



FAMILY
● LAW ●
COUNCIL

STATISTICAL SNAPSHOT OF FAMILY LAW

● 2002-2003 ●

FAMILY LAW COUNCIL

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OF FAMILY LAW

2002-2003

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1. INTRODUCTION

This is the second time the Family Law Council has presented its *Statistical Snapshot of Family Law*. This information was previously provided within the Council's Annual Report.¹ This report is different from the first in some significant ways. Since the last Snapshot, the Family Court of Australia has introduced new case management processes and a new electronic case management system, *Casetrack*, which reflects those changes. *Casetrack* is now also the electronic case management system for the Federal Magistrates Court of Australia and the Family Court of Western Australia.

These changes have meant that in many cases data from the first *Snapshot* cannot be compared with the data reported in this Snapshot. It is important to note that this Snapshot does not purport to be a comprehensive collection or analysis of statistics in this area.

The Family Law Council established a Reference Group to oversee the preparation of this Snapshot. The Reference Group comprised Ms Jennifer Cooke from the Family Court of Australia and Mr Peter May from the Federal Magistrates Court, both Observers on the Council; and Ms Susan Holmes, a Member of the Council. The Council is also grateful for the assistance provided by Mr Bruce Smyth and Ms Lixia Qu from the Australian Institute of Family Studies.

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

Jurisdiction under the *Family Law Act 1975* 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 the state and territory courts of summary jurisdiction.

The Family Court of Australia is a superior court of record that was established by the Family Law Act. It exercises original jurisdiction in all States and Territories of Australia, except Western Australia, and 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 a welfare jurisdiction.² It also, albeit less frequently, hears matters arising under the *Marriage Act 1961* and the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*.

In March 2004 the *Family Law Rules 2004* commenced. However, for the reporting period covered by this Snapshot, the *Family Law Rules 1984* applied.

¹ Prior to the Statistical Snapshot for 2000-01, the information contained in this publication was presented in Council's Annual Report. The Annual Report used to have 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.

² *Secretary, Department of Health and Community Services v JWB and SMB* (1992) FLC ¶92-293. See also *Minister for Immigration and Multicultural and Indigenous Affairs v B* (2004) 206 ALR 130.

The Family Court of Western Australia is a State court that was created in accordance with the Family Law Act and exercises the same federal jurisdiction as the Family Court of Australia.³

The Federal Magistrates Court was established by the *Federal Magistrates Act 1999*⁴ and first sat on 3 July 2000. In family law matters the Federal Magistrates Court exercises jurisdiction under the Family Law Act, the *Marriage Act 1961* and the Child Support Acts.⁵ For the period covered by this report the Federal Magistrates Court had jurisdiction over the dissolution of marriages and parenting of children including disputed final residence orders.⁶

The Federal Magistrates Court can hear property matters where the value of the property is less than \$700,000 without consent and above that amount with the consent of the parties. The Federal Magistrates Court can also hear maintenance applications, child support departure applications and appeals for children not covered by the *Child Support (Assessment) Act 1989*, as well as various matters under the *Marriage Act 1961*. The Court operates under its own Rules.⁷ It does not exercise any family law jurisdiction in Western Australia.

State courts of summary jurisdiction exercise limited jurisdiction under the Family Law Act.⁸ For many proceedings the parties must consent to the magistrate hearing the matter, for example when final children's orders are sought.

Family Court and Federal Magistrates Court statistics

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. It has been assisted in the preparation of this report by officers of these courts.

Australian Bureau of Statistics (ABS)

The Australian Bureau of Statistics (ABS) figures on divorce are compiled using data provided by the Courts.⁹ The data relate to all applications resulting in the grant of a decree absolute during the year. The courts are not the source of marriage data. ABS statistics are reported on a calendar year basis, while the Courts report on a financial year basis. The most recent ABS data available is for the 2003 calendar year. Where ABS statistics are used in this report, a footnote to that effect is provided.

³ See section 41 of the Family Law Act.

⁴ See section 8 of the *Federal Magistrates Act 1999* (Cth).

⁵ Section 39 of the Family Law Act.

⁶ Complete residence jurisdiction was given on 27 December 2000.

⁷ *Federal Magistrates Court Rules 2001*.

⁸ Section 39 of the Family Law Act.

⁹ The Family Court of Australia, Federal Magistrates Court and the Family Court of Western Australia are the sources of all of the ABS data for divorces. 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.

State and Territory Magistrates Courts' family law statistics

Victoria was the only state that has previously 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 1998/99.¹⁰ Victorian Magistrates Court statistics are now released on the internet on an ad hoc basis. They can be found at the Victorian Department of Justice website.¹¹

The Local Court of New South Wales collects the number of new family law matters¹² that come before the Court and the types of orders made. These statistics are recorded manually for management purposes only, so may not provide an accurate statistical analysis of the matters dealt with. They are available on request.¹³

There is no data available from other states and territories because of different collection practices.

Casetrack

From 1 October 2000 the Family Court of Australia changed the way it collected data concerning orders sought. As Council indicated in its Snapshot 2000-01, this change was made in preparation for *Casetrack*, the Court's new case management system.

Under *Casetrack*, it is possible to report on the number of orders sought within four general categories: (1) Children, (2) Financial, (3) Children and financial, and (4) Procedural orders.

However, the introduction of *Casetrack* means there is some information provided in the Snapshot 2000-01 which can no longer be updated. It is therefore not possible to compare some of the data contained in that report with data included in the present publication. Several categories of information which were contained in the Snapshot 2000-01 are affected.¹⁴

The comparability of the data has also been affected by the fact that the Family Court of Australia and the Federal Magistrates Court have different business processes, and therefore do not provide the same events to their clients, particularly with respect to conferencing. The Snapshot notes that the different business processes in each Court

¹⁰ Compiled and published by Portfolio Planning, Department of Justice, Victoria.

¹¹ <http://www.justice.vic.gov.au/>

¹² 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.

¹³ Correspondence should be addressed to: The Director, Local Courts, Level 1 Downing Centre, 143-147 Liverpool Street, Sydney NSW 2000.

¹⁴ (1) court orders sought (2) conferences (3) counselling (4) applications for consent orders (5) applications and orders in relation to children's issues. It is now not possible for the Family Court of Australia and the Family Court of Western Australia to report on a number of different orders sought in relation to children such as contact, residence and specific issues orders, or to provide a breakdown of the number of orders sought relating to costs, maintenance, property, injunctions, discharge and other miscellaneous types of orders.

require different information to be recorded, thus resulting in the need to maintain separate bodies of statistical information for each.

Casetrack accommodates the differences in the business activities of both jurisdictions and enables statistical reports to be produced for each. One of the key areas of difference is in relation to how mediation services are provided and purchased. As some of the Federal Magistrates Court services are outsourced they cannot be counted in *Casetrack*. This requires some explanation of what ‘mediation’ means and elaboration of the statistical interpretation of the various ‘phases’ of case management.

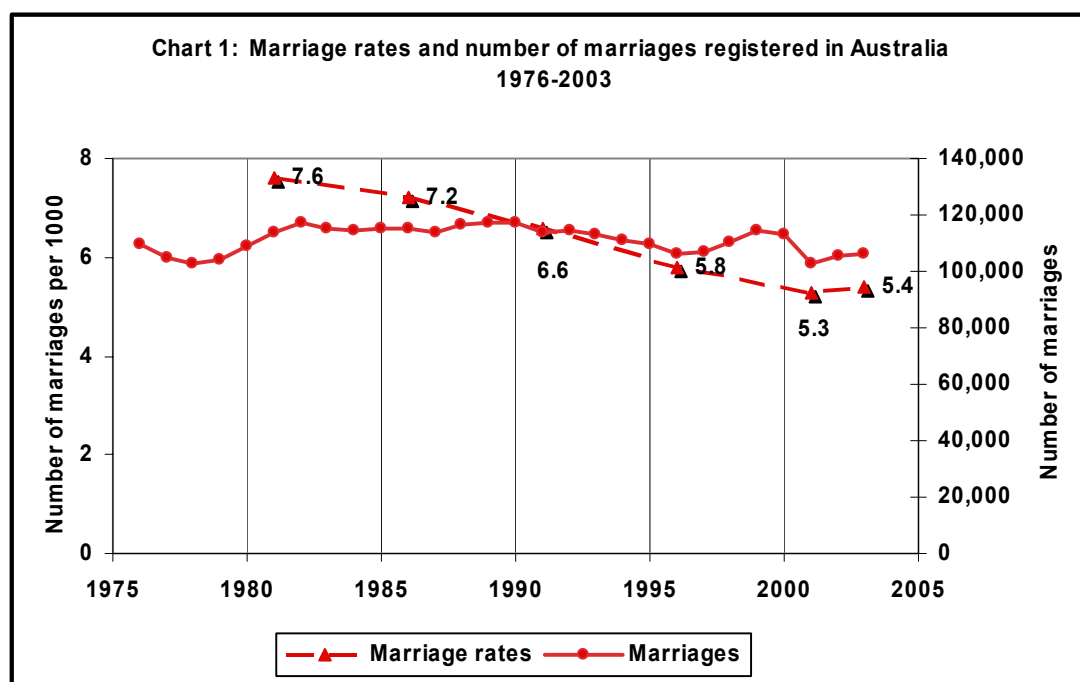
Further information about *Casetrack* is provided in Appendix 1.

2. MARRIAGES AND DIVORCES

Crude Marriage Rates

Marriage rates have continued to fall since the 1970s. In the 27 years from 1976 to 2003, the crude marriage rate (number of marriages per 1,000 estimated resident population) fell from 7.9 to 5.4 (representing the lowest on record).¹⁵

The data for the number of marriages per 1,000 unmarried men and women aged 15 years and over halved between 1976 and 2001 - from 62.9 in 1976 to 31 in 2001 for men and from 61.1 to 28 for women.¹⁶



During 2003 there were 106,400 marriages registered in Australia, representing an increase of 3% from 2001 (103,130).¹⁷ This is a decrease of 10% (10,835) from the number of registered marriages 21 years ago, in 1982.

The chart above shows the number of marriages registered each year since 1976 (the year the Family Law Act commenced) to 2003.¹⁸ Actual figures for this period are provided in Appendix 2.

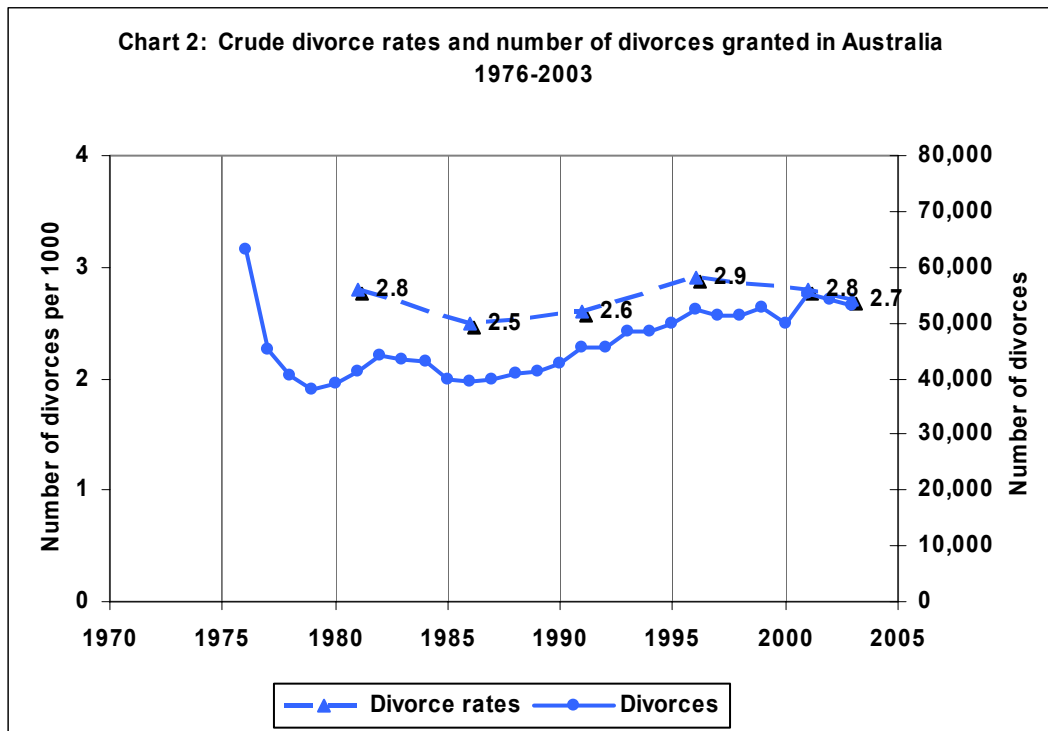
¹⁵ ABS (1995) *Australian Social Trends 1995*, Catalogue No.4102.0, p.33; ABS (various years) *Marriages Australia*, Catalogue No. 3306.0; ABS (various years) *Marriages and Divorces Australia*, Catalogue No. 3310.0; ABS (2204) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

¹⁶ ABS (2002), *Marriages and Divorces, Australia*, 2001, Catalogue No, 3310.0.

¹⁷ ABS (2005) *Marriages, Australia*, Catalogue No. 3306.0.55.001.

¹⁸ ABS (various years) *Divorces, Australia*, Catalogue no. 3307.0; *Marriages and Divorces, Australia*, Catalogue No. 3310.0.

The chart below shows the number of divorces granted each year since 1976.



Median age at marriage

The median age at which men married for the first time was 31 years in 2003, compared to 29 years in 1993 and 24.4 years in 1981. The median age for women marrying for the first time was 29 years in 2003, compared with 26 in 1993 and 22.1 in 1980. These figures illustrate the trend in both sexes towards marrying later in life.

The median age at marriage (incorporating first and subsequent marriages) in 2003 was 29 years for men and 27 years for women, compared with 26 years for men and 24 years for women in 1982.

In 2002, men aged 30 years and over represented 51% of men who married, compared to 18% in 1975 and women over 30 years represented 39% of women who married, compared to just 12% in 1975.

Of the 106,400 marriages registered in 2003, in 70,644 instances, or 66% of the marriages, neither partner had been previously married. This is roughly the same proportion as that for the past two decades.

Prior to 2000, the peak age for men marrying for the first time had always been below 30 years. 2000 was the first year this peak age rose to the 30-34 age group, and has remained in that bracket. The peak age for women marrying for the first time remained at 25-29 years, as it has been since 1987.

Chart 3 depicts the median age of all men and women who married and the median age of those who married for the first time, for selected years over the past two decades. The figures are provided in table 1.

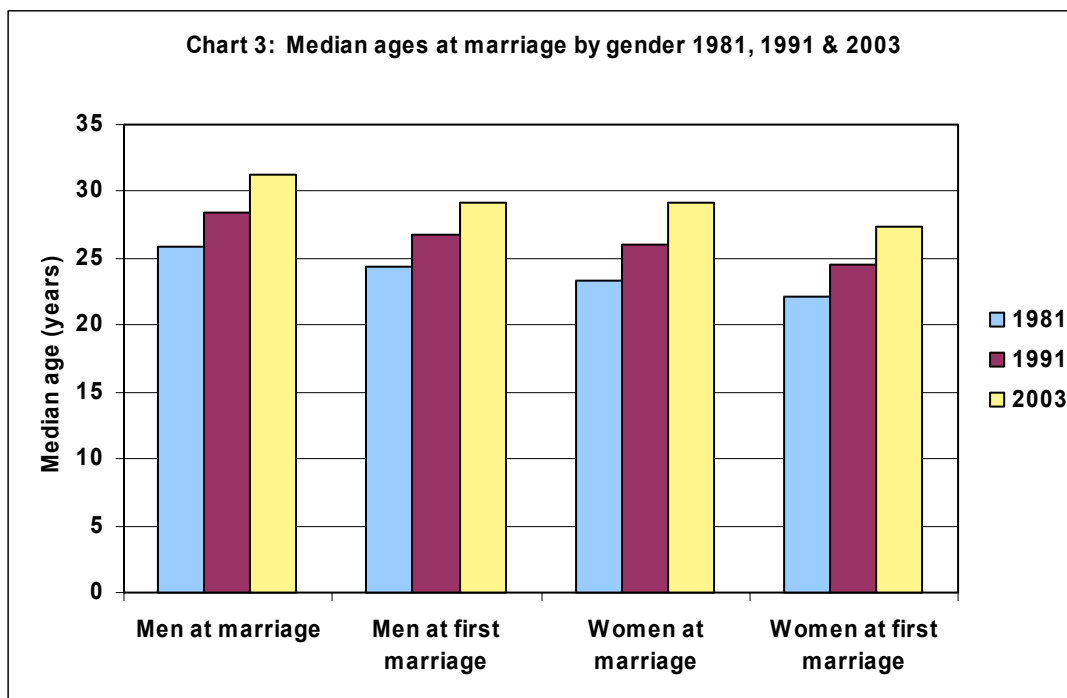


Table 1: Median ages at marriage by gender 1981, 1991, 2001-03

	1981	1991	2001	2002	2003
Men	25.9	28.4	30.6	31	31.2
Men marrying for the first time	24.4	26.7	28.7	29	29.2
Women	23.3	26	28.6	29	29.1
Women marrying for the first time	22.1	24.5	26.9	27.1	27.3

Divorce numbers

In 2000, there were 49,906 divorces, representing the lowest number since 1995, but in 2001, the number increased to 55,330 – the highest number since 1976. The number dropped slightly to 53,100 in 2003.¹⁹

The divorce rate increased dramatically following implementation of the Family Law Act. The crude divorce rate²⁰ increased from 1.8 in 1975 to 4.6 in 1976, but has fluctuated between 2.4 and 2.9 over the past 20 years. The rate was between 2.7 and 2.9 during 1980–84 and between 2.4 and 2.5 during 1985–89. By 1996, the rate had gradually increased to 2.9, and since that year has been between 2.6 and 2.8. The crude divorce rate was 2.6 in 2000, 2.8 in 2001 and 2.7 in both 2002 and 2003.

¹⁹ ABS (various years) *Divorces, Australia*, Catalogue no. 3307.0; *Marriages and Divorces, Australia*, Catalogue No. 3310.0.

²⁰ The crude divorce rate refers to the number of decrees absolute granted during the calendar year per 1,000 estimated resident population for the year.

A similar trend was apparent for the number of divorces per 1,000 married men and women. The rate increased from 11.6 for men and 11.5 for women in 1991 to 12.8 for men and 12.9 for women in 1996, but rose to 13.1 for both men and women in 2001.²¹

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 7.4 years in 1991 to 8.7 years in 2003 (it was 8.6 years in 2002). The median duration between the date of marriage and the date of decree absolute granted during 2003 was 12.2 years compared with 12.0 years in 2002 and 10.3 years in 1991.

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 2003 was 42.6 years and 39.9 years for women, compared with 38.4 for men and 35.5 for women in 1991.

Since 1984 husbands and wives have been able to apply jointly for divorce under the Family Law Act. From 1984 to 1996 the proportion of applications that were made jointly increased steadily from less than 1% to 22%. Between 1997 and 2000 the figure fluctuated around 19% and 20%, then increased to 25% in 2003.

Children involved in divorce

Over the past two decades, the percentage of divorces granted where children under 18 years of age have been involved fell from 61% in 1981 to 50% in 2003.²² The actual number of children involved in divorce was 49,900 in 2003, compared with 49,616²³ in 1981 and 48,100 in 1993.

In 2003 the average number of children per divorce (involving one or more children) was 1.87. This figure has remained constant since the early 1980s.

Divorce applications

The number of divorce applications filed in the Family Court of Australia in 1999-2000 was 48,504.

During 2001-02 and 2002-03, there were 50,727 and 50,104 divorce applications filed in Australia to the Family Court of Australia and Federal Magistrates Court.

In 2001-02 and 2002-03 there were 18,722 and 16,374 divorce applications filed in the Family Court of Australia. There were 5,766 and 4,997 divorce applications filed in the Family Court of Western Australia during the same years.

²¹ ABS (various years) *Divorces, Australia*, Catalogue no. 3307.0; *Marriages and Divorces, Australia*, Catalogue No. 3310.0. The data for post 2001 years is not yet available – ABS (2005) *Divorces, Australia*, Catalogue no. 3307.0.55.001.

²² ABS (various years) *Divorces, Australia*, Catalogue no. 3307.0; *Marriages and Divorces, Australia*, Catalogue No. 3310.0.

²³ In 1981 children included those up to the age of 21 years.

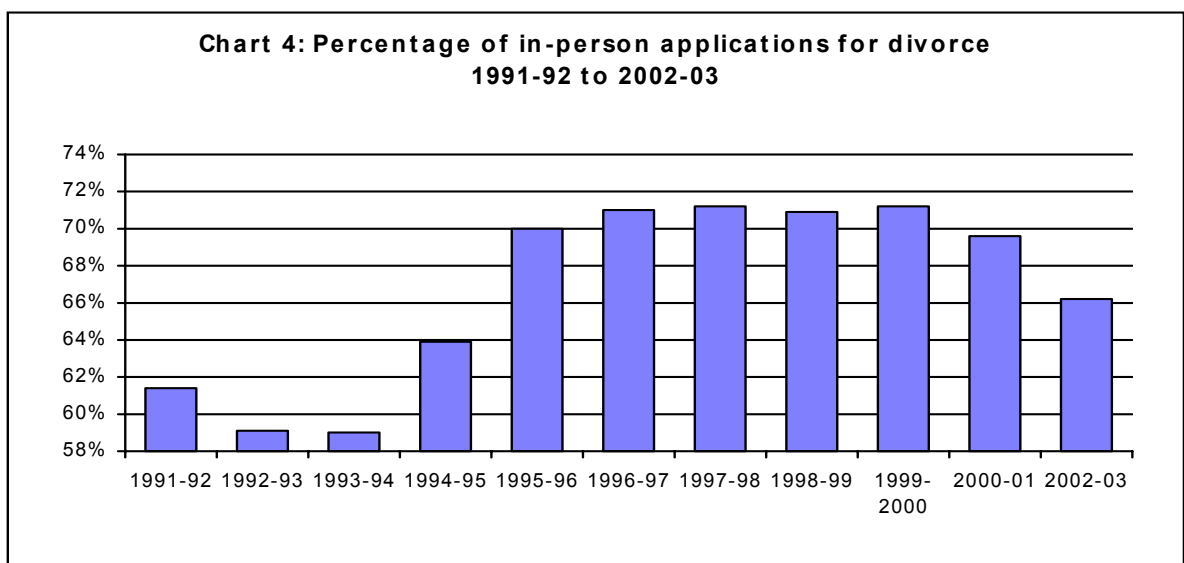
The Federal Magistrates Court had the greatest proportion of divorce applications filed, with 32,005 and 33,730 in 2002 and 2003 respectively.

The Family Court of Australia and the Federal Magistrates Court agree about the general distribution of the divorce hearing workload. The registry services for the processing of applications for divorce are provided by the Family Court on behalf of the Federal Magistrates Court. During 2002, 2003 the divorce application filing fees for the Family Court of Australia and the Federal Magistrates Court were \$574 and \$273 respectively.²⁴

Divorce applicants

After 2001, divorce applicants figures from the three family courts are combined in this report.²⁵ In 2002-03 there were 33,190 applications for divorce which did not have legal representation at the time of filing.²⁶ This figure represents 66.2% of the total number of divorce applications filed in the family courts. This percentage is down slightly from previous years.

Chart 4 shows the trends in the percentage of in-person applications from 1991 to 2003 and is a representation of the data provided in table 2.



Note. Data for 2001-02 is not available.

²⁴ Filing fees for the family courts are set by regulations.

²⁵ The 2000-01 percentages include Federal Magistrates Court figures.

²⁶ Note that applicants in non contested divorces are not required to appear in Court.

**Table 2: Percentage of in-person applications for divorce
1991-92 to 2002-03**

Year	In-person applicants	Year	In-person applicants
1991-92	61.4%	1997-98	71.2%
1992-93	59.1%	1998-99	70.9%
1993-94	59.0%	1999-00	71.2%
1994-95	63.9%	2000-01	69.6%
1995-96	70.0%	2001-02	Not available
1996-97	71.0%	2002-03	66.2%

3. APPLICATIONS FOR COURT ORDERS

When the *Statistical Snapshot 2000-01* was produced, the Family Court of Australia collected information about orders sought in different classifications than it does now. As a result, it is not possible to compare historical data to the data from *Casetrack*. Data for the transitional introductory year of *Casetrack* (2001-02) are also unavailable. Therefore, for orders sought, data are only available for the 2002-03 period which is now the *Snapshot's* base year for future reports. *Casetrack* categorises applications for final orders according to the high level issues involved, ie, children, financial or both. The new method of collation provides the opportunity to compare different areas with each other. Data in the same categories is not available for the Family Court of Western Australia and the Federal Magistrates Court.

Data for the types of final order applications made in the all three courts is shown in table 3. Data for interim orders is presented in table 4.

The total number of Final Orders applications for all three courts for in 2002-03 is 28,748. The total number of Interim Orders applications for all three courts in the same period is 28,679.

Table 3: Applications for Final Orders 2002-03 - Family Court of Australia, Federal Magistrates Court and Family Court of Western Australia

Area	Family Court of Australia	Federal Magistrates Court	TOTAL
Adelaide	2,277	441	2,718
Brisbane	2,564	1,614	4,178
Canberra	418	514	932
Dandenong	1,195	904	2,099
Darwin	44	272	316
Hobart	621	360	981
Melbourne	3,307	2,436	5,743
Newcastle	1,169	943	2,112
Parramatta	1,662	1,359	3,021
Sydney	2,821	83	2,904
Townsville	617	365	982
Western Australia	*	*	2,762
Total	16,695	9,291	28,748

Table 4: Applications for Interim Orders 2002-03 - Family Court of Australia, Federal Magistrates Court and Family Court of Western Australia

Area	Family Court of Australia	Federal Magistrates Court	TOTAL
Adelaide	3,138	453	3,591
Brisbane	2,559	1,039	3,598
Canberra	336	375	711
Dandenong	1,320	895	2,215
Darwin	52	287	339
Hobart	577	333	910
Melbourne	3,806	2,429	6,235
Newcastle	859	833	1,692
Parramatta	1,088	1,100	2,188
Sydney	2,574	195	2,769
Townsville	489	320	809
Western Australia	*	*	3,622
Total	16,798	8,259	28,679

Specific types of orders

Data are no longer collated for the “specific issues applications” category with *Casetrack*, therefore future statistics for specific issues applications will no longer be available and are instead included in the general category of children’s issues.

Data on the number of maintenance applications lodged in 2002-03 in the Family Court of Australia, Family Court of Western and Federal Magistrates Court is outlined in table 5. The figures include applications for both spousal maintenance under Part VIII of the Family Law Act and child maintenance under Division 7 of Part VII of the Family Law Act. There are decreasing numbers of child maintenance applications because children born on or after 1 October 1989, or parents separated on or after that date, are covered by the Child Support Scheme. 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 under section 118 of the *Child Support (Assessment) Act 1989* may be made in the Federal Magistrates Court, Family Court of Australia or the Family Court of Western Australia. The numbers of applications lodged in all courts for 2002-03 is provided in table 6.

Table 5: Maintenance applications in the Federal Magistrates Court, Family Court of Australia and Family Court of Western Australia 2002-03

Area	Federal Magistrates Court	Family Court of Australia	TOTAL
Adelaide	105	29	134
Brisbane	93	61	154
Canberra	27	12	39
Dandenong	56	11	67
Darwin	9	1	10
Hobart	21	5	26
Melbourne	121	81	202
Newcastle	13	8	21
Parramatta	43	15	58
Sydney	0	68	68
Townsville	27	15	42
Western Australia	*	*	158
Total	515	306	979

Table 6: Child support applications in the Federal Magistrates Court, Family Court of Australia and Family Court of Western Australia 2002-03

Area	Federal Magistrates Court	Family Court of Australia	TOTAL
Adelaide	101	34	135
Brisbane	112	37	149
Canberra	58	12	70
Dandenong	71	12	83
Darwin	20	1	21
Hobart	35	20	55
Melbourne	167	106	273
Newcastle	31	12	43
Parramatta	110	24	134
Sydney	3	111	114
Townsville	27	18	45
Western Australia	*	*	303
Total	735	387	1,425

Contraventions

Sanctions ordered, under section 112AD of the Family Law Act, for failure to comply with orders made under the Family Law Act may be varied or discharged under section 112AK.²⁷ The vast majority of applications for contravention of orders relate to children's matters. In the last full year available prior to the implementation of *Casetrack*, 1999-2000, the family courts together received 3,901 applications for orders to be discharged or varied under section 112AK.²⁸

There was a total of 1,269 contravention of child order applications in the Family Court of Australia in the 2002-03 period. In the same period there were 1,661 contravention of child order applications in the Federal Magistrates Court. These figures are shown in table 7 and the numbers of contravention of other order applications are provided in table 8.

Table 7: Contravention of Child Order Applications 2002-03 - Family Court of Australia, Family Court of Western Australia and Federal Magistrates Court

Area	Family Court of Australia	Federal Magistrates Court	Total
Adelaide	153	135	288
Brisbane	240	327	567
Canberra	52	82	134
Dandenong	86	160	246
Darwin	7	36	43
Hobart	49	74	123
Melbourne	183	305	488
Newcastle	89	184	273
Parramatta	106	269	375
Sydney	236	2	238
Townsville	68	87	155
Western Australia	*	*	429
Total	1,698	1,661	3,788

²⁷ Section 112AD contraventions are just one kind of enforcement application.

²⁸ The Family Court of Australia's new case management system, *Casetrack*, was implemented part way through the year so comparable data to previous years is not available.

Table 8: Contravention of Other Order Applications 2002-03 - Family Court of Australia, Family Court of Western Australia and Federal Magistrates Court

Area	Family Court of Australia	Federal Magistrates Court	Total
Adelaide	28	7	35
Brisbane	28	26	54
Canberra	5	8	13
Dandenong	9	12	21
Darwin	0	5	5
Hobart	10	9	19
Melbourne	64	65	129
Newcastle	3	7	10
Parramatta	5	7	12
Sydney	38	0	38
Townsville	8	8	16
Western Australia	*	*	60
Total	258	154	472

Enforcement and contempt

An enforcement summons may be issued by a Registrar of the Federal Magistrates Court, Family Court of Australia or Family Court of Western Australia 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 summons filed in all courts in 2002-03 are provided in table 9.

Table 10 sets out the numbers of contempt²⁹ applications made in all courts for the same period, which are quite low.

²⁹ The Macquarie dictionary defines contempt as “disobedience to, or open disrespect of, the rules or orders of a court or legislature, or conduct likely to prejudice the fair trial of a litigant or an accused person”.

Table 9: Enforcement summons filed - Federal Magistrates Court, Family Court of Australia and Family Court of Western Australia 2002-03

Area	Federal Magistrates Court	Family Court of Australia	TOTAL
Adelaide	15	24	39
Brisbane	51	33	84
Canberra	12	7	19
Dandenong	21	7	28
Darwin	5	0	5
Hobart	30	11	41
Melbourne	70	47	117
Newcastle	15	16	31
Parramatta	48	15	63
Sydney	0	78	78
Townsville	13	10	23
Western Australia	*	*	111
Total	280	248	639

Table 10: Contempt applications - Federal Magistrates Court, Family Court of Australia and Family Court of Western Australia 2002-03

Area	Federal Magistrates Court	Family Court of Australia	TOTAL
Adelaide	0	3	3
Brisbane	1	9	10
Canberra	1	0	1
Dandenong	0	3	3
Darwin	1	1	2
Hobart	1	3	4
Melbourne	7	6	13
Newcastle	0	4	4
Parramatta	1	2	3
Sydney	0	5	5
Townsville	0	0	0
Western Australia	*	*	17
Total	12	36	65

4. DISPUTE RESOLUTION

Policies and Practices

The Family Court of Australia, Family Court of Western Australia and the Federal Magistrates Court have different procedures and practices in relation to mediation. These influence when mediation is offered, what services fall within that category and how mediation services are counted and quantified. All courts emphasise Primary Dispute Resolution as an essential facet of the case management process.

Conciliation Conference figures relate to financial matters only.

Federal Magistrates Court

Primary Dispute Resolution processes are used in the Federal Magistrates Court before, during and after proceedings. The processes used are counselling, mediation and conciliation. Parties may attend counselling at the Family Court Mediation Section before the first court date. At the first court date, they may be ordered to attend counselling or conciliation at either the Family Court or at a community based organisation. Some parties are also ordered to attend counselling at a community based organisation following the completion of proceedings.

Family Court of Australia

Mediation may be offered, or parties ordered to attend at various stages. The Family Court emphasises mediation at the dispute resolution phase. When cases move into the determination phase they may also resolve but the primary emphasis of court events in this phase is on preparation for trial.

The resolution phase involves court events where the Court tries to help parties reach an agreement about the financial and children's issues in dispute – case assessment, mediation and conciliation conferences. This covers all events up to the issue of a trial notice. The determination phase begins when parties have been through the last resolution event for their case and have not reached agreement.

Table 11: Actual number of case assessment, conciliation and pre-trial conferences 2002-03 - Family Court of Australia, Family Court of Western Australia and Federal Magistrates Court³⁰

	Conferences Held	All Issues Resolved	
		No.	%
Case Assessment (Family Court of Australia)	5,431	1,539	28.3%
Conciliation (Family Court of Australia, Family Court of Western Australia and Federal Magistrates Court)	8,330	2,460	29.5%
Pre-trial (Family Court of Australia and Family Court of Western Australia)	3,846	685	17.8%
Total resolved	15,184	4,514	29.7%

Case Assessment conferences

From February 2001 the Family Court of Australia began case conferencing. This has been further developed to Case Assessment Conferences. A case assessment conference is commonly held as the first court event. It involves an information session, assessment of the family and case needs, negotiation and directions. The key focus of the case assessment conference is to ascertain the issues in dispute between the parties. A feature of the conference is to provide the parties with an opportunity to negotiate a resolution on their first day at the Court. This feature is utilised where the parties are sufficiently informed of the issues so as to be in a position to negotiate. In many circumstances particularly in financial cases, further disclosure and valuations or appraisals of assets are required so as the parties are able to negotiate from an informed position. Depending on the nature of the issues involved, it is 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 aims to hold case assessment conferences for most cases, in place of most court ordered pre-directions hearing mediation.

In 2002-2003 5,431 case assessment conferences were held in the Family Court of Australia. In 1,539 cases, or 28.3% of all case assessment conferences held, all the issues were resolved.

³⁰ The data does not include the number of conciliation conferences outsourced by the Federal Magistrates Court.

Conciliation conferences

In contested property matters in the Family Court of Australia, the parties are required to attend a conference with Deputy Registrar. Such conferences are provided for in subsection 79(9) of the Family Law Act and aim to encourage couples to reach agreement on issues between themselves rather than have a decision made by the Court. Conciliation conferences are held for property disputes, except when conducted jointly with mediators when both property and children's matters are in dispute.

The Family Court of Australia held 5,108 conciliation conferences in 2002-03.³¹ In 1,722 of these conciliation conferences, all the issues were resolved. This represents a resolution rate of 33.7%. Conciliation conferences conducted by Registrar can only record a 'settled outcome' where consent orders are made finalising all issues and therefore cannot include partial settlement or 'settled pending consent orders' where a settlement achieved cannot be finalised by consent orders on the day of the conference, for example due to legislative obligations to notify trustees in relation to superannuation interests, complex drafting is required or parties intend to enter into a financial agreement and then discontinue the case..

Conciliation conferences in the Federal Magistrates Court are conducted by Deputy Registrars of the Family Court or by community based organisations.

In 2002-03, Family Court of Australia Deputy Registrars conducted 1,322 conciliation conferences for Federal Magistrates Court clients compared with 170 conferences in 2001-02. Of the 1,322 conferences held, 27% settled at the conference. Conciliation conferences conducted by Registrar can only record a 'settled outcome' where consent orders are made finalising all issues and therefore cannot include partial settlement or 'settled pending consent orders' where a settlement achieved cannot be finalised by consent orders on the day of the conference, for example due to legislative obligations to notify trustees in relation to superannuation interests, complex drafting is required or parties intend to enter into a financial agreement and then discontinue the case.

In 2001-02, 54 conciliation conferences were conducted by community based organisations compared with 213 conferences in 2002-03. In 2001-02, a full or partial settlement was reached in 56% of conferences held in community based organisations compared with 49% in 2002-03. Community based organisations record settlement or partial settlement reached and, as they cannot approve orders, are not limited to recording only those cases where orders are made.

Pre-trial conferences in the family courts

The Family Court of Australia and the Family Court of Western Australia both conduct pre-trial conferences before a matter goes to trial to ensure that the matter is ready for trial. Pre trial conferences replaced pre hearing conferences in 2002-03. The pre-trial conference is intended to reduce the over-list ratio and ensure increased certainty of trial dates. A focus of pre-trial conferences is to ensure readiness for trial.

³¹ Not including the Family Court of Western Australia.

Settlements will still occur at pre-trial conferences as the evidence and possible arguments will be known at this time.

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. It is therefore not part of the case management system of the Federal Magistrates Court to hold pre-trial conferences.

The Family Court of Australia held 3,323 pre-trial conferences in 2002-03. In 579 of Family Court of Australia's cases (17.4%) all of the issues were resolved or disposed of without the matter having to go to trial. This figure does not include those cases which settled between the pre-trial conference and the first day of trial.

Conference resolution rate

In previous years around one-third of all conferences have resolved all issues before trial. There have been some changes to the function of the conferences which mean that 2002-03 data is not readily comparable to data in the first *Snapshot*.

Chart 5 compares the proportion of conferences where all issues were resolved across the types of conferences held in 2002-03 and is a representation of the data provided in table 12.

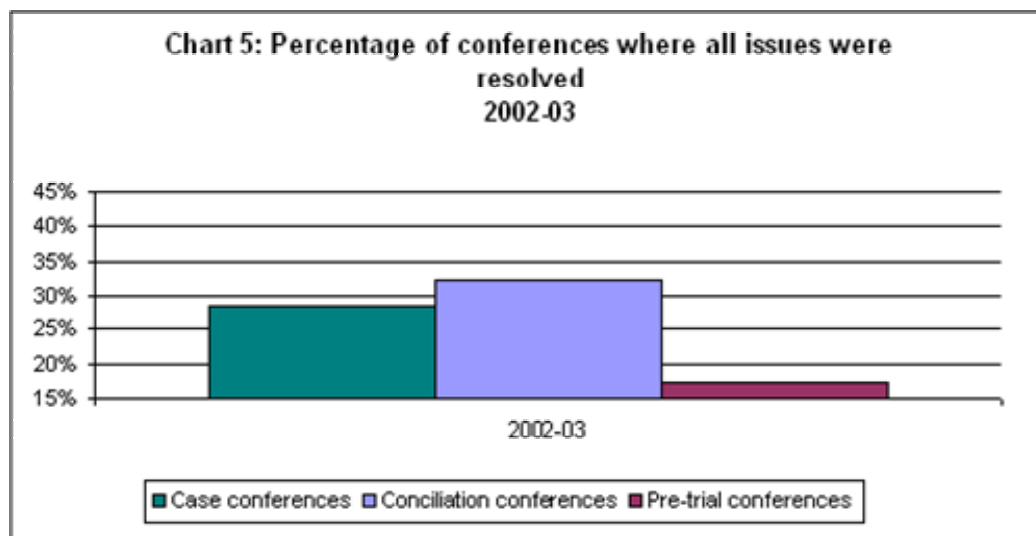


Table 12: Percentage of conferences where all issues were resolved 2000-01 to 2002-03

	2000-01	2002-03
Case Assessment Conferences	33.1%	28.3%
Conciliation	40.6%	32.3%
Pre-trial	27.1%	17.4%

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

A party to a marriage, a party to proceedings under the Family Law 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 Federal Magistrates Court.³² A court exercising jurisdiction under the Family Law Act can also advise parties to attend counselling when it believes this may assist them.³³

In the Family Court of Australia and the Family Court of Western Australia there were total of 2,988 voluntary interviews held and 1,944 new interventions³⁴ during 2002-03.³⁵

Court ordered mediation before first directions hearing

In certain situations a court exercising jurisdiction under the Family Law Act may order parties to attend mediation before a first directions hearing has occurred. This may happen, for example, where an emergency interim application for an injunction has been filed.³⁶ This data needs to be qualified, however because the impact of *Casetrack* on data collection practices has been quite significant and data is no longer manually collected.

As foreshadowed in the first *Snapshot*, case assessment conferences have largely replaced pre-directions hearing mediation. There were a total of 5,608 interviews held and there were 4,153 new interventions in 2002-03.

During 2002-03, 21% of total court ordered pre-first directions hearing interviews held and 23% of new interventions made were by Family Court of Australia mediators on behalf of the Federal Magistrates Court.

Court ordered mediation after first directions hearing

At directions hearings the Family Court of Australia can order parties to attend mediation where children's issues are in dispute.³⁷ During proceedings a court exercising jurisdiction under the Family Law Act can also order the parties to undergo mediation where there are disputes regarding children.³⁸

In 2002-03 there were 9,049 court-ordered post-first directions hearing interviews held and there were 5,605 new interventions. Family Court of Australia Mediators

³² See sections 15, 15A, 16, 62C – 62E of the Family Law Act.

³³ See sections 16A - 16C and 62B of the Family Law Act.

³⁴ A new intervention is where the court mediators are dealing with clients for the first time. 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 mediation will not resolve the problem.

³⁵ Since November 2000 the Family Court of Australia no longer provides voluntary mediation in its Sydney, Melbourne, Parramatta, Brisbane, Adelaide and Dandenong registries. Community based organisations provide this service, with government funding being provided on a tender basis.

³⁶ See sections 16A and 62F of the Family Law Act.

³⁷ See Order 9 rule 2(5) of the *Family Law Rules 1984*.

³⁸ See sections 62F and 65F of the Family Law Act.

provided mediation on behalf of the Federal Magistrates Court in 16% of interviews and 20% of new interventions.

Chart 6 compares the numbers of interviews held and new interventions made in 2002-03 and is a representation of the data provided in table 13.³⁹

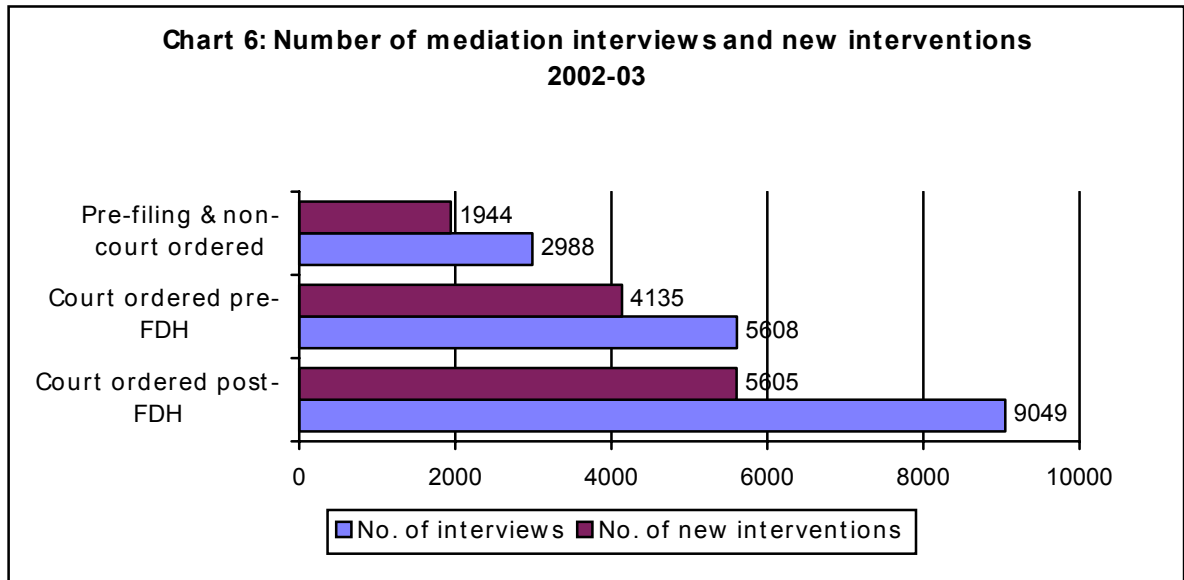


Table 13: Number of mediation interviews and new interventions 2002-03

	Interviews	New interventions
Pre-filing and non-court ordered mediation	2,988	1,944
Court ordered pre-FDH mediation	5,608	4,135
Court ordered post-FDH mediation	9,049	5,605

³⁹ This data was provided by the Family Court of Australia and the Family Court of Western Australia.

5. FAMILY REPORTS

In certain circumstances a court exercising jurisdiction under the Family Law Act will order that a family report be prepared by a mediator.⁴⁰ This report, once compiled, may be received into evidence.

In 2002-03 there were 1,098 family reports released in Family Court of Australia matters and 729 were undertaken or coordinated by the Family Court of Australia in Federal Magistrates Court matters.

There were 230 family reports released in Family Court of Western Australia for the same year.

These figures do not include outsourced family reports.

⁴⁰ See sections 62G and 65G of the Family Law Act.

6. ORDER 14 CONSENT ORDERS APPLICATIONS IN THE FAMILY COURT

This section only relates to consent orders applications made in the Family Court of Australia under the Order 14 procedures in the *Family Law Rules 1984*. This application has not been adopted or replicated in the Federal Magistrates Court.

Consent Orders Applications

Under Order 14 of the *Family Law Rules 1984*, 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.

During 2002-03 there were 11,607 applications made for consent orders filed in Family Court of Australia and 2,019 in the Family Court of Western Australia.⁴¹

⁴¹ 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.

7. PARENTING PLANS

An amendment to the Family Law Act means that there is no longer a requirement to register a parenting plan.⁴² 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.⁴³

During the reporting year 2002-03, there were 195 parenting plans applications filed for registration with the Family Court of Australia. There is no provision in the *Federal Magistrates Court Rules 2001* for the lodgement of parenting plans.

The Family Law Act provided for the use and, if required, the registration of parenting plans under section 63E.

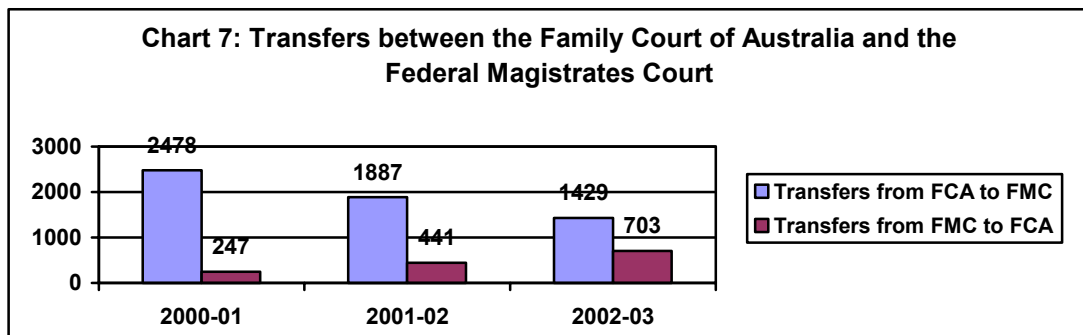
⁴² *Family Law Amendment Act 2000, Family Law Amendment Rules 2004 (No. 1) 2004 No. 5* commencing 12 February 2004 has removed the forms required for registering parenting plans from the schedule of forms.

⁴³ <http://www.law.gov.au/flc>

8. TRANSFERS BETWEEN THE FAMILY COURT AND THE FEDERAL MAGISTRATES COURT

Section 39 of the *Federal Magistrates Act 1999* allows proceedings pending in the Federal Magistrates Court to be transferred to the Family Court of Australia at the Federal Magistrates Court's discretion, either upon application by a party or on its own initiative. 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.

During 2002-03, 703 matters were transferred from the Federal Magistrates Court to the Family Court. Conversely, 1,429 matters were transferred from the Family Court to the Federal Magistrates Court in 2002-03.



9. DEFENDED HEARINGS

As previously noted, the statistics reported in the 2000-01 *Snapshot* for defended hearings are not comparable with those contained in this publication due to changes associated with the introduction of *Casetrack* by the Family Court of Australia. Table 14 shows figures for the Family Court of Australia and Family Court of Western Australia.⁴⁴

Table 14: Finalised at hearing

Trials and Judgments	Family Court of Australia TOTAL	Family Court of Western Australia TOTAL
Number of matters listed for trial	4,218	219
Number of matters finalised (not settled) at hearing	1,085	175

⁴⁴ The Federal Magistrates Court cannot provide figures for cases that originate before *Casetrack*.

10. APPEALS

Appeals lodged

In 2002-03 there were 257 appeals lodged with the Full Court of the Family Court of Australia.

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 to be heard by a single Judge. Leave, however, 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 magistrates.

During 2002-03, 83 appeals (32%) came from cases originally heard in the Federal Magistrates Court. All but 3 of these appeals were heard by a single Judge.

Chart 8 is a graph of the figures provided in table 15 below.

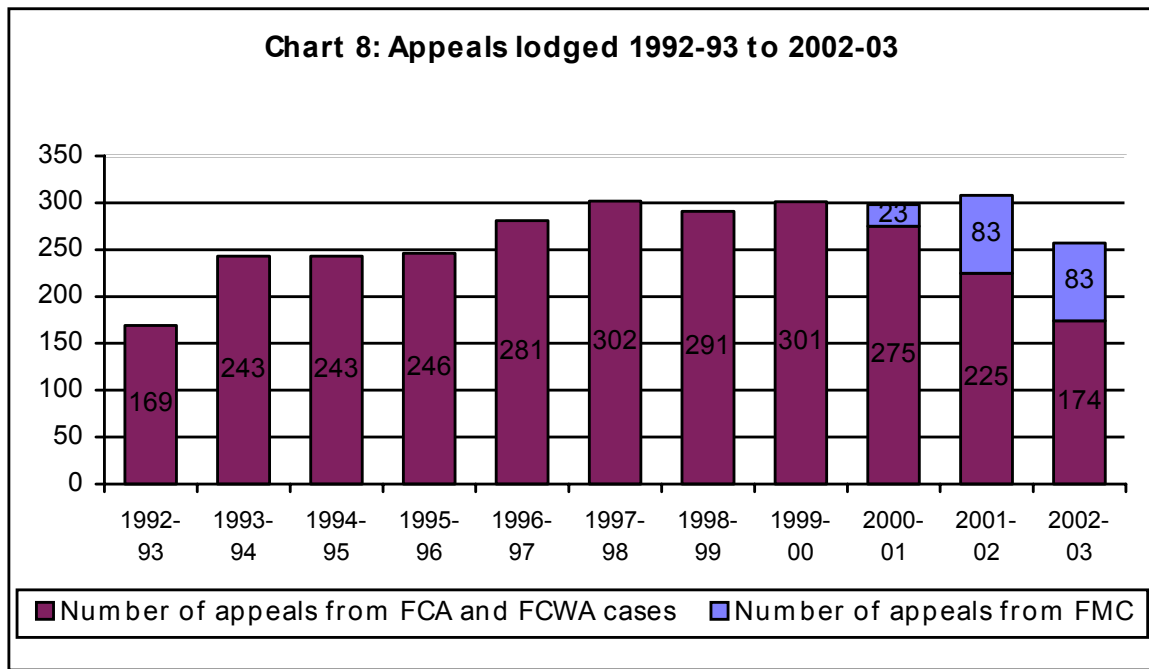


Table 15: Appeals lodged 1992-93 to 2002-03

Year	Appeals	Year	Appeals
1992-93	169	1998-99	291
1993-94	243	1999-00	301
1994-95	243	2000-01	298
1995-96	246	2001-02	308
1996-97	281	2002-03	257
1997-98	302		

Appeals heard

In 2002-03, the number of appeals heard⁴⁵ in the Full Court of the Family Court of Australia was 170. Some 56 of these were appeals from decrees of the Federal Magistrates Court. The number of appeals finalised⁴⁶ in the Full Court during 2002-03 was 185.

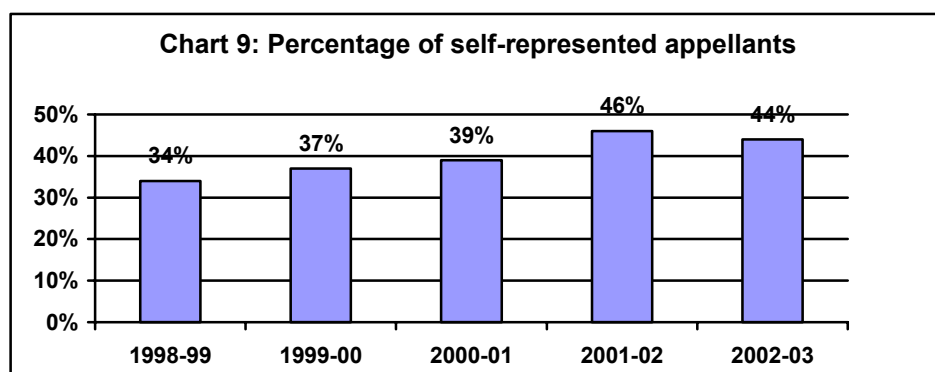
Table 16 compares the numbers of appeals lodged, heard and finalised over the past seven years.

Table 16: Disposal of appeals 1996-97 to 2002-03

Year	Lodged	Heard		Finalised	
		Number	%	Number	%
1996-97	281	148	52.7	189	67.3
1997-98	302	180	59.6	204	67.5
1998-99	291	170	58.4	199	68.4
1999-00	301	169	56.1	196	65.1
2000-01	298	148	49.7	194	65.1
2001-02	308	159	51.6	208	67.5
2002-03	257	170	66.1	185	72.0

Self-represented litigants on appeal

The proportion of self-represented appellants has remained constant in 2002-03, following a rising trend in recent years. Self-represented appellants made up 40.1% of all appellants in 2002-03, up from 34% in 1998-99.⁴⁷



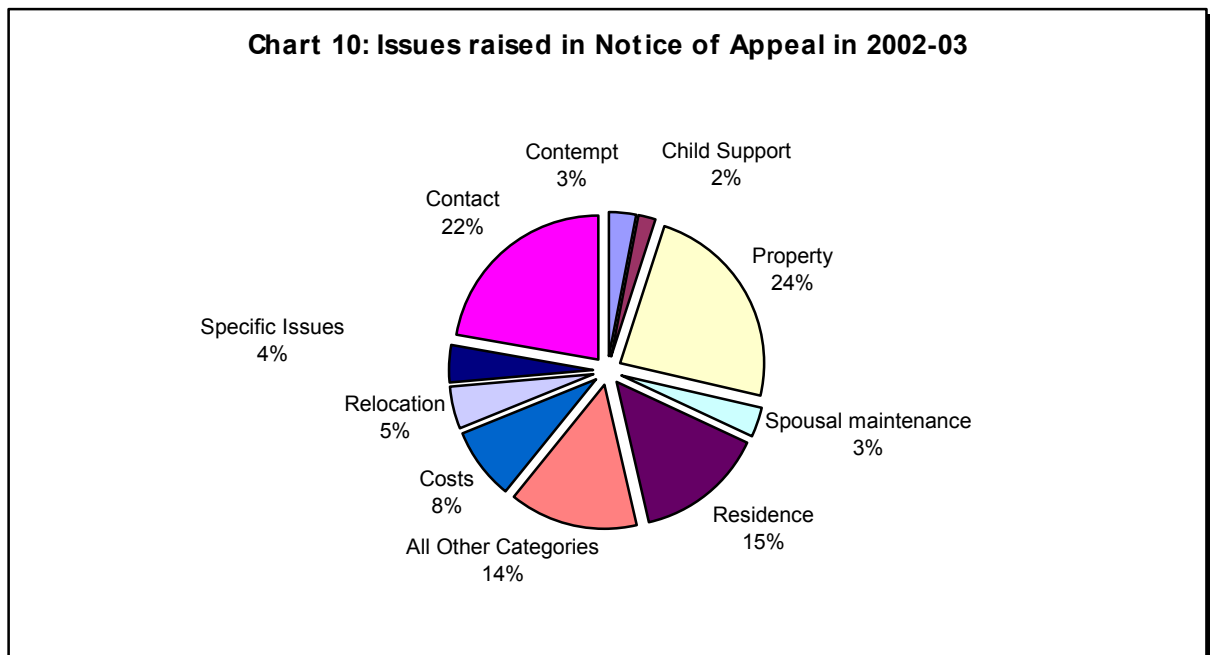
⁴⁵ Appeals allowed and dismissed.

⁴⁶ Appeals allowed, dismissed and abandoned.

⁴⁷ Data provided by Family Court of Australia: Performance Analysis Unit.

Issues raised in appeals

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 (24%), although the children's issues of residence, contact and specific issues combined made up a far greater proportion of cases (41%). Chart 10 illustrates the breakdown of the issues raised on appeal in 2002-03 in the Family Court of Australia.



APPENDIX 1: *Casetrack*

Casetrack is the electronic case management system that provides easy access to client and case information for the courts exercising family law jurisdiction. *Casetrack* is the Courts' primary business system and contains up to 5 million case and client records that are accessible Australia wide. *Casetrack's* users can search or input information by using one simple, fast, and efficient system, with Court processes supported and a high standard of client services delivered. In addition, *Casetrack* supports the way the Family Court of Australia integrates its system with the Federal Magistrates Court, and the Family Court of Western Australia.

- 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 on-line reports, interface with the finance system, and secure privileged notes based on the user's role within the court.
- 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 are 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.

Whilst *Casetrack* implements significant changes and improvements to data collection and management information in the Family Court, a new system was also required because the Court made important changes to the case management pathway. New practices and procedures followed the recommendations made by the Court's Future Directions Committee in 2000. These changes were aimed at the better support of an emphasis on primary dispute resolution as well as improvements in the preparation for trial of those cases that did not resolve in the resolution phase. *Casetrack* necessarily matches the practice.

There were also very strong technical reasons for a new system. The old system, Blackstone, was close to the end of its supportable life. The development of *Casetrack* was also a necessary prerequisite for other strategic moves around the use of web services for clients, thus improving access to justice.

APPENDIX 2: Marriage and Divorce

Registered marriages and divorces 1976-2003

Year	Marriages	Divorces	Year	Marriages	Divorces
1976	109,973	63,230	1990	116,959	42,635
1977	104,918	45,152	1991	113,869	45,652
1978	102,958	40,608	1992	114,752	45,729
1979	104,396	37,854	1993	113,255	48,363
1980	109,240	39,258	1994	111,174	48,312
1981	113,905	41,412	1995	109,386	49,712
1982	117,275	44,088	1996	106,103	52,466
1983	114,860	43,525	1997	106,735	51,288
1984	114,485	43,124	1998	110,598	51,370
1985	115,493	39,830	1999	114,316	52,566
1986	114,833	39,417	2000	113,429	49,906
1987	114,113	39,725	2001	103,130	55,330
1988	116,816	41,007	2002	105,435	54,000
1989	117,176	41,383	2003	106,400	53,100

