



2021 / 2022

PWD  
266  
578

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

2021-22

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.

Excerpts from this publication may be reproduced, with appropriate acknowledgment, as permitted under the Copyright Act 1968.

For further information please contact:  
[SupremeCourt@supremecourt.tas.gov.au](mailto:SupremeCourt@supremecourt.tas.gov.au)

Published November 2022

[www.supremecourt.tas.gov.au](http://www.supremecourt.tas.gov.au)



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	11
------------	----

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
-----------------	----

Performance Data	21
------------------	----

Civil Jurisdiction Caseload	29
-----------------------------	----

Appeals (FCA and LCA)	32
-----------------------	----

Admissions to Practice	35
------------------------	----

Probate Jurisdiction	35
----------------------	----

Mediations	37
------------	----

Location & Contacts of Courts	39
-------------------------------	----

# CONTENTS



# From the Chief Justice



The Hon Alan Blow AO

## THE SUPREME COURT OF TASMANIA IN 2021/2022: SOME OBSERVATIONS

During the reporting year the major challenges faced by the Court were again the impact of the COVID-19 pandemic, the backlog of criminal cases, and the volume of judicial work.

### THE COVID-19 PANDEMIC

Criminal trials proceeded in Hobart, Launceston and Burnie during the months from July to December 2021. Because of social distancing requirements and the small size of some jury rooms, it was not possible to conduct more than two jury trials at a time in Hobart, nor more than one jury trial at a time in Launceston. Jurors were not confined to jury boxes. In Launceston and Burnie the public seating areas were converted to jury areas, with seats more than 1.5 metres apart, and new public areas were made available in other rooms where the public could watch the proceedings on TV screens. In Hobart, jury trials were routinely conducted in Court 1

(originally designed as a civil court) and Court 7, with jurors spread out over about half of each courtroom.

Tasmania's borders re-opened in December 2021. Because of increasing infection rates in January 2022 criminal trials were again suspended. The annual church service for the opening of the legal year was cancelled, as was the traditional judges' breakfast following the service. Arrangements were made for a service and a reception to be held on 29 July.

Jury trials resumed on 28 March 2022. There were no further interruptions to jury trials during the reporting year, but the arrangements necessitated by social distancing remained in place. All persons in court rooms and public areas of the court buildings were required to wear masks throughout the year.

Throughout the reporting year the judges continued to permit counsel to participate in proceedings by audio visual link or by telephone when appropriate. In some cases accused persons were permitted to participate in proceedings by telephone when their cases were listed only for mention or directions. In a number of cases Victorian counsel appeared by audio visual links during lockdowns in Melbourne.

On 12 May 2022 the Attorney-General, the Hon Elise Archer MP, signed a fresh notice under s 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* and I signed a fresh determination authorising certain proceedings to be held in the Court without face-to-face appearances for a maximum period of 12 months.

### OTHER CHALLENGES

The Court's greatest challenge remains the backlog of first instance criminal cases. In the reporting year the clearance rate increased from 92% to 108.3%, but that figure is deceptive. It reflects the fact that the *Justice Miscellaneous (Criminal Backlog and Related Matters) Act 2020* commenced on 1 July 2021. Prior to that date, witnesses in criminal cases were examined in preliminary proceedings before magistrates or justices only after they had been committed for trial and appeared in the Supreme Court. However the *Criminal Code* was amended with effect from that date to provide for preliminary proceedings before magistrates and justices ordinarily to take place before the accused were committed for trial. Because accused persons were often being committed for trial at a later stage there was a temporary reduction in the number of cases being committed for trial. The number of criminal cases finalised during the reporting year actually fell from 496 to 445. The backlog problem remains very serious. The only significant development is

that a greater proportion of the pending cases are now in the Magistrates Court awaiting the making of committal orders and a smaller proportion are pending in the Supreme Court.

## APPOINTMENTS

The Honourable Justice Tamara Jago was appointed as a judge of the Court with effect from 1 November 2021. Her Honour is based in Burnie, and is the first judge of the Court ever to be based there. Arrangements have been made for her to conduct most of the criminal cases in Burnie, with other judges visiting Burnie on circuit only twice per year. In her first eight months in office, the number of pending criminal cases in Burnie was reduced from 189 to 156. During the same period the number of pending cases in both Hobart and Launceston increased significantly.

Ms Sarah Kay was appointed as the Solicitor-General for Tasmania with effect from 24 December 2021. She was appointed as senior counsel on 4 January 2022.

The Honourable Robert James Charles Benjamin AM and Ms Kate Cuthbertson were appointed as senior counsel on 13 May 2022. A ceremonial sitting in relation to Ms Kay's appointment and theirs was held on 9 June 2022.

On 18 May 2022 Her Excellency the Governor appointed two legal practitioners, Christopher Groves and Jane Bloomfield, to be members of the Rule Committee pursuant to the *Supreme Court Civil Procedure Act 1932*.

## OTHER DEVELOPMENTS

With effect from 6 September 2021, s 6A of the *Supreme Court Act 1887* and the *Supreme Court Act 1959* were amended by increasing the retirement age of Supreme Court judges and the associate judge from 72 years to 75 years.

On 4 November 2021 a plaque acknowledging the Muwinina People, the custodians of the land upon which the Supreme Court's buildings in Hobart are situated, was unveiled by Ms Leah Cameron and me. Ms Cameron is the principal solicitor of Marrawah Law Pty Ltd. It is proposed that similar plaques will be installed in the Court's premises in Launceston and Burnie after consultation with representatives of the Tasmanian Aboriginal community.

On 22 February 2022 the Parliamentary Standing Committee on Public Works approved the design of a new court complex proposed for the former University of Tasmania site at Mooreville Road, Burnie. On 23 March 2022 the then Premier, the Hon Peter Gutwein MP, announced a halt to

the development of the Mooreville Road proposal while an expression of interest process was undertaken to ascertain whether there was an appropriate site for a new court complex in the Burnie CBD. By the end of the reporting year a number of expressions of interest had been received. It was subsequently announced that three possible sites in the Burnie CBD were being considered. As a matter of principle, it is highly desirable that court buildings 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 2022

# Year at a glance

## CASELOAD SUMMARY

The following tables provide summaries of the Court's caseload in the 2021-22 year.

A detailed review of the operations and performance of the Court to 30 June 2022 is contained within this report.

Jurisdiction	Lodgements	Appeals	Finalised First Instance	Finalised Appeals	Bail Applications
Criminal	420	23	455	27	223
Civil	539	59	570	55	n/a
<b>Total</b>	<b>959</b>	<b>82</b>	<b>1,025</b>	<b>82</b>	<b>223</b>

Jurisdiction	Lodgements	Caveat	Application for Reseal	Total
Probate	2,663	40	35	2,738

Jurisdiction	Conducted	Settled at Conference	Settled after Conference (within 30 days)	Total Settled
Mediation	190	37	73	110

## 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 adopting 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 in the Magistrates Court it is ordered that they appear in the Supreme Court for sentencing by a judge. If the defendant pleads not guilty and there is to be a trial, it is ordered that they appear in the Supreme Court for trial, by 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 consisting of (usually) 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
- 13 Registry staff
- 30 Judicial Support Staff
- 7 Corporate Support Staff

## OUR BUDGET

- \$12.491M revenue
- \$9.145M 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. Currently there are 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 FULL-TIME 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 (appointed 1st November 2021)

## THE ACTING JUDGES:

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

## 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 2022 Chief Justice Blow took part in the following activities:

- On 16 July 2021 his Honour spoke at a dinner for students who had completed the Tasmanian Legal Practice Course
- On 3 November 2021 his Honour participated in a panel discussion as part of an on-line seminar presented by the Australian Academy of Law on Intermediate Courts of Appeal
- On 13 November 2021, his Honour, together with the Court's architect Peter Partridge, hosted a tour of the Hobart court buildings as part of Open House Hobart, organised by the Australian Institute of Architects
- On 8 February 2022 his Honour attended a meeting at the University of Tasmania to discuss developments relating to the Law Faculty, the Tasmanian Legal Practice Course, and the Tasmania Law Reform Institute
- His Honour attended an on-line meeting of the Council of Chief Justices of Australia and New Zealand on 18 October 2021, and hosted a meeting of that Council in Hobart on 11 April 2022
- On 22 April 2022 his Honour participated in the Australian Institute of Judicial Administration's 10th Appellate Judges Conference, held in Sydney
- His Honour participated remotely in meetings of the Governing Council and Executive Committee of the Australian Judicial Officers Association, and attended a meeting of its Governing Council in Melbourne on 18 June 2022
- His Honour participated in on-line meetings of a committee of the National Judicial College of Australia that is organising a conference to be held in Sydney in October 2022 entitled "Reflections on being a Judge"
- His Honour participated in advocacy exercises as part of the 2022 Tasmanian Legal Practice Course
- On 16 May 2022 his Honour made a speech at the opening of Law Week

- On 18 May 2022, as part of Law Week, his Honour joined Peter Partridge, the Court's architect, in conducting a tour of the Hobart court buildings
- On 30 June 2022 his Honour spoke at the Hobart launch of "Blight Street" by Adelaide poet Geoff Goodfellow

### JUSTICE WOOD

During the year ended 30 June 2022 Justice Wood took part in the following activities:

- Delivered a module on cultural diversity and working with interpreters to the students of the Tasmanian Legal Practice Course in June 2022. This module was developed by Justice Wood in collaboration with the Director of the Course and incorporates teaching about the Recommended National Standards on Working with Interpreters and a foundation in cultural awareness and access to justice
- Joined an advisory committee of the Australian Institute of Judicial Administration for a research project on coercive control in connection with the National Domestic and Family Violence Bench Book. The project was completed and materials published by the AIJA
- As a member of the Judicial Council on Cultural Diversity attended meetings of the Council on 15 October 2021 by teleconference and in person in Adelaide on 6 May 2022 and a meeting of the Cultural Diversity Justice Network on 5 May 2022
- As a member of a sub-committee of the Judicial Council on Cultural Diversity worked on the production of a bench-book for judicial officers on interpreters in criminal proceedings which is now available and has been published on the JCCD website
- Appointed a member of the Australasian Institute of Judicial Administration Council at an election of Council members on 23 October 2021. Attended the Annual General Meeting and Council meetings on 23 October 2021, Council meetings on 19 March 2022 and 4 June 2022 by video conference
- As a member of the AIJA Education Standing Committee attended a meeting by video-conference on 23 February 2022
- Participated in the Tasmania University Law Society's Q & A session as a panelist on 6 September 2021 for the Society's Women in the Law week

- Attended The Friends' School career expo in May 2022 and presented on careers in the law and judiciary
- Attended meetings of the Tasmania Law Reform Institute as a member of the Board
- As a committee member of the Australian Association of Women Judges attended telephone meetings

## JUSTICE ESTCOURT

During the year ended 30 June 2022 Justice Estcourt published the following articles and speeches:

- [The Battle for Trial by Jury](#) Article published in the Australian Law Journal (2021) 95 ALJ 946
- [Ethics and Court Appearances](#); Paper delivered to the Law Society of Tasmania Litigation Conference 2021, November 2021
- [Beware the March of AI](#) Address to the Students' Legal Service 2021
- Full judgment in the Dunalley Fires Actions [Prestage v Barrett; Thorne v Barrett; Howells v Barrett \[2021\] TASSC 27](#)
- Justice Estcourt also conducted an Open House tour at the Hobart Supreme Court

## JUSTICE PEARCE

During the year ended 30 June 2022 Justice Pearce took part in the following activities:

- Attended meetings of the Rule Committee
- 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 Judicial Officers reference group in respect of the proposed relocation of the Burnie Court complex
- In August 2021 conducted Open House lecture and tour, Supreme Court Launceston
- In April and May 2022 conducted weekly training sessions for students of the Centre for Legal Studies

## JUSTICE BRETT

During the year ended 30 June 2022 Justice Brett took part in the following activities:

- Attended meetings of the Board of the Centre for Legal Studies
- Acted as the coordinator of the Supreme Court module for the 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 and acted as Treasurer of the Committee
- Attended meetings of the Judicial Officers reference group in respect of the proposed relocation of the Burnie Court complex
- Attended meetings of the Rule Committee.
- Presented a paper to the Law Society's Criminal Law conference 2022 entitled "Judge Alone Trials"

## JUSTICE JAGO

During the year ended 30 June 2022 Justice Jago took part in the following activities:

- Attended Queen's Birthday Order of Australia Honours Investiture on behalf of the Chief Justice in January 2022
- Conducted sessions for students of the Centre for Legal Studies as part of the Supreme Court module in April and May 2022
- Provided a presentation on "Differences in advocacy: Magistrates Court and Supreme Court" to the Legal Aid Commission criminal law practitioners in June 2022

## ASSOCIATE JUSTICE HOLT

During the year ended 30 June 2022 Associate Justice Holt took part in the following activities:

- Attended meetings of the Harmonisation of Rules Committee
- Attended meetings of the Australian Centre for International Commercial Arbitration Judicial Liaison Committee
- Conducted advocacy workshops for the Centre for Legal Studies



## EDUCATION AND COMMUNITY ENGAGEMENT

Even though many of the COVID regulations are being relaxed, it has still not been possible for the Court to engage fully in many of its normal community and education activities. However, it has been able to continue with some of its activities and also to continue to develop new offerings using technology to stay in touch with the community:

- Following on from the successful webcasts last year, the Court, as forecast last year, webcast the admission of graduates into the legal profession on 6 August 2021. Parents and relatives, both in mainland Australia and overseas, were able to watch practitioners being admitted, which was otherwise not possible due to the COVID regulations and the impossibility of international travel. The videos will remain on the internet for watching in the future. The Court is interested in continuing the webcasting on a long term basis
- The judges continued their long-standing practice of giving lectures at the Tasmanian Legal Practice Course as well as presiding over litigation and advocacy exercises for the Course trainees. These were conducted at the Supreme Court itself, providing the trainees with valuable face to face and practical experience of the Court process, familiarity with the Court environment, and public speaking skills
- In August 2021 the Court provided the venue for the University of Tasmania Law School moots, which give students the experience of arguing a fictitious case in a real court environment
- In March 2022 the Court hosted the Royal Hobart Hospital Medico-Legal Training Program
- Also, in April 2022 the Court was the venue for the Tasmanian University Law School Mooting and Negotiations Competition
- Over the next year, the Australian Law Journal will feature on its back cover a series of photographs, plans and drawings detailing the history of the Court (“one of the oldest, continuously functioning, independent superior courts in the common law world”: the Hon Justice Francois Kunc, ALJ Editor) and the law in Tasmania, curated by the Hon Justice Stephen Estcourt
- In conjunction with this feature, the Court has also begun work on making a video of the Court premises, in conjunction with the architect, Mr Peter Partridge, to showcase the unusual architectural features of the buildings. It is envisaged that this video will be accessed on the internet via a QR code placed with some of the curated covers of the ALJ so that the public can view the video at the same time as reading about the historical development of the Court
- The Court has continued its tradition of participating in Open House tours of its premises to offer to the public access to architecturally significant buildings in and around Hobart
- In Law Week (May 2022), the Chief Justice gave the keynote opening speech at the Law Society of Tasmania. The Chief Justice and the Hon Justice Stephen Estcourt also gave tours of the buildings to the public. The Chief Justice and the Hon Justice Robert Pearce offered sentencing workshops based on fictional scenarios so that people could actively participate in the process of sentencing
- On 4th November 2021 the Court unveiled a plaque in the foyer of the Civil Building acknowledging Aboriginal peoples and their rights as the first peoples of lutruwita (now known as Tasmania). The Chief Justice gave a speech of acknowledgment of the Muwinina people, the custodians of the land on which the Court is situated, and Ms Leah Cameron of Marrawah Law gave the welcome to country. The Court is developing a Reconciliation Action Plan to guide the organisation, its judges and staff in dealing with Aboriginal cultural issues in the workplace and to embed the principles and purpose of reconciliation and would be happy to receive suggestions about the contents of this plan
- The judges have continued to present papers to legal conferences, to publish articles about the law, the Court and its history in newspapers, law journals and academic journals, to deliver addresses to interested groups and to contribute book chapters to legal works

## LEGISLATIVE AMENDMENTS

In the reporting year the legislative changes relating to the work of the Court included the following:

The *Justice Miscellaneous (Court Backlog and Related Matters) Act 2020* commenced on 1 July 2021. That Act amended the *Bail Act 1994* and the *Criminal Code* to limit the situations in which bail applications and appeals from magistrates' decisions relating to bail may be instituted in the Supreme Court. It also amended the *Criminal Code* so that the examination of witnesses in preliminary proceedings before magistrates and justices will ordinarily be conducted before accused persons are committed for trial, rather than after they have been committed and appeared in the Supreme Court. It amended the *Justices Act 1959* by introducing provisions relating to preliminary proceedings and by increasing the monetary limits relating to property crime charges that may be tried by magistrates. It amended the *Sentencing Act 1997* to increase the maximum prison term that can be imposed by a magistrate for a crime that is triable summarily. It also amended the *Misuse of Drugs Act 2001* and the *Police Offences Act 1935* so that, in a variety of situations, summary charges may be laid when previously defendants had to be charged under the *Criminal Code*. All of these measures were designed to reduce the volume of work coming to the Supreme Court, to give magistrates powers to deal with cases that it was appropriate for them to deal with, and thus to reduce the Supreme Court's backlog problem.

The *Justice Miscellaneous (Increase in Judicial Retirement Age) Act 2021* commenced on 6 September 2021. It amended the *Supreme Court Act 1887* and the *Supreme Court Act 1959* to increase the retirement age for judges and the associate judge from 72 years to 75 years.

The *Dangerous Criminals and High Risk Offenders Act 2021* was proclaimed to commence on 13 December 2021. This Act reformed the law in relation to declarations that offenders are dangerous criminals. The consequence of such a declaration is that the offender will be imprisoned indefinitely. The Act provides for periodic reviews, for pre-release procedures, and for High Risk Offender (HRO) orders if a serious offender is considered to pose a risk to the community, but does not meet the criteria for a dangerous criminal declaration. The Court now has the power to make an HRO order which may contain an extensive variety of very restrictive supervisory conditions.

The *Criminal Code Amendment (Judge Alone Trials) Act 2022* was proclaimed to commence on 8 June 2022. It amended the

*Criminal Code* to allow the Crown or an accused person to apply for a trial to be heard and determined by a single judge without a jury. A judge-alone trial may be ordered only if the accused gives an informed consent to the proposed order. A judge-alone trial may not be ordered unless consent is given in respect of every charge on an indictment, and by every accused person if more than one person has been charged. An order for a judge-alone trial may not be made unless a judge is satisfied it is in the interests of justice to make the order.



## CASE EXAMPLE – THE SECOND NEILL-FRASER APPEAL

One of the most publicised and publicly debated criminal cases in the almost 200 year history of the Court has been the conviction for murder of Sue Neill-Fraser. At a trial in 2010 before Justice Blow (as he then was), Ms Neill-Fraser was found guilty of the murder of her partner, Robert Chappell, on or about 26 January 2009, on board the couple's yacht, the Four Winds. She was sentenced to imprisonment for 26 years with effect from 20 August 2009, and it was ordered that she was not to be eligible for parole until she had served 18 years of that sentence. She appealed against both the conviction and sentence.

On 6 March 2012 the Court of Criminal Appeal, comprised of Chief Justice Crawford and Justices Tennent and Porter, dismissed Ms Neill-Fraser's appeal against conviction but allowed the appeal against sentence and sentenced her to imprisonment for 23 years from 20 August 2009 and ordered that she was not to be eligible for parole until she had served 13 years of that imprisonment.

An application for special leave to appeal to the High Court of Australia was dismissed by Chief Justice French and Justice Crennan on 7 September 2012.

Public agitation as to the asserted wrongfulness of Ms Neill-Fraser's conviction, absent a body or a clear motive, and the publication of a number of books and articles about the case, resulted, some years afterwards, in an amendment to the Tasmanian *Criminal Code* permitting a second appeal by a convicted person if there was fresh and compelling evidence demonstrating a substantial miscarriage of justice.

On 2 August 2015 Ms. Neill-Fraser applied for leave to appeal against her conviction pursuant to the new provision of the *Code* on the ground that fresh and compelling evidence established that there had been such a miscarriage of justice. On 21 March 2019 Justice Brett granted her leave to lodge a second appeal to the Court of Criminal Appeal against her conviction on the ground that arguably there was such fresh and compelling evidence.

The evidence to which Justice Brett's decision referred was the evidence of the out of court representations of Ms Meaghan Vass as to her being present, with others, on the yacht at the time of Mr. Chappell's death. The principal piece of evidence providing context to that evidence was the location of Ms Vass's DNA on the yacht, and what a newly commissioned DNA expert, Mr Maxwell Jones of Victoria Police, had to say as to how it would have been a "very rare occurrence" for the presence of that DNA to have been other than as a result of a direct deposit by Ms Vass personally.

Ms Vass in her evidence at the trial had denied that she was ever on board the yacht and the State submitted to the jury that the presence of her DNA was as a result of a secondary transfer. The State submitted that it would have been enough if someone, "anywhere in Hobart" had acquired

some trace of her DNA on their footwear before getting on the yacht, "then maybe got in the car, driven down and got out and onto the boat and transferred it".

Because of the view Justice Brett took about Ms Vass's representations before him, it was neither necessary nor desirable for his Honour to determine whether Mr Jones' evidence might also amount to fresh and compelling evidence. That was left as a matter for the Court on the new appeal.

On the hearing of the second appeal, Ms Vass gave evidence, however Ms Neill-Fraser abandoned reliance on her representations in the midst of her cross-examination by the State and the majority of the Court, comprising Justices Wood and Pearce, dismissed the appeal, concluding that Mr Jones' evidence was not fresh or compelling and did not establish that there had been a substantial miscarriage of justice. Justice Estcourt (in dissent), concluded that Mr Jones' evidence was fresh and compelling and did establish that there had been a miscarriage of justice.

In his judgement Justice Estcourt stated that he would have ordered a new trial for Ms Neill-Fraser on the basis that had Mr Jones' evidence been given at the trial in 2010, the State's case could not have been left to the jury with a reasonable hypothesis consistent with Ms Neill-Fraser's innocence raised by the defence, namely, Ms Vass' asserted presence on the yacht, being trivialised, as it was by the State, as merely a "red herring".

The dismissal of Ms Neill-Fraser's second appeal was the subject of an application to the High Court for special leave to appeal, filed on 4 January 2022. The application was heard and refused on 12 August 2022.

## 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.

### FIRST INSTANCE

Lodgements	2017-18	2018-19	2019-20	2020-21	2021-22
Burnie	124	161	172	155	75
Hobart	276	332	309	243	227
Launceston	175	174	166	141	118
<b>Total</b>	<b>575</b>	<b>667</b>	<b>647</b>	<b>539</b>	<b>420</b>

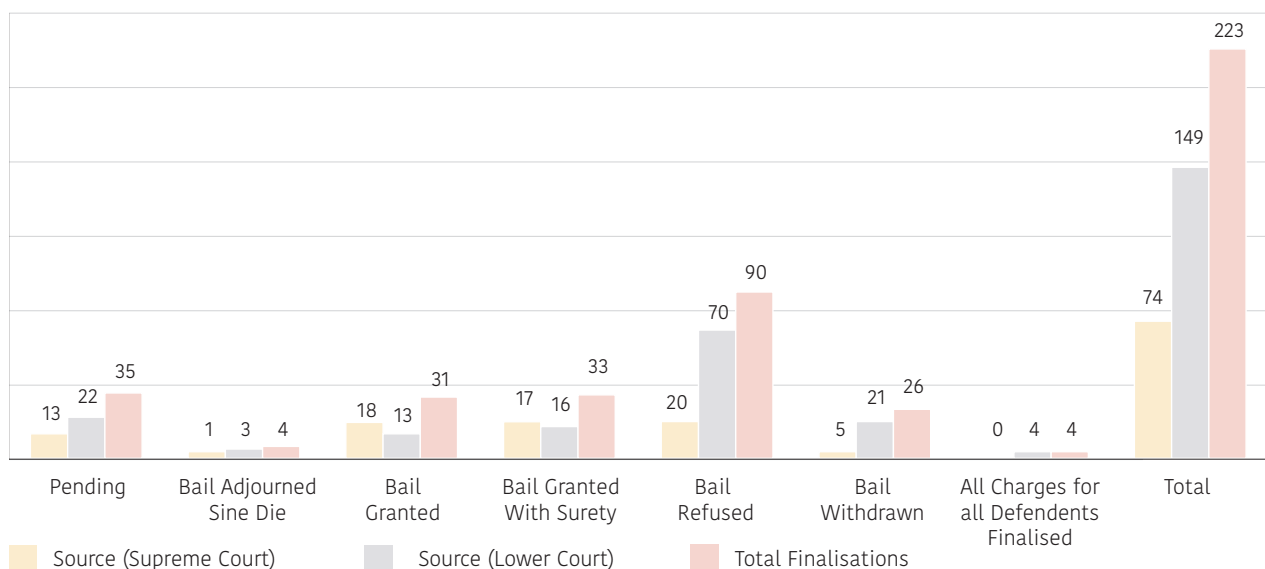
Finalisations	2017-18	2018-19	2019-20	2020-21	2021-22
Burnie	91	112	143	91	135
Hobart	254	244	289	252	226
Launceston	148	124	164	153	94
<b>Total</b>	<b>493</b>	<b>480</b>	<b>596</b>	<b>496</b>	<b>455</b>

	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	35	32	28	21	23
Total Finalisations	33	29	28	18	27

### APPEALS (COURT OF CRIMINAL APPEAL)

	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	35	32	28	21	23
Total Finalisations	33	29	28	18	27

## METHOD OF FINALISATION AND ORIGIN OF APPLICATION



## BAIL

	2017-18	2018-19	2019-20	2020-21	2021-22
Applications	356	384	461	333	223

Method of Finalisation - and initiation	Source -Lower Court	Source Supreme Court	Total Finalisations
Pending	22	13	35
Bail Adjourned Sine Die	3	1	4
Bail Granted	13	18	31
Bail Granted with Surety	16	17	33
Bail Refused	70	20	90
Bail Withdrawn	21	5	26
All Charges for all Defendants Finalised	4	0	4
<b>Total</b>	<b>149</b>	<b>74</b>	<b>223</b>

Of the 223 bail applications, 67% (149) originated from appeals against orders refusing bail in the Magistrate Court (lower court), where 20% (29) of these applications were granted bail.

Supreme Court bail applications represented 33% (74) of total applications where 47% (35) were successful in being granted bail.



## 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 others.

This year the Court continued to support the Department with the implementation of Justice Connect and *Astria*. Justice Connect is a program of work that will deliver a major digital transformation of Tasmania's justice system to replace outdated and inefficient practices with an integrated end-to-end digital solution for criminal, civil and correctional jurisdictions managed by the Department of Justice, whilst *Astria* is the name of the digital solution the Justice Connect program team are implementing for Tasmania's Department of Justice.

The vision for *Astria* is to transform the operation of the justice system for all Tasmanians. Slow, outdated and inaccurate systems and processes will be things of the past. *Astria* will be efficient, reliable and accurate to support a fair, just and safe Tasmania.

The Supreme Court has also commenced a project to upgrade the in-court AV technology in its Burnie and Hobart court rooms. This will improve the performance and reliability of the video-conferencing, audio-enhancement and voice recording AV functions, and bring these Courts to the same level as the other court rooms. These works will be completed in January 2023.



## CIVIL

Civil matters are those where the Court determines disputes involving sums in excess of \$50,000 and other non-monetary remedies. 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:

	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	740	761	605	460	539
Total Finalisations	771	711	733	612	570
<b>Clearance Rate</b>	<b>104%</b>	<b>93%</b>	<b>121%</b>	<b>133%</b>	<b>106%</b>

## APPEALS (FULL COURT OF APPEAL & LOWER COURT OF APPEAL)

	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	67	55	54	75	59
Total Finalisations	48	77	59	72	55

## PROBATE

The table below shows the lodgements and finalisations for probate:

	2017-18	2018-19	2019-20	2020-21	2021-22
Probate Lodgements	2,336	2,069	2,366	2,257	2,663
Probate Grants	2,287	2,309	2,418	2,290	2,528

## 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 provides expedition, saves costs and enables the parties to achieve a mutually acceptable resolution of the dispute. It is also now 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 selected legal practitioners where necessary.

Financial Year	2017-18	2018-19	2019-20	2020-21	2021-22
Mediations Conducted	134	124	140	189	190
Matters Settled at Mediation	31	31	35	60	37
Percentage of Matters Settled at Mediation	23%	25%	25%	32%	19%
Total Matters Settled within 30 days of Mediation	81	45	53	93	73
Percentage of Total Matters Settled within 30 days of Mediation	60%	36%	38%	49%	38%
Percentage of Matters settled at, or within 30 days of Mediation	84%	61%	63%	81%	58%

The number of mediations conducted in the 2021-22 year increased slightly (1%) on the previous year. The percentage of mediations settled at, or within 30 days of mediation decreased significantly by 27% on the 2020-21 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 his 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 this important community responsibility. 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.

### JURY STATISTICS 2021-22

Registry	Jurors summonsed	Jurors attended	Jurors Empanelled	Number of Trials
Hobart	4812	1163	314	28
Launceston	3063	589	149	12
Burnie	3781	703	252	21
<b>Total</b>	<b>11,656</b>	<b>2,455</b>	<b>715</b>	<b>61</b>

This year juries were empanelled in 61 trials (a reduction from 86 in the last Financial Year). No civil trials were conducted.

### ENFORCEMENT OF COURT ORDERS

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

Execution of court orders outside the immediate precincts 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 his officers may execute any writ within the State. The number of writs of execution filed with the Court has increased this year from 9 (2020-2021) to 12.

- 8 were writs of possession (up from 4 last year)
- 4 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.

This year there were 53 applications for orders for possession of premises for mortgagees and landlords, pursuant to section 146 of the *Land Titles Act* 1980 (up from 17 last year).

Generally speaking the number of writs to enforce judgments has started to increase (but not to pre-pandemic levels), possibly due to financial institutions relaxing relief provisions for mortgagors experiencing stress.



## CASE EXAMPLE - PRESTAGE v BARRETT [2021] TASSC 27

On the evening of 28 December 2012 the first defendant, Melissa Barrett and the second defendant Hamish Robinson lit a campfire within the remnants of an old tree stump, a short distance east of the residence on Ms Barrett's property in Forcett, not far from Dunalley as the crow flies. It was a cool night. They lit the fire for warmth and for the enjoyment of Mr Robinson's 10 year old son.

Mr Robinson and Ms Barrett set and lit the campfire and they sat by it for some hours. The fire burned down to coals. Some steps were taken by Mr Robinson, and then by Ms Barrett, to extinguish the fire. Mr Robinson said he checked the fire pit the next morning and was satisfied the fire was extinguished. On or about 1 January 2013 there was some rain and Ms Barrett noticed steam rising from the area of the old stump but did nothing about it.

At around 2pm on 3 January 2013 Ms Barrett looked out from her residence toward the old stump and saw the grass around it on fire. It was a hot, windy day and the gusty wind, blowing from the west-northwest, drove the fire immediately into a steep, wooded gully to the south and east of the Barrett residence. The fire then spread rapidly to the east and southeast of Forcett, through Dunalley and eventually across much of the Tasman Peninsula, even jumping across Eaglehawk Neck to the Taranna area. Some 25,520 ha were burned in total, including the property of the test case plaintiff, Ms Sonia Daly, at 12 Fulham Road in Dunalley.

Some 400 plaintiffs sued Ms Barrett and Mr Robinson for damages. Pursuant to the *Supreme Court Rules* 2000, it was ordered that there be an initial trial of all issues raised in the proceedings, including the fact and quantum of losses suffered by the test case plaintiff, but not including the fact or quantum of losses suffered by other plaintiffs. So the action was akin to a class action and was the first such case tried in Tasmania.

Justice Estcourt found in a 150 page judgement, handed down within four weeks of the trial, that Ms Barrett was liable to the test case plaintiff for damages for negligence and for private nuisance in a sum of \$300,000 and that it followed in principle that she should be liable to each of the other plaintiffs in negligence and in private nuisance, subject to proof of damage. He also apportioned the loss and damage claimed by the plaintiffs as to 80% in the case of Ms Barrett and as to 20% in the case of Mr Robinson.

There was no appeal from the decision and the claims of the remaining 400 plaintiffs were settled by way of a deed of release.

## 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 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:

	2017-18	2018-19	2019-20	2020-21	2021-22
Total	79	70	66	79	96

# Appendices

## FINANCE

RECEIPTS	FY20/21	FY21/22
Recurrent appropriation	6,362,309	7,046,386
Registry fees	692,944	562,657
Provision of transcript	44,196	23,198
Probate fees & charges	2,370,670	3,017,979
Mediation fees	102,861	98,550
Sheriff's fees	8,200	8,029
Court reporting	11,425	1,475
Video conferencing	0	0
Other receipts	1,243,319	1,734,864
<b>TOTAL RECEIPTS</b>	<b>10,835,925</b>	<b>12,493,138</b>

EMPLOYEE-RELATED EXPENDITURE	FY20/21	FY21/22
Salaries & wages	4,633,820	4,713,491
Fringe Benefits Tax	118,983	133,097
Payroll tax	0	0
Superannuation	589,741	629,377
Workers compensation insurance	223,813	195,355
Training	18,354	21,135
Other employee related expenses	68,769	88,867
<b>TOTAL EMPLOYEE-RELATED EXPENDITURE</b>	<b>5,653,480</b>	<b>5,781,322</b>

ADMINISTRATIVE & OTHER EXPENDITURE	FY20/21	FY21/22
Fuel, light & power	251,260	300,996
Advertising & recruitment	2,245	6,290
Rental	5,069	7,964
Communications	79,395	73,329
Travel	307,243	388,616
Consultancies	63,287	73,427
Printing & stationery	76,294	70,063
Rates	185,441	179,812
Repairs & maintenance	146,283	681,702
Minor equipment	13,756	36,463
Library materials	546,904	587,712
Computers & IT	483,609	533,116
Expenses of witnesses	42,729	93,838
Expenses of Jurors	418,990	421,901
Other administrative expenses	1,432,880	1,073,580
<b>TOTAL OTHER EXPENDITURE</b>	<b>4,055,386</b>	<b>4,528,809</b>

RESERVED BY LAW	FY20/21	FY21/22
Salaries & other entitlements of Judges	3,630,927	4,183,314
Salaries & other entitlements of the Associate Judge	431,208	433,026
<b>TOTAL RESERVED BY LAW EXPENDITURE</b>	<b>4,062,135</b>	<b>4,616,340</b>

<b>OVERHEAD CONTRIBUTION TO THE DEPARTMENT OF JUSTICE</b>	<b>1,294,455</b>	<b>1,347,534</b>
---	------------------	------------------

## HUMAN RESOURCES

STAFFING	2017-18	2018-19	2019/20	2020/21	2021/22
Judiciary and Support:					
Judges and Associate Judge	8.3	8.3	7.8	7.9	8.1
Judges' Library	0.6	0.6	0.6	0.5	0.6
Judicial Support	15.6	16.6	17.4	15.7	14.8
Registry:					
Civil	6.6	6.9	4.5	4.5	5.5
Criminal	4.8	5.8	4.4	4.5	4.7
Probate	3.0	3.0	2.4	2.4	2.3
Mediators	0.4	0.4	0.4	0.4	0.4
Office of the Sheriff	8.2	10.2	8.4	10.2	8.5
Corporate Services:					
Information Communication Technology	1.0	1.3	1.4	1.4	1.4
Transcription Services	8.8	9.8	8.6	7.9	6.3
First Line Support Staff	3.0	2.7	5.3	5.4	5.8
<b>Total</b>	<b>60.2</b>	<b>65.6</b>	<b>61.1</b>	<b>60.8</b>	<b>58.4</b>



## PERFORMANCE DATA

### INTRODUCTION

The *Supreme Court of Tasmania Annual Report 2021-22* is a statistical report providing details of the Court's caseload and statistical performance for the 2021-22 financial year reporting period.

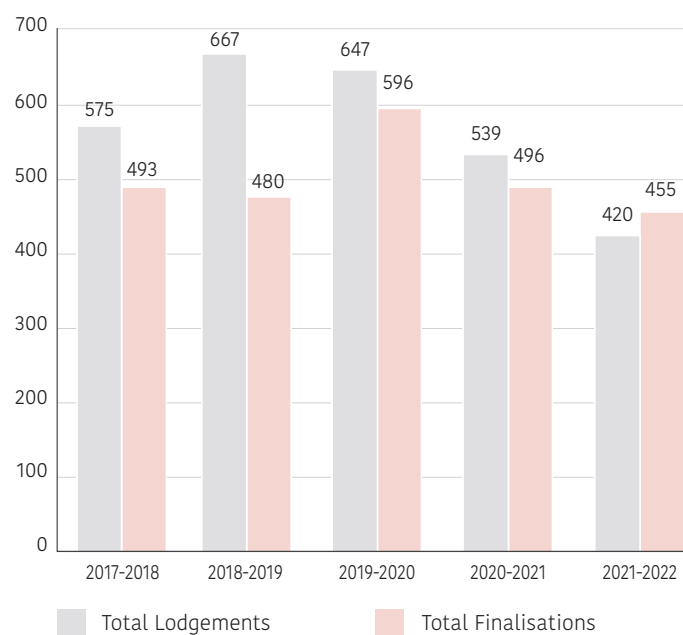
It consists of various reporting components that cover the Court's criminal, civil, appeal and probate jurisdictions, along with statistics on bail applications and mediations.

### DATA

The data used in the preparation of this report is as at 30th June 2022 and provides information for the 2021-22 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 Database.

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



Lodgements	2017-18	2018-19	2019-20	2020-21	2021-22
Burnie	124	161	172	155	75
Hobart	276	332	309	243	227
Launceston	175	174	166	141	118
Total	575	667	647	539	420

Finalisations	2017-18	2018-19	2019-20	2020-21	2021-22
Burnie	91	112	143	91	135
Hobart	254	244	289	252	226
Launceston	148	124	164	153	94
Total	493	480	596	496	455

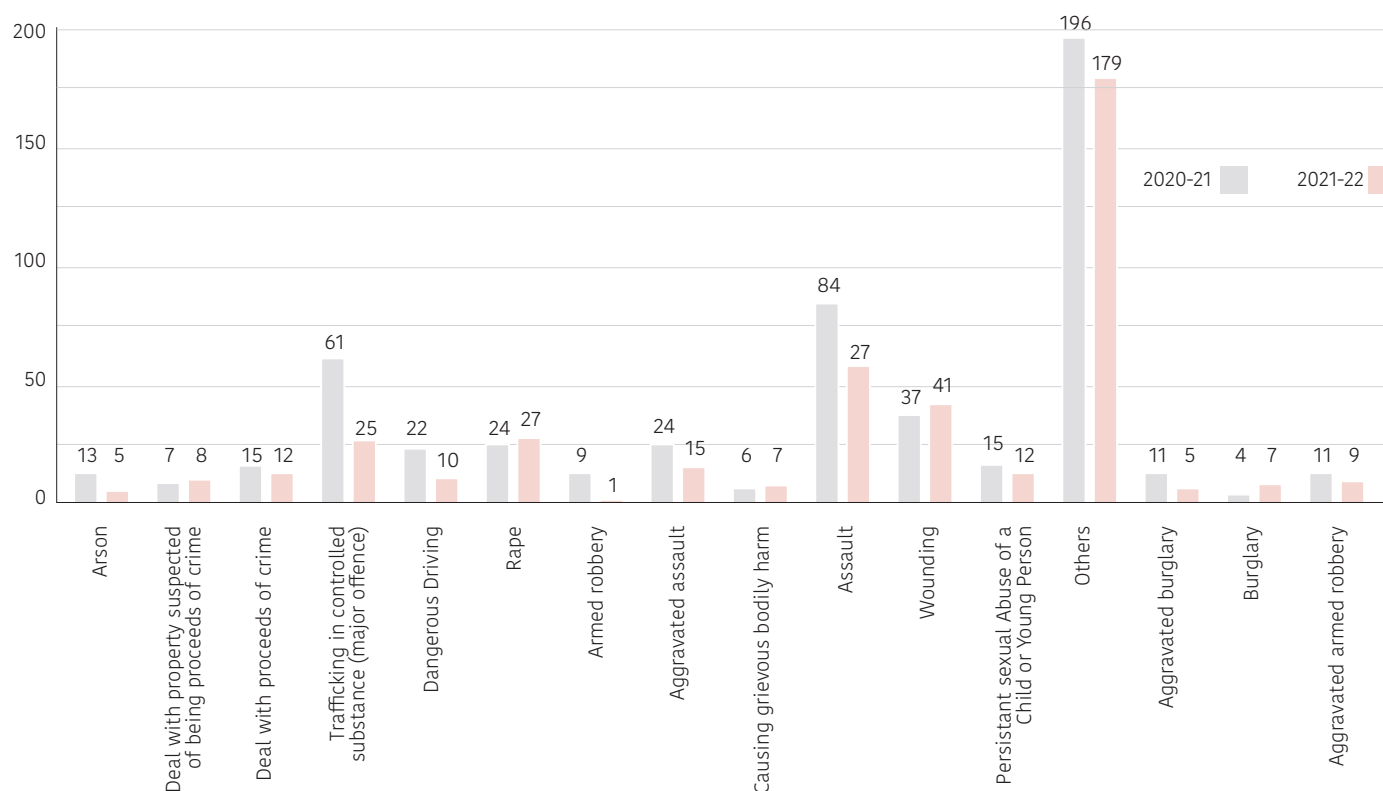


Criminal (non-appeal) lodgements for the 2021-22 year declined considerably, reaching a total of 420, compared to the 2020-21 total of 539 (a 22% decrease). There was a reduction in the number of finalisations compared to the previous year, however overall the clearance rate increased significantly over the previous year at 114%.

Criminal (non-appeal) finalisations reduced from 496 in 2020-21 to 455 in 2021-22 (8% decrease) despite some recovery from the pandemic during the 2021-22 year.

Finalisations have been typically trending upwards since 2013-14 but since the pandemic are now trending down.

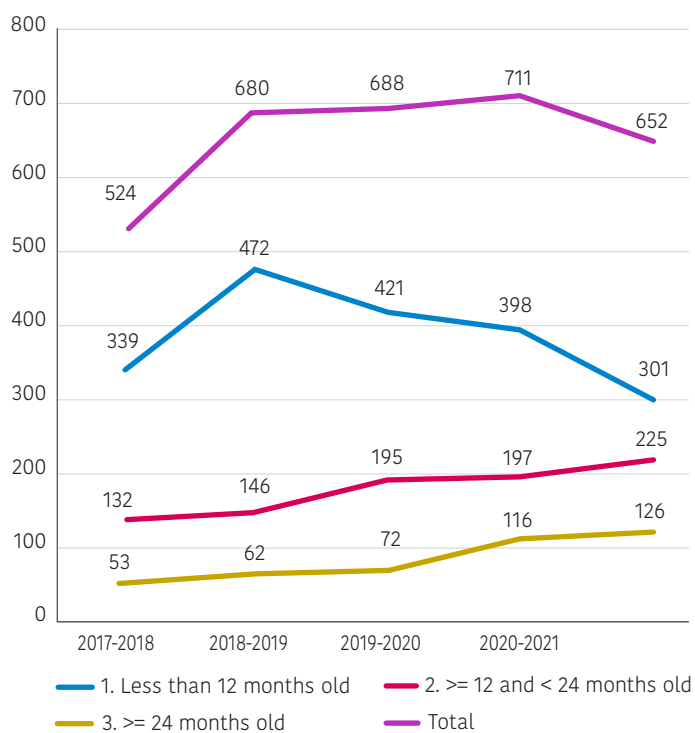
## CRIMINAL CASE LODGEMENT BY OFFENCE CATEGORY 2020-21 v 2021-22



Code	ANZSOC Breakdown By Group	2020-21	2021-22	Variation	% change
711	Burglary	4	7	3	+75%
211	Causing grievous bodily harm	6	7	1	+17%
831	Deal with property suspected of being proceeds of crime	7	8	1	+14%
311	Rape	24	27	3	+13%
211	Wounding	37	41	4	+11%
	Others	196	179	-17	-9%
611	Aggravated armed robbery	11	9	-2	-18%
831	Deal with proceeds of crime	15	12	-3	-20%
311	Persistent Sexual Abuse of a Child or Young Person	15	12	-3	-20%
213	Assault	84	57	-27	-32%
212	Aggravated assault	24	15	-9	-38%
711	Aggravated burglary	11	5	-6	-55%
412	Dangerous driving	22	10	-12	-55%
1021	Trafficking in controlled substance (major offence)	61	25	-36	-59%
1211	Arson	13	5	-8	-62%
611	Armed robbery	9	1	-8	-89%
	<b>Total</b>	<b>539</b>	<b>420</b>	<b>-119</b>	<b>-22%</b>

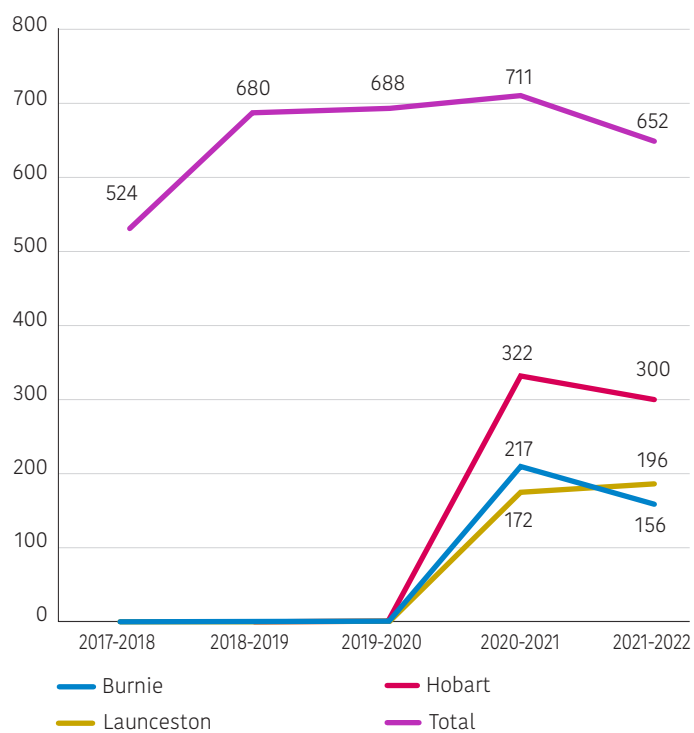


## CRIMINAL PENDING - 5 YEAR TREND



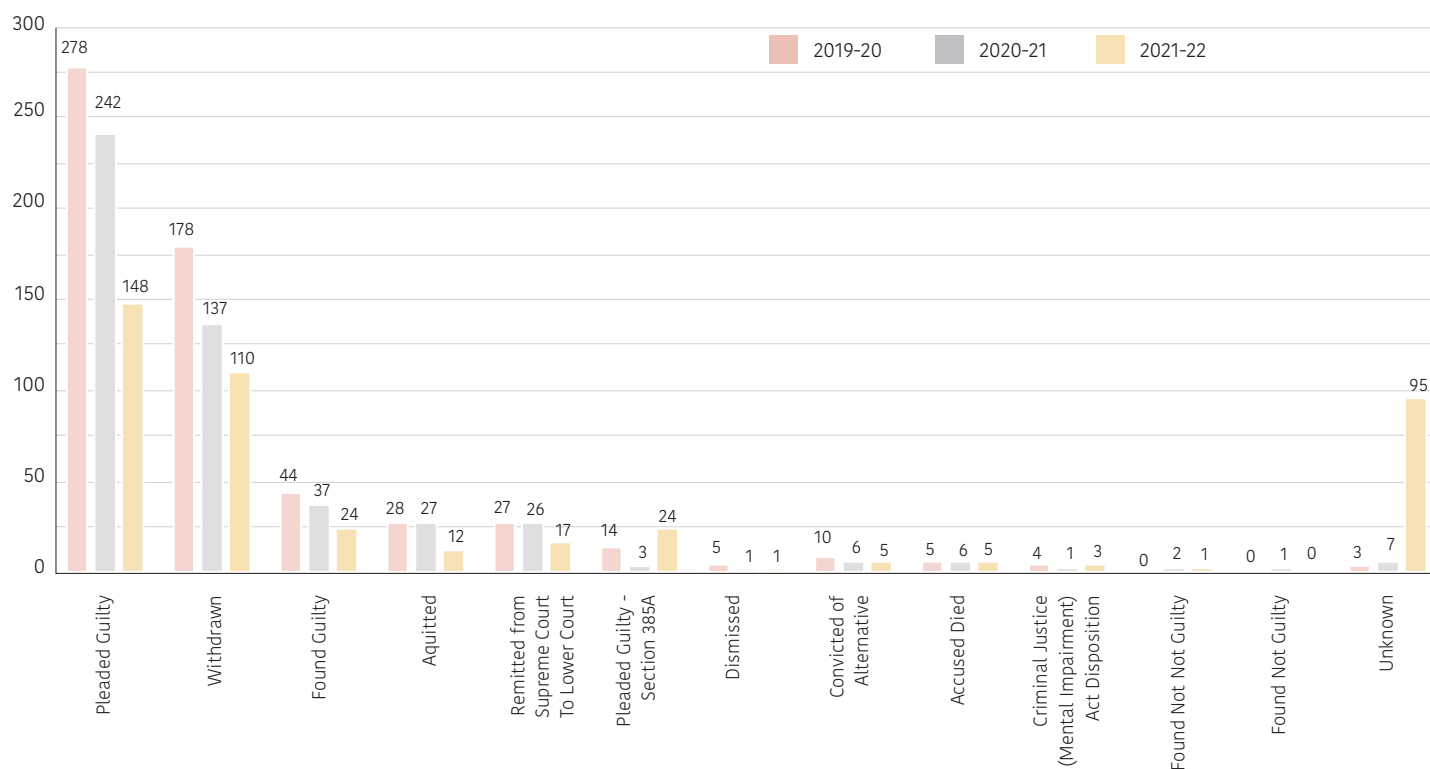
Criminal Pending	2017-18	2018-19	2019-20	2020-21	2021-22
1. Less than 12 months old	339	472	421	398	301
2. >= 12 and < 24 months old	132	146	195	197	225
3. >= 24 months old	53	62	72	116	126
<b>Total</b>	<b>524</b>	<b>680</b>	<b>688</b>	<b>711</b>	<b>652</b>

## CRIMINAL PENDING BY REGION - 5 YEAR TREND



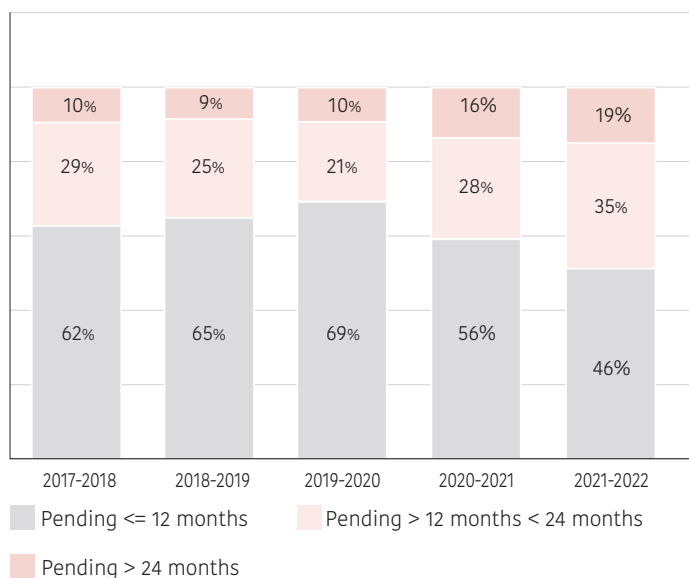
Criminal Pending	2017-18	2018-19	2019-20	2020-21	2021-22
Burnie	N/A	N/A	N/A	217	156
Hobart	N/A	N/A	N/A	322	300
Launceston	N/A	N/A	N/A	172	196
<b>Total</b>	<b>524</b>	<b>680</b>	<b>688</b>	<b>711</b>	<b>652</b>

## METHOD OF FINALISATION (MOST SERIOUS CHARGE)



Method Finalised	Total 2019-20	Total 2020-21	Total 2021-22
Pled Guilty	278	242	148
Withdrawn	178	137	110
Found Guilty	44	37	24
Acquitted	28	27	12
Remitted from Supreme Court to Lower Court	27	26	17
Pled Guilty - Section 385A	14	3	24
Dismissed	5	1	1
Convicted of Alternative	10	6	5
Accused Died	5	6	5
Criminal Justice (Mental Impairment) Act disposition	4	1	3
Found Not Not Guilty	0	2	1
Found Not Guilty	0	1	0
Unknown	3	7	95
<b>Grand Total</b>	<b>596</b>	<b>496</b>	<b>445</b>

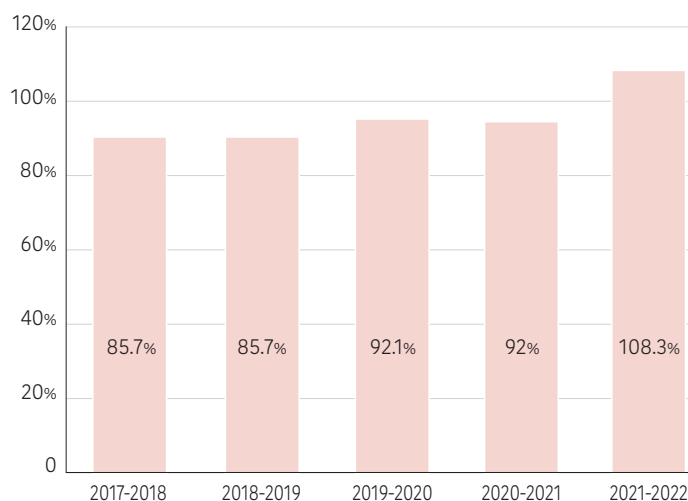
## BACKLOG INDICATOR: CRIMINAL



	2017-18	2018-19	2019-20	2020-21	2021-22
Pending <= 12 months	65%	69%	61%	56%	46%
Pending > 12 months and < 24 months	25%	21%	28%	28%	35%
Pending > 24 months	10%	9%	10%	16%	19%

The criminal (non-appeal) pending caseload (also referred to as backlog) has decreased by 8% during the reporting year, from 711 in 2020-21 to 652 in 2021-22.

## CRIMINAL CASE (FIRST INSTANCE) CLEARANCE RATES



	2017-18	2018-19	2019-20	2020-21	2021-22
First Instance Clearance Rate	85.7%	85.7%	92.1%	92%	108.3%

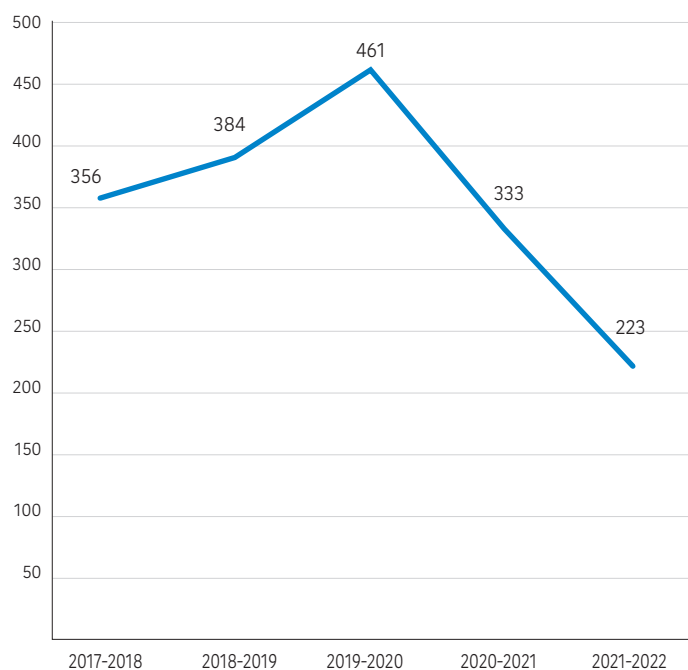
There were significantly more finalisations than lodgements in 2021-22 which meant that the clearance rate of the Supreme Court's Criminal Division has increased to 108%.

The Supreme Court has put in place various plans to allow better management of criminal (non-appeal) caseload to be achieved, including as follows:

- The appointment of a seventh judge
- The continued appointment of acting judges to complement the existing six full-time permanent judges
- Scheduling additional criminal courts to sit, primarily in Hobart and Launceston, to ensure that the backlog is managed
- Allocation of acting judges to sit on appeals to allow permanent judges increased time to prepare judgments, sentences etc
- Measures to counteract the hiatus in criminal trials due to the pandemic.



## BAIL APPLICATIONS - 5 YEAR TREND

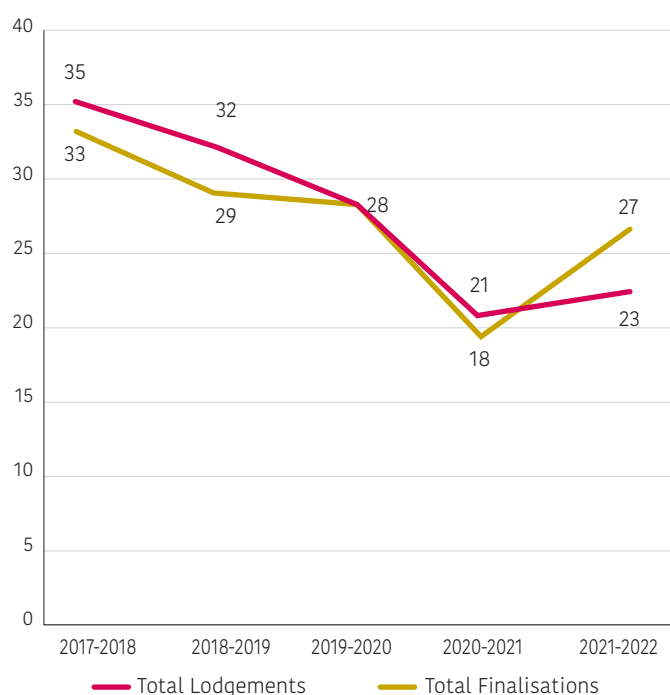


	2017-18	2018-19	2019-20	2020-21	2021-22
Total	356	384	461	333	223

Bail applications have again reduced, experiencing a 33% decrease from the 2020-21 year.

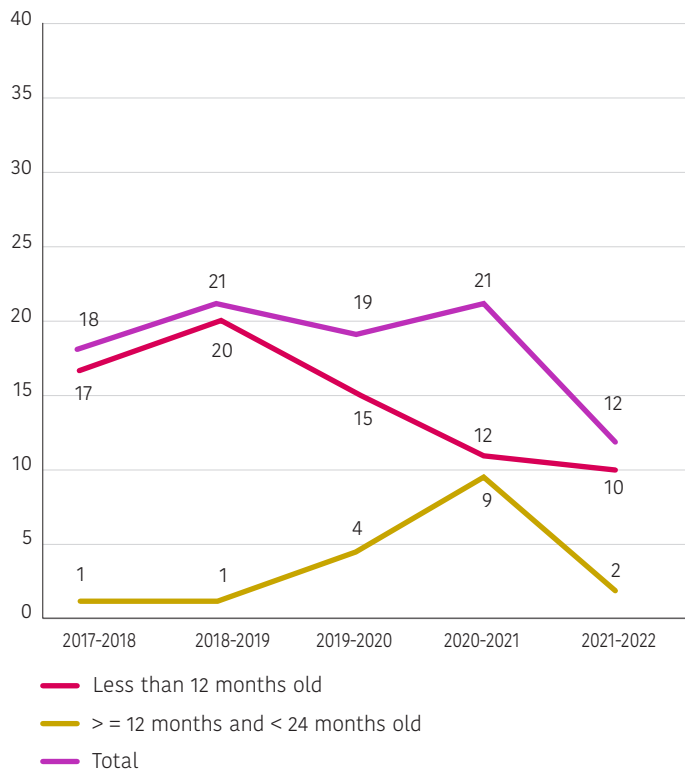
## APPEALS (COURT OF CRIMINAL APPEAL)

### COURT OF CRIMINAL APPEAL LODGEMENTS & FINALISATIONS - 5 YEAR TREND



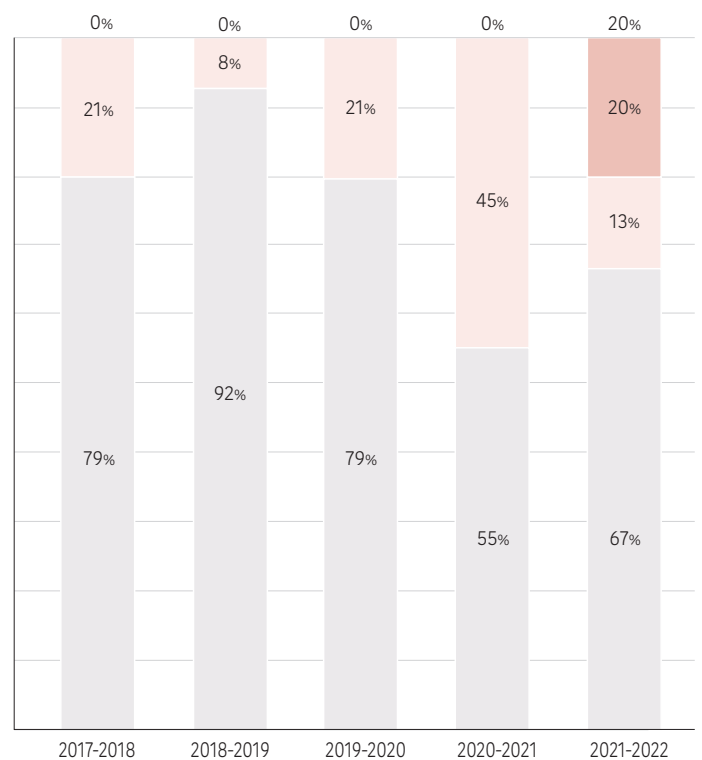
	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	35	32	28	21	23
Total Finalisations	33	29	28	18	27

## COURT OF CRIMINAL APPEAL PENDING - 5 YEAR TREND



Age	2017-18	2018-19	2019-20	2020-21	2021-22
1. Less than 12 months old	17	20	15	12	10
2. >= 12 months and < 24 months old	1	1	4	9	2
<b>Total</b>	<b>18</b>	<b>21</b>	<b>19</b>	<b>21</b>	<b>12</b>

## BACKLOG INDICATOR: COURT OF CRIMINAL APPEAL



Pending <= 12 months

Pending > 12 months and <= 24 months

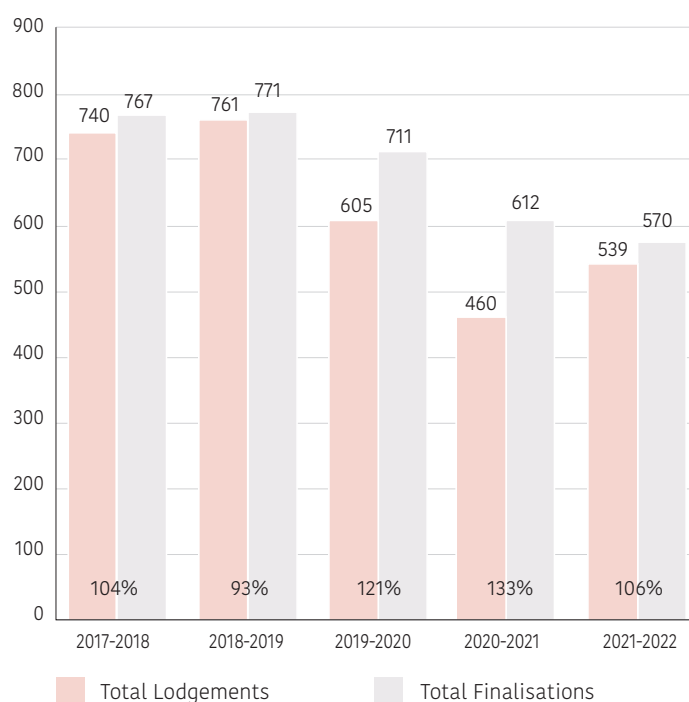
Pending > 24 months

	2017-18	2018-19	2019-20	2020-21	2021-22
Pending <= 12 months	79%	92%	79%	55%	67%
Pending > 12 months and <= 24 months	21%	8%	21%	45%	13%
Pending > 24 months	0%	0%	0%	0%	20%

## CIVIL JURISDICTION CASELOAD

### FIRST INSTANCE

#### CIVIL LODGEMENTS AND FINALISATIONS - 5 YEAR TREND



	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	740	761	605	460	539
Total Finalisations	771	711	733	612	570
<b>Clearance Rate</b>	<b>104%</b>	<b>93%</b>	<b>121%</b>	<b>133%</b>	<b>106%</b>

Civil (non-appeal) lodgements for the 2021-22 year increased by 17% (79) on the 2020-21 year. Finalisations decreased slightly, by 7% (42) in 2021-22 from the 2020-21 year. The clearance rate decreased slightly compared to 2020-21 – to 106%.

### CASE EXAMPLE –

#### WILDERNESS SOCIETY (TASMANIA) INC v WILD DRAKE PTY LTD [2021] TASFC 12

Wild Drake Pty Ltd applied to the Central Highlands Council for a planning permit for visitor accommodation on Halls Island in Lake Malbena, which is within the Walls of Jerusalem National Park. It was proposed that helicopters would be used to provide access and supplies. The Council refused the application, but a permit was subsequently granted by the Resource Management and Planning Appeal Tribunal (“the RMPAT”).

Four appellants, including The Wilderness Society (Tasmania) Inc, appealed to the Supreme Court. On 6 July 2020 Justice Estcourt dismissed that appeal. The four appellants appealed to the Full Court. Their appeal was heard on 2 October 2020.

Halls Island was covered by a planning scheme under the *Land Use Planning and Approvals Act 1993* (“the *LUPA Act*”) and by a management plan under the *National Parks and Reserves Management Act 2002* (“the *NPRM Act*”). The planning scheme permitted a permit to be granted if a proposed use was “undertaken in accordance with a reserve management plan”. The principal issue in the appeal concerned the meaning of those words. Acting Justice Porter, with whom the Chief Justice agreed, held that the ordinary meaning of those words should prevail, and that “the use must comply with, or conform to, the specific requirements of the plan that relate to whether or not it can be undertaken”.

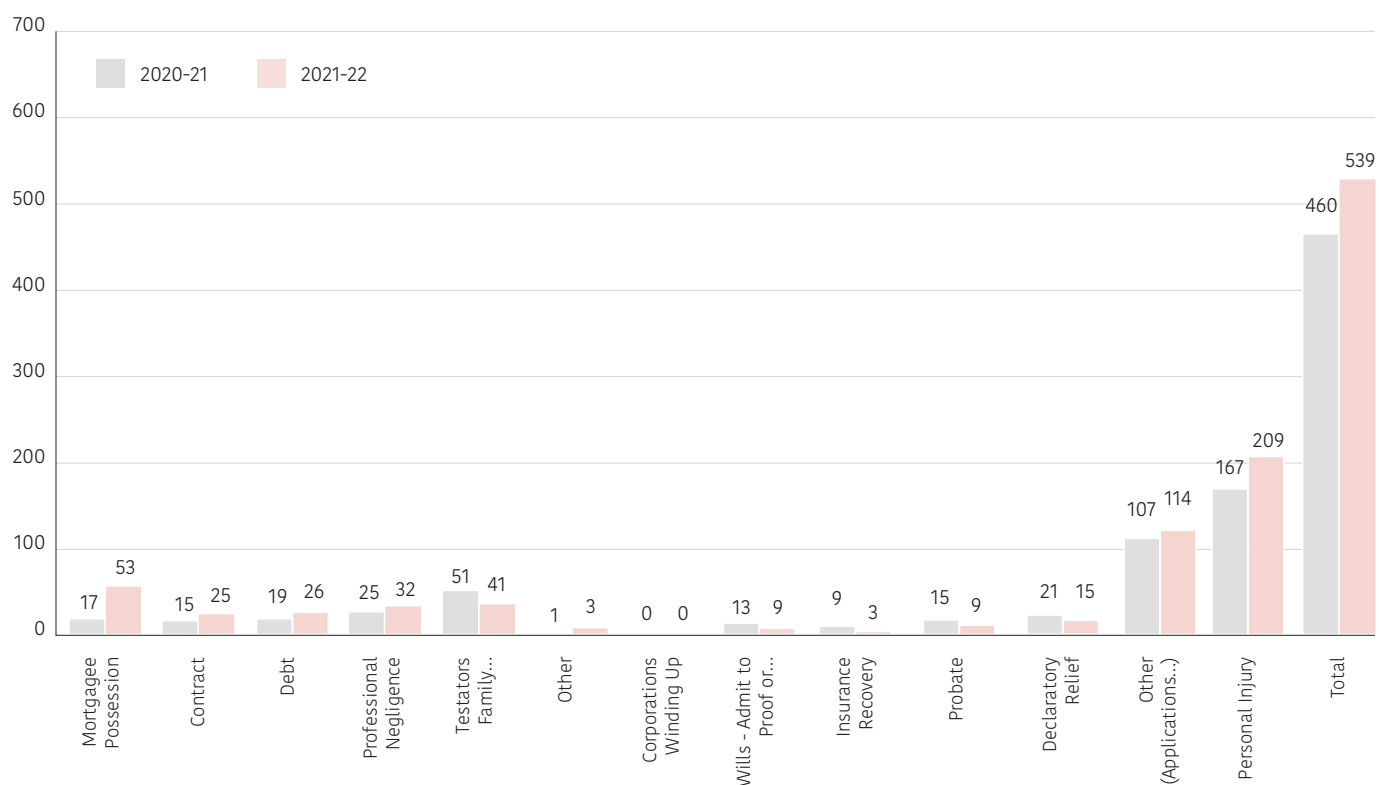
One of the respondent’s contentions was that certain provisions in the *NPRM Act* impliedly superseded provisions in the *LUPA Act*. The Full Court concluded that contention had no merit. One of the appellants’ contentions was that the land was not subject to a reserve management plan under the *NPRM Act* because the Minister had granted a business licence and a lease of the area to Wild Drake Pty Ltd. Justice Brett, with whom the Chief Justice agreed, concluded that the granting of the lease and licence did not override or detract from the effect of the relevant management plan.

The judgment of the Full Court was delivered on 15 September 2021. The orders of the Full Court were that the appeal was allowed, the order of Justice Estcourt set aside, the decision of RMPAT set aside and the matter remitted to RMPAT for reconsideration in accordance with a direction that, for the purposes of the planning scheme, the Tribunal may determine that the use of the relevant land will be undertaken in accordance with the Tasmania Wilderness World Heritage Area Management Plan 2016 “only if it is satisfied that the proposed use is compliant with or conforms to all the prescriptive requirements of that management plan.”

## CASE STUDY

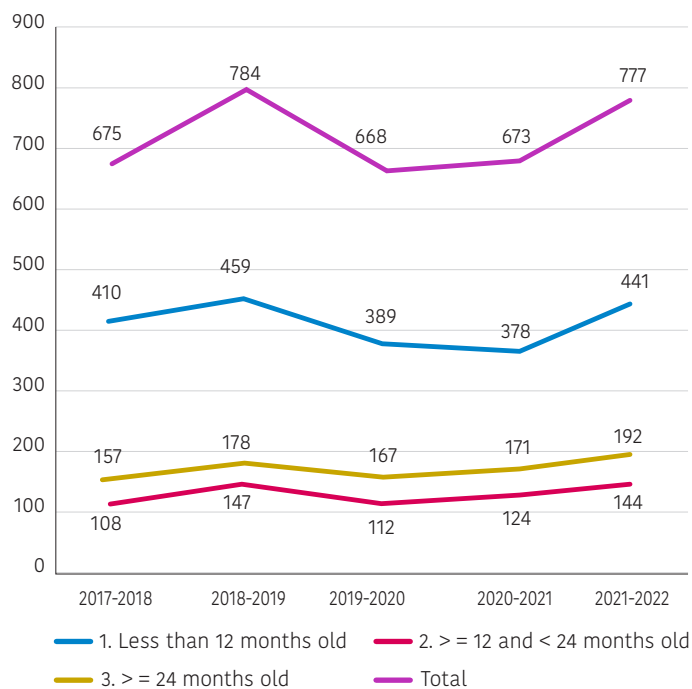


## CIVIL LODGEMENTS BY FILE TYPE



Lodgement	2020-21	2021-22
Mortgagee Possession	17	53
Contract	15	25
Debt	19	26
Professional Negligence	25	32
Testators Family Maintenance	51	41
Other	1	3
Corporations Winding Up	0	0
Wills - Admit to Proof or Rectification	13	9
Insurance Recovery	9	3
Probate	15	9
Declaratory Relief	21	15
Other (Applications Under Acts)	107	114
Personal Injury	167	209
<b>Total</b>	<b>460</b>	<b>539</b>

## CIVIL PENDING - 5 YEAR TREND

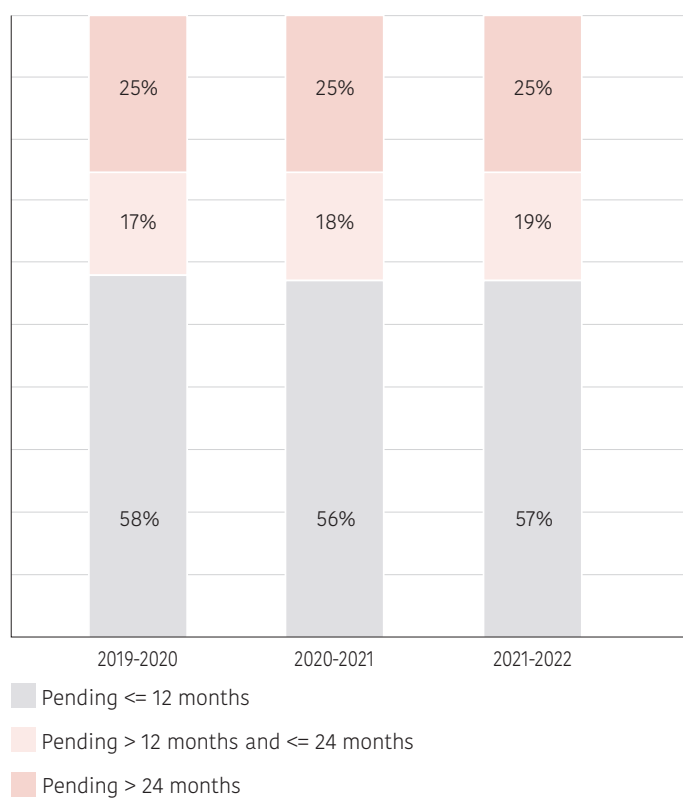


Age Months	2017-18	2018-19	2019-20	2020-21	2021-22
1. Less than 12 months old	410	459	389	378	441
2. >= 12 months and < 24 months old	108	147	112	124	144
3. >= 24 months old	157	178	167	171	192
<b>Total</b>	<b>675</b>	<b>784</b>	<b>668</b>	<b>673</b>	<b>777</b>

The civil (non-appeal) pending caseload increased by 16% during the reporting year, from 673 in 2020-21 to 777 in 2021-22. The backlog has remained fairly steady at:

- 57% in cases aged less than 12 months;
- 19% in cases aged between 12 and 24 months; and
- 25% in cases greater than 24 months.

## CIVIL BACKLOG INDICATOR - FIRST INSTANCE



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

## CASE EXAMPLE –

### SHAW v TASMANIA [2022] TASSCA 2

This case involved the questions of whether s 3 of the *Criminal Code* embraced the common law concept of joint criminal enterprise and whether s 4 included the crime originally set out to be committed as well as the crime that was ultimately committed in pursuit of a common purpose.

In June 2016 the appellant, David Shaw, owned a house in Clarendon Vale. On the evening of 27 June 2016 it caught fire and was badly damaged. It was insured. The appellant made a claim on his insurance policy. The insurance company conducted an investigation and rejected the claim. The appellant and a friend of his, Michael Wells, were jointly charged with arson and with attempting to dishonestly acquire a financial advantage. They were tried together before Justice Geason and a jury, and were both found guilty of both charges. Mr Shaw appealed against his convictions and sentence.

This appeal was the first for which the Court had convened a bench of five judges to review the law since 1997. This step was taken because a decision of a majority of two judges in *Clarke v Tasmania* [2013] TASSCA 11; 24 Tas R 384, had been taken as authority for the principle that a person incurred criminal responsibility under s 3(1)(a) of the *Code* by participating in a joint criminal enterprise, as understood under the common law.

In a joint judgment of the Chief Justice and Justices Wood, Pearce and Brett (with a separate judgment on the part of Justice Estcourt), the Court rejected the view that when a crime is committed by a party to a joint criminal enterprise, all parties to that joint criminal enterprise fall within the meaning of the words “every person who actually commits the crime” in s 3(1)(a), including a party who plays no active role in the commission of the crime. The Court held that those words were to be given a literal meaning, and were not to be given an extended meaning based on the common law as it had developed with respect to the criminal liability of principal offenders, involving participation in a joint criminal enterprise by presence. In other words, the common law of joint criminal enterprise was not part of the law of Tasmania.

Further, the plurality noted that s 4 of the *Code* imposes criminal liability for all crimes committed in the prosecution of an unlawful common purpose, including crimes within the scope of the unlawful common purpose and crimes incidental to the prosecution of that purpose.

The appeal was thus dismissed and the appeal against sentence was also dismissed unanimously.

## APPEALS (FULL COURT OF APPEAL & LOWER COURT OF APPEAL)

### APPEAL LODGEMENTS AND FINALISATIONS – 5 YEAR TREND

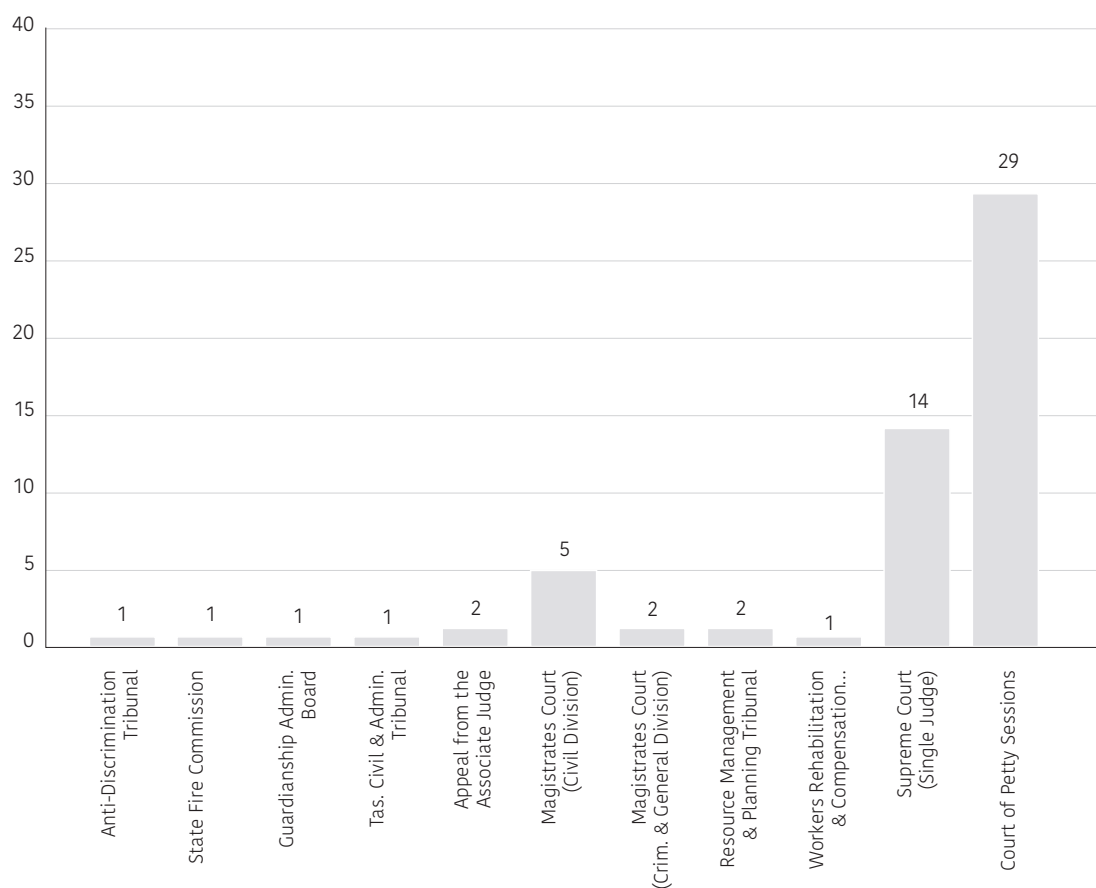


	2017-18	2018-19	2019-20	2020-21	2021-22
Total Lodgements	67	55	54	75	59
Total Finalisations	48	77	59	72	55

FCA and LCA appeals (combined) lodgements have decreased on the previous year by 21% (16). Finalisations have also decreased from 72 in 2020-21 to 55 in 2021-22, representing a 24% decrease.

## CASE STUDY

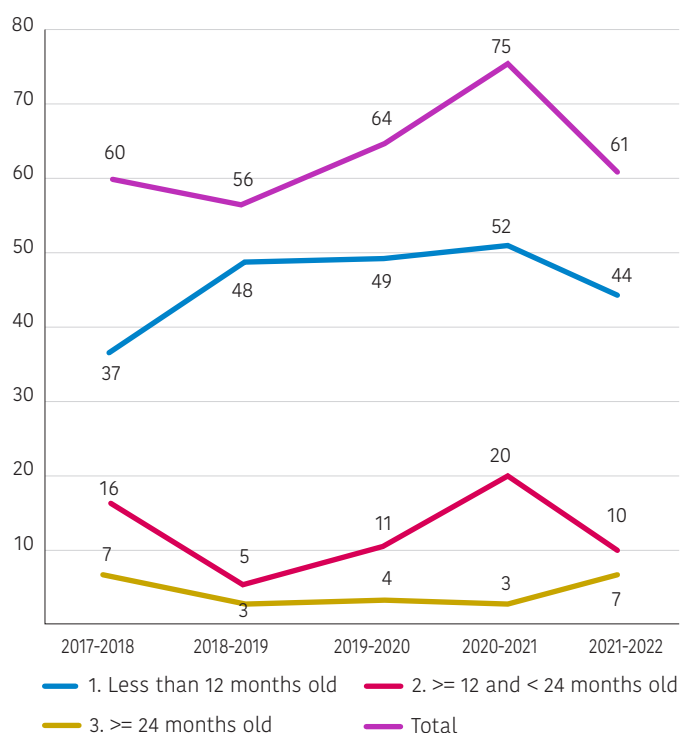
## CIVIL APPEAL (FCA AND LCA) LODGEMENTS BY ORIGIN



Appeal Origin	Number 2021-22
Anti-Discrimination Tribunal	1
State Fire Commission	1
Guardianship Administration Board	1
Tasmanian Civil and Administrative Tribunal	1
Appeal from the Associate Judge	2
Magistrates Court (Civil Division)	5
Magistrates Court (Criminal & General Division)	2
Resource Management & Planning Tribunal	2
Workers Rehabilitation and Compensation Tribunal	1
Supreme Court (Single Judge)	14
Court of Petty Sessions	29
<b>Total</b>	<b>59</b>



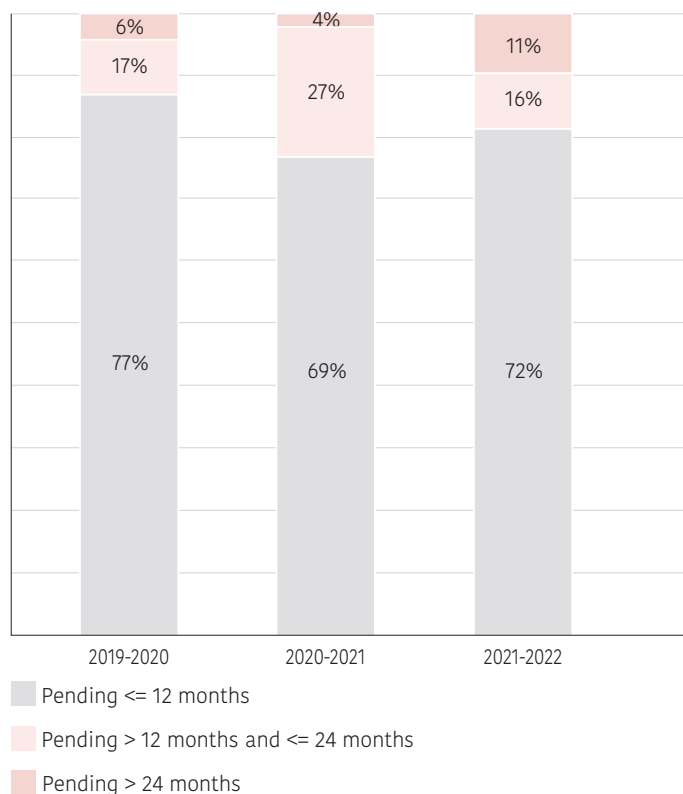
## CIVIL APPEAL PENDING (FCA AND LCA) - 5 YEAR TREND



Age	2017-18	2018-19	2019-20	2020-21	2021-22
1. Less than 12 months old	37	48	49	52	44
2. >= 12 months and < 24 months old	16	5	11	20	10
3. >= 24 months old	7	3	4	3	7
<b>Total</b>	<b>60</b>	<b>56</b>	<b>64</b>	<b>75</b>	<b>61</b>

FCA and LCA appeals (combined) pending matters have decreased from 75 in 2020-21 to 61 in 2021-22, representing a decrease of 19%.

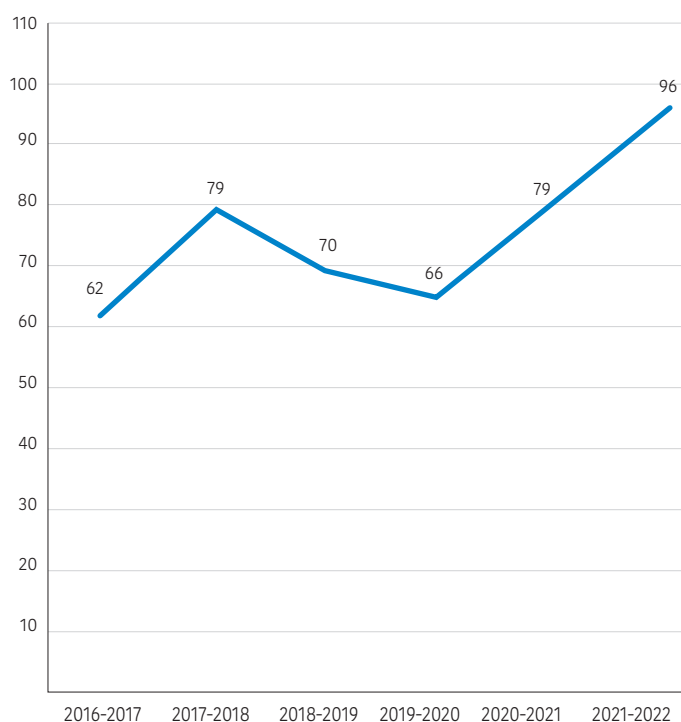
## CIVIL APPEALS BACKLOG INDICATOR FIRST INSTANCE



	2019-20	2020-21	2021-22
Pending <= 12 months	77%	69%	72%
Pending > 12months and <= 24 months	17%	27%	16%
Pending > 24 months	6%	4%	11%

## ADMISSIONS TO PRACTICE

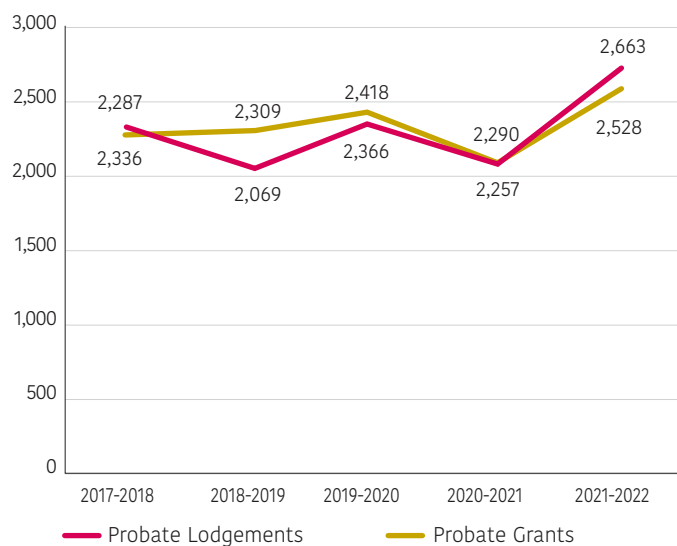
### ADMISSIONS TO PRACTICE - 5 YEAR TREND



	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Total</b>	<b>62</b>	<b>79</b>	<b>70</b>	<b>66</b>	<b>79</b>	<b>96</b>

## PROBATE JURISDICTION

### PROBATE LODGEMENTS AND GRANTS - 5 YEAR TREND

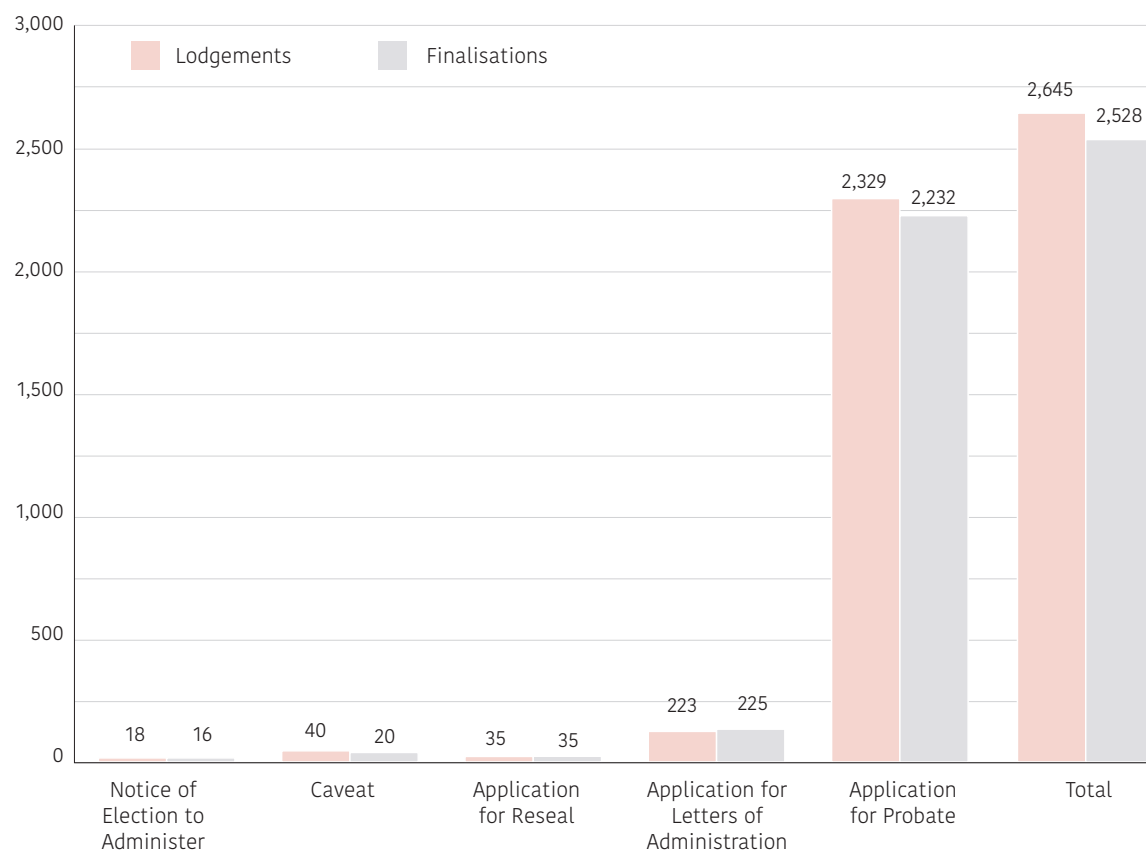


	2017-18	2018-19	2019-20	2020-21	2021-22
Probate Lodgements	2,336	2,069	2,366	2,257	2,663
Probate Grants	2,287	2,309	2,418	2,290	2,528

Probate lodgements increased 18%, from 2,527 in 2020-21 to 2,663 in 2021-22.

Grants of Probate also increased by, 238 on the 2020-21 year – a 10% increase.

## LODGEMENTS AND FINALISATIONS 2021-22



Activity Type	Lodgements	Finalisations
Notice of Election to Administer	18	16
Caveat	40	20
Application for Reseal	35	35
Application for Letters of Administration	223	225
Application for Probate	2,329	2,232
<b>Total</b>	<b>2,645</b>	<b>2,528</b>

## MEDIATIONS

### MEDIATIONS 5 YEAR TREND

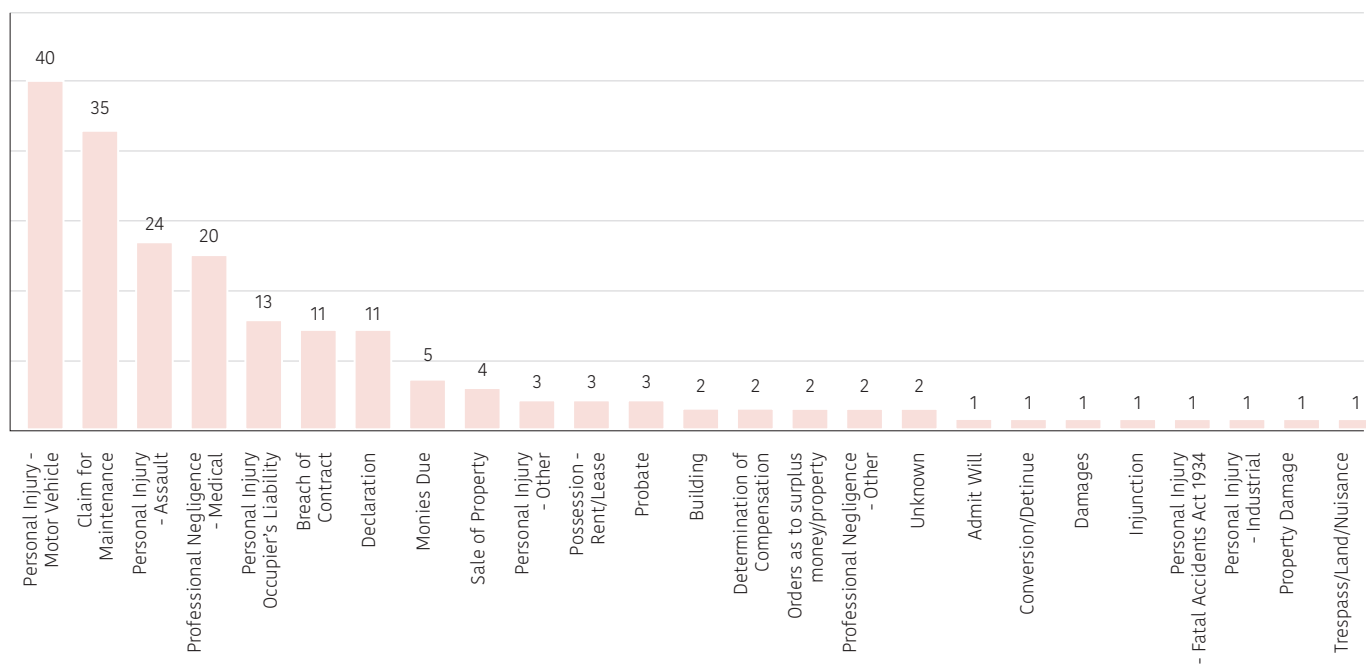


Financial Year	2017-18	2018-19	2019-20	2020-21	2021-22
Mediations Conducted	134	124	140	189	190
Matters Settled at Mediation	31	31	35	60	37
Percentage of Matters Settled at Mediation	23%	25%	25%	32%	19%
Total Matters Settled within 30 days of Mediation	81	45	53	93	73
Percentage of Total Matters Settled within 30 days of Mediation	60%	36%	38%	49%	38%
Percentage of Matters settled at, or within 30 days of Mediation	84%	61%	63%	81%	58%

The number of mediations conducted in the 2021-22 year increased slightly (1%) on the previous year. The percentage of matters settled at, or within 30 days of mediation decreased significantly by 27% on the 2020-21 year.



## TOTAL CONDUCTED BY NATURE



Mediation Nature	Total
Personal Injury - Motor Vehicle	40
Claim for Maintenance	35
Personal Injury - Assault	24
Professional Negligence - Medical	20
Personal Injury - Occupier's liability	13
Breach of Contract	11
Declaration	11
Monies Due	5
Sale of Property	4
Personal Injury - Other	3
Possession - Rent/Lease	3
Probate	3
Building	2
Determination of Compensation	2
Orders as to surplus money/property	2
Professional Negligence - Other	2

Unknown	2
Admit Will	1
Conversion/Detinue	1
Damages	1
Injunction	1
Personal Injury - Fatal Accidents Act 1934	1
Personal Injury - Industrial	1
Property damage	1
Trespass/Land/Nuisance	1
<b>Grand Total</b>	<b>190</b>

## LOCATION OF COURTS

**Hobart:** 3-5 Salamanca Place, Hobart TAS 7001

**Launceston:** 116 Cameron Street, Launceston TAS 7250

**Burnie:** 38 Alexander Street, Burnie TAS 7320

## CONTACTS

**Phone:** 1300 664 608

**Email:** [supremecourt@supremecourt.tas.gov.au](mailto:supremecourt@supremecourt.tas.gov.au)

