

Legal Publishing in Tasmania



Dorothy Shea

Librarian, Supreme Court of Tasmania

Introduction

By 1998 it should be possible to access an increasing amount of Tasmanian legal material on the Internet. Supreme Court judgments, decisions of the Resource Management and Planning Appeals Tribunal and the Debates of the Parliament of Tasmania are already available. A consolidation of the Statutes of Tasmania is expected to be available online early in 1998.

Homepages for a number of Tasmanian organisations are another source for obtaining legal information on the World Wide Web. The Parliament of Tasmania and the Bar Association already have their Homepages online while the Supreme Court and the Law Society are in the process of developing their Websites.

As we move towards the 21st century and the storage and retrieval of information in electronic form becomes increasingly the norm, it is important to remember that the majority of legal reference material is still only accessible in print form. This article looks at the history of the various forms of legal publications in Tasmania and their relevance and accessibility for effective legal research.

History of the Supreme Court in Tasmania

The island of Tasmania, formerly Van Diemen's Land, was part of the colony of New South Wales from 1803 when John Bowen first landed at Risdon Cove in the Derwent River. The colony's administration was undertaken by the governors and other officials in Sydney, and in some cases by the Colonial Office in London. This included legal decisions relating to both civil and criminal actions of a serious nature. Despite the expense for the colony in arranging for the parties involved, the witnesses, exhibits and legal counsel to travel to Sydney, it was not until 1819 and 1921 that the New South Wales civil and criminal courts were convened in Van Diemen's Land.

Following Commissioner Bigge's report into the administration of the colony of New South Wales in the early 1920s the *New South Wales Act 1823 (UK)*¹ authorised the Crown to establish two new Supreme Courts, one for the mainland and the other for island, even though it was still part of the colony of New South Wales. Following the Act, Charters of Justice were promulgated to introduce the new scheme of justice administration.² Under the Act and the Charter, the new

¹ 4 Geo IV (1823) c96

² *Warrant for Charter for Supreme Court in Van Diemen's Land* 18 August 1983; HRA Series III, Vol 4, p478

Supreme Court in Van Diemen's Land was vested with many of the powers and functions exercised by the separate court systems in England dealing with common law and equity

The Supreme Court of Tasmania sat for the first time on 24 May 1824 and the first criminal trial in the colony was that of William Tibbs who was "put to the bar on an indictment charging him with shooting at a black man named John Jackson, on the 17th January last, whereby the unfortunate man lost his life"³. The first reported civil case was *Kemp & Co v Basstian*, a contract case reported in the *Colonial Times* of 26 November 1824.

Information on Tasmanian cases for most of the 19th century is to be found in the old colonial newspapers which are available on microfilm in the State Library. Two books recently published by the University of Tasmania provide an extension to the process of searching through old microfilms for information on early Tasmanian cases. In 1995 the University of Tasmania Law Press published *Carrel Inglis Clark: The Supreme Court of Tasmania - Its First Century 1824-1924*, edited by Richard Ely. The book consists of a series of essays written by Clark and first published in the *Critic* in 1922 and 1923. In addition to biographical notes about all the Judges of the Court, the essays record important cases heard in the Supreme Court from 1824 to 1924. These cases are significant not only because they illuminate the general history of Tasmania but because many of them can be regarded as leading cases in the development of the law. This book is a useful starting point for those interested in the early cases heard in the Supreme Court of Van Diemen's Land and Tasmania.

Another book, published by the Centre for Historical Studies at the University of Tasmania, deals with the life of Andrew Inglis Clark⁴ father of Carrel Inglis Clark. The book looks at his career as a lawyer, politician, political reformer and judge. In particular Chapter 8, by Sir Guy Green, on Mr Justice Clark, looks at his career as a Supreme Court Judge and discusses briefly a number of important cases in which he was involved.

Law Reports and Digests

Until 1856 when the name of Van Diemen's Land was changed to Tasmania, cases in the colony were reported in *The Colonial Times*, *Hobart Town Advertiser*, *Hobart Town Gazette* and *The Mercury*.

The earliest attempt at providing a more comprehensive coverage of Supreme Court cases in Tasmania is in Hore's *Digest of Tasmanian Cases*⁵ which covers the period 1856-1896. This Digest gives a brief description of the case and then refers the reader mainly to the *Mercury Newspaper* (or in a few cases to the *Launceston*

³ *Hobart Town Gazette*, 28 May 1824

⁴ *An Australian Democrat: The Life, Work, and Consequences of Andrew Inglis Clark* edited by Marcus Haward and James Warden 1995

⁵ I. F. S. Hore, *Digest of Cases decided in Tasmania 1856-1896* Hobart, Cox & Co, 1897

Examiner, Tasmanian News or Daily Telegraph) for a report of the case. A collection of these newspaper reports is held by the Supreme Court Library but it is by no means complete. The State Library of Tasmania has a microfilm collection of the newspapers for this period that can be consulted for items not held by the Supreme Court.

The years 1897-1904 are covered by *Reports of Cases determined in the Supreme Court of Tasmania*, a two volume set edited by Herbert Nicholls and W J T Stops and published by Charles Maxwell in Melbourne. They were produced to bridge the gap between Hore's *Digest* and the first regular series of law reports in Tasmania that began in 1905 and continued until 1940. The initial editors of *The Tasmanian Law Reports* were Herbert Nicholls and W J T Stops and the printer and publisher was *The Tasmanian News* in Collins Street.

A total of thirty five volumes were published from 1905 to 1940 (only one volume being produced for the years 1926-1927 for those whose mathematical abilities calculate there were thirty six years in this period) and during this time there were a variety of editors and publishers until the Law Book Company took on the responsibility of publishing the Reports in 1941 under the new title of *State Reports of Tasmania*.

Initially *The Tasmanian Law Reports* reported cases determined in the Supreme Court of Tasmania but from 1907 to 1929 this was extended to include the Mining Board. In the years 1924 to 1925 there are also Notes of Magistrates Cases included. Marine Board inquiries never appeared in the law reports, being published in the *Hobart Town Gazette*.

A new series commenced in 1941 titled *The State Reports Tasmania*, published by the Law Book Company which continues to this day to publish the State's law reports. This series continued until 1953, when it was replaced by the *Tasmanian State Reports* which were published from 1954 until 1978. From 1979 until 1991 the series was published as *Tasmanian Reports*, and the most recent series is also titled *Tasmanian Reports* but now includes volume numbers which were not used in the previous series.

In 1978 an *Order-In-Council*⁶ established a Council of Law Reporting, consisting of four persons appointed by the Governor. The four members were the Chief Justice of the Supreme Court of Tasmania or a judge nominated by him, a member of the Faculty of Law at the University of Tasmania, a barrister or legal practitioner nominated by the Law Society and the editor of the *Tasmanian Law Reports*. In 1990 the Council became a body corporate with the corporate name of the Council of Law Reporting for Tasmania.⁷ The Council is responsible for deciding which cases will be reported, arranging for reporters, editing and producing the manuscript for publication by LBC Information Services.

⁶ Council of Law Reporting Order 1978, Statutory Rule No 82

⁷ *Council of Law Reporting Act 1990*, s4

To date there has been no Index to the *Tasmanian Reports*. However LBC Information Services is in the process of publishing an Index covering the years 1970 to 1996. This should be available early 1998. Prior to this subject access to Tasmanian case law has only been available through Digest Services.

Tasmanian case law is digested in the *Australian Digest* and case names can be located through the *Australian Case Citator*. On a local level a number of digest services have provided some coverage of the State's legal judgments. In 1916 a digest of Tasmanian cases for the years 1897 to 1914 was published by Charles Maxwell of Melbourne.⁸ From 1960 Michael Lillas produced a digest of Tasmanian case law and in 1988 extended his annual coverage to produce the *Tasmanian Supreme Court Judgments Digest of Cases*⁹ which provides a comprehensive digest of Tasmanian cases decided from 1897 to 1988, and is supplemented by an annual update. The Digest covers both reported and unreported judgments. A further publication by Christopher Bartlett covers the List B decisions not found in the Lillas publication. First published in 1992, it is also supplemented by an annual update. Both these publications are published by CAL Pty Ltd, a legal publisher in Burnie.

Unreported judgments

The Supreme Court Library holds copies of Tasmanian unreported judgments from 1929 onwards. In 1960 most unreported judgments were given a number to identify them. This system was expanded in the late 1970s to create two types of judgments, A and B. Initially only A judgments were numbered. B judgments were considered to be of little importance and were simply called B judgments until 1982 when they too were given numbers. From 1982 to 1996 there were two number sequences for unreported judgments. At the end of 1996 the judges decided that the distinction between A and B judgments was no longer relevant and from the beginning of 1997 all unreported judgments are numbered from 1/1997 onwards.

Tasmanian unreported judgments are available either on subscription from the Printing Authority of Tasmania or individually from the Supreme Court Registry and from the Library. They are also available in electronic form on AustLII, on the Commonwealth Attorney-General's SCALE database, Butterworths Unreported Judgments service, LBC Information Services and tasInLaw. Judgments in electronic form are available from 1987 to date, but the coverage is not complete for the years 1987-1990 except for those produced by NiuMedia Pacific on their tasInLaw database.

⁸ *The Tasmanian Digest, being a digest of cases decided between the years 1897-1914* edited by W J T Stops, Melbourne, Maxwell, 1916.

⁹ M F Lillas, *Tasmanian Supreme Court Judgments Digest of Cases*, Burnie, CAL, 1988.

Comments on Passing Sentence

Judges' comments on passing sentence have been available from the Supreme Court since 1994 and are also made available to the State Library, the Law Society Libraries and the University Library. Limited access to Comments produced in the years prior to 1994 is available from the Supreme Court Library.

Magistrates decisions

Decisions from the Magistrates' Courts in Tasmania are available from 1973 to 1993. No published decisions have been produced for the last four years. If someone is interested in a particular case heard in the Magistrates Court for these years, it is best to ring the Court and ask to be supplied with a copy of the decision.

Miscellaneous decisions

There are quite a few Boards and Tribunals in Tasmania that publish their decisions on an irregular basis. These include the Licensing Board, the Motor Accidents Compensation Tribunal, the Public Vehicle Licensing Appeal Tribunal, the Tasmanian Building Appeals Board, the Tasmanian Industrial Commission, the Tasmanian Racing Appeal Board and the Tasmanian Workers Compensation Division. More recently the Resource Management and Planning Appeal Tribunal has produced its decisions on a regular basis while the Master's determinations in the area of Criminal Injuries Compensation have been produced on an annual basis since 1978.

For those seeking information about the decisions of these bodies, Section 4 Part IV of the Law Society of Tasmania's *Solicitors Handbook*¹⁰ lists Government Departments, Agencies, Boards and Tribunals with contact telephone numbers.

Hansards

Unlike most other jurisdictions Tasmania had no formal record of parliamentary proceedings until 1980 when the first Hansard was produced. Information on parliamentary proceedings from the period 1920 to 1977 was only available through a series called *The Mercury Reprints*, produced from the pages of the *Mercury Newspaper* and supplied to the Parliament and to Government Departments. These reports often only contain brief reports of second reading speeches and for researchers wanting to obtain the full text of these speeches it is necessary to identify the Minister responsible for the administration of the Act, and to ask the appropriate Department to retrieve the file from the Archives Office. In 1996 it was decided to cease the print publication of Tasmanian parliamentary debates and to make them available through the Internet.

¹⁰ Law Society of Tasmania, *Solicitors Handbook*, 1994 (amended to 1997)

Legislation

Prior to 1825 when the Legislative Council was established in Van Diemen's Land, the Lieutenant Governor legislated by Government and General Orders. Castles¹¹ details the history and availability of these early materials.

From 1826 to 1856 the *Hobart Town Gazette* published the Acts of the Lieutenant Governor and Council of Van Diemen's Land. The Government Printer has also published collections and annual volumes of statutes from 1826 to the present. At various times collections and consolidations of the statute law have been produced.

In 1873 the Government Printer published *The Acts of the Governor and Council of Tasmania* (7 Geo IV to 19 Vict). Castles describes this as "an incomplete coverage of the enactments of the Legislative Council of Van Diemen's Land prior to the introduction of responsible government and a bicameral legislature"¹². In 1879 H M Hull edited the *Acts of the Parliament of Tasmania* (7 Geo IV to 41 Vict) covering the years 1826 to 1877. This was followed by a reprint of Tasmanian statutes, *Statutes of Tasmania from 7th George 4th (1826) to 46th Victoria (1882)* prepared by Frederick Stops in four volumes from 1883 to 1885. A fifth volume appeared in 1890 and a revised edition was produced in 1904. There was no attempt at consolidation or revision in either of these editions.

Probably the most useful reprint of Tasmanian Statutes is the 1936 Reprint: *The Public Acts of Tasmania (Reprint) 1826-1936* in seven volumes. In the Historical and Explanatory Note in Volume 1 of the Reprint the Chief Parliamentary Draftsman makes the point that in the preceding 110 years nearly 4800 Acts have been passed and that it was time for a general consolidation and comprehensive revision of the law. The Tasmanian Government contracted Butterworths to publish the Reprint, which is extensively annotated and cross referenced throughout to *Halsbury's Laws of England*, *Halsbury's Statutes of England*, *English and Empire Digest and Encyclopaedia of Forms and Precedents*. Arrangement of the Acts is alphabetical by subject matter and Volume 7 contains tables and a subject index.

Tasmanian Statutes 1826-1959 is the last complete reprint of Tasmanian legislation, covering the public general Acts in force to the end of 1959. Unlike the 1936 Reprint the 1959 volumes are not annotated. Acts are arranged alphabetically with public general Acts in Volumes 1 to 6 and local, personal and private Acts in Volume 7. It is useful to remember that Imperial Acts and instruments which relate to the Tasmanian Constitution are included as an appendix to Volume 6.

In 1978 the Government Printer commenced a rolling reprint program to replace the reprinted Acts that were previously bound with the annual volumes of the statutes. This program was never completed and some years ago it was decided to embark on producing an electronic database of Tasmanian legislation, which would consolidate all Tasmanian statutes. When the Legislation Publication Act

11 Alex C Castles, *Annotated Bibliography of Printed Materials of Australian Law 1788-1900*, Sydney, Law Book Company, 1994, record 878

12 *ibid*, record 102

1996 comes into force (hopefully in early 1998) the database will contain the authorised versions of the statute law of Tasmania.¹³

Subordinate legislation in Tasmania was published in the *Tasmanian Gazette* until 1953. From 1954 it has been produced in a similar manner to the statutes. Statutory rules, as defined in the *Rules Publication Act 1953*, are printed by the Government Printer and a bound volume produced for each year. At this stage statutory rules will not be included in the electronic database of Tasmanian legislation.

The Office of Parliamentary Counsel prepares an annual *Index to the Legislation of Tasmania*. There is an alphabetical list of Acts enacted from 1826 and still in force, a subject index to Tasmanian statutes and a subject listing for statutory rules. In recent years this Index has been supplemented by a privately published service *The Legislative Index Supplement*, produced by Stenning & Associates in Hobart, provides a monthly update to the Parliamentary Counsel Index.

Annotated Tasmanian Acts that are available include *The Annotated Evidence Act 1910* by Lillas, Szramka and Cross (1985), *Justices Act 1959* by Mr Justice Zeeman (1991), *Land Titles Act 1980* by R J Hoyle (1990), *Limitation Act 1974* by P Cranswick (1990) and *Workers Compensation Act 1988* by C Bartlett. *The Guide to Tasmanian Case Law*, produced by Darcy Erwin and published by B & D Binding Services, provides case law annotations to the *Criminal Code Act 1924*, the *Police Offences Act 1935* and the *Poisons Act 1971*.

Law Journals and Newsletters

The University of Tasmania produces two excellent publications: the *University of Tasmania Law Review* publishes refereed articles on any topic of legal interest and the *Journal of Law and Information Science* is an interdisciplinary publication addressing issues relating to law and information science.

The Law Letter, newsletter of the Law Society of Tasmania, provides good coverage of legal events in Tasmania along with short articles of interest to the legal community in the State.

Conclusion

The publication of legal information has always occupied a position of importance in the history of Tasmania. According to Castle¹⁴ Lieutenant-Governor David Collins brought a printing press with him and used it within the first few weeks of his occupation of land on the Derwent River in 1803. Today we are looking at an increasing amount of material being available in electronic form; in some cases as with the Tasmanian Hansard being only available as an online service. Questions as to storage and retrieval, the acceptance by the Courts of judgments and legislation in electronic form, the availability to the public, whether judgments and legislation should be in the public domain and what costs are likely to be incurred by users of this material are all still being debated, and are subjects that are likely to provide considerable scope for future articles in *The Australian Law Librarian*.

¹³ *Legislation Publication Act 1996*, section 6

¹⁴ Castle, *ibid*, record 878

Tasmanian Websites

tasInLaw

Lists cases and catchwords for the Supreme Court judgments and provides a summary of progress of legislation in Parliament for the current year

URL <http://www.niimedia.com.au/tasmlaw>

Tasmanian Bar Association

URL <http://www.tased.edu.au/tasonline/bartas>

Tasmanian Legislation

To access click on Legislation System Project Newsletter

URL <http://www.thelaw.tas.gov.au>

Tasmanian Parliament

To access the Hansard click on the Hansard Button

URL <http://www.parliament.tas.gov.au>