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Family Law Council

July 2002

Statistical Snapshot of Family Law 2000-2001

The Family Law Council is pleased to announce the release of its first stand-alone statistical report on various aspects of the Australian family law system.

The report, entitled *Statistical Snapshot of Family Law 2000-2001*, draws on data sourced from the Family Court of Australia, the Family Court of Western Australia, the Federal Magistrates Service and the Australian Bureau of Statistics. Previously, Council has collated and presented these statistics in its Annual Report.

The Family Law Council is a statutory authority established by section 115 of the *Family Law Act 1975*. Under sub-section 115(3) of the Act, the functions of Council are to advise and make recommendations to the Minister concerning the working of the *Family Law Act 1975* and other legislation relating to family law; the working of legal aid in relation to family law; and any other matters relating to family law.

The Council's Annual Reports, and a large number of other reports and papers (including letters of advice) are available for perusal on line at www.law.gov.au/flc. For example recent documents to be found on the Council's website include:

- *Litigants in Person* (2000)
- *The Best Interests of the Child? – The Interaction of Public and Private Law in Australia* Discussion Paper No 2 (2000)
- *Cultural-community divorce and the Family Law Act 1975* (2001)
- *Violence and Property Proceedings - Letter of Advice* (2001).

I believe this *Statistical Snapshot of Family Law: 2000-2001*, and those that are planned to be produced in the coming years, will be a very useful adjunct to the range of other material available concerning the Family Law system.

John Dewar



FAMILY LAW COUNCIL

STATISTICAL SNAPSHOT

OF

FAMILY LAW

2000-2001

June 2002

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ISBN 0 642 21045 4

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THE FAMILY LAW COUNCIL

The Family Law Council is a statutory authority which was established by section 115 of the *Family Law Act 1975*. The functions of the Council are set out in sub-section 115(3) of the Act, which states:

It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning -

- (a) the working of this Act and other legislation relating to family law;
- (b) the working of legal aid in relation to family law; and
- (c) any other matters relating to family law.

The Council may provide advice and recommendations either on its own motion or at the request of the Attorney-General.

Membership of the Family Law Council (as at 1 June 2002)

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FAMILY LAW COUNCIL'S STATISTICAL SNAPSHOT OF FAMILY LAW 2000-01

INTRODUCTION

1. This is the first year in which the Family Law Council has presented its snapshot of family law statistics in this format. Previously Council's Annual Report had a chapter devoted to statistics that were drawn from readily available collections. Council decided that these statistics would be better presented as a separate publication. Please note that this report cannot, and does not, purport to be a comprehensive collection or analysis of statistics in this area.

Courts that exercise jurisdiction under the *Family Law Act 1975*

2. Jurisdiction under the *Family Law Act 1975* (the Act) is exercised by the Family Court of Australia¹, the Family Court of Western Australia², the Supreme Court of the Northern Territory³, courts of summary jurisdiction and the Federal Magistrates Court.⁴ The Family Court of Australia is a superior court of record that was established by the Act. It exercises original jurisdiction in all States and Territories of Australia, except Western Australia and appellate jurisdiction throughout Australia.. The Court 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) and the distribution of property following marriage breakdown. It also, albeit less frequently, hears matters arising under the *Marriage Act 1961*, and the Child Support Acts 1988-89 (Cth). The Family Court of Western Australia is a State court that was created in accordance with the Act and exercises the same federal jurisdiction as the Family Court of Australia.⁵
3. The Federal Magistrates Service (FMS) was established by the *Federal Magistrates Service Act*⁶ and first sat on 3 July 2000. In family law matters the FMS exercises jurisdiction under the Act.⁷ For the period covered by this report the Court had jurisdiction over the dissolution of marriages (but not declarations as to validity of a marriage or dissolutions or orders for nullity of marriage), parenting of children other than disputed final residence orders, unless the parties consented (complete residence jurisdiction was given on 27 December 2000). It does not have jurisdiction in relation to adoption proceedings. It could hear property matters where the value of the property is less than \$300,000 (from 1 January 2002 this was increased to \$700,000) or where the parties consent, maintenance for children not covered by the Child Support (Assessment) Act 1989 and enforcement of court orders.⁸ It has its own Rules⁹ which differ from those followed by the Family Court of Australia. It cannot exercise any family law jurisdiction in Western Australia.

¹ Created by section 21, *Family Law Act 1975* (Cth).

² *Family Court Act 1997* (WA), replacing *Family Court Act 1975* (WA)

³ See sections 69H(3), *Family Law Act 1975* (Cth)

⁴ See Australian Family Law Practice,

⁵ See section 41, *Family Law Act 1975* (Cth).

⁶ See section 8 of the *Federal Magistrates Act 1999* (Cth).

⁷ Section 39, *Family Law Act 1975* (Cth).

⁸ See Federal Magistrates Court Practice 25-110

⁹ *Federal Magistrates Court Rules 2001*

4. State courts of summary jurisdiction exercise limited jurisdiction under the Act.¹⁰ For many proceedings the parties must consent to the magistrate hearing the matter, for example where final children's orders are sought.

Family Court and FMS statistics

5. Council has gathered relevant data from the Family Court of Australia, the Family Court of Western Australia and the FMS, for most of the statistics in this report. It has been assisted in the preparation of this report by officers of these courts, however any analysis is solely the responsibility of the Council.

Australian Bureau of Statistics (ABS)

6. ABS statistics on divorce are compiled using data provided by Family Court Registries and the FMS. The data relates to all applications resulting in the grant of a decree absolute during the year. Unlike the statistics collected by the Family Courts and the FMS, marriage and divorce statistics are collected by the ABS on a calendar year basis. Where ABS statistics are used in this report, it is footnoted that this is the case. Further statistical information on marriage and divorce in Australia in 2000 is available in the ABS publication *2000 Marriages and Divorces, Australia* released in August 2001.

Magistrates Court statistics

7. Victoria was the only state that collected and published statistics on family law applications in its court of summary jurisdiction, the Magistrates Court. However, these statistics are no longer published, the last publication being *Family Law Act Statistics 1997/98 and 1998/99*¹¹. Victorian Magistrates Court statistics are now released on the internet on an *ad hoc* basis. They can be found at the Department of Justice, Victoria website.¹²

Local Court statistics

8. The Local Court of New South Wales collects the number of new family law matters¹³ that come before the Court and the types of orders made. These statistics are recorded manually for management purposes only, so do not provide a completely accurate statistical analysis of the matters dealt with. They are available on request.¹⁴

Court Orders Sought

9. From 1 October 2000 the Family Court of Australia changed the way it collected data concerning orders sought. This change was made in preparation for *Casetrack*, the Court's new case management system. This data will be included in the next Statistical report.

¹⁰ s 39, *Family Law Act 1975* (Cth).

¹¹ Compiled and published by Portfolio Planning, Department of Justice, Victoria.

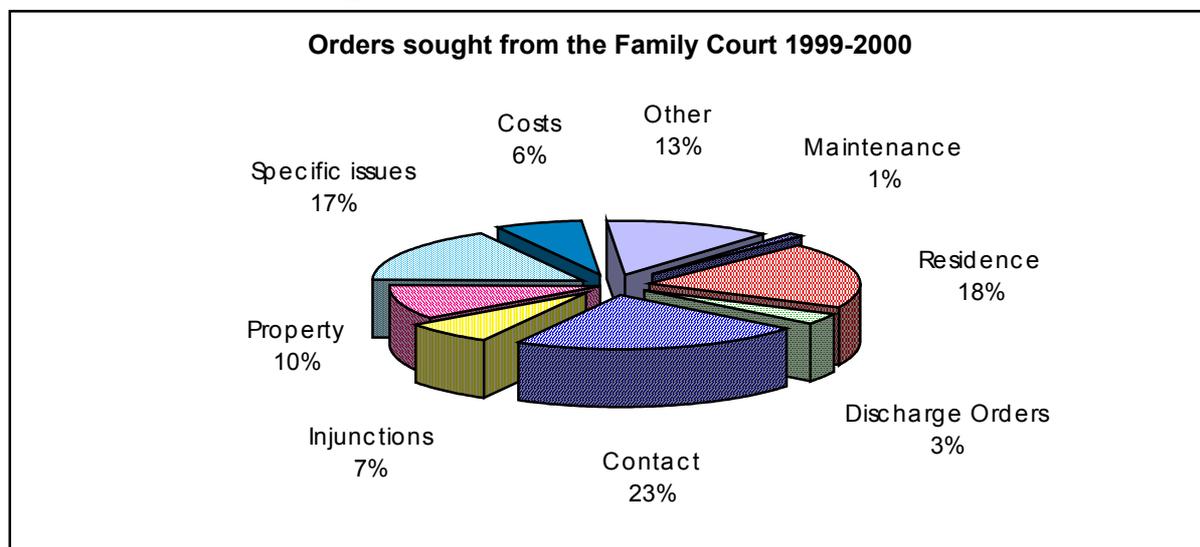
¹² <http://www.justice.vic.gov.au/>

¹³ 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 1975* (Cth).

¹⁴ Correspondence should be addressed to: The Director, Local Courts, Level 1 Downing Centre, 143-147 Liverpool Street, Sydney NSW 2000.

10. Chart 1 illustrates the breakdown of the types of orders sought in the Family Court of Australia and the Family Court of Western Australia in 1999-2000, the last year data was collected in the same format as previous years. The largest single categories were contact, residence and specific issues¹⁵. Matters relating to children (residence, contact, specific issues and child maintenance) combined to constitute 59% of all orders sought.

CHART 1: Orders sought from the Family Court 1999-2000¹⁶



Description	Total
Contact	27,307
Residence	23,956
Specific Issues	20,235
Property	12,692
Injunctions	8,471
Costs	7,883
Discharge Orders	3,901
Maintenance	1,478
Other	15,449

¹⁵ Specific issues orders deal with all parental responsibility matters other than residence, contact and child maintenance. For example, they may deal with matters such as education, religious upbringing or health care. Along with other parenting orders, specific issues orders are made by the Court under section 65D of the *Family Law Act 1975* (Cth).

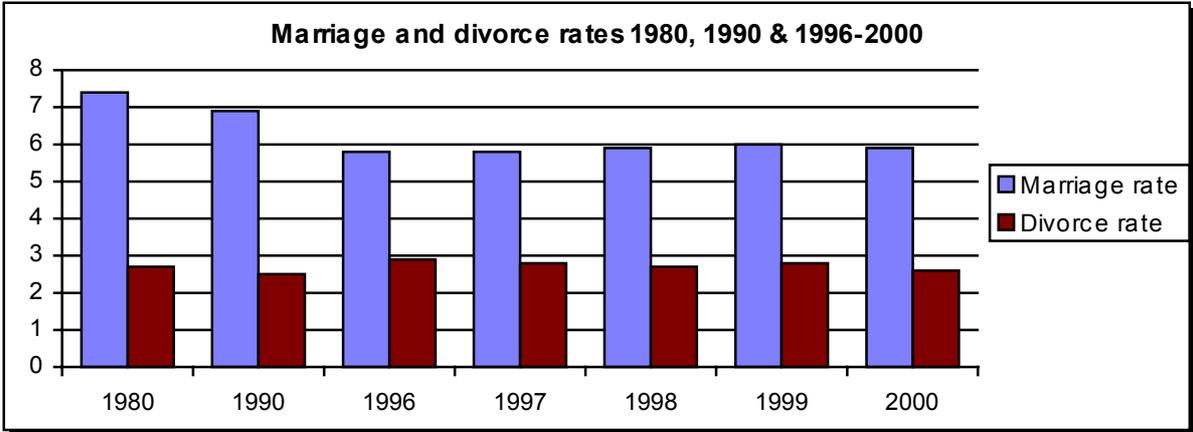
¹⁶ Including the Family Court of Western Australia.

MARRIAGES AND DIVORCES

Marriages and Divorces both slightly down¹⁷

- 11. The marriage and divorce rates both decreased slightly in 2000. The crude marriage rate (number of marriages per 1,000 population) dropped from 6.0 in 1999 to 5.9 in 2000, the same rate as in 1998. This figure remained fairly steady throughout the 1990s, but is much lower than ten or twenty years earlier.
- 12. The crude divorce rate fell from 2.8 in 1999 to 2.6 in 2000, which was slightly lower than what it had been for the previous five years. This figure has remained at relatively the same level for the past two decades. Chart 2 compares the marriage and divorce rates of 1980 and 1990 with those from 1996 to 2000 inclusive.

CHART 2: Marriage and divorce rates per 1,000 population 1980, 1990 and 1996-2000

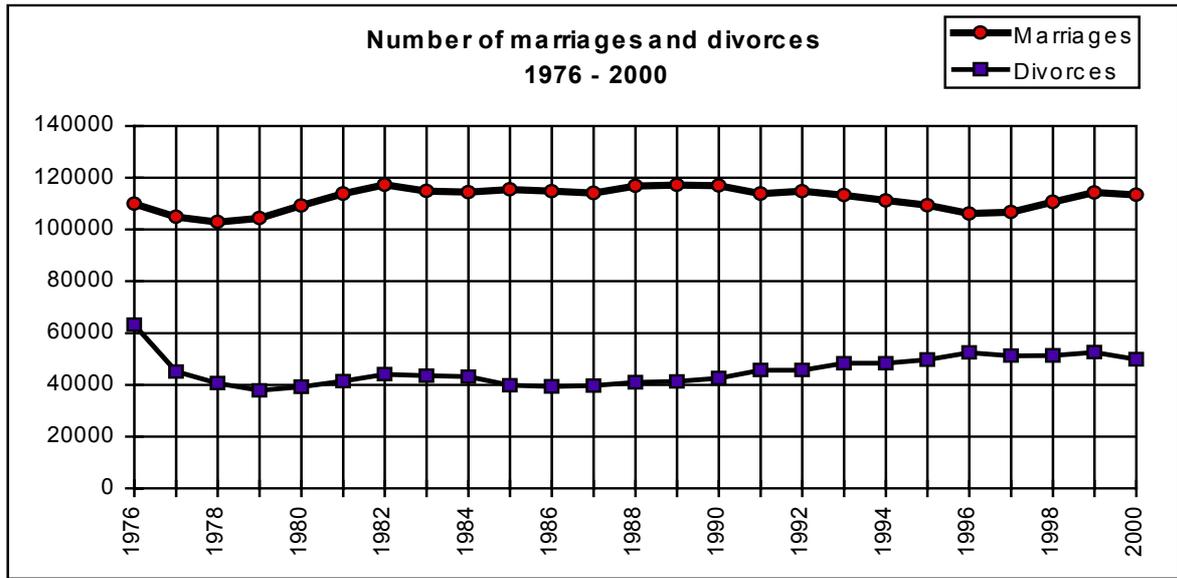


	<u>1980</u>	<u>1990</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Marriage Rate:	7.4	6.9	5.8	5.8	5.9	6.0	5.9
Divorce Rate:	2.7	2.5	2.9	2.8	2.7	2.8	2.6

- 13. 113,429 marriages were celebrated in 2000, representing a decrease of just 887 or 0.8% from 1999. Although this figure is down a little on 1999, it is above the average number of marriages per year for the last decade. The number of divorces granted was 49,906, the lowest number since 1995. This was a fall of 2,660 or 5.1% from 1999. Chart 3 shows the number of marriages registered and the number of divorces granted from 1976 (the year after the Act commenced) to 2000.

¹⁷ ABS statistics for calendar year 2000.

CHART 3: Marriages registered and divorces granted in Australia 1976-2000



	<u>Marriages</u>	<u>Divorces</u>		<u>Marriages</u>	<u>Divorces</u>
1976	109,973	63,230	1989	117,176	41,383
1977	104,918	45,152	1990	116,959	42,635
1978	102,958	40,608	1991	113,869	45,652
1979	104,396	37,854	1992	114,752	45,729
1980	109,240	39,258	1993	113,255	48,363
1981	113,905	41,412	1994	111,174	48,312
1982	117,275	44,088	1995	109,386	49,712
1983	114,860	43,525	1996	106,103	52,466
1984	114,485	43,124	1997	106,735	51,288
1985	115,493	39,830	1998	110,598	51,370
1986	114,833	39,417	1999	114,316	52,566
1987	114,113	39,725	2000	113,429	49,906
1988	116,816	41,007			

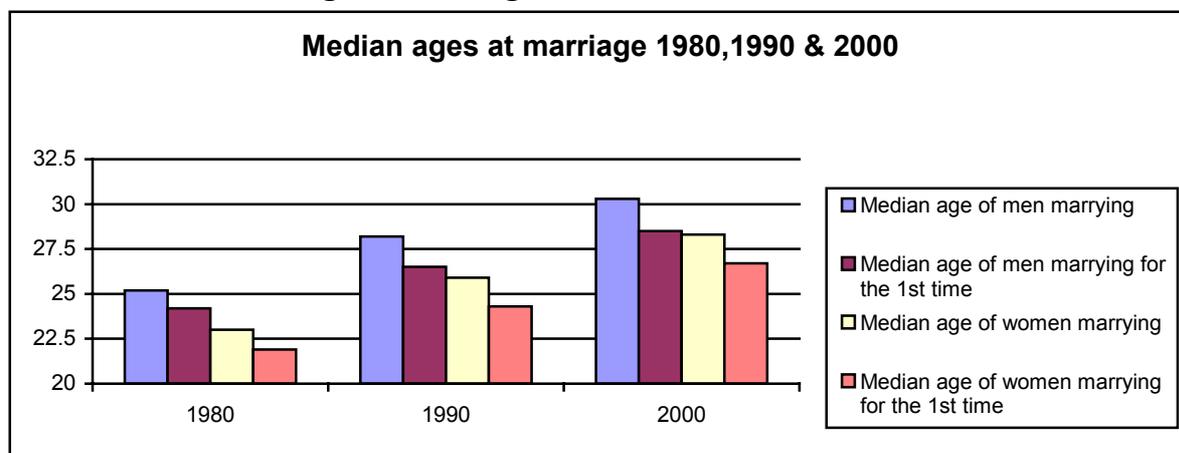
Average age at marriage continues rising¹⁸

14. The median age at marriage (incorporating first and subsequent marriages) in 2000 was 30.3 years for men and 28.3 years for women. The median marriage ages in 1990 were 28.2 years for men and 25.9 years for women, and in 1980, 25.2 years and 23.0 years respectively. These figures illustrate the trend in both sexes towards marrying later in life.
15. In 2000, men over 30 years represented 52% of men who married, compared to 18% in 1975 and women over 30 years made up 40% of women who married in 2000, compared to just 12% twenty-five years earlier.
16. Of the 113,429 marriages registered in 2000, in 75,503 instances, or 67% of the marriages, neither partner had been previously married. This is roughly the same proportion as that for the past two decades.
17. The median age at which men married for the first time was 28.5 years in 2000, compared to 26.5 years in 1990 and 24.2 years in 1980. The median age for women marrying for the first time was 26.7 years in 2000, as compared with 24.3 in 1990 and 21.9 in 1980.

¹⁸ *Ibid.*

18. Chart 4 compares the median ages at marriage, both overall and for the first time, for men and women over the past two decades.

Chart 4: Median ages at marriage 1980, 1990 and 2000



	<u>1980</u>	<u>1990</u>	<u>2000</u>
Median age of men marrying	25.2	28.2	30.3
Median age of men marrying for the first time	24.2	26.5	28.5
Median age of women marrying	23.0	25.9	28.3
Median age of women marrying for the first time	21.9	24.3	26.7

19. Until 2000, the peak age group for men marrying for the first time had been 25-29 years every year since 1976. 2000 was the first year the peak age group was 30-34 years. The peak age group for women marrying for the first time remained 25-29 years, as it had been since 1987.

Divorce numbers increase over decade¹⁹

20. The number of divorces granted in Australia in 2000, was 49,906. This was the smallest number since 1995. However this number was still a 17% increase on divorce numbers in 1990 compared with only a 7% increase in the married population over the same time.

21. The average length of marriages that end in divorce increased gradually over the last decade after remaining steady throughout the 1980s. The median duration between the date of marriage and the date of final separation increased from 7.3 years in 1990 to 8.2 years in 2000. The median duration between the date of marriage and the date of decree absolute granted during 2000 was 11.6 years compared with 10.1 years in 1990.

22. The median age at divorce for men and women has continued to rise, consistent with the trend to marry later and the slight increase in median length of marriages that end in divorce. The median age at divorce for men in 2000 was 41.4 years and 38.6 years for women.

23. Since 1984 husbands and wives have been able to apply jointly for divorce under the Act. From 1984 to 1996 the proportion of applications that were made jointly increased

¹⁹ *Ibid.*

steadily from less than 1% to 22%. Since 1997 this figure has hovered around 19% and 20%. In 2000 the proportion of applications made jointly was 20%.

Rise in number of children involved in divorce²⁰

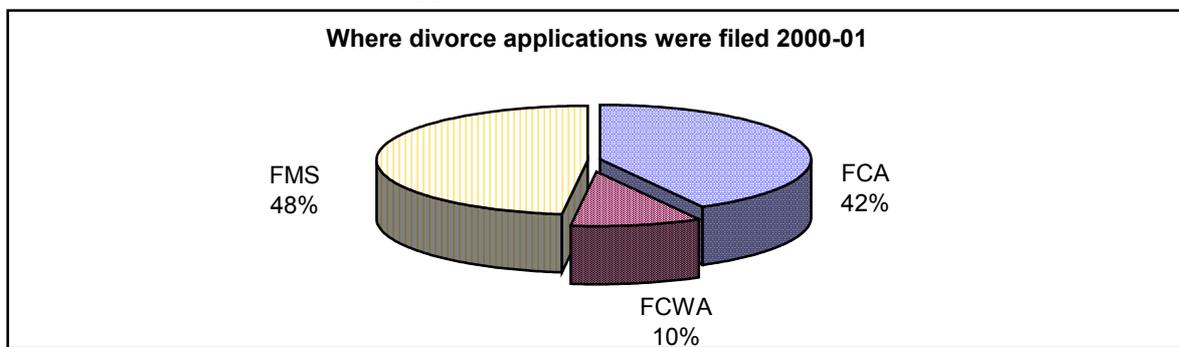
24. Over the past two decades, the percentage of divorces granted where children under 18 years of age have been involved fell from 61% in 1980 to 53% in 2000. However, the actual number of children involved in divorce increased, because the number of divorces granted rose. In 2000 there were 49,612 children involved in divorce, compared with 46,838 in 1980. In 2000 the average number of children per divorce (involving one or more children) was 1.9. This figure has remained constant since the early 1980s.

Greatest proportion of divorce applications filed in FMS

25. During 2000-01 there was a total of 54,325 divorce applications filed in the Family Court of Australia, the Family Court of Western Australia and the FMS. This figure is just 293, or 0.5%, up on last years Australia-wide figure.

26. Of the 54,325 divorce applications, 22,841, or 42%, were filed in the Family Court of Australia.²¹ In the Family Court of Western Australia, 5,378 divorce applications, or 10% of total applications, were filed. The FMS had the greatest proportion of divorce applications filed, with 26,106, or 48%.²² The Family Court of Australia and the FMS agree about the general distribution of the workload between the two courts for the hearing of the applications. All the registry services for the processing of the applications are provided by the Family Court on behalf of the FMS.

Chart 5: Where divorce applications were filed 2000-01



Divorce applicants in-person slightly down²³

27. In 2000-01, 37,799²⁴ people filed applications for divorce themselves, rather than through a lawyer. This figure represents 69.6% of the total number of divorce applications filed in

²⁰ *Ibid.*

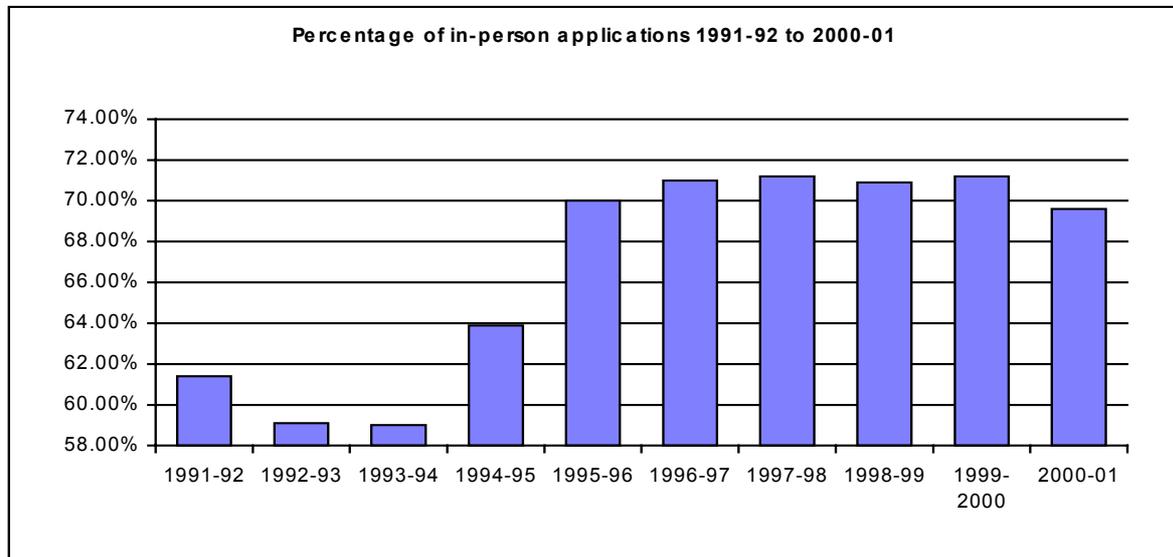
²¹ Compare this figure with the number of divorce applications filed in the Family Court of Australia in 1999-2000 of 48,504. 1999-2000 was the year before the FMS began operation.

²² The divorce application filing fees for the FMS and the Family Court of Australia are \$250 and \$526 respectively.

²³ These statistics relate solely to the *lodgment* of divorce applications. They do not indicate the proportion of in-person appearances before the Court. Note that applicants who do not have children are not required to appear in Court.

the Family Court of Australia, the Family Court of Western Australia and the FMS. This percentage has remained steady around 70% since 1995-96.

Chart 6: Percentage of in-person applications for divorce 1991-92 to 2000-01²⁵



1991-92	61.4%	1996-97	71.0%
1992-93	59.1%	1997-98	71.2%
1993-94	59.0%	1998-99	70.9%
1994-95	63.9%	1999-2000	71.2%
1995-96	70.0%	2000-01	69.6%

28. In the Family Court of Australia, 69.9% of divorce applications filed were in-person and the Family Court of Western Australia had 82.3% of applications filed in-person. 66.7% of divorce applications filed in the FMS were done so in-person.

29. The proportion of in-person applications to total applications for divorce varied widely across the country. The Adelaide, Brisbane, Hobart, and Townsville Registries of the Family Court of Australia and the Family Court of Western Australia all had more than 80% of applications made in-person. The registries of Sydney and Melbourne showed the lowest proportions of in-person applications with 56% and 37% respectively.

30. The Adelaide, Canberra, Darwin, Hobart and Newcastle Registries of the FMS all had more than 80% of applications made in-person. The Sydney and Melbourne Registries of the FMS also had the lowest proportion of in-person applications, with 67% and 66% respectively.

COURT ORDERS SOUGHT IN 1999-2000

31. As mentioned above²⁶, the Family Court of Australia now collects orders sought at a higher level of classification than in previous years. As a result, the data for 2000-01

²⁴ 15,965 in the Family Court of Australia. 4,424 in the Family Court of Western Australia (as advised by the FCWA). 17,410 at the FMS.

²⁵ The 2000-01 percentage includes FMS figures.

relating to the types of court orders sought is not comparable to previous years and is not included in this report. In order to provide some indication of the trends concerning the types of court orders sought over recent years, last year's data has been provided.

32. There was an increase in the number of residence and contact applications in 1999-2000 for all children's matters, and also for ex-nuptial children's matters, continuing the trend of earlier years. Similarly, there was a slight increase in the number of specific issues applications filed for all children's matters, and also for ex-nuptial children's matters.

33. Tables 1 and 2 show the numbers of residence, contact and specific issues applications filed, in the Family Courts of Australia and Western Australia combined, for all children compared to those filed for ex-nuptial children for the years 1996-97 to 1999-2000.

TABLE 1: Residence, contact and specific issues applications (all children's matters and ex-nuptial children's matters), 1996-97²⁷ to 1999-2000

Year	Residence applications filed for all children's matters	Residence applications filed for ex-nuptial children's matters		Contact applications filed for all children's matters	Contact applications filed for ex-nuptial children's matters	
	No.	No.	%	No.	No.	%
1996-97	18,503	6,427	34.7%	21,897	7,670	35.0%
1997-98	20,947	7,734	36.9%	23,958	8,733	36.5%
1998-99	22,362	8,570	38.3%	25,993	9,831	37.8%
1999-2000	23,956	9,464	39.5%	27,307	10,410	38.1%

TABLE 2: Specific issues applications (all children's matters and ex-nuptial children's matters), 1996-97 to 1999-2000

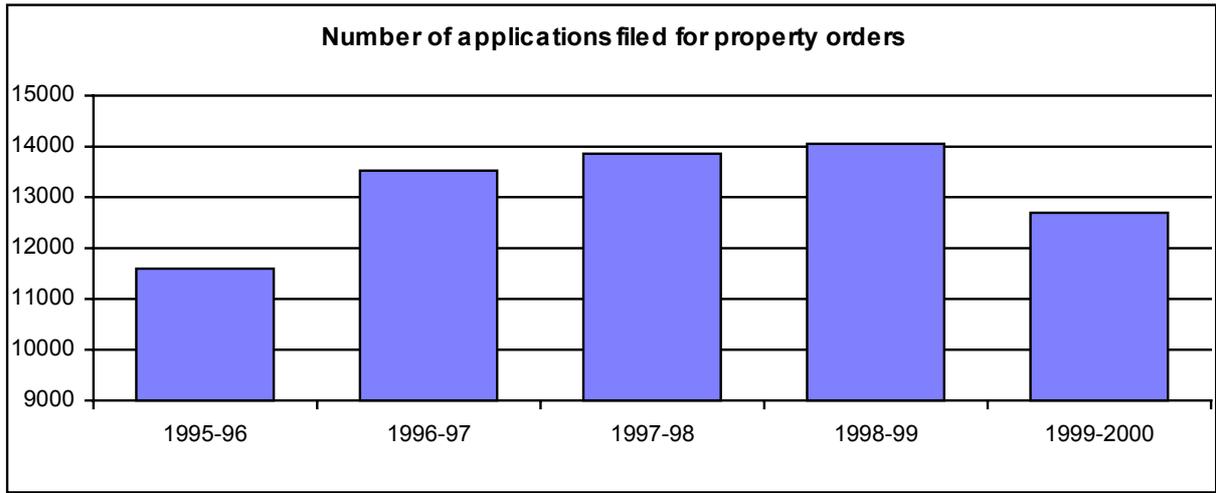
Year	Specific issues applications filed for all children's matters	Specific issues applications filed for ex-nuptial children's matters	
	No.	No.	%
1996-97	14,801	4,969	33.6%
1997-98	17,464	6,245	35.8%
1998-99	19,314	7,384	38.2%
1999-2000	20,235	7,962	39.3%

34. The number of applications filed for property matters in the Family Courts of Australia and Western Australia combined decreased by almost 10% in 1999-2000, after gradual increases from 1995-96 to 1998-99.

²⁶ Refer to paragraph 9.

²⁷ 1996-97 was the first year of operation of the *Family Law Reform Act 1995*, amending the *Family Law Act 1975* (Cth), which introduced the concepts of 'residence' and 'contact'.

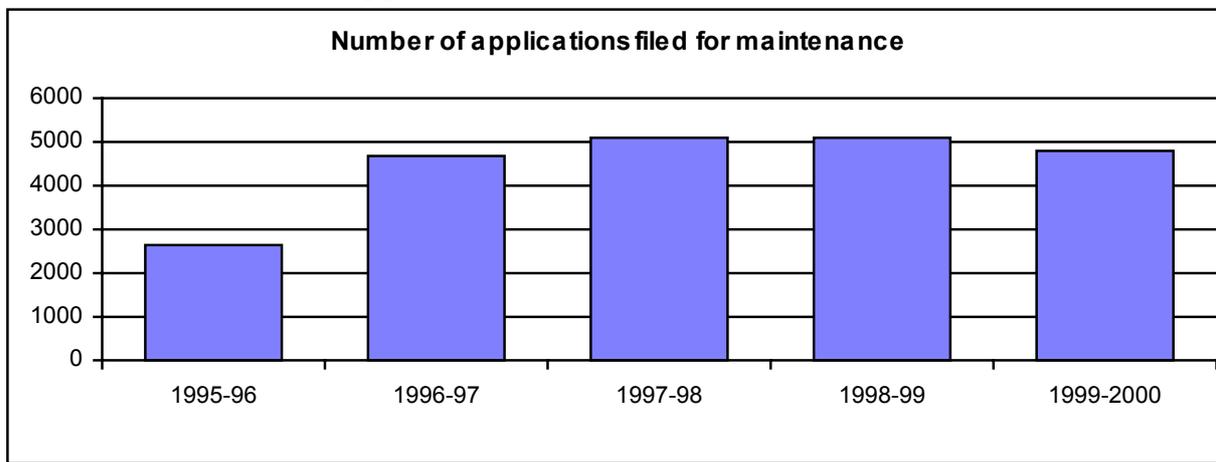
CHART 7: Number of property applications filed 1995-96 to 1999-2000



1995-96	11,592	1998-99	14,053
1996-97	13,527	1999-2000	12,692
1997-98	13,857		

35. During 1999-2000 there were a total of 4,793 applications for maintenance. Of these, 3,315 were spousal maintenance applications and 1,478 child maintenance applications²⁸. The total number of maintenance applications was down slightly on 1998-99, as were both spousal and child maintenance applications. Total maintenance applications in 1999-2000 were still, however, 81% greater than the same figure in 1995-96.

CHART 8: Number of applications filed for maintenance 1995-96 to 1999-2000

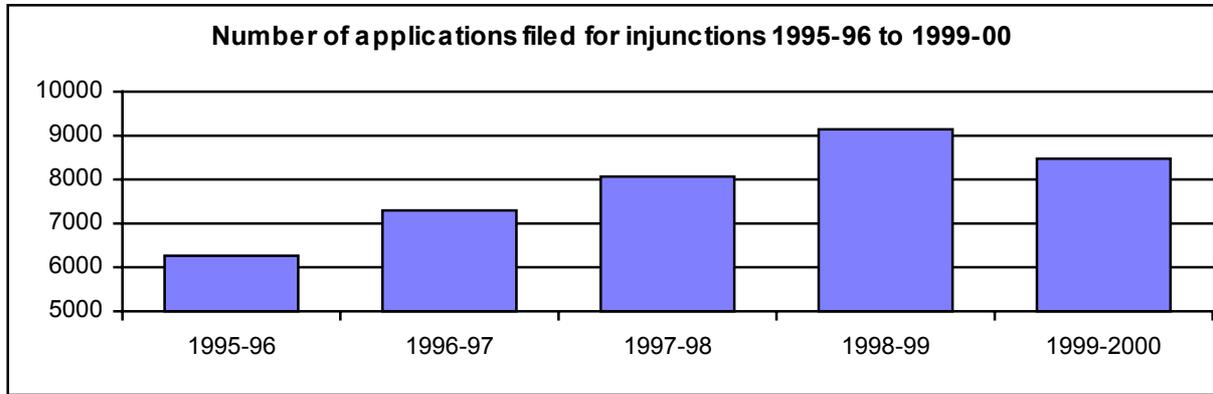


1995-96	2,646	1998-99	5,090
1996-97	4,677	1999-2000	4,793
1997-98	5,095		

²⁸ The majority of child maintenance applications are made administratively to the Child Support Agency (CSA). Applications can only be made to the Family Court where an application cannot properly be made to the CSA. This generally occurs where the 'child' for whom maintenance is sought is over 18 years. See sections 66E, 66G and 66L of the *Family Law Act 1975* (Cth) and section 24 of the *Child Support (Assessment) Act 1989*.

36. The steady increase in the number of applications for injunctions, in the Family Courts of Australia and Western Australia combined, over the previous four years ceased in 1999-2000, with a slight decrease on the figures of 1998-99. The data collected did not provide a breakdown of the type of injunctions sought.

CHART 9: Number of applications filed for injunctions 1995-96 to 1999-2000



1995-96	6,268	1998-99	9,142
1996-97	7,298	1999-2000	8,471
1997-98	8,069		

37. Although the Act anticipates that each party to proceedings will bear his or her own costs, it also provides for situations where the circumstances justify an order for costs.²⁹ In 1999-2000 there were a total of 7,883 applications made for costs in the Family Court of Australia and the Family Court of Western Australia. These represented about 6% of the total orders sought, consistent with the figures from the previous two years.

38. Sanctions ordered, under section 112AD, for failure to comply with orders made under the Act³⁰ may be varied or discharged under section 112AK. In the last full year for which data is available, 1999-2000, the Family Courts of Australia and Western Australia combined received 3,901 applications for orders to be discharged or varied under section 112AK³¹.

ONE-THIRD OF CONFERENCES RESOLVE ALL ISSUES

Case conferences

39. From February 2001 the Family Court of Australia began case conferencing. A case conference is held after an information session for the parties and before the directions hearing, and allows the parties an opportunity to negotiate a resolution on their first day at the Court. Depending on the nature of the issues involved, it is convened by a Deputy Registrar (for financial disputes), a counsellor (for disputes over children) or both a Deputy Registrar and counsellor (for disputes involving both financial matters and children). In future, the Family Court hopes that case conferences will be held for most

²⁹ See sections 117 and 118, *Family Law Act 1975* (Cth)

³⁰ Defined in section 112AA *Family Law Act 1975* (Cth) to exclude a parenting order.

³¹ The Family Court of Australia's new case management system, Casetrack, was implemented partway through the year so comparable data to previous years is not available.

cases and expects that they will replace most court ordered pre-directions hearing counselling.

40. From February 2001 through to the end of June 2001 1,732 case conferences were held in the Family Court of Australia. In 573 cases, or 33.1% of all case conferences held, all the issues were resolved before going to the directions hearing.

Conciliation conferences

41. In contested property matters, the parties are required to attend a conference with a Registrar or Deputy Registrar before an order can be sought from the Court. Such conferences are provided for in subsection 79(9) of the Act and aim to encourage couples to reach agreement on issues between themselves rather than have a decision imposed on them by the Court. The Family Court of Australia now also holds conciliation conferences on behalf of the FMS as well as catering for its own clients.
42. There were 9,173³² conciliation conferences held Australia-wide in 2000-01 of these, 2.4% were held by the Family Court of Australia on behalf of the FMS. In 3,720³³ conciliation conferences all the issues were resolved. This represents a resolution rate of 40.6%, a slight increase on the previous year's rate.

Pre-hearing conferences

43. The Family Court of Australia and the Family Court of Western Australia both conduct pre-hearing conferences before a matter goes to trial, to ensure that the matter is ready for a hearing and to give the parties a further opportunity to reach agreement. The FMS does not hold pre-hearing conferences.
44. The number of pre-hearing conferences held in 2000-01 was 8,773³⁴. In 2,378³⁵ cases, or 27.1% of cases, all of the issues were resolved without the matter having to go to trial. The proportion of pre-hearing conferences that resolve all issues has risen steadily since 1996-97 from 23.9%.
45. The Family Court of Australia is now phasing out pre-hearing conferences as part of its new case management system, that incorporates pre-trial management. As part of this process the Court has introduced the pre-trial conference, which has a greater focus on ensuring all parties are fully prepared for trial than the older pre-hearing conference. Where a party is not fully prepared, for example where all the necessary affidavits have not been filed, the matter will not be listed for trial. The pre-trial conference is intended to reduce the overlist ratio and ensure increased certainty of trial dates. It is believed that settlements will still regularly occur at pre-trial conferences, because all the evidence and

³² 7,007 conducted by the Family Court of Australia. 2,166 conducted by the Family Court of Western Australia (as advised by the FCWA).

³³ 3,121 in the Family Court of Australia. 599 in the Family Court of Western Australia (as advised by the Family Court of Western Australia).

³⁴ 8,341 conducted by the Family Court of Australia. 432 conducted by the Family Court of Western Australia (as advised by the FCWA).

³⁵ 2,282 in the Family Court of Australia. 96 in the Family Court of Western Australia (as advised by the FCWA).

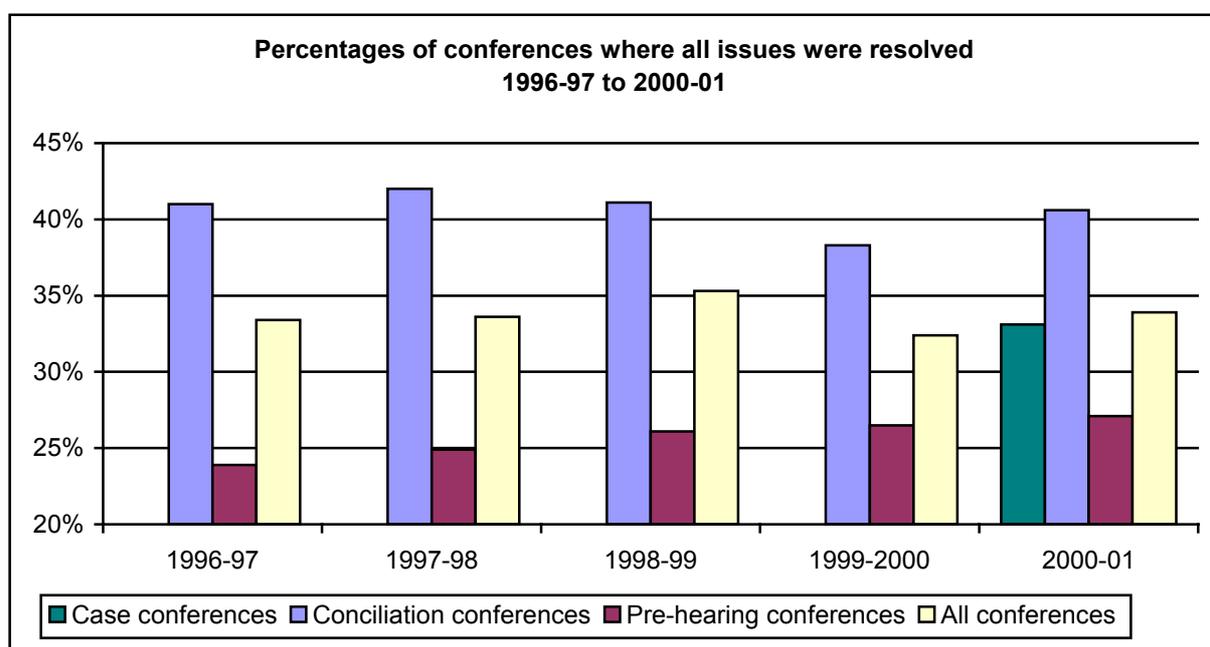
possible arguments will be known to the parties by the time it is held. This means parties will be more certain about what may happen at trial.

All conferences

46. The total number of case, conciliation and pre-hearing conferences held in 2000-01 was 19,678. Of these, 6,671, or 33.9%, were cases in which all issues were resolved through conference mechanisms. This has continued the trend of recent years that about one-third of all conferences have resolved all issues before trial.

47. Chart 10 compares the proportion of conferences where all issues were resolved across the types of conferences held over the last five years.

Chart 10: Percentages of conferences where all issues were resolved 1996-97 to 2000-01



	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>
Case confs					33.1%
Conciliation confs	41.0%	42.0%	41.1%	38.3%	40.6%
Pre-hearing confs	23.9%	24.9%	26.1%	26.5%	27.1%
All confs	33.4%	33.6%	35.3%	32.4%	33.9%

MOST COUNSELLING OCCURS AFTER FIRST DIRECTIONS HEARING

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

48. A party to a marriage, a party to proceedings under the Act, a parent, a child or a child representative can request counselling from the Family Court of Australia, the Family Court of Western Australia or the FMS.³⁶ A court exercising jurisdiction under the Act can also advise parties to attend counselling, when it believes this may assist them.³⁷

³⁶ See sections 15, 15A, 16, 62C, 62CA, 62D and 62E *Family Law Act 1975* (Cth).

³⁷ See sections 16A, 16B, 16C and 62B *Family Law Act 1975* (Cth)

49. During 2000-01 there were a total of 8,789³⁸ interviews held voluntarily and 5,295³⁹ new interventions⁴⁰ made by the Family Court of Australia and the Family Court of Western Australia.
50. Since November 2000 the Family Court of Australia has no longer provided voluntary counselling in its Sydney, Melbourne, Parramatta, Brisbane, Adelaide and Dandenong registries. In these areas, community based organisations have been expected to provide this service, with government funding being provided on a tender basis.

Court ordered pre-first directions hearing counselling

51. In certain situations a court exercising jurisdiction under the Act may order parties to attend counselling before a first directions hearing has occurred. This may happen, for example, where an emergency interim application for an injunction has been filed.⁴¹ As mentioned above, case conferences are expected to some extent to replace pre-directions hearing counselling, so with their further phasing in, the number of pre-directions hearing counselling interventions is expected to drop.
52. There were 7,787⁴² interviews held, as a result of court orders made before a first directions hearing in 2000-01 and 5,130⁴³ new interventions were made in these circumstances throughout the year.
53. Family Court of Australia counsellors perform some of the counselling required for FMS matters, because the FMS does not have its own counselling service.⁴⁴ In 2000-01 3.4% of court ordered pre-first directions hearing interviews held and 3.8% of new interventions made were by Family Court of Australia counsellors on behalf of the FMS.

Court ordered post-first directions hearing counselling

54. At a directions hearing the Family Court can order parties to undergo counselling.⁴⁵ During proceedings a court, exercising jurisdiction under the Act, can also order the parties to undergo counselling in relation to the children of the parties.⁴⁶ For example, a magistrate may order parties to undergo counselling at their first court appearance.
55. In 2000-01 there were 12,593⁴⁷ court-ordered post-first directions hearing interviews held and 7,461⁴⁸ new interventions were made. Family Court of Australia counsellors acted on

³⁸ 8,264 held in the Family Court of Australia. 525 held in the Family Court of Western Australia.

³⁹ 5,069 made in the Family Court of Australia. 226 made in the Family Court of Western Australia.

⁴⁰ An intervention is where there may be any number of interviews about the same matter over a period of time. So one intervention may consist of just one interview or more than ten interviews, depending on how many it takes to resolve a matter or decide counselling will not resolve the problem. A new intervention is where the court counsellors are dealing with the people involved for the first time.

⁴¹ See sections 16A and 114 of the *Family Law Act 1975* (Cth). See also section 62F.

⁴² 6,646 held in the Family Court of Australia. 1,141 held in the Family Court of Western Australia.

⁴³ 4,610 made in the Family Court of Australia. 520 made in the Family Court of Western Australia.

⁴⁴ The remainder of counselling performed for FMS matters is undertaken by community based organisations.

⁴⁵ See Order 9 rule 2(5) of the *Family Law Rules*.

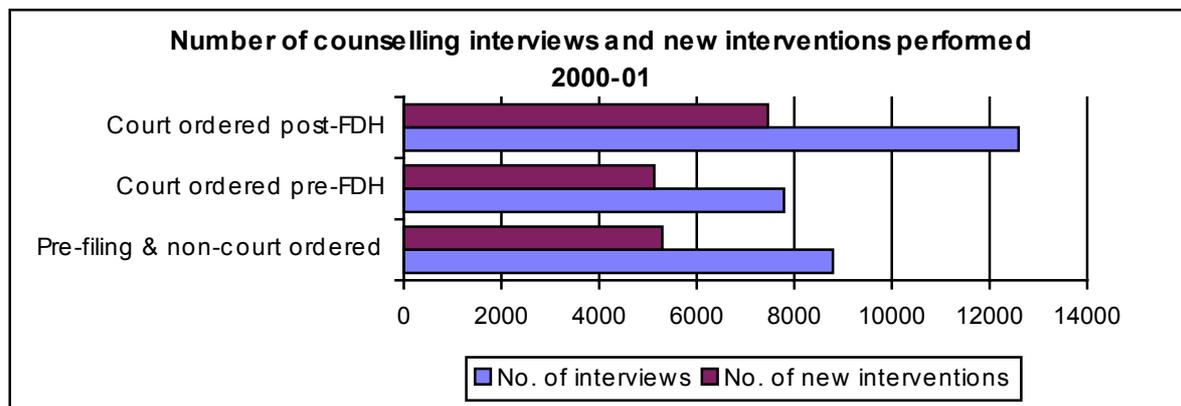
⁴⁶ See sections 62F and 65F *Family Law Act 1975* (Cth).

⁴⁷ 11,866 held in the Family Court of Australia. 727 held in the Family Court of Western Australia.

behalf of the FMS in 6.3% of interviews held in the Family Court of Australia and 7.7% of new interventions.

56. Chart 11 compares the numbers of counselling interviews held and new interventions made in 2000-01.

CHART 11: Number of counselling interviews held and new interventions made 2000-01



	Interviews	New interventions
Pre-filing and non-court ordered counselling	8,789	5,295
Court ordered pre-FDH counselling	7,787	5,130
Court ordered post-FDH counselling	12,593	7,461

Family reports

57. In certain circumstances a court exercising jurisdiction under the Act will order that a family report be prepared by a counsellor, for example, a judge may require assistance to determine what arrangements best serve a child's interests.⁴⁹ This report, once compiled, may be received into evidence.

58. In 2000-01, 10,371 interviews were held and 2,097 new interventions made for the preparation of reports for Australia's Family Courts. Of these, 9,796 interviews were held and 2,041 new interventions made for the Family Court of Australia. There were a total of 2,153⁵⁰ family reports released during the year by the Family Court of Australia.

59. In the Family Court of Western Australia, 575 interviews were held and 56 new interventions made for the preparation of family reports. Statistics on the numbers of reports released by the Family Court of Western Australia are unavailable.

60. There were 407 interviews and 110 new interventions made, by Family Court of Australia counsellors for the compilation of family reports for FMS matters. As a result of this work, a total of 222⁵¹ reports were released by the FMS in 2000-01.

⁴⁸ 7,061 made in the Family Court of Australia. 400 made in the Family Court of Western Australia.

⁴⁹ See sections 62G and 65G *Family Law Act 1975* (Cth)

⁵⁰ 227 Short Form Family Reports, 1,926 Full Family Reports.

⁵¹ 18 Short Form Family Reports, 204 Full Family Reports.

APPLICATIONS FOR CONSENT ORDERS SLIGHTLY UP

61. Under Order 14 of the *Family Law Rules*, a registrar, judge, judicial registrar or magistrate may make an order if both parties file written consent to that order being made. Typically an application for a consent order is filed by the parties before they have attended any court hearings. There were 13,825 applications made for consent orders in the Family Court of Australia and the Family Court of Western Australia during 2000-01.⁵² This was an increase of 514, or 3.9%, from 1999-2000.

FALL IN NUMBER OF PARENTING PLANS REGISTERED

62. The Act provides for the use and, if required, the registration of parenting plans under section 63E. During the reporting year there were 271 parenting plans filed for registration with the Family Court of Australia and the Family Court of Western Australia.⁵³ No parenting plans were filed with the FMS during this time. In the Family Court of Australia, a total of 201 parenting plans were registered during 2000-01, representing a 26% drop on the same figure from 1999-2000. There were 5 parenting plans registered revoking previous parenting plans in the Family Court of Australia. No parenting plans were registered in the Family Court of Western Australia during 2000-01.

63. 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 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.⁵⁴

VAST MAJORITY OF FORMS 48 AND 49 FILED IN THE FAMILY COURT

64. Using a Form 49, a person can apply to have the court impose sanctions on a person they allege to have contravened children's orders.⁵⁵ If the court finds that children's orders were in fact contravened, it has a range of actions available to it under Division 13A of Part 7 of the Act.⁵⁶ These include making or varying parenting orders, ordering attendance at parenting programs, making community service orders and in extreme circumstances ordering imprisonment.

65. In 2000-01, 2,662 Form 49s were filed in the Family Court of Australia, Family Court of Western Australia and FMS combined. Of these 1,858, or 70% were filed in the Family Court of Australia and 311 Form 49s were filed in the Family Court of Western Australia,

⁵² Note that there may be more than one order sought per application, so this figure is not the actual number of orders sought. 'Consent minutes', which can be handed up in court at any time without an application being filed, are also not represented in these figures.

⁵³ 235 filed in the Family Court of Australia. 1 filed in the Family Court of Western Australia (as advised by the FCWA).

⁵⁴ <http://www.law.gov.au/flc>

⁵⁵ See Order 35 rule 6 of the *Family Law Rules*.

⁵⁶ Until the end of 2000, sanctions for the contravention of children's orders were found in section 112AD of the *Family Law Act 1975* (Cth), along with sanctions for the contravention of other orders. Applications for sanctions for contravention of children's orders were also made using a Form 49 before the Act was amended.

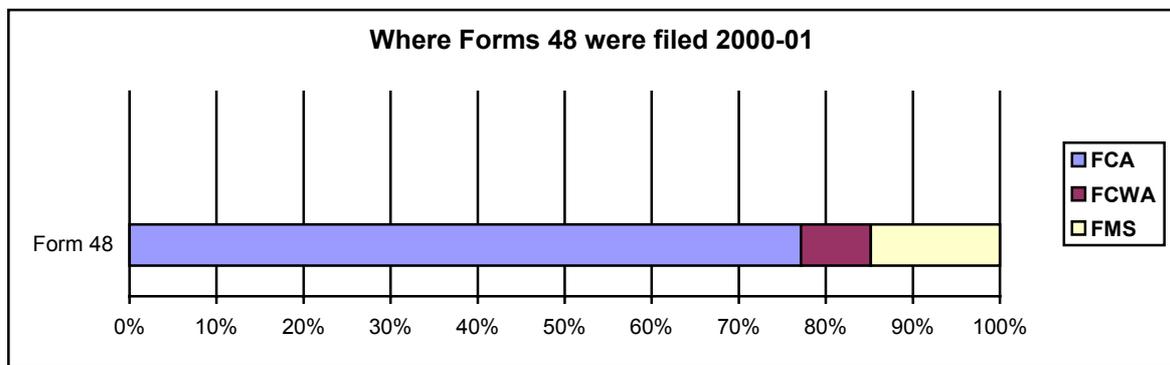
representing 12% of the total number filed. In the FMS, 493, or 18% of Form 49s were filed.

66. A Form 48 is used to apply for sanctions where orders that do not affect children are contravened.⁵⁷ The types of action a court can take if these allegations are made out are found in section 112AD of the Act. These include requiring a bond to be entered into, requiring a fine to be paid and ordering imprisonment.

67. There were a total of 398 Form 48s filed in 2000-01 in Australia’s Family Courts and the FMS. Of these, 307, or 77%, were filed in the Family Court of Australia and 32, or 8%, filed in the Family Court of Western Australia and 59 Form 48s were filed in the FMS, representing 15% of the total.

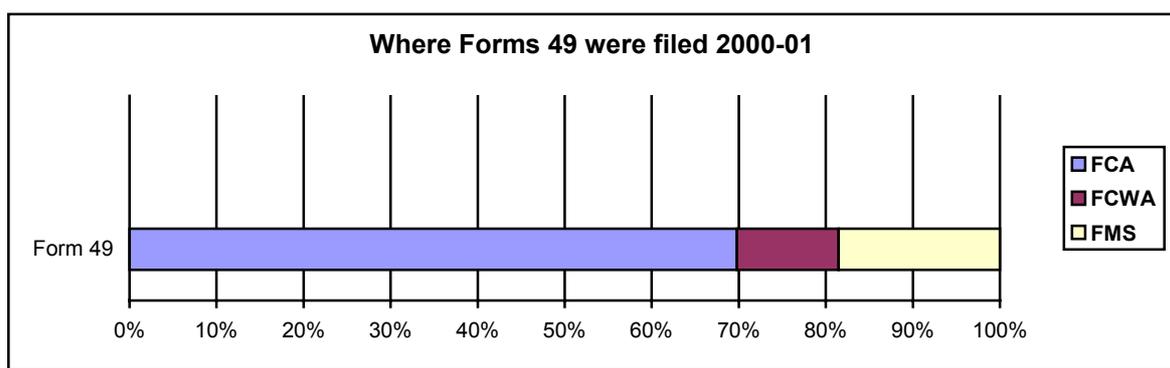
68. Charts 12 and 13 show the breakdown in percentages of where Forms 48 and 49 were filed in 2000-01.

Chart 12: Where Forms 48 were filed 2000-01



	FCA	FCWA	FMS	Total
Form 48	307 = 77%	32 = 8%	59 = 15%	398

Chart 13: Where Forms 49 were filed 2000-01



	FCA	FCWA	FMS	Total
Form 49	1,858 = 70%	311 = 12%	493 = 18%	2,662

⁵⁷ See Order 35 rule 5 of the *Family Law Rules*.

MORE TRANSFERS FROM FAMILY COURT TO FMS THAN VICE VERSA

69. Section 39 of the *Federal Magistrates Act*⁵⁸ allows proceedings pending in the FMS to be transferred to the Family Court of Australia at the FMS's discretion, either upon application by a party or on its own initiative. Likewise, section 33B of the Act allows proceedings pending in the Family Court to be transferred to the FMS at the Family Court's discretion.
70. During 2000-01, 223 matters were transferred from the FMS to the Family Court. Transfers from the Family Court to the FMS were much larger, numbering 2,478.
71. Under sections 45 and 46 of the Act, proceedings instituted in a court of summary jurisdiction may be transferred to the Family Court of Australia, on the application of a party or on its own initiative. During 2000-01, 2,564 matters were transferred from courts of summary jurisdiction to the Family Court. This figure, although greater than the number of transfers from the Family Court to the FMS, is down on the previous year's figure of 2,750.

FALL IN NUMBER OF DEFENDED HEARINGS FINALISED⁵⁹

72. Contested cases in the Family Court of Australia were recorded as 'direct track', 'standard track' and 'complex track' defended matters from 1996-97 to 2000-01. From 2001-02 the Court will be using a new system to record contested matters.
73. During 2000-01, Table 3 shows that 4,160 defended hearings were reported as finalised in the Family Court of Australia, a fall of 477 cases, or 10.3%, from 1999-2000. In the Family Court of Western Australia, 393 defended hearings were finalised, resulting in a total of 4,553 defended hearings being finalised in Australia's Family Courts.

TABLE 3: Trends in Family Court Judge & Judicial Registrar Defended Hearings

	1999/2000	2000/2001	Change (N)	Change (%)
1. Defended Hearings: Final Order Applications	4,637	4,160	477	-10.3
2. Defended Hearings: Other Applications	2,834	^a 2,564	270	-9.5
Total	7,471	6,724	747	^b -10.0

^aOther Applications for this period include, for example:

- Hague Convention (N=38)
- Contraventions (N=1,383)
-

^bDecrease may reflect the transfer of the less complex matters to FMS.

⁵⁸ 1999 (Cth)

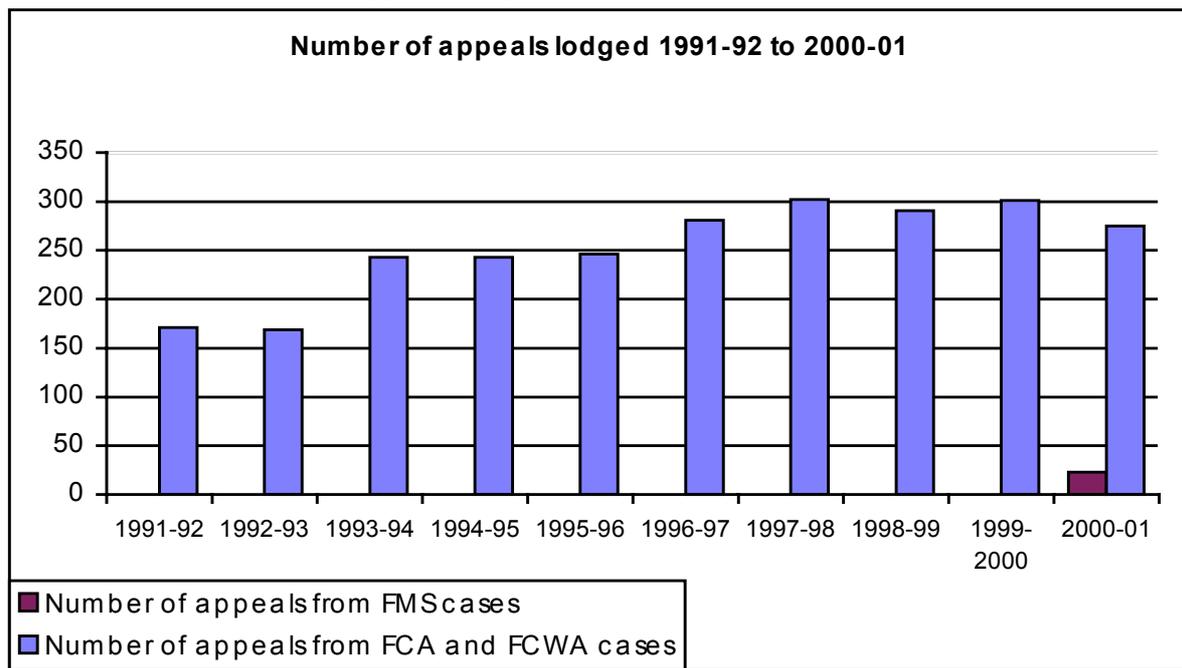
⁵⁹ FMS figures are not available.

APPEALS

Number of appeals lodged remains steady

74. The number of appeals lodged from the Family Court of Australia and the Family Court of Western Australia⁶⁰ combined to the Full Court of the Family Court of Australia has remained steady around 300 or just below for the last five years after substantial increases in the early 1990s. In 2000-01 there were 298 appeals lodged with the Full Court. This figure is just 3 less than the previous year. However, the complexity of appeals may be increasing⁶¹.
75. In Eastern Australia 126 appeals were lodged in 2000-01, the highest number of appeals lodged of all the regions.⁶² The South had 87 appeals lodged, Northern Australia had 51 appeals lodged, and 34 appeals were lodged in the West.
76. Under section 94AAA of the Act appeals from the FMS are heard in the Full Court of the Family Court of Australia, unless the Chief Justice considers it appropriate to be heard by a single Judge. During 2000-01 year all appeals were heard by a single Judge. The appeals statistics in 2000-01 include for the first time appeals from the FMS to the Full Court. Of the 264 appeals lodged outside Western Australia, 23 appeals, or 8.7%, came from cases originally heard in the FMS.

Chart 14: Number of appeals lodged 1991-92 to 2000-01



⁶⁰ Under section 94, *Family Law Act 1975* (Cth), appeals from the Family Court of Western Australia lie with the Full Court of the Family Court of Australia.

⁶¹ See *CDJ v VAJ* (1998) HCA 67 and *Allesch v Maunz* (2000) HCA 40

⁶² Appeals statistics are still collected in categories based on region: East covers Sydney, Parramatta, Newcastle and Canberra, South covers Melbourne, Dandenong Hobart and Adelaide, North covers Brisbane, Townsville and Darwin, and West is Perth.

Number of appeals lodged 1991-92 to 2000-01:

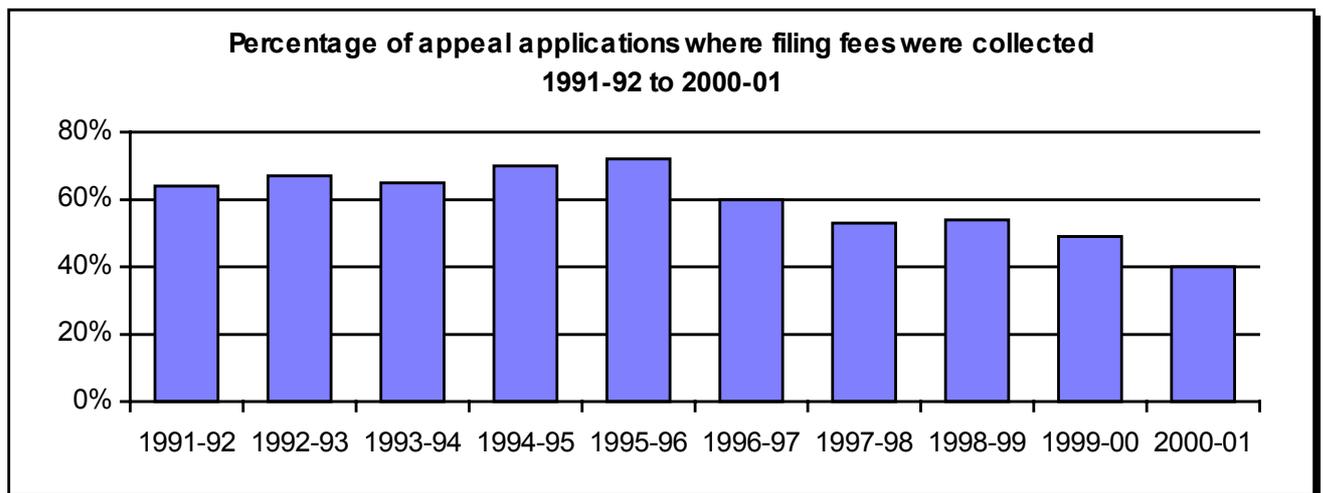
1991-92	171	1996-97	281
1992-93	169	1997-98	302
1993-94	243	1998-99	291
1994-95	243	1999-2000	301
1995-96	246	2000-01	298

Fall in proportion of appeal filing fees collected⁶³

77. During 2000-01 there was a large fall in the proportion of filing fees collected for appeal applications, continuing the trend downwards in recent years. Filing fees were collected for 40% of applications, down from 49% in 1999-2000.

78. The proportion of appeal applications having fees waived rose from 49% in 1999-2000 to 55% in 2000-01. Five years earlier, in 1996-97 the same figure was 34%. In 2000-01, 5% of applicants were exempt from paying filing fees on their appeal applications.

CHART 15: Percentage of appeal applications where filing fees were collected 1991-92 to 2000-01



1991-92	64%	1994-95	70%	1997-98	53%
1992-93	67%	1995-96	72%	1998-99	54%
1993-94	65%	1996-97	60%	1999-2000	49%
				2000-01	40%

Appeals heard down but appeals finalised steady

79. In 2000-01, the number of appeals heard⁶⁴ in the Full Court was 148. This is the lowest number of appeals heard since 1996-97. The number of appeals finalised⁶⁵ in the Full Court during 2000-01 was 194. This figure is only 2 down on 1999-2000 and consistent with numbers of recent years⁶⁶. 104 appeals were withdrawn during the year, this figure

⁶³ These figures is based on the number of applications filed, not the number heard. Applications that are deemed to have been waived may be withdrawn or abandoned before finalisation.

⁶⁴ Appeals allowed and dismissed.

⁶⁵ Appeals allowed, dismissed and abandoned.

⁶⁶ Refer to footnote no.60.

being significantly higher than the number of appeals withdrawn in a financial year in the past decade.

80. Table 4 compares the numbers of appeals heard, finalised and withdrawn over the past five years.

TABLE 4: Disposal of appeals 1996-97 to 2000-01

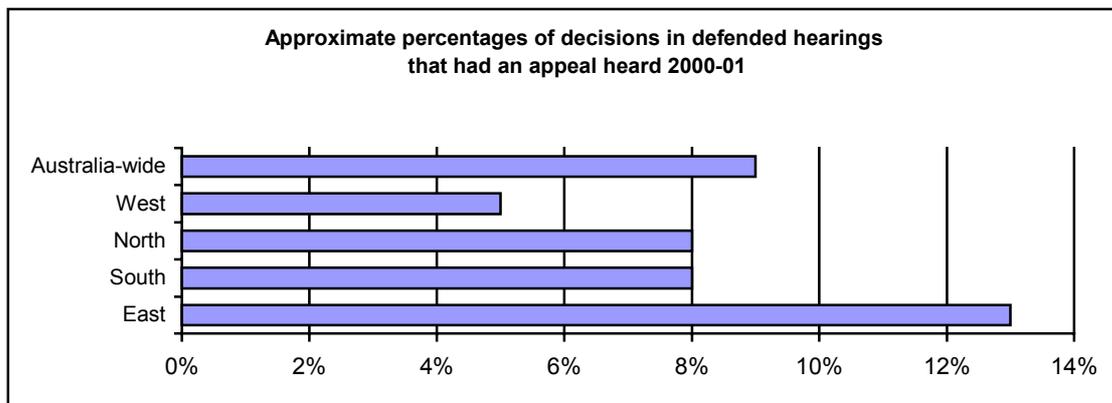
Year	Heard	Finalised	Withdrawn
1996-97	148	189	70
1997-98	180	204	24
1998-99	170	199	79
1999-2000	169	196	81
2000-01	148	194	104

81. In 2000-01, there were 4,553 defended hearings finalised in the Family Courts of Australia and Western Australia combined, 1,446 of which were finalised by judgment. In the same year, 137 appeals were heard from decisions of these Courts.⁶⁷ These figures indicate that about 9% of decisions in defended hearings, in Australia's Family Courts, had appeals heard against them.⁶⁸

82. Eastern Australia had the highest number of appeals heard, 70, of all the regions in 2000-01. This number represents about 13% of defended hearings finalised by judgment in the region. The South had 28 appeals heard in 2000-01, representing about 8% of defended hearings finalised by judgment. About 8% of decisions in defended hearings in the North also had appeals heard against them, with 24 appeals heard. The West had 15 appeals heard, representing just 5% of the number of defended hearings finalised by judgment in the Family Court of Western Australia in 2000-01.

83. Chart 16 compares by region the percentages of decisions in defended hearings in the Family Courts of Australia and Western Australia that led to a further hearing on appeal.

Chart 16: Decisions in defended hearings that had an appeal heard 2000-01



⁶⁷ 122 appeals heard from decisions of the Family Court of Australia. 15 appeals heard from decisions of the Family Court of Western Australia.

Decisions in defended hearings: appeal heard 2000-01 (approximate percentages):

East	13%	West	5%
South	8%	Australia-wide	9%
North	8%		

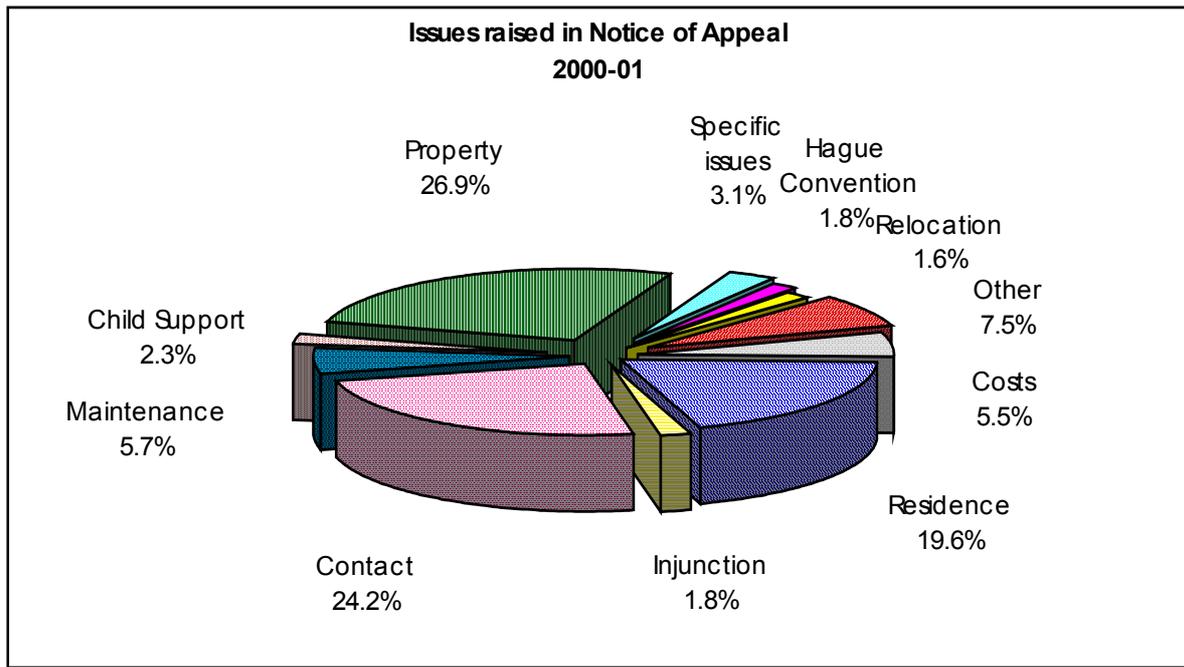
Self-represented litigants on appeal still rising

84. The proportion of appellants in person continued to rise in 2000-01, following the trend of recent years. Appellants in person made up 39% of all appellants in 2000-01, up from 37% the year before and 34% in 1998-99.⁶⁹

Property remains most appealed issue

85. An appeal may be a single issue case or involve multiple issues. As in previous years, the highest single issue appealed was in relation to property (26.9%), although the children’s issues of residence, contact and specific issues combined made up a far greater proportion of cases (46.9%). Chart 17 illustrates the breakdown of the issues raised on appeal in 2000-01.

CHART 17: Issues raised in Notice of Appeal 2000-01



⁶⁸ This percentage is only indicative of the proportion of decisions that had appeals heard against them, as some appeals heard in 2000-01 were for decisions handed down in 1999-2000, and the appeals for some decisions handed down in 2000-01 would have been heard in 2001-02.

⁶⁹ Data provided by Family Court of Australia: Performance Analysis Unit.