS

Hobart: 3-5 Salamanca Place, Hobart TAS 7000

Launceston: 116 Cameron Street, Launceston TAS 7250

Burnie: 38 Alexander Street, Burnie TAS 7320

CONTACTS

Phone: 1300 664 608

Email: SupremeCourtHobart@supremecourt.tas.gov.au

