

The defendant, Mr Simmons, appears for sentence having pleaded guilty in the Magistrates Court to one count of unlawfully setting fire to property. I am also dealing with his plea of guilty to a summary charge of unlawfully destroying property. On 5 May 2021 the defendant was an inmate of Risdon Prison, and housed in a medium security unit block which contain six cells and a common area which included a kitchenette and bathroom. At the time, all cells in the unit were occupied. I was told that during the day discussions had taken place between inmates generally about lighting fires as a protest against an increase in the frequency of lockdowns. At about 7.30 pm and then again at about 8 pm, fires were started in two different and separate units. The Tasmanian Fire Service was dispatched to the prison complex. Shortly after 8 pm the defendant used a microwave oven to ignite a length of rolled up toilet paper which he used to start a fire in his cell, cell 1 of the unit. CCTV records an initial entry by the defendant into his cell with lit paper, and him leaving and returning on two further occasions after getting more toilet paper. On the third occasion flames are visible on the footage, and smoke has begun to fill the common area. After unsuccessfully trying to break a unit window with a milk crate, the defendant then used the crate to smash a television which was mounted on a wall in the common area. The defendant then lit another length of toilet paper and took it into cell 6, where he is seen on CCTV holding a pillow which was on fire. He handed the pillow to another inmate who carried that to cell 3 and attempted to start a fire in that cell. The defendant remained in cell 6 attempting to encourage the growth of the fire. Once the fire took hold in that cell, the defendant went to cell 3 at which point no flames are visible. However, after a brief time, the defendant ran back to cell 6, took a flaming object and returned to cell 3 using that object to start a fire in that cell. It was nearly 8.15 pm at this time and vision by way of CCTV was almost entirely obscured by smoke. Dim flames can be seen in cell 3, but none were visible in cell 1 or 6. At about 8.40 pm, members of the TRG went to the unit and removed all inmates. The fires were then extinguished. The TFS fire investigation report reveals that in cell 1, the origin of the fire was the mattress with the view taken that headless matchsticks were used to aid combustion. A second area of origin was identified as being on a desktop inside the cell. In relation to cells 3 and 6, the points of fire origin were bedding materials on the bed itself. The fires in the unit caused damage to a total value of approximately \$24,400. This related to damage to bedding clothing and furnishings other smoke and fire damage, and water damage to appliances due to the activation of a sprinkler system. The television unit cost \$350 to replace. I note that the defendant pleaded guilty on his second appearance in the Magistrates Court on 3 September 2021, his first appearance being on 13 August when he was unrepresented.

The defendant was 23 years old at the time; now 24. He has a history of offending effectively starting in October 2013 when he was a youth. In October 2013 he pleaded guilty to a large number of offences that extended to dishonesty violence and drug matters. Relevantly, there was one charge of attempting to unlawfully set fire to property, and thirteen charges of destroying property. He was not convicted but ordered to serve 84 hours of community service, and he was made the subject of a 9 month probation order with conditions. He was resentenced on those matters about a year later having offended further in the meantime, the result being a 6 month detention order, the execution of the whole of which was suspended on conditions for 18 months. There was further offending, and further sentencing and resentencing. When an adult, actual imprisonment came on 29 March 2017 for several breaches of a family violence order and six charges of assault. He was then sentenced to 6 months' imprisonment the execution of 3 months of which was suspended on conditions. Significantly, on 21 February

2018, on charges of wounding, assault and offences of dishonesty including destroy property, the 3 month suspended sentence was activated to commence on 15 January 2018, and the defendant was sentenced to 2 years and nine months cumulative to the 3 month term, but with parole eligibility of one half. He was released on parole in early August 2019, and returned for a short period in early December 2020, and ultimately returned to custody on 12 February 2021. In the meantime he committed a variety of offences in December, January and February 2021 which included four charges of assault and a number of charges of breaching a family violence order. On 15 June 2021 he was sentenced to 14 months' imprisonment to be served cumulatively to the remainder of his previous sentence, with a non-parole period of one half. The end result of all of that is that he was eligible for parole on 12 September 2021 and, as I understand it, there is nothing pending in that respect. With remissions, his earliest release date is 15 May 2023; the latest date being 15 September 2023. The defendant seems to have an unremarkable upbringing and after his schooling finished found employment for extended periods, mostly within the building industry. He has struggled with substance abuse as a youth and in early adulthood, the illicit substances used included methylamphetamine. I was told that when he was released on parole he had full-time work but his difficulties with illicit substances saw him give up that employment as he did not want to be a burden on his employer. His drug use contributed to the offending for which he was sentenced in June of this year. As can be seen from the chronology, this offending took place shortly before that sentence was passed. I was told that this was a very frustrating time for him. He was waiting for a date for submissions in mitigation to be made but there were delays. I was told that lockdowns in his unit were frequent, with family prison visits often cancelled at very short notice. He thought this may be a wider issue throughout the prison and later discovered that to be so. In discussions with prison staff, he was apparently told that the issue was with those at a higher pay grade and that "something big is going to need to happen" before change would occur. Presumably, the speaker meant that for those in the relevant positions to take the issue seriously and commit greater resources to the prison, the status quo would be maintained. It seems that he took this advice to heart. He was able to see the first fires that were lit on this particular evening, realised others were protesting and decided to do likewise. He accepts that he was the main perpetrator in relation to what happened in his unit. However, it was put that the others in the cells knew what was happening so that they were able to take steps to protect themselves and personal items. At least partially, as a result of this incident the defendant was in solitary confinement for a significant time including one month in particular, where there was only 4½ hours respite, sometimes being given the choice of exercise or cleaning the cell. I was told he accepts that all he has really achieved is destruction, damage and expense. I was also told that the defendant's mental health deteriorated and he is now on an antipsychotic medication. It is suggested those matters are a deterrent to him, and that may be so. I take into account the plea of guilty that was entered at an early stage. It does have utilitarian value. I also take into account the defendant's age – he is still a relatively young man – and the time he has spent in custody since January 2018, and the period he is likely to be in custody as best that can be assessed.

Mr Simmons, setting fire to bedding and the like in prison cells creates a risk for prison officers and other inmates, as well as emergency personnel required to attend. These sorts of events defy and disrupt orderly prison management. Cases of this type that come before the Court ordinarily involve a prisoner setting fire to bedding in their own cell. You were primarily responsible for fires in three, causing a considerable amount of damage. A level of frustration might be understandable but whatever the perceived rights or wrongs of the situation, this sort of conduct must be condemned. Attempting to deter others from similar behaviour is an important factor. As you are no doubt aware, I have to make a term of imprisonment cumulative to your present terms unless there are exceptional circumstances. None have been claimed and

none seem to exist. I take into account the matters I have mentioned. You are convicted and sentenced to 9 months' imprisonment cumulative to the terms presently being served. Given your age and present circumstances I think it appropriate to make provision for parole, and I order that you not be eligible for parole until you have served 6 months of that term. Although there is little prospect of you paying the amount, I will make a compensation order in favour of the State of Tasmania in the form of the Tasmanian State Prison Service, in the amount of \$24,430.93. The law requires me to order payment within 28 days, which I do, but note the law also provides for other payment alternatives.