



FAMILY

● LAW ●

COUNCIL

STATISTICAL SNAPSHOT OF FAMILY LAW

● 2003–2005 ●

Family Law Council

STATISTICAL SNAPSHOT

OF FAMILY LAW

2003–2005

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1. Introduction

This is the third Family Law Council *Statistical Snapshot of Family Law*. The first Statistical Snapshot was produced in June 2002. Prior to that date, some statistical information was published in the Family Law Council's Annual Report.

Council has established a reference group to oversee the preparation of this publication. The reference group comprises Ms Angela Filippello from the Family Court of Australia, Mr David Monaghan from the Family Court of Western Australia, and Dr Bruce Smyth from the Australian Institute of Family Studies and Mr John Mathieson from the Federal Magistrates Court, all of whom are Observers on Council. The Council would like to thank the reference group for their work.

Courts exercising jurisdiction under the Family Law Act 1975

Jurisdiction under the Family Law Act 1975 (Cth) (Family Law Act) is exercised by the Family Court of Australia, the Family Court of Western Australia, the Federal Magistrates Court, the Supreme Court of the Northern Territory, and State and Territory courts of summary jurisdiction.

The relationship between the Family Court and the Federal Magistrates Court is an evolving one. The Federal Magistrates Court was established in 2000 to handle less complex matters in family law and general federal law¹. Its practices and procedures reflect that aim. In accordance with the purposes for which the Federal Magistrates Court was established, there is an agreement between the two courts that less complex matters will be transferred from the Family Court to the Federal Magistrates Court and more complex matters will be transferred from the Federal Magistrates Court to the Family Court. In 2003 the two courts agreed that divorce applications would be heard in the Federal Magistrates Court². In 2004 the Family Court issued Practice Direction 4 of 2004 which provided that summary applications including Maintenance, Child Support, Enforcement Applications and Contravention Applications should be filed in the Federal Magistrates Court unless associated matters are pending in the Family Court. This relationship between the courts should be kept in mind when comparing statistical information about the courts.

Family Court of Australia

The Family Court of Australia is a superior court of record established in 1975 by the Family Law Act. It exercises original jurisdiction in all States and Territories except Western Australia and exercises appellate jurisdiction throughout Australia. The Family Court of Australia has jurisdiction to hear matters relating to divorce and matrimonial causes (most commonly, applications for parenting orders relating to both nuptial and ex-nuptial children), the distribution of property following marriage breakdown, and welfare.³ The Court also hears matters arising under the *Marriage*

¹ Federal Magistrates Court of Australia *Annual Report* p9.

² Practice Direction No 6 of 2003, Family Court, 13 November 2003.

³ *Secretary, Department of Health and Community Services v JWB and SMB (1992) FLC 92-293*; *Minister for Immigration and Multicultural and Indigenous Affairs v B (2004) 206 ALR 130*.

Act 1961 (Cth) (Marriage Act), the Child Support (Assessment) Act 1989 (Cth) and the Child Support (Registration and Collection) Act 1988 (Cth) (Child Support Acts).

Family Court of Western Australia

The Family Court of Western Australia is a State court created in accordance with the Family Law Act. It exercises the same federal jurisdiction as the Family Court of Australia.⁴ In addition the Family Court of Western Australia has jurisdiction over children and property disputes of de-facto couples.

Federal Magistrates Court

The Federal Magistrates Court is a court of record established by the *Federal Magistrates Act 1999 (Cth) (Federal Magistrates Act)*.⁵ In family law matters, the Federal Magistrates Court exercises jurisdiction under the Family Law Act, the Marriage Act and the Child Support Acts.⁶ The court operates under its own Rules.⁷

The Federal Magistrates Court has jurisdiction over the dissolution of marriages; applications for spousal maintenance; all parenting orders, including disputed applications about where children will live;⁸ enforcement of orders; location and recovery orders; and matters concerning questions of parentage. It also has unlimited jurisdiction in property matters.⁹ Unlike the Family Court of Australia, it does not have jurisdiction to hear matters regarding adoptions or applications concerning the nullity or validity of a marriage. It does not exercise any family law jurisdiction in Western Australia.¹⁰

Supreme Court of the Northern Territory

In the Northern Territory, the Supreme Court has jurisdiction to hear matters arising under the Family Law Act and the Marriage Act. Section 69H(3) of Family Law Act invests jurisdiction in the Supreme Court to hear matters arising under Part VII. The Supreme Court's jurisdiction is limited to cases where at least one of the parties is ordinarily a resident of the Northern Territory when the proceedings are instituted or are transferred to the Court¹¹.

State and Territory courts of summary jurisdiction

State and Territory courts of summary jurisdiction exercise limited jurisdiction under the Family Law Act.¹² In the majority of family law matters, particularly matters concerning care arrangements for a child, both parties are required to consent to a court's jurisdiction prior to a matter being heard.

⁴ Family Law Act, s 41.

⁵ Federal Magistrates Act, s 8.

⁶ Family Law Act, s 39.

⁷ *Federal Magistrates Court Rules 2001*.

⁸ Complete residence jurisdiction was given on 27 December 2000.

⁹ *Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)*, Schedule 7.

¹⁰ Family Law Act, s 40A.

¹¹ Family Law Act, s 69K.

¹² Family Law Act, s 39.

Statistics

Analysis

The information presented in this Statistical Snapshot is more comprehensive than that previously published in Council's annual reports. The Statistical Snapshot aims to be a convenient reference resource for those engaged in research and analysis; it does not present a comprehensive collection or analysis of family law statistics. Where data comparisons and trend analyses are not possible, this has been indicated throughout the Statistical Snapshot.

When reading this Statistical Snapshot, it is important to note that court data relates to financial years 2003–2005 whereas Australian Bureau of Statistics (ABS) data relates to calendar years 2003, 2004 and 2005.

Data that specifically relate to a section of the Family Law Act that has since been repealed or amended are clearly specified.

The introduction of *Casetrack* into the family courts in 2002 improved the court's capability to collect statistical information.¹³ *Casetrack* has enabled data to be collected regarding the number of orders sought within four general categories:

- children
- financial
- children and financial, and
- procedural orders.

Family Courts and Federal Magistrates Court

Council has gathered relevant data from the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court for most of the statistics in this report. Council would like to thank the courts for their cooperation and assistance.

It should be noted that the Family Court of Australia and the Federal Magistrates Court have different case management processes. This difference reflects the fact that the Federal Magistrates Court deals with less complex matters and the Family Court with more complex matters. As a result of the different focus, each court requires parties to participate in different court events and provide the court with different information. For example, a key area of difference is the Case Assessment Conference which is a feature of the Family Court's case management system which is not replicated in the Federal Magistrates Court. In addition the Federal Magistrates Court does not have its own counselling and mediation services and as a result the Family Court provides some of these services to the Federal Magistrates Court and counsellors outside the court system also provide some of the services. The statistics provided reflect only those services provided by the Family Court.

¹³ Further information on *Casetrack* is contained in Appendix 1.

Some Family Court of Australia data for 2003–04 are not available due to the court’s redevelopment of its data collection mechanism during that period. Where information is not available, this has been clearly noted.

State and Territory courts of summary jurisdiction

Each State and Territory court of summary jurisdiction has its own practice for the collection and publication of family law data. It is common in these jurisdictions for published statistical data to reflect overall numbers of orders made rather than categories of particular areas of law; for example, family law or criminal law.

By way of example of the differing approaches amongst the courts of summary jurisdiction, the Local Court of New South Wales collects data on the number of new family law matters that come before the court and the types of orders made.¹⁴ Because these statistics are recorded manually for management purposes only, they may not provide an accurate statistical analysis of matters dealt with. These statistics are available on request.¹⁵

However, the Magistrates’ Court of Victoria included a section on Family Law Jurisdiction in its *2004–2005 Annual Report*. The statistics included in that section indicated that the court experienced a decrease in the number of family law related orders made in comparison to the previous year. Specifically, it reports that in 2004–2005 the court made a total of 2,709 orders under the Family Law Act, representing a decrease of 16% from 2003–2004.¹⁶

Australian Bureau of Statistics

The Australian Bureau of Statistics is the source of the marriage and divorce statistics contained in this Statistical Snapshot.

ABS divorce statistics are reported on a calendar year basis and are compiled using data provided by the courts.¹⁷ Divorce statistics relate to all applications where the outcome was an order for dissolution of marriage.

¹⁴ A family law matter may include applications made under the *Child Support (Assessment) Act 1989* (Cth) and the *De Facto Relationships Act 1991* (NSW) as well as under the Family Law Act.

¹⁵ Correspondence should be addressed to The Director, Local Courts, Level 1 Downing Centre, 143–147 Liverpool Street, Sydney NSW 2000.

¹⁶ Magistrates’ Court of Victoria, *2004–2005 Annual Report* (2006), p. 38, Melbourne, 2005, viewed 18 October 2006, <[http://www.magistratescourt.vic.gov.au/CA256902000FE154/Lookup/Annual_Report/\\$file/Annual_Report_2004-05.pdf](http://www.magistratescourt.vic.gov.au/CA256902000FE154/Lookup/Annual_Report/$file/Annual_Report_2004-05.pdf)>.

¹⁷ The Family Court of Australia, Federal Magistrates Court and the Family Court of Western Australia are the sources of all ABS divorce data. The Family Court of Australia provides this information to the ABS on behalf of the Family Court of Western Australia and the Federal Magistrates Court.

Impact of the 2006 family law reforms

Significant changes have occurred to the family law system as a result of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Shared Parental Responsibility Act). The Shared Parental Responsibility Act reflects the Government's determination to ensure the right of children to grow up in a safe environment with the love and support of both their parents, and places an emphasis on the protection of children from family violence.

The key changes in the Shared Parental Responsibility Act are to:

- introduce a new presumption of equal shared parental responsibility
- require the court to consider whether a child spending equal time with both parents is reasonably practical and in the best interests of the child. If it is not appropriate, the court must consider substantial and significant time
- make the right of the child to know their parents and be protected from harm the primary factors when deciding the best interests of the child
- require parents to attend family dispute resolution and make a genuine effort to resolve their dispute before taking a parenting matter to court. This requirement does not apply where there is family violence or abuse
- strengthen the existing enforcement regime by giving the courts a wider range of powers to deal with people who breach parenting orders
- require the court to take into account parents who fail to fulfil their major responsibilities
- amend the existing definition of family violence to make clear that a fear or apprehension of violence must be 'reasonable'
- provide for a less adversarial approach in all child-related proceedings
- increase the emphasis on parenting plans to encourage parents, where possible, to come to suitable agreements outside the court system, and
- better recognition of the interests of the child in spending time with grandparents and other relatives.

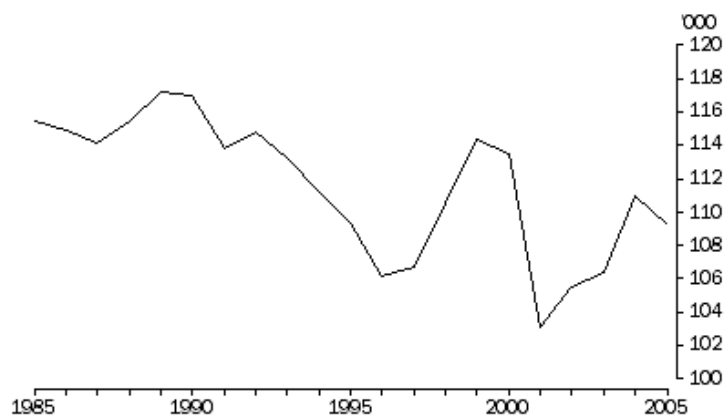
Data in this Statistical Snapshot reflect the law and processes that were in place prior to the 2006 reforms.

2. Marriages

Registered marriages

In 2004, there were 110,958 marriages registered in Australia.¹⁸ In 2005, 109,323 marriages were registered, representing a slight decrease of 1,635 (1.5%) on the previous year.¹⁹

Chart 1: Total marriages, 1985–2005



Source: ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001

¹⁸ ABS (2004) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

¹⁹ *ibid.*

Crude marriage rates

Over the past 20 years, the crude marriage rate (number of marriages per 1,000 of population) has been in decline.²⁰ In 2005, the crude marriage rate decreased to 5.4 per 1,000 people.²¹ This represents a 1.9 per 1,000 decline with respect to the rate in 1985 (7.3) and a 0.7 per 1,000 decline with respect to the rate in 1995 (6.1).²²

Chart 2: Crude marriage rate, 1985–2005



Source: ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001

²⁰ ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

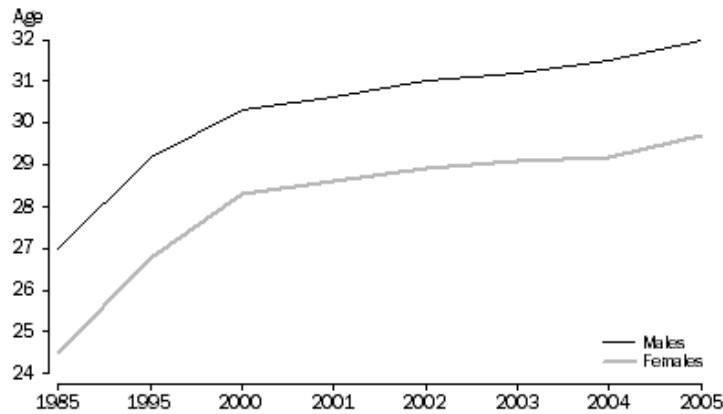
²¹ *ibid.*

²² *ibid.*

Median age at marriage

The trend towards marriage at an older age continued in 2004 and 2005. The median age at marriage was 32 years for men in both 2004 and 2005, compared with 26 years in 1985.²³ For women, the median age rose from 24 years in 1985 to 29 years in 2004 and 29.7 years in 2005.²⁴

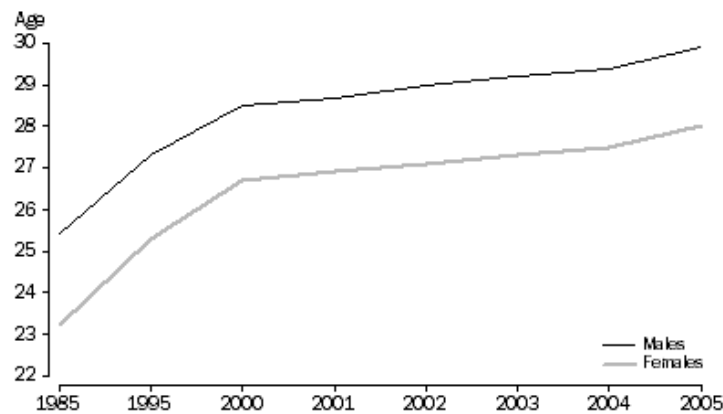
Chart 3: Median age at marriage



Source: ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001

The median age at first marriage has also increased. The median age for men was 29 years in 2004 and 29.9 years in 2005.²⁵ For women, the median age at first marriage was 28 years in both 2004 and 2005.²⁶ In 1985, the median ages at first marriage were 25.4 years for men and 23.2 years for women.²⁷

Chart 4: Median age at first marriage



Source: ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001

²³ ABS (2004) *Marriages, Australia*, Catalogue No. 3306.0.55.001; ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

Marital status at marriage

Marriages in which both parties were married for the first time comprised 67% of all marriages registered in 2004 and 68% in 2005.²⁸ In both 2004 and 2005, a further 18% of all marriages involved one partner who had been previously married.²⁹ In 2004, 15% were remarriages for both partners; in 2005, this figure was 14%.³⁰ These proportions have remained constant over the past 20 years.³¹

Overall, men had a shorter interval between previous and current marriage than women.³² In 2004, the median time interval before remarriage was 3.8 years for men compared with 4.4 years for women.³³ In 2005, the median time interval before marriage was 3.5 years for men compared with 4.2 years for women.³⁴

Cohabitation prior to marriage

In both 2004 and 2005, 76% of couples who registered a marriage had cohabited prior to marriage.³⁵ There has been a steady increase in cohabitation since 2000, when 71% of couples had cohabited prior to marriage.³⁶ In comparison, rates of cohabitation prior to marriage were approximately 25% in 1977, 42% in 1987 and 65% in 1997.³⁷

²⁸ ABS (2004) *Marriages, Australia*, Catalogue No. 3306.0.55.001; ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

³³ *ibid.*

³⁴ *ibid.*

³⁵ ABS (2004) *Marriages, Australia*, Catalogue No. 3306.0.55.001; ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

³⁶ ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

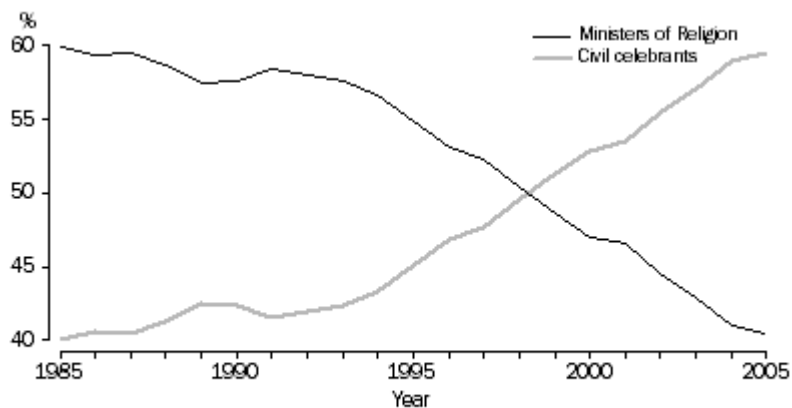
³⁷ ABS (1997) *Marriages and divorces, Australia*, Catalogue No. 3310.0.

Marriage celebrants

In 1985, only 40% of registered marriages were performed by civil celebrants.³⁸ This figure increased to 59% in 2004 and 60% in 2005.³⁹ This is consistent with the trend favouring civil celebrants, which began in 1999 when civil celebrants performed 51% of all marriages.⁴⁰

Couples who cohabit prior to marriage are more likely to marry in a civil ceremony (66% in 2004, 67% in 2005) than those who do not.⁴¹

Chart 5: Category of celebrant, 1985–2005



Note: Result for 1995 estimated because rites were not processed.

Source: ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001

³⁸ ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

³⁹ ABS (2004) *Marriages, Australia*, Catalogue No. 3306.0.55.001; ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

⁴⁰ *ibid.*

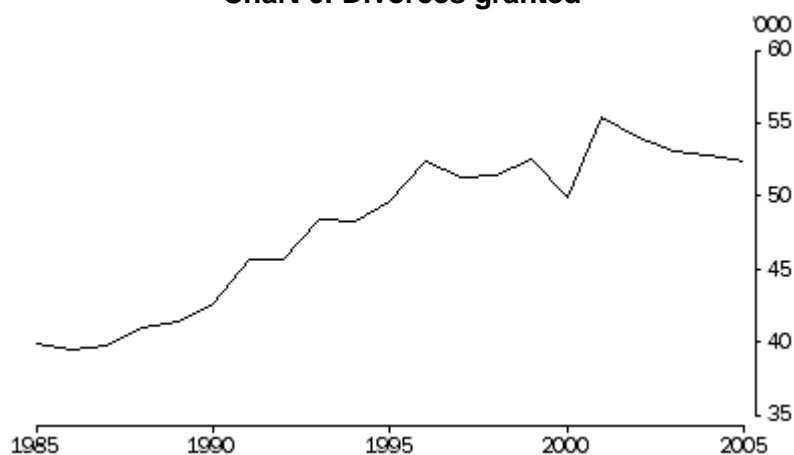
⁴¹ *ibid.*

3. Divorces

Divorces granted

There were 52,747 divorces granted in 2004 and 52,399 in 2005: a decrease of 0.07% each year from the 53,145 divorces granted in 2003.⁴² In 2005, the number of divorces represented the fourth annual decrease since a high of 55,330 in 2001.⁴³ There was a 2.4% decrease in 2002.⁴⁴ After 2002, the rate of decline in the number of divorces has slowed with each successive year.⁴⁵

Chart 6: Divorces granted



Source: ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001

⁴² *ibid.*

⁴³ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.00.55.001.

⁴⁴ *ibid.*

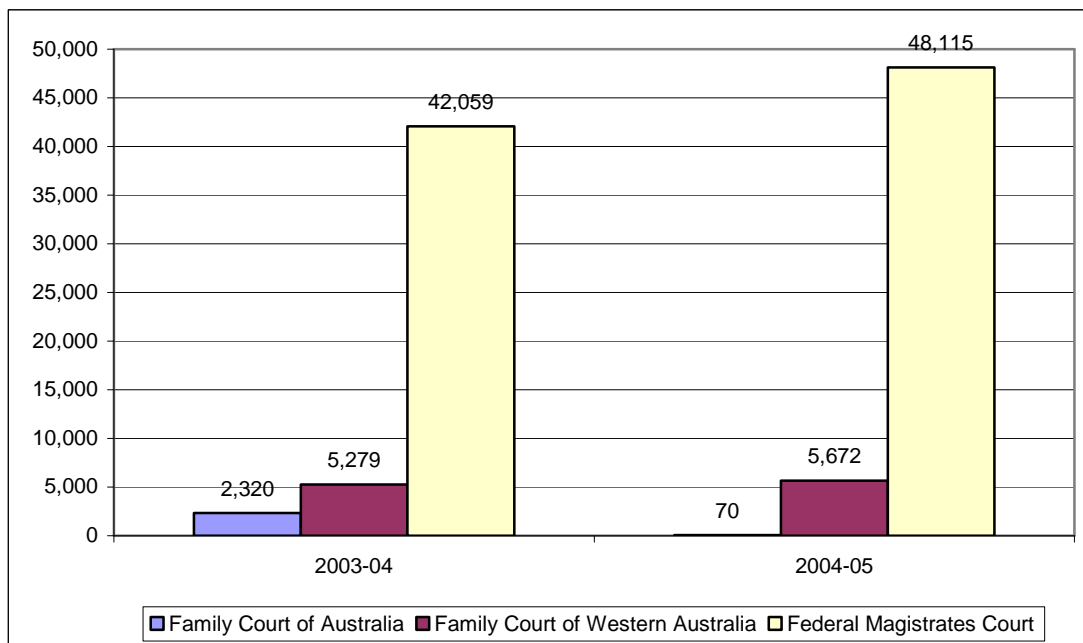
⁴⁵ *ibid.*

Divorce applications

The number of divorce applications heard by the Family Court of Australia has continued to decline. In 2003 it was agreed between the Family Court of Australia and the Federal Magistrates Court that it was more appropriate for divorce application to be heard in the Federal Magistrates Court. On 13 November 2003 the Chief Justice of the Family Court of Australia issued a Practice Direction indicating that all divorce applications should be filed in the Federal Magistrates Court. The majority of divorce applications heard in the Federal Magistrates Court are dealt with by registrars engaged on a sessional basis by that court although a small proportion continue to be heard by registrars employed by the Family Court of Australia who are appointed as registrars of the Federal Magistrates Court. The Family Court of Western Australia hears divorce applications in that State. Between 2003 and 2005 divorces in Western Australia were heard by magistrates.

In 2004–05, only 70 divorce applications were heard in that court. In contrast, the number of divorce applications heard in the Family Court of Western Australia increased from 5,279 in 2003–04 to 5,672 in 2004–05 and those heard in the Federal Magistrates increased from 42,059 in 2003–04 to 48,115 in 2004–05.

**Chart 12: Number of divorce applications filed
Family Court of Australia, Family Court of Western Australia
and Federal Magistrates Court**



Divorce rates

The crude divorce rate (number of divorces per 1,000 of population) has marginally decreased in the past 20 years. The crude divorce rate for both 2004 and 2005 was 2.6, compared to 2.7 in 2003 and 2.8 in 1984.⁴⁶

The most current data available regarding divorce rates is for 2001.⁴⁷ At that time, the divorce rate was 13.1 per 1,000 married males or females.⁴⁸ This is an increase from 11.9 per 1,000 married males and 12.0 per 1,000 for married females in 2000, and 11.6 per 1,000 married males and 11.5 per 1,000 married females in 1991.⁴⁹

Chart 7: Crude divorce rate



Source: ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001

Analysis of the latest available trends shows that there is an overall increase in the likelihood of a marriage ending in divorce.⁵⁰ The most recent statistics indicate that, if a group of newly-born babies is exposed to 1997–99 rates of marriage, divorce, remarriage, widowhood and mortality, 32% of their marriages will end in divorce.⁵¹ If 1990–92 rates were applied, 29% of these of marriages would end in divorce, and 28% would end in divorce if 1985–87 rates were applied.⁵²

⁴⁶ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.00.55.001; ABS (2005) *Divorces, Australia*, Catalogue No. 3307.00.55.001.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ ABS (2000) *Marriages and Divorces, Australia*, Catalogue No 3310.0.

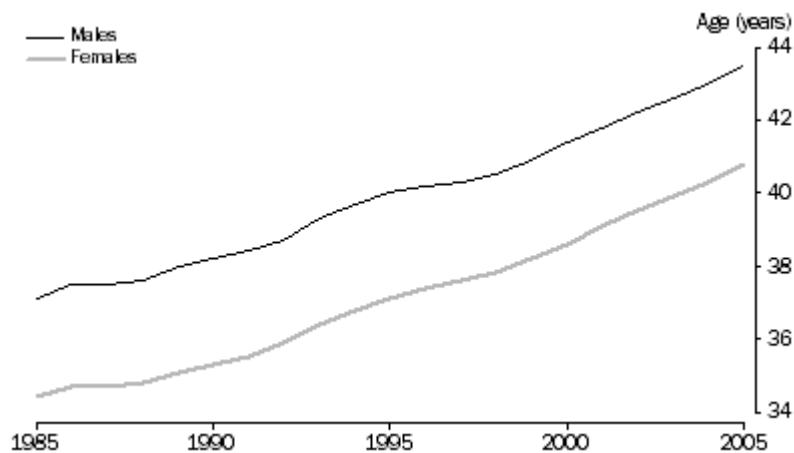
⁵² ABS (2005) *Divorces, Australia*, Catalogue No. 3307.00.55.001.

Median age at divorce

The median age at divorce continued to increase in 2004 and 2005. The median age at divorce for men was 43.5 years in 2005 and 43.0 years in 2004, up from 42.6 years in 2003, 40 years in 1995 and 37.1 years in 1985.⁵³ The median age at divorce for women was 40.8 years in 2005 and 40.3 years in 2004, up from 39.9 years in 2003, 37.1 years in 1995 and 34.4 years in 1985.⁵⁴

The rise in the median age at divorce is consistent with a long-term trend towards later marriage and the increased interval between marriage and divorce.⁵⁵

Chart 8: Median age at divorce



Source: ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001

⁵³ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001; ABS (2005) *Divorces, Australia*, Catalogue No. 3307.00.55.001.

⁵⁴ *ibid.*

⁵⁵ *ibid.*

Duration of marriage for divorcing couples

The median duration of marriage to both separation and divorce is increasing. The median duration of marriage to separation was 8.8 years in 2005, up from 8.7 years in both 2004 and 2003.⁵⁶ This is an increase from 7.6 years in both 1995 and 1994.⁵⁷ The median duration of marriage to divorce in 2005 was 12.6 years, compared with 12.3 years in 2004, 12.2 years in 2003 and 11 years in 1995.⁵⁸

In 2004, 5.7% of divorces involved separation within the first year of marriage, 32.8% within the first five years, 21.9% within five to nine years and 45.2% after 10 years of marriage.⁵⁹ In 2005, 5.6% of divorces involved separation within the first year of marriage, 32.2% within the first five years, 22.1% between five and nine years, and 45.6% after 10 years of marriage.⁶⁰

Of the couples who divorced in 2004, 16% were married for less than five years, 24% between five and nine years, and 59.1% for 10 years or more.⁶¹ Of these couples, 15.7% had been married for 25 years or more.⁶² Of the couples who divorced in 2005, 15.2% were married for less than five years, 25% between five and nine years, and 59.8% for 10 years or more.⁶³ Of these couples, 16.5% had been married for 25 years or more.⁶⁴

Chart 9: Median duration to separation and divorce



Source: ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁵⁹ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶⁰ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶¹ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶² *ibid.*

⁶³ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶⁴ *ibid.*

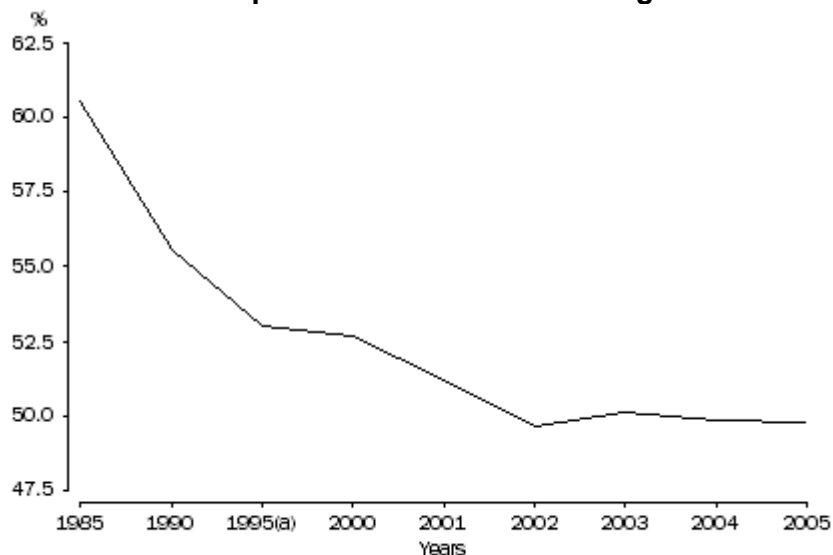
Divorces involving children

Over the last 20 years, the percentage of divorces granted involving children less than 18 years of age has decreased from 60.6% in 1985 and 52.4% in 1994 to 49.8% in both 2004 and 2005.⁶⁵ The number of children involved in divorce in 2005 (49,358) increased 0.2% from 49,260 in 2004 and is 5% higher than the 1985 figure of 46,800.⁶⁶

Of divorces involving children under 18 years of age in 2004, the age of the youngest child was less than five years for 24.9% of divorces, five to nine years for 36.1% of divorces, and over 10 years for 38.9% of divorces.⁶⁷

Of divorces involving children under 18 years of age in 2005, the age of the youngest child was less than five years for 24.3% of divorces, five to nine years for 36.4% of divorces, and over 10 years for 39.3% of divorces.⁶⁸

Chart 10: Proportion of divorces involving children



(a) Proportion estimated in 1995 due to unavailability of data.

Source: ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001

⁶⁵ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001; ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶⁶ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶⁷ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁶⁸ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

Divorce applicants

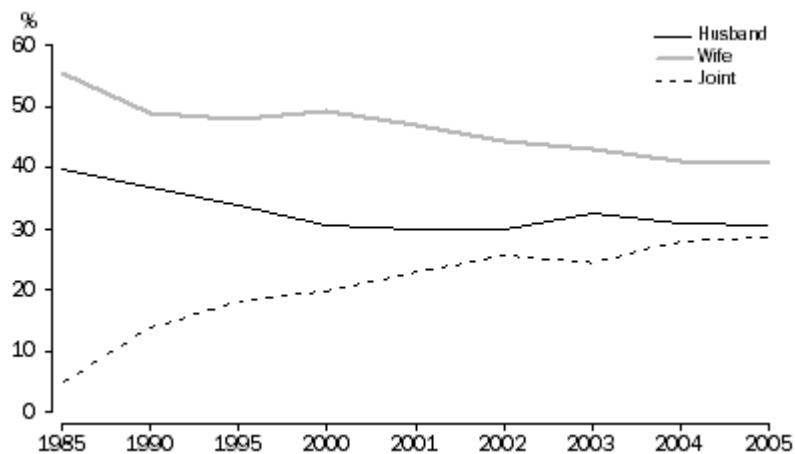
In both 2004 and 2005, more females than males lodged applications for divorce. This is consistent with previous years.

In 2004, 41% of divorce applications were lodged by females and 31.0% by males.⁶⁹ In 2005, 40.8% of divorce applications were lodged by females and 30.6% by males.⁷⁰

In 2005, 28.5% of divorces were the result of joint applications, an increase from 28.0% in 2004, 18.1% in 1995 and 4.8% in 1985.⁷¹

The median duration of marriage to divorce was shorter for joint applicants (11.7 years in 2005, 11.5 years in 2005) as well as for female applicants (11.9 years in 2005, 11.7 years in 2004) compared with male applicants (14.4 years in 2005, 14.2 years in 2004).⁷²

Chart 11: Type of applicant



Source: ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001

⁶⁹ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁷⁰ ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁷¹ ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001; ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

⁷² ABS (2004) *Divorces, Australia*, Catalogue No. 3307.0.55.001; ABS (2005) *Divorces, Australia*, Catalogue No. 3307.0.55.001.

4. Applications for court orders

Table 1 shows that the total number of applications for final orders decreased during the period, with 27,491 applications in 2003–04 and 26,192 in 2004–05. Consistent with the arrangements between the courts⁷³ there was a decrease in the number of applications and increases were recorded in both the Family Court of Western Australia and the Federal Magistrates Court.

**Table 1: Applications for final orders
Family Court of Australia, Family Court of Western Australia and
Federal Magistrates Court**

Total applications for final orders		
Court	2003–04	2004–05
Family Court of Australia	14,885	11,923
Family Court of Western Australia	2,731	2,777
Federal Magistrates Court	9,875	11,534
Total	27,491	26,234

**Table 2: Applications for final orders by registry
Family Court of Australia**

Family Court of Australia	2003–04	2004–05
Adelaide	1,883	1,339
Brisbane	2,925	2,035
Canberra	349	246
Dandenong	939	634
Darwin	31	40
Hobart	595	525
Melbourne	2,955	2411
Newcastle	721	516
Parramatta	1,505	1394
Sydney	2,386	2,223
Townsville	596	560
Total	14,885	11,923

⁷³ Practice Direction No 4 of 20004, Family Court.

**Table 2a: Applications for final orders by registry
Federal Magistrates Court**

Federal Magistrates Court	2003-04	2004-05
Adelaide	641	1016
Brisbane	2006	2716
Canberra	568	619
Dandenong	1065	1159
Darwin	318	276
Launceston	288	360
Melbourne	2353	2572
Newcastle	830	948
Parramatta	1387	1287
Sydney	45	69
Townsville	374	512
Total	9875	11534

As shown in Table 3, the total number of applications for interim orders also fell during the period, from 28,260 applications in 2003–04 to 27,731 in 2004–05. As was the case for applications for final orders shown in Table 1, the number of applications for interim orders in the Family Court of Australia fell and an increase was recorded in the Federal Magistrates Court. This is consistent with the arrangements between the two courts. An increase was also recorded in the Family Court of Western Australia.

**Table 3: Applications for interim orders
Family Court of Australia, Family Court of Western Australia and
Federal Magistrates Court**

Total applications for interim orders		
Court	2003–04	2004–05
Family Court of Australia	14,676	12,631
Family Court of Western Australia	3,894	4,135
Federal Magistrates Court	9,690	10,965
Total	28,260	27,731

**Table 4: Applications for interim orders by registry
Family Court of Australia**

Family Court of Australia	2003–04	2004–05
Adelaide	2,569	2,113
Brisbane	2,686	2,369
Canberra	393	286
Dandenong	989	709
Darwin	30	33
Hobart	506	419
Melbourne	3,204	2,552
Newcastle	662	530
Parramatta	878	901
Sydney	2,224	2,180
Townsville	535	539
Total	14,676	12,631

**Table 4a: Applications for interim orders by registry
Federal Magistrates Court**

Federal Magistrates Court	2003-04	2004-05
Adelaide	718	1090
Brisbane	1466	1948
Canberra	581	616
Dandenong	1038	1131
Darwin	322	303
Launceston	267	260
Melbourne	2508	2587
Newcastle	899	959
Parramatta	1248	1333
Sydney	336	337
Townsville	307	401
Total	9690	10965

Maintenance orders

The number of child maintenance applications is decreasing, due to the introduction of the Child Support Scheme. The scheme covers all children under 18 born on or after 1 October 1989 and children born before that date but whose parents separated after that date. Pursuant to section 66E of the Family Law Act, a court must not make a child maintenance order in relation to a child who is covered by the Child Support Scheme. However, orders in relation to the diminishing group of children under 18 born before 1 October 1989 and whose parents separated before that date and in relation to varying an assessment under section 118 of the *Child Support (Assessment) Act 1989* may be made in the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court. Except in Western Australia such applications are usually brought in the Federal Magistrates Court⁷⁴.

The following statistics relate to applications for child maintenance under Part VII Division 7 of the Family Law Act and for spousal maintenance under Part VIII of the Family Law Act. Separate statistics for child maintenance and spousal maintenance are not available for the Family Court of Western Australia and the Federal Magistrates Court. Therefore, the total number of maintenance applications filed in these courts is shown in Table 5. Family Court of Australia statistics are shown in Table 6.⁷⁵

**Table 5: Maintenance applications
Family Court of Western Australia and Federal Magistrates Court**

Maintenance applications			
Family Court of Western Australia		Federal Magistrates Court	
2003–04	2004–05	2003–04	2004–05
101	31	352	103

**Table 6: Maintenance and child support applications
Family Court of Australia**

Family Court of Australia			
maintenance		Child support	
2003–04	2004–05	2003–04	2004–05
234	115	300	105

⁷⁴ Practice Direction No 4 of 2004, Family Court.

⁷⁵ On 1 April 2004, new Family Court Rules introduced 'orders sought' on applications and removed some types of application forms. Applications can have more than one order sought.

Contraventions

As shown in Table 7, total applications for contravention of a child order in both the Family Court of Australia and the Federal Magistrates Court decreased from 2,639 in 2003–04 to 2,400 in 2004–05.

**Table 7: Contravention of child orders
Family Court of Australia and Federal Magistrates Court**

Total applications for contraventions of child orders		
Court	2003–04	2004–05
Family Court of Australia	983	946
Federal Magistrates Court	1,656	1,454
Total	2,639	2,400

Contraventions of other orders increased in both the Family Court of Australia and the Federal Magistrates Court. As shown in Table 8, there were 407 applications in 2003–04 and 519 applications in 2004–05.

**Table 8: Contravention of other orders
Family Court of Australia and Federal Magistrates Court**

Total applications for contraventions of other orders		
Court	2003–04	2004–05
Family Court of Australia	148	103
Federal Magistrates Court	259	416
Total	407	519

**Table 9: Contravention of other orders by registry
Family Court of Australia**

Family Court of Australia	2003–04	2004–05
Adelaide	9	10
Brisbane	20	16
Canberra	10	1
Dandenong	3	6
Darwin	0	0
Hobart	5	2
Melbourne	32	26
Newcastle	4	0
Parramatta	5	5
Sydney	49	32
Townsville	11	5
Total	148	103

**Table 9a: Contravention of other orders by registry
Federal Magistrates Court**

Federal Magistrates Court	2003–04	2004–05
Adelaide	11	27
Brisbane	57	98
Canberra	32	45
Dandenong	33	49
Darwin	6	6
Launceston	13	7
Melbourne	52	89
Newcastle	17	24
Parramatta	17	28
Sydney ⁷⁶	0	0
Townsville	21	43
Total	259	416

The Family Court of Western Australia does not keep separate statistics for child orders. As shown in Table 10, the total number of contravention applications decreased from 520 in 2003–04 to 419 in 2004–05.

**Table 10: Contravention of child orders and other orders
Family Court of Western Australia**

Family Court of Western Australia	
2003–04	2004–05
520	419

Enforcement and contempt

An enforcement summons may be issued by a registrar of the Family Court of Australia, the Family Court of Western Australia or by the Federal Magistrates Court if an order for payment of money has been made and a person has defaulted on payment or is in arrears.

The figures for the number of enforcement summonses filed in all courts in 2003–04 and 2004–05 are provided in Table 11. There was a slight decrease in the number of enforcement summonses overall, from 556 in 2003–04 to 470 in 2004–05. That decrease was as a result of a small decrease in the Family Court of Western Australia and a large decrease in the Federal Magistrates Court. The figures for the Family Court of Australia increased from 225 in 2003–04 to 264 in 2004–05.

⁷⁶ There were no federal magistrates sitting in Sydney during the period covered by this Report.

**Table 11: Enforcement summonses filed
Family Court of Australia, Family Court of Western Australia and
Federal Magistrates Court**

Total enforcement summonses filed		
Court	2003–04	2004–05
Family Court of Australia ⁷⁷	225	264
Family Court of Western Australia	122	113
Federal Magistrates Court	209	93
Total	556	470

Table 12 sets out the numbers of contempt applications made in all registries of the family law courts for the same period. Applications for contempt increased from 120 in 2003–04 to 154 in 2004–05. The increase was largely in the Family Court of Western Australia, where applications rose from 16 in 2003–04 to 42 in 2004–05.

**Table 12: Contempt applications
Family Court of Australia, Family Court of Western Australia and
Federal Magistrates Court**

Total contempt applications		
Court	2003–04	2004–05
Family Court of Australia	70	79
Family Court of Western Australia	16	42
Federal Magistrates Court	34	33
Total	120	154

**Table 13: Contempt applications by registry
Family Court of Australia**

Family Court of Australia	2003–04	2004–05
Adelaide	7	9
Brisbane	27	27
Canberra	3	4
Dandenong	5	5
Darwin	0	0
Hobart	1	1
Melbourne	6	10
Newcastle	1	0
Parramatta	5	10
Sydney	12	12
Townsville	3	1
Total	70	79

⁷⁷ Includes orders sought.

**Table 13a: Contempt applications by registry
Federal Magistrates Court**

Federal Magistrates Court	2003–04	2004–05
Adelaide	6	4
Brisbane	7	11
Canberra	2	2
Dandenong	0	2
Darwin	0	0
Launceston	0	2
Melbourne	4	5
Newcastle	3	1
Parramatta	7	3
Sydney	0	0
Townsville	5	3
Total	34	33

Dispute resolution

Impact of 2006 reforms to family law dispute resolution

The 2006 Shared Parental Responsibility Act instituted significant changes to family law dispute resolution processes. As noted previously, the data collated in this Statistical Snapshot relate to 2003–2005 and reflect the law and processes in place prior to the 2006 reforms. The practices and procedures set out below are also those in place prior to the 2006 reforms. It is expected that they will alter to reflect the changes introduced by the reforms.

Practices and procedures

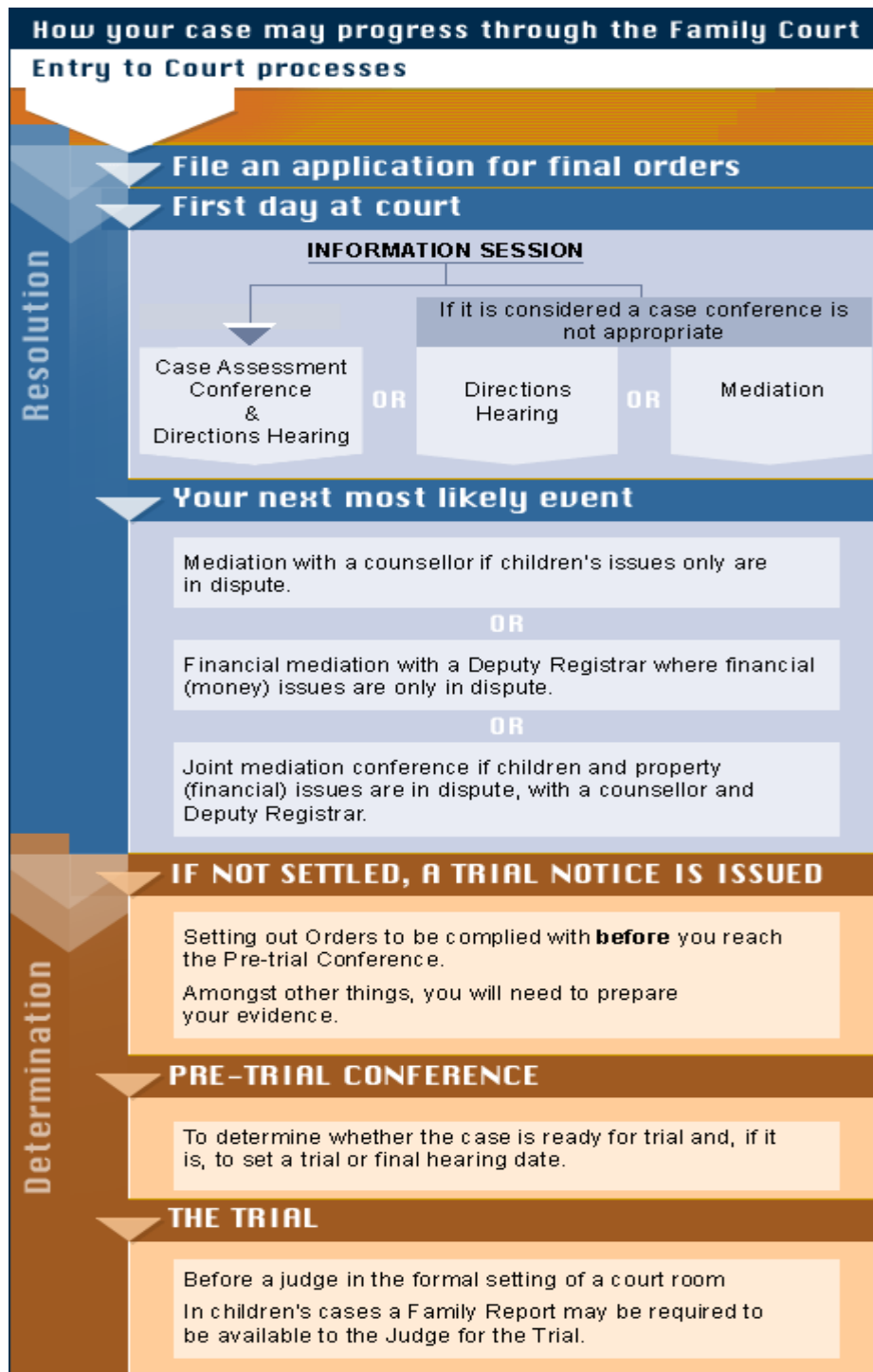
The Family Court of Australia, Family Court of Western Australia and the Federal Magistrates Court had different practices and procedures, which influenced when mediation and/or counselling were offered, what services fell within each category and how services were quantified. All courts emphasised primary dispute resolution as an essential facet of case management processes.

Family Court of Australia

Mediation and/or counselling were available to parties, either voluntarily or by court order at various stages of the court process. The Family Court emphasised mediation through its pre action protocols and at the dispute resolution phase after an application has been filed. Cases could also be resolved at the determination phase, but the primary emphasis during this phase was on preparation for trial.

The resolution phase involved court events where the court tried to help parties reach an agreement about contentious financial and children's issues, and covered all events up to the issue of a trial notice. The determination phase began when parties had been through the last resolution event for their case and had not reached agreement.

The following flowchart shows how cases progress through the Family Court.⁷⁸



⁷⁸ Family Court of Australia, *How your case may progress through the Family Court*, Sydney, 2006, viewed 19 October 2006, <<http://www.familycourt.gov.au/presence/connect/www/home/guide/resolution/flowchart/>>.

Family Court of Western Australia

Primary dispute resolution processes, such as counselling, mediation and conciliation were available in the Family Court of Western Australia

Federal Magistrates Court

Primary dispute resolution processes such as counselling, mediation and conciliation were used in the Federal Magistrates Court before, during and after proceedings. Parties could attend counselling at the Family Court Counselling Section prior to the first court date. At the first court date, parties could be ordered to attend counselling or conciliation at either the Family Court or at a community-based organisation if no previous counselling or conciliation discussions had been held. Some parties were also ordered to attend counselling at a community-based organisation following the completion of proceedings.

Case assessment conferences

Case assessment conferences are part of the Family Court's case management system and during the period covered by this Snapshot were commonly held as the first court event in the Family Court of Australia and the Family Court of Western Australia. Consistent with its focus on dealing with matters summarily, the Federal Magistrates Court does not hold Case assessment conferences.

The key focus of Case assessment conferences is to ascertain the issues in dispute between the parties. Over the period considered, they involved an information session, assessment of family and case needs, negotiation and directions. While matters may settle at a Case assessment conference, its primary purpose is case management.

Case assessment conferences sought to ensure that parties were sufficiently informed of the issues in dispute so as to be in a position to negotiate. They also provided an opportunity for parties to negotiate a resolution on their first day at court although in many circumstances, particularly in financial cases, additional disclosure and valuations or appraisals of assets were required prior to further negotiations.

Depending on the nature of the issues involved, case assessment conferences were convened by a deputy registrar (for financial disputes), a mediator (for disputes involving children), or both a deputy registrar and mediator (for disputes involving both financial matters and children). The Family Court aimed to hold case assessment conferences for most cases, in place of court ordered pre-directions hearing mediation.

As shown in Table 14 below, the number of case assessment conferences held in the Family Court of Australia increased in 2003–04 to 7,737, up from 5,431 in 2002–03, before falling in 2004–05 to 6,100.⁷⁹ The resolution rate for all issues at case assessment conferences fell during the same period, from 28.3% (1,539 of 5,431 conferences) in 2002–03 to 26% (2,016 of 7,737 conferences) in 2003–04 and 20.3% (1,241 of 6,100 conferences) in 2004–05.

Conciliation conferences

In contested property matters in the Family Court of Australia, parties were required to attend a conference with a deputy registrar. Such conferences are provided for in subsection 79(9) of the Family Law Act and are intended to encourage parties to reach agreement rather than seek a court determination. Conciliation conferences in the Federal Magistrates Court were conducted by deputy registrars of the Family Court of Australia or by community-based organisations. When both property and children's matters were in dispute, mediators were also in attendance in both courts.

Settlements at conciliation conferences were recorded by a registrar only if final consent orders were made. Partial settlements, or settlements pending final consent orders outcomes, were not recorded as settled. Such outcomes could involve cases in

⁷⁹ Conciliation conference figures relate to financial matters only.

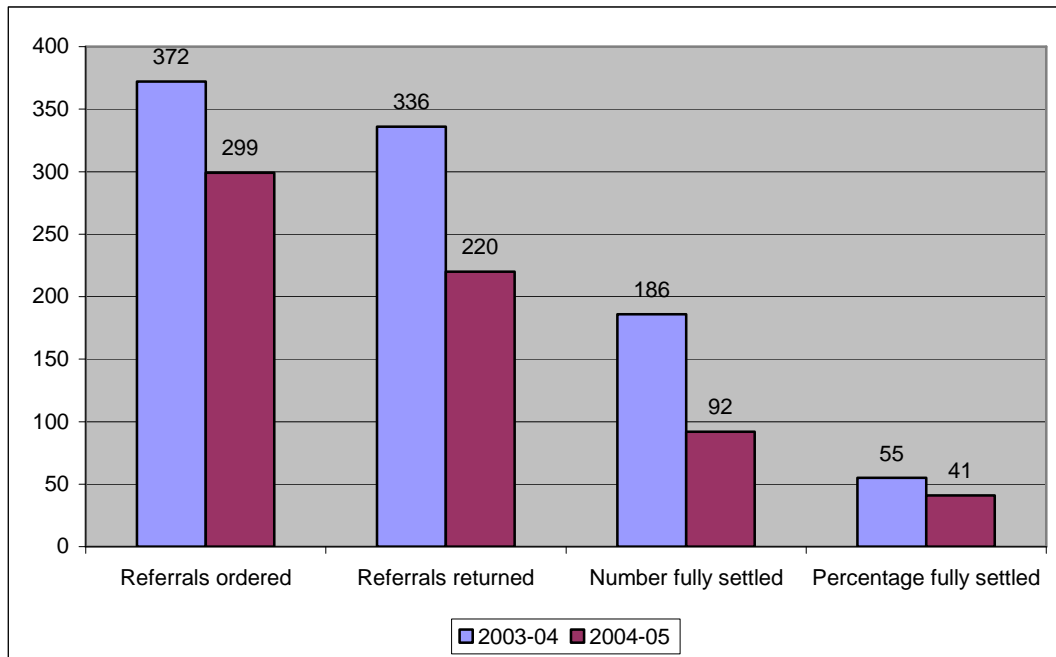
which a settlement could not be finalised by consent orders on the day of the conference; for example, where there were legislative obligations to notify trustees in relation to superannuation interests, where complex drafting was required, or where parties intended to enter into a financial agreement and discontinued the case. This contrasts to the way in which community based organisations, which of course cannot make consent orders, recorded settlements. Any comparison made of the settlement statistics should take account of this.

In line with the case assessment conferences trend, the number of conciliation conferences in all three courts increased in 2003–04 to 9,454, up from 8,330 in 2002–03, before falling in 2004–05 to 7,689. The overall resolution rate fell to 29.1% (2,754 of 9,454) in 2003–4 from 29.5% (2,460 of 8,330) in 2002–03 before rising to 30.4% (2,337 of 7,689 conciliation conferences) in 2004–05.

As shown in Table 14 below, from 2003–04 to 2004–05 the percentage of conciliation conferences where all issues were resolved remained fairly constant in the Family Court of Australia at 32.3%(1,972 of 6,108 conferences) and 31.3%(1,387 of 4,436 conferences) respectively. However, the rate fell significantly in the Family Court of Western Australia, from 25.3 %(417 of 1,649 conferences) to 19.3% (245 of 1,267 conferences). The greatest improvement occurred in the Federal Magistrates Court, where rates rose from 21.5% (365 of 1,697 conferences) to 35.5% (705 of 1,986 conferences).

As previously noted, in the Federal Magistrates Court some conciliation services are provided by community-based organisations. As shown in Chart 13, in 2003–04, 372 Conciliation conferences were referred to community-based organisations, of which 336 were returned completed. Of those 336, all issues were resolved in 186 conferences (55%). In 2004–05, 299 Conciliation conferences were referred, of which 220 were returned completed. Of those 220, all issues were resolved in 92 conferences (41%).

Chart 13: Conciliation conferences conducted by community-based organisations where all issues were resolved 2003–05



Pre-trial conferences in the Family Courts

The Family Court of Australia and the Family Court of Western Australia conducted pre-trial conferences to ensure that matters were ready for trial. Pre-trial conferences are intended to ensure increased certainty of trial dates. Settlements may occur at pre-trial conferences.

The Federal Magistrates Court operates a docket system of case management where the same federal magistrate is responsible for the total management of a matter. The Federal Magistrates Court does not hold pre-trial conferences.

Pre-trial conferences rose to 4,111 in 2003–04, up from 3,846 in 2002–03, before falling to 3,695 in 2004–05. Resolution rates have remained fairly constant during that period: 17.8% (685 of 3,846) in 2002–03, 16.9% (694 of 4,111) in 2003–04 and 17.3% (640 of 3,695) in 2004–05.

Some context may be useful when interpreting the data set out in Table 14 . While settlements are encouraged at both the Case assessment conference and the Pre trial conference, the primary purpose of both of these conferences is case management.

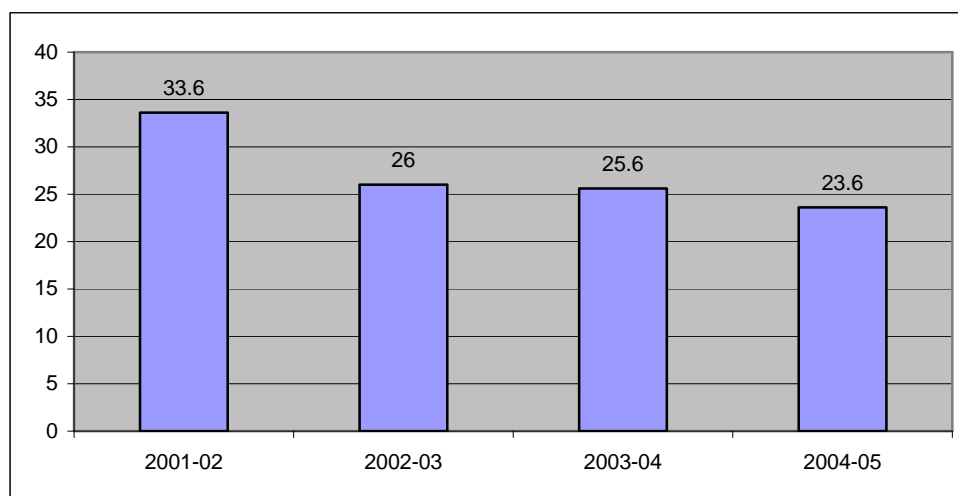
**Table 14: Case assessment, conciliation and pre-trial conferences
Family Court of Australia, Federal Magistrates Court⁸⁰
and Family Court of Western Australia**

	Conferences held		All issues resolved			
	2003–04	2004–05	2003–04		2004–05	
			No.	%	No.	%
Case assessment:						
Family Court of Australia	7,737	6,100	2,016	26	1,241	20.3
Family Court of Western Australia	N/A*	1,141	N/A*	N/A*	185	16.2
Subtotals & percentages	7,737	7,241	2,016	26	1,426	19.7
Conciliation:						
Family Court of Australia	6,108	4,436	1,972	32.3	1,387	31.3
Family Court of Western Australia	1,649	1,267	417	25.3	245	19.3
Federal Magistrates Court	1,697	1,986	365	21.5	705	35.5
Subtotals & percentages	9,454	7,689	2,754	29.1	2,337	30.4
Pre-trial:						
Family Court of Australia	3,285	3,182	537	16.3	563	17.7
Family Court of Western Australia	826	513	157	19	77	15
Subtotals & percentages	4,111	3,695	694	16.9	640	17.3
Totals/percentages	21,302	18,625	5,464	25.6	4,403	23.6

*N/A = Not applicable

⁸⁰ The data does not include the number of conciliation conferences outsourced by the Federal Magistrates Court.

Chart 14: Percentage of court conferences where all issues were resolved 2001–05



Pre-filing and non-court-ordered mediation (voluntary counselling)

During the period covered by this Snapshot, a party to a marriage, a party to proceedings under the Family Law Act, a parent, a child or a child representative could request counselling from the Family Court of Australia or the Family Court of Western Australia.⁸¹ A court exercising jurisdiction under the Family Law Act could also order or suggest that parties attend counselling if it considered that such counselling could be of assistance.⁸² In the Family Court voluntary counselling was only offered in those registries where such services were not available in the community.

**Table 15: Pre-filing voluntary interviews and new interventions
Family Court of Australia and Family Court of Western Australia**

Court	Voluntary interviews		New interventions	
	2003–04	2004–05	2003–04	2004–05
Family Court of Australia	Not available	2,281	Not available	935
Family Court of Western Australia	114	3	175	0
Total	--	2,284	--	935

⁸¹ See sections 15, 15A, 16, 62C–62E of the Family Law Act. These sections have been repealed by the Shared Parental Responsibility Act.

⁸² See sections 16A–16C and 62B of the Family Law Act. These sections have been repealed by the Shared Parental Responsibility Act.

Court-ordered interviews before first directions hearing

In certain situations, a court exercising jurisdiction under the Family Law Act could order parties to attend interviews before a first directions hearing; for example, where an emergency interim application for an injunction had been filed.⁸³ As noted in the 2002–2003 Statistical Snapshot, *Casetrack* has had a significant impact on data collection practices. Therefore, some data previously included in this section of the Statistical Snapshot is no longer available.

As foreshadowed in the first Statistical Snapshot, case assessment conferences have largely replaced pre-directions hearing mediation. Only 662 interviews were held in the Family Court of Australia during 2004–05 compared to 5,608 in 2002–03.⁸⁴

**Table 16: Court-ordered interviews before first directions hearing
Family Court of Australia**

Court	Court ordered interviews pre FDH	
	2003–04	2004–05
Family Court of Australia	Not available	662

⁸³ See sections 16A and 62F of the Family Law Act. These sections have been repealed by the Shared Parental Responsibility Act.

⁸⁴ Data is only available for Family Court of Australia.

Court-ordered interviews after first directions hearing

The Family Law Rules were extensively revised in 2004. The *Family Law Rules 2004* (the 2004 Rules) commenced on 29 March 2004. Prior to that revision, Order 9 Rule 2(5) of the *Family Law Rules 1984* specifically provided for orders referring a matter to counselling, mediation or arbitration.⁸⁵ The equivalent order in the 2004 Rules is Rule 12.05. This Rule does not specifically provide for the making of orders referring a matter to counselling, mediation or arbitration. As the court has continued to make orders referring matters to post-first-directions-hearing interventions, it must be assumed that the power to do so remains.

In 2004–05 there were 4,576 court-ordered post-first-directions-hearing interviews held and 4,367 new interventions.

**Table 17: Court-ordered interviews and interventions post first directions hearing
Family Court of Australia and Family Court of Western Australia**

Court	Court ordered interviews post FDH		Court ordered interventions post FDH	
	2003–04	2004–05	2003–04	2004–05
Family Court of Australia	Not available	4,217	Not available	3,352
Family Court of Western Australia	673	359	1,528	1,015
Total	--	4,576	--	4,367

⁸⁵ *Family Law Rules 1984* Order 9 Rule 2(5) (iii), (iv) and (v).

5. Family reports

In certain circumstances a court exercising jurisdiction under the Family Law Act will order that a family report be prepared.⁸⁶ This report may be received into evidence.

In 2004–05, there were 1,728 family reports released in the Family Court of Australia and 187 in the Family Court of Western Australia. During the same period, 1,108 family reports were released in the Federal Magistrates Court, a substantial increase from the 728 released in the preceding year. The rise in the number of Federal Magistrates Court family reports was due to the increased number of applications filed during 2004–05.

**Table 18: Family reports released
Family Court of Australia, Family Court of Western Australia and
Federal Magistrates Court**

Court	Family reports released	
	2003–04	2004–05
Family Court of Australia	Not available	1,728
Family Court of Western Australia	207	187
Federal Magistrates Court ⁸⁷	728	1,108
Total	--	3,023

⁸⁶ See sections 62G and 65G of the Family Law Act. Note: these statistics relate to the Family Law Act prior to the 2006 reforms. These sections were amended in those reforms.

⁸⁷ Figures do not include outsourced family reports.

6. Part 10.4 consent orders applications in the Family Court

This section only relates to applications for consent orders made in the Family Court of Australia under Rule 10.15 of the 2004 Rules. This application has not been adopted or replicated in the Federal Magistrates Court.

Under Rule 10.15 of the 2004 Rules, judicial officers of the Family Court of Australia and Family Court of Western Australia may make an order if both parties file written consent to that order being made.

It should be noted that more than one order may be sought per application; therefore, the data presented in Table 19 does not represent actual number of orders sought. In addition, consent minutes are not represented in these figures: they can be handed up in court at any time after proceedings have commenced and an application for consent orders is not filed separate to the original proceedings.

As shown in Table 19, 12,124 consent orders applications were filed in the Family Court of Australia in 2003–04. The number decreased to 11,557 in 2004–05. In contrast, the Family Court of Western Australia received 1,744 applications in 2003–04 and experienced a considerable increase to 2,985 applications filed in 2004–05.

**Table 19: Number of consent orders applications filed
Family Court of Australia and Family Court of Western Australia**

Court	Consent orders applications	
	2003–04	2004–05
Family Court of Australia	12,124	11,557
Family Court of Western Australia	1,744	2,985
Total	13,868	14,542

7. Parenting plans

In March 2000, the Family Law Council and the National Alternative Dispute Resolution Advisory Council published a letter of advice to the Attorney-General in relation to parenting plans made under the Family Law Act. The letter supported the idea that parents be encouraged to develop parenting plans, but did not see the need to retain the provisions relating to their registration. The letter of advice can be viewed on Council's website: <<http://www.law.gov.au/flc>>. Subsequently, the *Family Law Amendment Act 2000* removed the requirement to register parenting plans.

8. Transfers between Family Court and Federal Magistrates Court

The Federal Magistrates Act allows proceedings pending in the Federal Magistrates Court to be transferred to the Family Court of Australia at the Federal Magistrates Court's discretion,⁸⁸ or in accordance with the mandatory requirements.⁸⁹ Likewise, section 33B of the Family Law Act allows proceedings pending in the Family Court to be transferred to the Federal Magistrates Court at the Family Court of Australia's discretion.

No regulations governing the transfer of cases from the Federal Magistrates Court to the Family Court have been made. When deciding to exercise their discretion to transfer proceedings to the Family Court, Federal Magistrates consider factors specified in ss39 (3) and (4) *Federal Magistrates Act 1999* (Cth) and factors specified in rule 8.02 of the *Federal Magistrate Court Rules 2001* (Cth). Where a family law or child support hearing is likely to take more than 2 days, it is likely that the Federal Magistrate will transfer the hearing to the Family Court (rule 8.02(4)(f)).

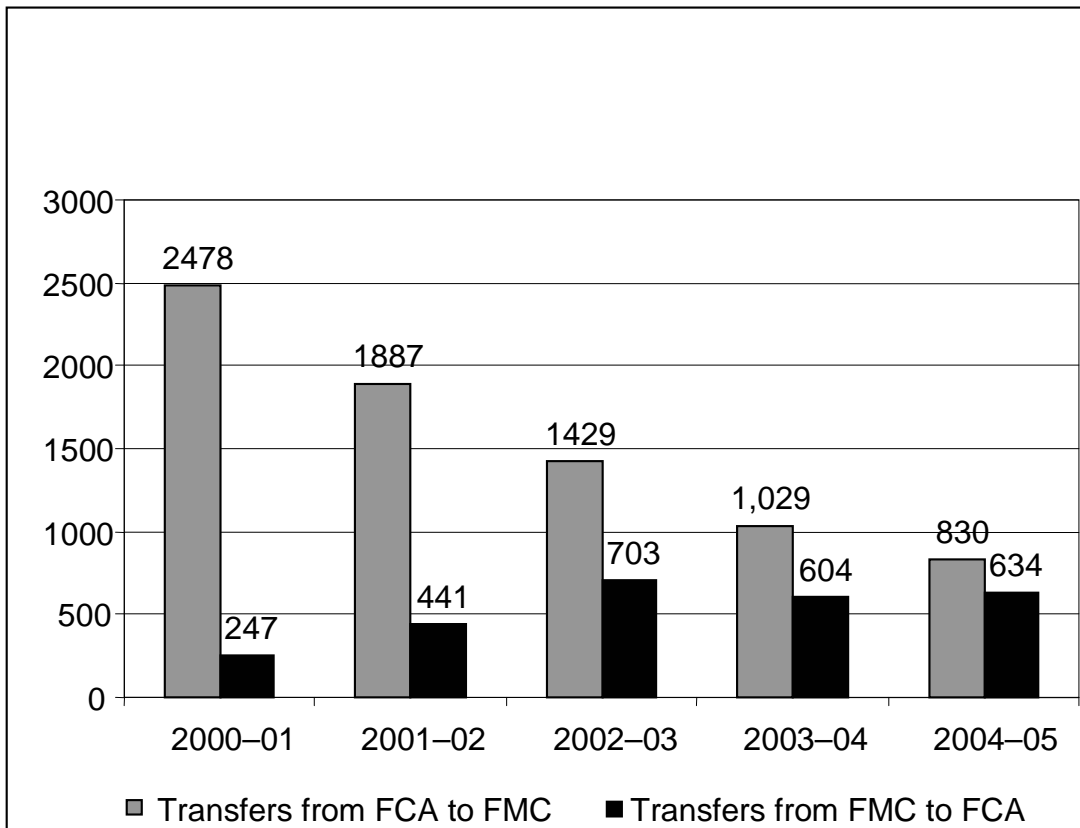
In 2003–04 there were 1,029 transfers from the Family Court of Australia to the Federal Magistrates Court and 604 transfers from the Federal Magistrates Court to the Family Court of Australia.

In 2004–05 there were 830 transfers from the Family Court of Australia to the Federal Magistrates Court and 634 transfers from the Federal Magistrates Court to the Family Court of Australia.

⁸⁸ Federal Magistrates Act, s 39.

⁸⁹ Federal Magistrates Act, s 41.

Chart 15: Transfers between the Family Court of Australia and the Federal Magistrates Court



9. Defended hearings

In the Family Court of Australia, the number of defended hearings listed for trial in 2003–04 and 2004–05 decreased significantly from the 4,218 listed in 2002–03. There were 3,187 in 2003–04 and 3,054 in 2004–05.

In the Federal Magistrate’s Court there was a slight increase in the number of matters listed for trial in 2003–04 and 2004–05, increasing from 4, 447 in 2003–04 to 4,616 in 2004–05. However, this increase was not significant.

In the Family Court of Western Australia, the number of defended hearings almost doubled to 411 in 2003–04, up from 219 in 2002–03. However, numbers fell to 185 in 2004–05.

**Table 20: Defended hearings
Family Court of Australia, Family Court of Western Australia and
Federal Magistrates Court**

	Family Court of Australia		Family Court of Western Australia		Federal Magistrates Court	
	2003–04	2004–05	2003–04	2004–05	2003–04	2004–05
Number of matters listed for trial	3,187	3,054	411	185	4,447	4,616
Number of matters finalised (not settled) at hearing	760	834	305	230	1,454	1,481

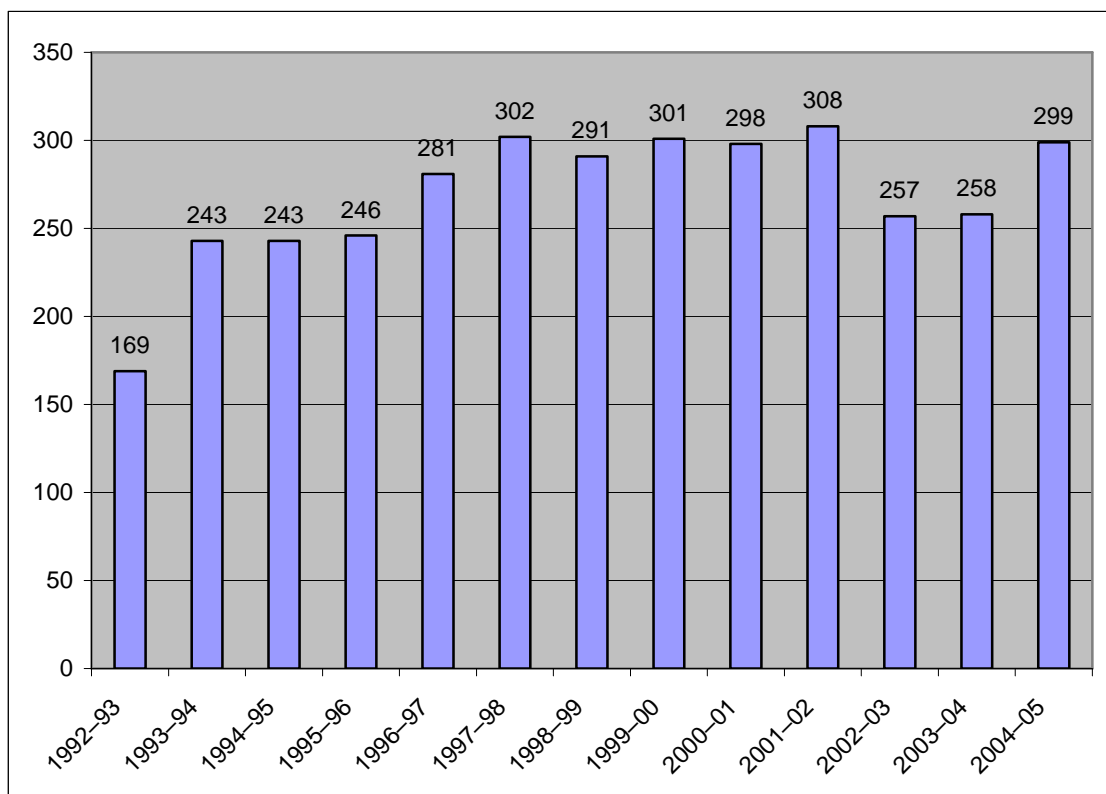
10. Appeals

Appeals lodged

Under section 94AAA of the Family Law Act, appeals from the Federal Magistrates Court are heard in the Full Court of the Family Court of Australia unless the Chief Justice considers it appropriate that an appeal be heard by a single judge. However, leave is required to appeal from interlocutory decisions of a federal magistrate and decisions of a federal magistrate in relation to child support. The Federal Magistrates Court does not deal with appeals from the decisions of its federal magistrates.

As shown in Table 21, in the Family Court of Australia during 2003–04, 79 appeals (30.6%) were lodged from cases originally heard in the Federal Magistrates Court; in 2004–05, 106 appeals (35.4%) were lodged from cases originally heard in the Federal Magistrates Court. Trends in lodgement data are represented in Chart 16.

Chart 16: Appeals lodged 1992–93 to 2004–05



Appeals heard

In the Family Court of Australia, all appeals heard by a single judge were appeals from a decree of the Federal Magistrates Court. Western Australia does not have a Federal Magistrates Court, the appeals were from decisions of Western Australian courts of summary jurisdiction.

**Table 22: Appeals heard by a single judge
Family Court of Australia and Family Court of Western Australia**

Court	Appeals heard by a single judge	
	2003–04	2004–05
Family Court of Australia	47	50
Family Court of Western Australia	71	65
Total	118	115

Summary of appeals lodged and heard in the Family Court of Australia

**Table 23: Appeals lodged and heard
Family Court of Australia**

Family Court of Australia	2003–04	2004–05
Appeals lodged	258	299
Appeals lodged decrees of the Federal Magistrates Court	79	106
Appeals determined	147	131
Appeals determined by a single judge	47	50
Appeals heard: decrees from the Federal Magistrates Court	51	53
Appeals finalised	244	234
Self-represented litigants on appeal	98	122

Disposal of Appeals in the Family Court of Australia

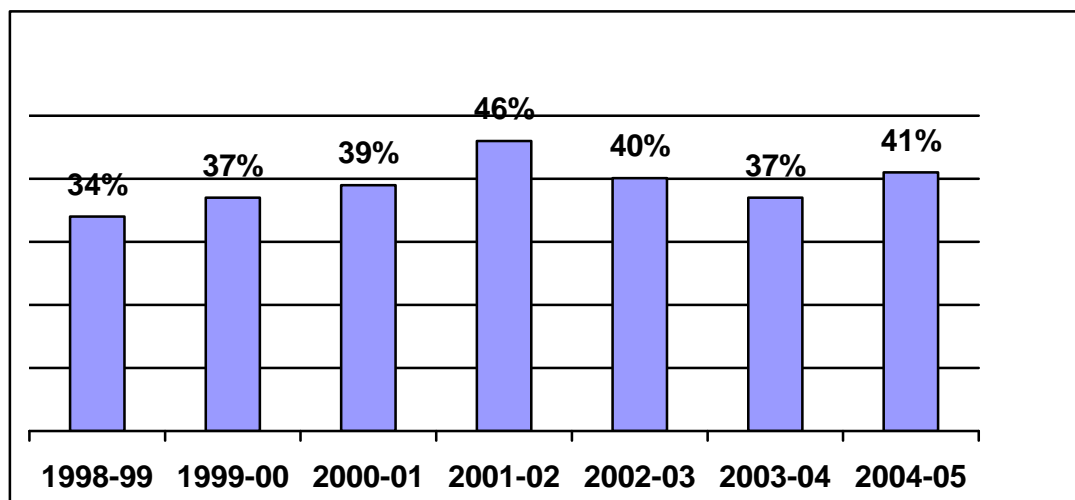
Table 24: Disposal of appeals 1996–97 to 2004–05

Year	Heard ⁹⁰		Finalised ⁹¹	
	No.	% ⁹²	No.	%
1996–97	148	52.7	189	67.3
1997–98	180	59.6	204	67.5
1998–99	170	58.4	199	68.4
1999–00	169	56.1	196	65.1
2000–01	148	49.7	194	65.1
2001–02	159	51.6	208	67.5
2002–03	170	66.1	185	72.0
2003–04	147	56.9	244	94.6
2004–05	131	43.8	234	78.3

Self-represented litigants on appeal

The proportion of self-represented appellants in the Family Court of Australia has remained fairly constant since 1999–2000, with the exception of a spike in 2001–02.

Chart 17: Percentage of self-represented appellants



⁹⁰ Appeals allowed and dismissed.

⁹¹ Appeals allowed, dismissed, abandoned and withdrawn. Prior to 2003–04, the number of appeals finalised did not include appeals withdrawn. This may partially explain the increase in numbers commencing in 2003–04.

⁹² The percentages shown are based on the number of appeals filed each year compared to the number of appeals heard in each year.

Issues raised in appeals

An appeal may involve one or multiple issues. As in previous years, the highest single issue appealed was in relation to property (26%), although children's and specific issues matters combined made up a far greater proportion of cases (44%).

Chart 18: Issues raised in appeals 2003–05

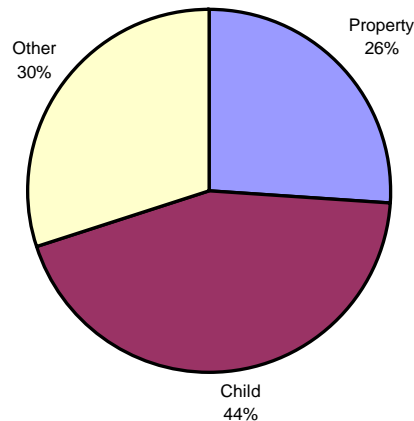


Chart 19 illustrates the breakdown of issues raised in appeals in 2003–05 in the Family Court of Australia. Where appeals were lodged against both interim and final orders on a single issue, the statistics represent the total number of appeals in that category. For example, appeals relating to Interim Property Orders and Final Property Orders are represented in the category shown as Property.

Chart 19: Issues raised in appeals 2003–05

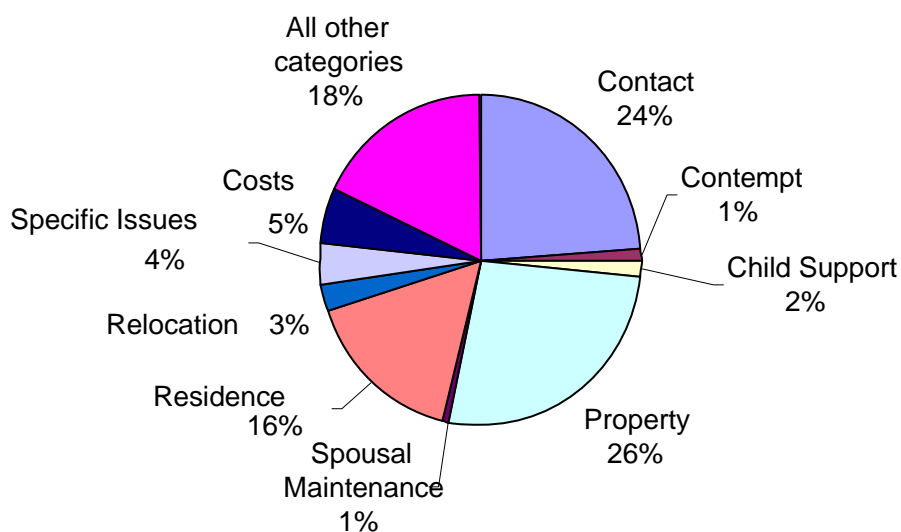


Chart 20 illustrates the breakdown of issues raised on appeal against interim orders in 2003–05 in the Family Court of Australia. In these appeals, children’s issues of residence, contact and specific issues (87%) far outnumber appeals related to property (13%).

Chart 20: Issues raised in appeals against interim orders in 2003–05

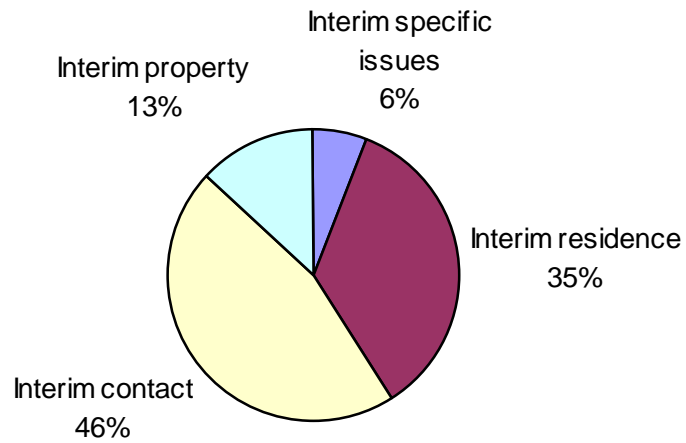


Table 25 shows the number of issues raised in appeals the Family Court of Australia.

**Table 25: Issues raised in appeals
Family Court of Australia**

Family Court of Australia	2003–04	2004–05
Child maintenance	2	3
Child support	6	7
Contact	76	90
Contempt	5	12
Costs	20	19
Dissolution of marriage	2	1
Enforcement	8	1
Hague Convention	2	0
Injunctions	5	8
Interim child maintenance	0	0
Interim contact	14	20
Interim property	4	4
Interim residence	11	14
Interim specific issues	2	7
Interim spousal maintenance	0	1
Intervention	0	0
Jurisdiction	3	1
Nullity	0	0
Other	15	16
Property	96	106
Relocation	10	13
Residence	61	63
Security for costs	0	0
Specific issues	13	30
Spousal maintenance	3	8
Stay of orders	0	1
Total	358	425

APPENDIX 1: *Casetrack*

From 1 October 2000 the Family Court of Australia changed the way it collected data due to the introduction of *Casetrack*, the electronic case management system that replaced Blackstone.

Casetrack provides access to client and case information for courts exercising family law jurisdiction. It contains case and client records dating back to 1980 and is flexible enough to record the different cases management used by the 3 courts.

By using the one system to hold and maintain all client information, *Casetrack* can incorporate all appointments and listings with scheduling of all case events. The electronic recording of all case events allows for the provision of management information, statistical data and online reports, interface with the finance system, and secure privileged notes based on the user's role within the court. Other benefits include:

- The tracking, movement and location of court files are maintained, with document links made to files and events.
- Outcomes of court and mediation events can be recorded along with any orders made. Party attendance to scheduled court and mediation events is also recorded.
- The production of orders and other documents is made easier with a Microsoft Word interface.
- *Casetrack* has the ability to create unlimited hearing types and diary template variations, along with the production of all appointment letters.
- Individual officers can view and update their diaries with follow-ups done either automatically or manually.
- One reference number, or Client Identification Number, applies to every matter the client has with the court, no matter where it is filed.

APPENDIX 2: Marriage and divorce

Year	Marriages	Divorces	Year	Marriages	Divorces
1976	109,973	63,230	1991	113,869	45,652
1977	104,918	45,152	1992	114,752	45,729
1978	102,958	40,608	1993	113,255	48,363
1979	104,396	37,854	1994	111,174	48,312
1980	109,240	39,258	1995	109,386	49,712
1981	113,905	41,412	1996	106,103	52,466
1982	117,275	44,088	1997	106,735	51,288
1983	114,860	43,525	1998	110,598	51,370
1984	108,655	43,124	1999	114,316	52,566
1985	115,493	39,830	2000	113,429	49,906
1986	114,833	39,417	2001	103,130	55,330
1987	114,113	39,725	2002	105,435	54,004
1988	116,816	41,007	2003	106,394	53,145
1989	117,176	41,383	2004	110,958	52,747
1990	116,959	42,635			

Chart 20: Marriage and divorce

