

Part three: Performance

The work of the court

Family law and child support

Approximately 80 per cent of the court's workload is in the area of family law and child support. It shares jurisdiction with the Family Court in this area.

The areas of family law which the court has jurisdiction include; applications for divorce, spousal maintenance, property disputes (up to \$700 000), parenting orders, enforcement of orders, location and recovery orders, warrants for the apprehension or detention of a child, determination of parentage and recovery of child bearing expenses.

Figure 3.1: Child support matters – applications

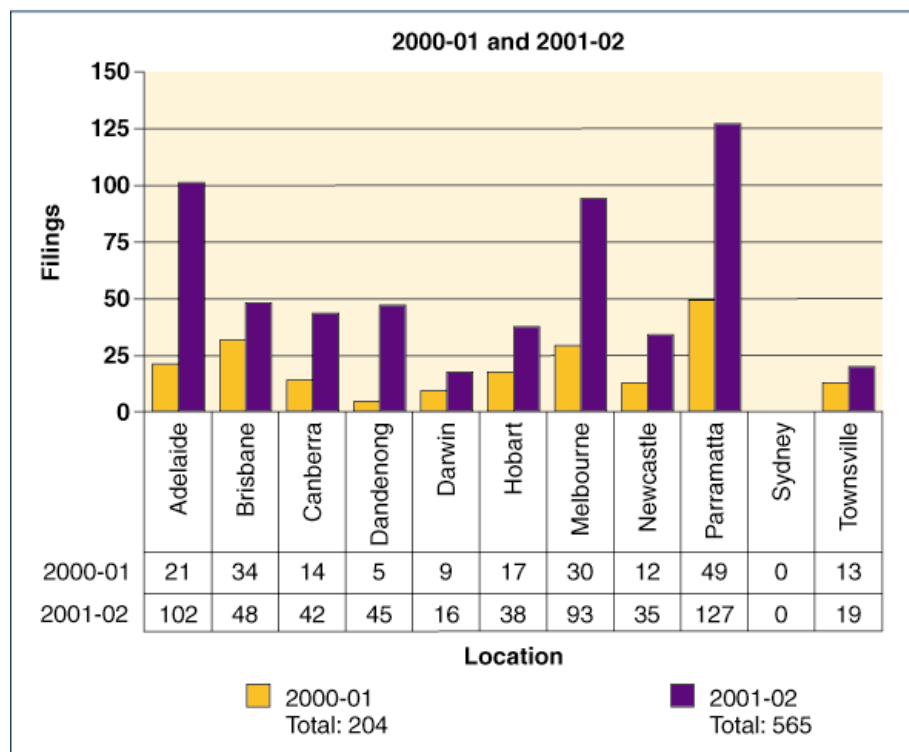
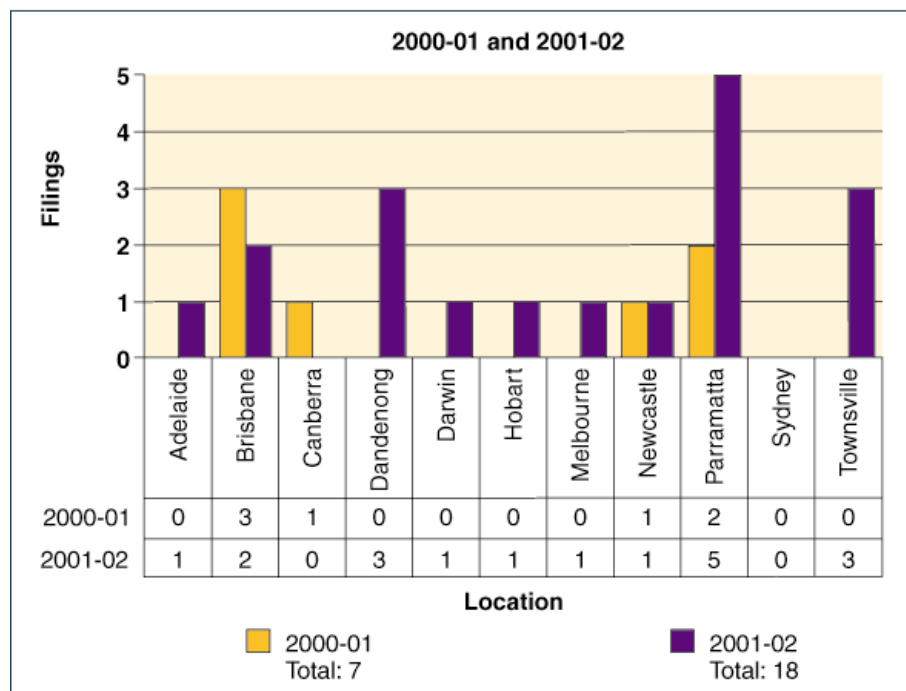


Figure 3.2: Child support matters – appeals

Legislative and other changes impacted on the court's jurisdiction and contributed to the court's increased workload in 2001-02. These legislative changes are as follows:

- Amendments to the *Family Law Regulations 1984* increased the jurisdictional limit on property matters filed in the Federal Magistrates Court to \$700 000 (from 1 January 2002).
- Amendments to the *Family Law Act 1975* pursuant to the *Family Law Legislation Amendment (Superannuation) Act 2001*, scheduled for operation from 28 December 2002, enables superannuation interests to be treated as property which can be divided on a marriage breakdown, and to bind third party trustees.
- The Family Court issued a Practice Direction, which provided that from 2 January 2002 a range of applications should be filed in the Federal Magistrates Court. This is subject to any arrangements between the Chief Justice and the Chief Federal Magistrate in relation to particular registries, and subject to there being no associated matter pending in the Family Court. The range of applications are:
 - Summary maintenance;
 - Enforcement of money orders and child support;
 - Applications and appeals under the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*; and
 - Contravention of orders.

The majority of divorce applications are now filed and heard in the Federal Magistrates Court and are heard by federal magistrates and registrars.

Figure 3.3: Divorces filed

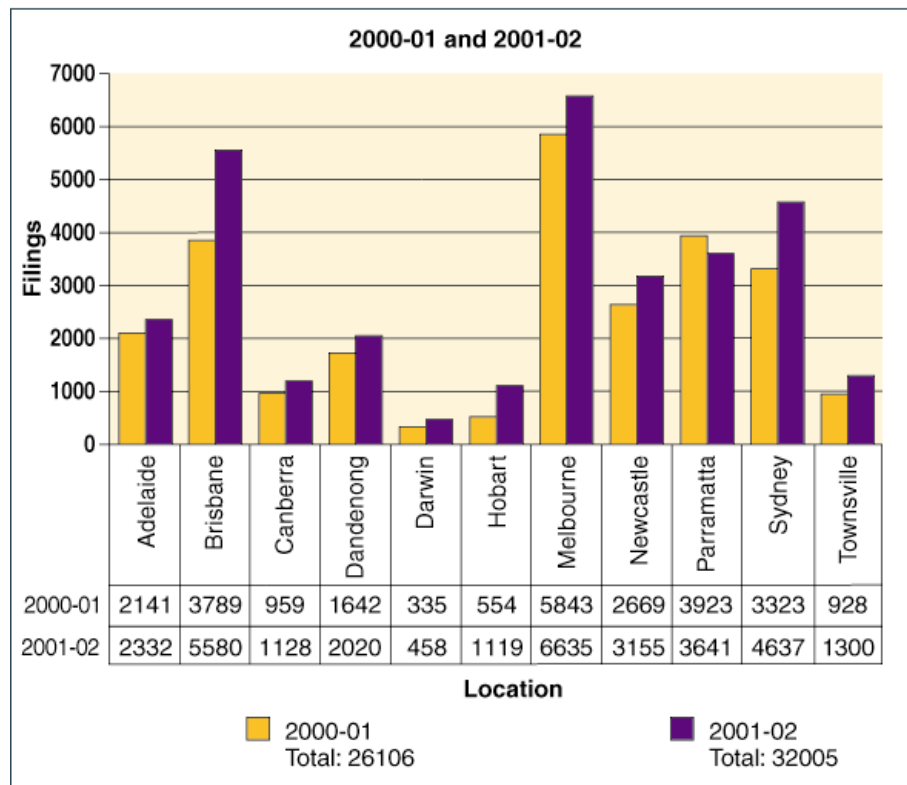
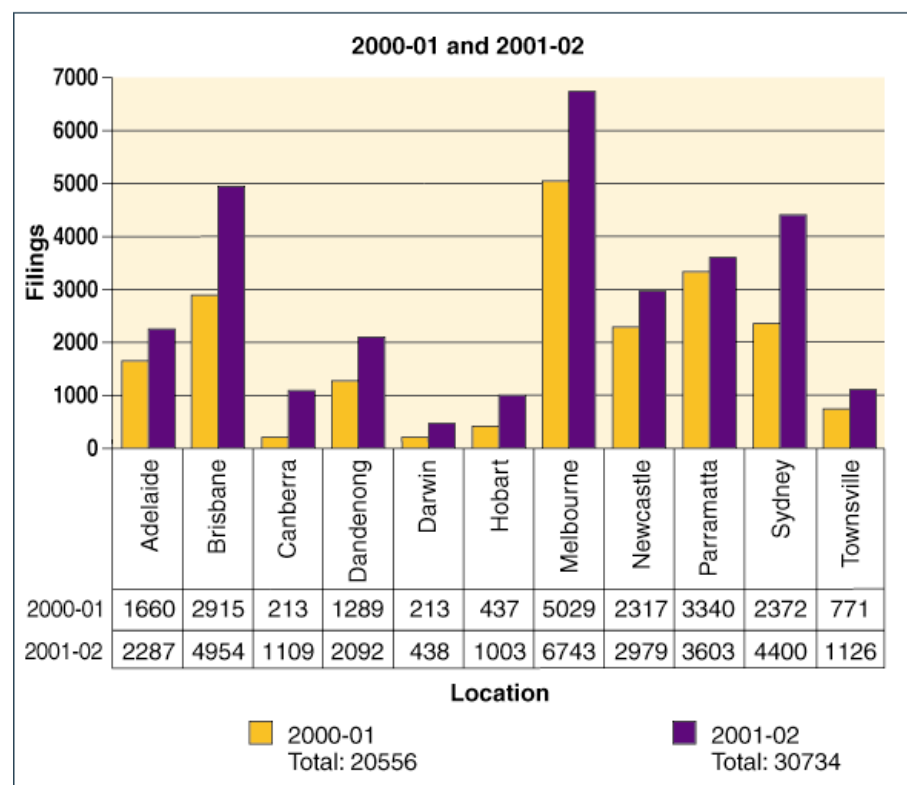
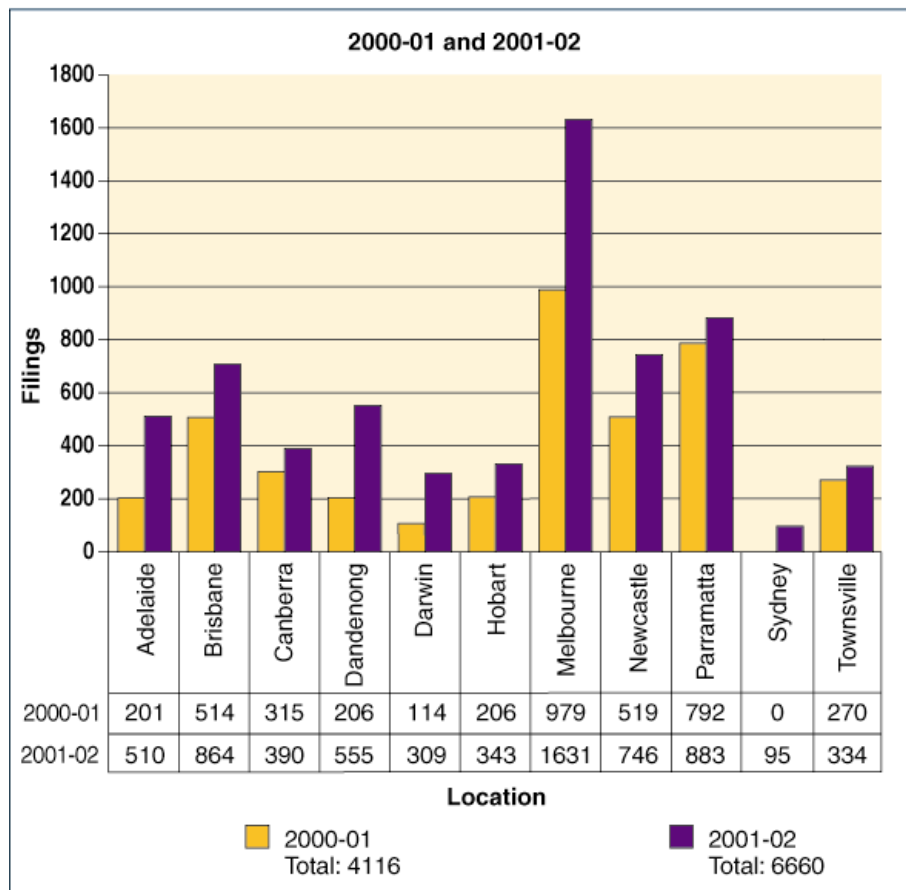


Figure 3.4: Divorces granted



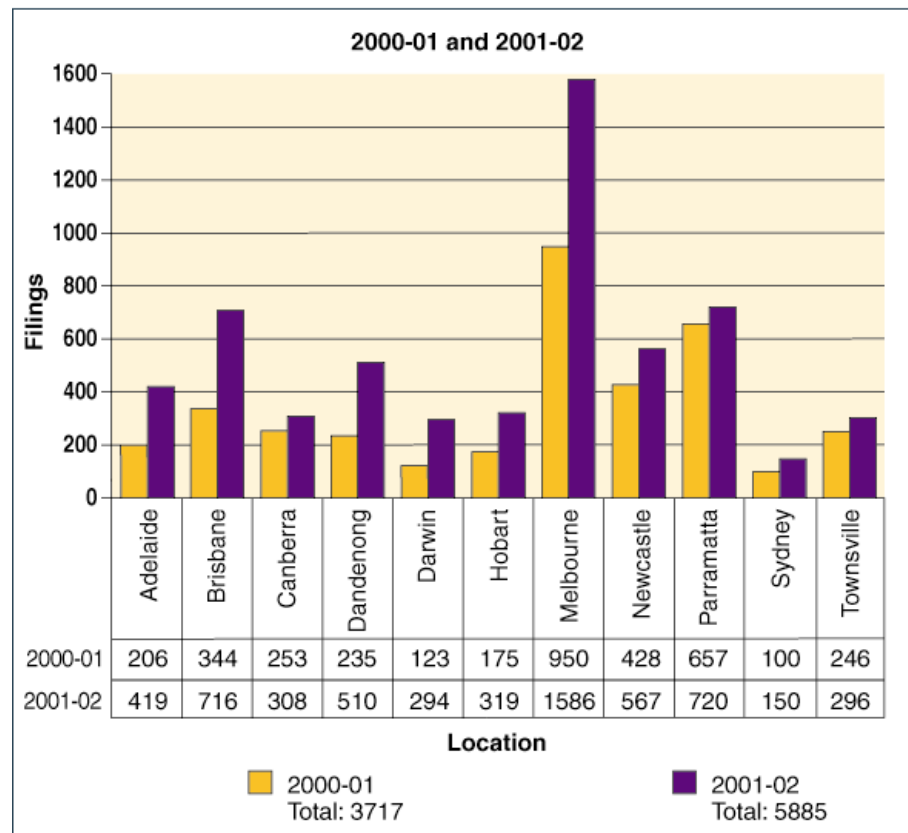
The number of applications for final orders in ancillary proceedings (such as financial and children’s matters) has increased dramatically over the past year. The Federal Magistrates Court now receives about 27 per cent of all applications made to federal courts, up from 17 per cent last year.

Figure 3.5: Ancillary applications filed



Allied to the filing of applications for final orders is a large volume of applications for interim orders. The volume of interim applications does not necessarily translate into workload as many interim applications are actually finalised with the related application for final orders.

While the majority of the decisions made by federal magistrates exercising family law or child support jurisdiction are delivered orally at the end of the hearing, there are many decisions which are reserved and delivered as a written judgment. Some decisions that have been written, including some oral decisions for which a transcript has been made, are available on the court’s web site and on legal research sites. There are currently more than 285 decisions of the court in family law and child support matters available on the court’s web site.

Figure 3.6: Ancillary applications (for interim hearing) filed

Examples of the court's work in 2001-02

The reporting of family law proceedings is subject to section 121 of the Family Law Act. A wide cross-section of family law decisions, edited for the purposes of this provision, are published on the court's web site.

In *C & C* [2002] FMCA fam 138, a father sought an injunction restraining the mother of his child from relocating interstate with the child. Federal Magistrate Walters gave an analysis of relocation law and the guidelines as set out in *A & A Relocation Approach* (2000) FLC 93-035 and restated in *H & L* (2000) FLC 93-036. Having evaluated the parties' proposals, orders were made recognising the importance of the mother's right to freedom of movement.

In *T & N* [2001] FMCA fam 222, Federal Magistrate Ryan considered a proposal for shared parenting arrangements. She considered the Australian, English and Canadian case law and concluded that such a proposal requires that there is good communication between the parents to overcome the practical difficulties associated with children living between two homes. In rejecting the proposal, the court held that there was a high level of conflict and open hostility between the parties in this case.

Migration law

Figure 3.7: Migration matters

	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01	Jan-02	Feb-02	Mar-02	Apr-02	May-02	Jun-02	Year 2001-2002
Adelaide	0	0	0	0	0	0	0	0	0	0	5	3	8
Brisbane	0	0	0	0	0	0	0	0	0	0	0	0	0
Canberra	0	0	0	0	0	0	0	0	0	0	0	0	0
Darwin	0	0	0	0	0	0	0	0	0	0	0	0	0
Hobart	0	0	0	0	0	0	0	0	0	0	0	0	0
Melbourne	0	0	0	0	0	0	0	0	4	11	20	24	59
Sydney	0	0	0	1	1	0	0	0	6	2	22	30	62
Perth	0	0	0	0	0	0	0	4	4	18	16	11	53
TOTAL	0	0	0	1	1	0	0	4	14	31	63	68	182

Since October 2001, the Federal Magistrates Court has shared concurrent jurisdiction with the Federal Court to review visa-related decisions of the Migration Review Tribunal, Refugee Review Tribunal and the Administrative Appeals Tribunal.

This was the result of significant amendments that were made to the *Migration Act 1958*, which provided a new judicial review scheme for all visa-related decisions made by these tribunals. In addition to the High Court or Federal Court, applications for judicial review can now be made in the Federal Magistrates Court.

The key mechanism in the new judicial review scheme is the privative clause, which limits the capacity of the court to make orders if it finds that an error has been made by the administrative decision-maker.

The changes to the legislation have resulted in a significant increase in the court's migration work which now represents the largest jurisdictional category in the court's general federal law defended hearing list.

Further changes to the Migration Act came into effect on 3 July 2002 by the *Migration Legislation Amendment (Procedural Fairness) Act 2002* which excluded the common law rules of procedural fairness and made it explicit that decision-makers must comply with the procedures set down in the statute.

In 2001-02, the Federal Magistrates Court participated in a Migration Users Group meeting in Sydney, during which, the court discussed issues of concern with the lawyers who are predominantly engaged in migration work in Sydney. A similar meeting is planned for Melbourne.

Examples of the court's work in 2001-02

In *Morgan v Minister for Immigration* [2002] FMCA 155, the court considered the effect of the privative clause in the context of a jurisdictional error. The case dealt with the Migration Review Tribunal's decision that related to an assessment of the applicant's ability to speak English. Federal Magistrate Driver found that the Migration Review

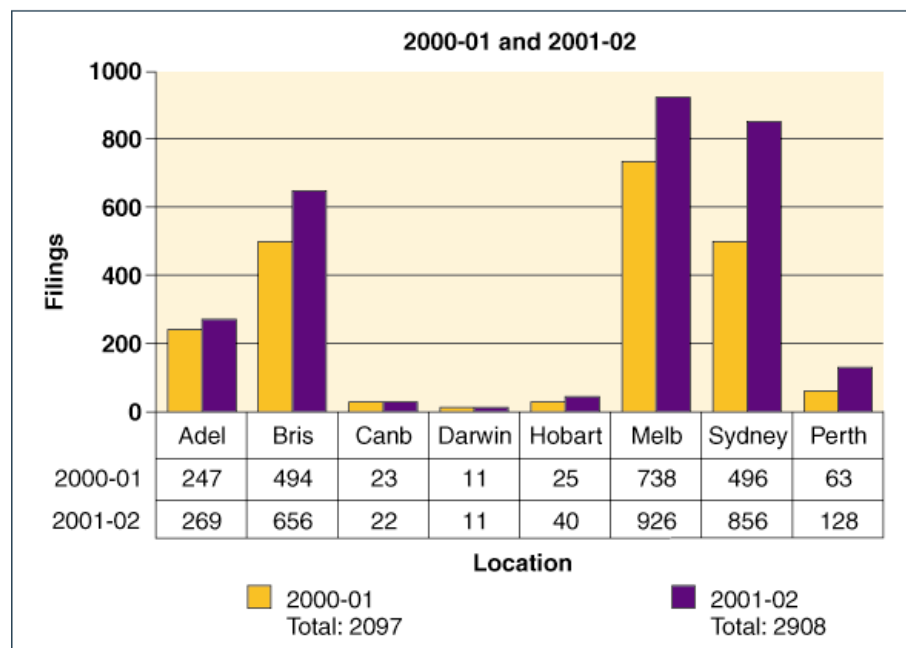
Tribunal misunderstood the relevant law and had made a jurisdictional error. In interpreting the privative clause, Federal Magistrate Driver stated:

....to find that a jurisdictional error will not be reviewable unless I could be satisfied that the jurisdictional error relates to a breach of an essential requirement in the Migration Act.....I am not able to conclude that these errors of jurisdiction were a breach of an essential requirement of the Migration Act. In the circumstances, I am prevented by the privative clause from interfering with the decision of the MRT.

Prior to the recent decision of the Full Court of the Federal Court regarding the privative clause, there was some difference of approach in the Federal Court to the interpretation of the clause. In some cases it was considered necessary first to clearly determine the scope of the operation of the privative clause before deciding whether a reviewable error had been made. In the matter of *NACH v MIMIA* [2002] FMCA 110, Chief Federal Magistrate Bryant took the approach of, first, determining whether any error was established. Only if an error is found did she consider it necessary to consider the application of the privative clause.

Bankruptcy

Figure 3.8: Bankruptcy matters



The Federal Magistrates Court has concurrent jurisdiction with the Federal Court under the *Bankruptcy Act 1966* except for the capacity to undertake trials with a jury. The court has established itself as a significant court in the bankruptcy jurisdiction and now deals with nearly all bankruptcy applications filed in federal courts.

All bankruptcy matters are heard by a registrar at the first court date with matters requiring judicial consideration then being referred to a federal magistrate. The use of Federal Court registrars (who perform functions for the Federal Magistrates Court that are similar to those of the Federal Court) ensures that existing bankruptcy expertise

continues. The Federal Magistrates Court is grateful for the work provided throughout the year by Federal Court registrars.

A number of federal magistrates are *eligible judges* for the purposes of Section 130 of the Bankruptcy Act and are authorised to issue warrants for the seizure of property of a bankrupt estate.

Examples of the court's work in 2001-02

With jurisdiction in bankruptcy and family law, the Federal Magistrates Court is in a unique position to deal with matters where both interact. In *Worrall v Kerr-Jones* [2002] FMCA 21, Federal Magistrate Baumann considered whether a payment pursuant to a property settlement was void against the trustee pursuant to section 122 of the Bankruptcy Act and whether a payment to a creditor from funds otherwise unavailable to unsecured creditors is a preference. In dismissing the application, Federal Magistrate Baumann held that payment was not a 'maintenance order' but an order for property settlement. He considered such orders were not afforded the specific exemption intended by section 122(2) of the Bankruptcy Act and a payment under a property order is void against the trustee under section 121. It was a payment by a bankrupt that did not result in a voidable preference.²

In *Cary & Anor v Owners of Strata Plan Number 7241* [2002] FMCA, the question was raised whether the bankruptcy notice was invalid because it failed to identify the correct provision under which interest was claimed. Federal Magistrate Driver found it to be a defect that could not be remedied and set aside the creditor's petition. He noted concern that the bankruptcy proceedings had been instituted in Tasmania when both the creditor and the debtors were located in New South Wales. He subsequently made no order in relation to costs and warned that trustees should be cautious before accepting instructions to act in proceedings with no apparent connection to the jurisdiction they are located in.

In *Vince v State of Tasmania* [2002] FMCA 7, Federal Magistrate McInnis considered the interaction of the Bankruptcy Act and provisions of the *Living Marine Resources Management Act 1995* (Tas). The matter involved a fishing vessel that was seized by Tasmanian fisheries officers after it had been used for the illegal collection of abalone. The application by a trustee in bankruptcy sought a declaration that the fishing vessel was owned by the bankrupt and that the ownership now vested in the trustee and, consequently, an order for delivery of that vessel should be made to him. It was held that there was no inconsistency between the Commonwealth and State legislation and that the vessel was lawfully seized. The trustee could not take any better right than that possessed by the bankrupt.

² This case has gone on appeal to the Federal Court.

Trade Practices

The court's jurisdiction in trade practices matters is limited to matters arising under Divisions 1 (misleading and deceptive conduct claims) and 1A (product safety and product information provisions) of Part V of the *Trade Practices Act 1974*. It is further limited by a cap of \$200 000 on the award of damages under the Act.

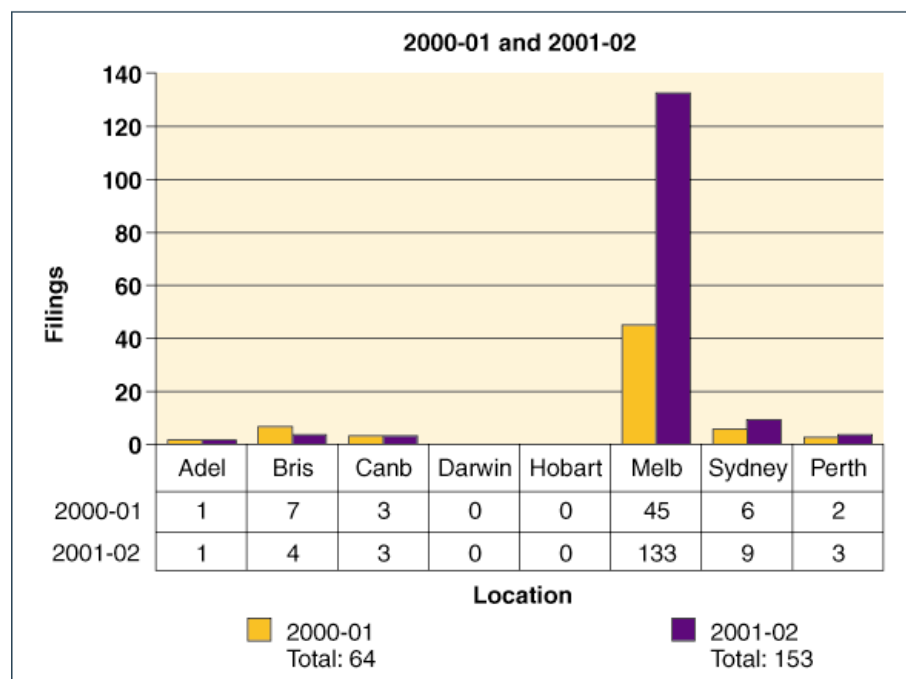
Despite these jurisdictional restrictions, the court provides an accessible forum for smaller and less complex cases involving issues under section 52 of the Trade Practices Act. It is expected that the number of trade practices applications filed in the court will increase with the growing awareness of the court's capacity to resolve such matters economically.

Examples of the court's work in 2001-02

In 2001-02, the court heard a number of trade practices cases that related to section 52 claims within a franchising context, including *Allan v Ferns Investment* [2002] FMCA 16 heard by Federal Magistrate McInnis, and *Space Planning Concepts v Elevaire* [2001] FMCA 75 heard by Federal Magistrate Raphael.

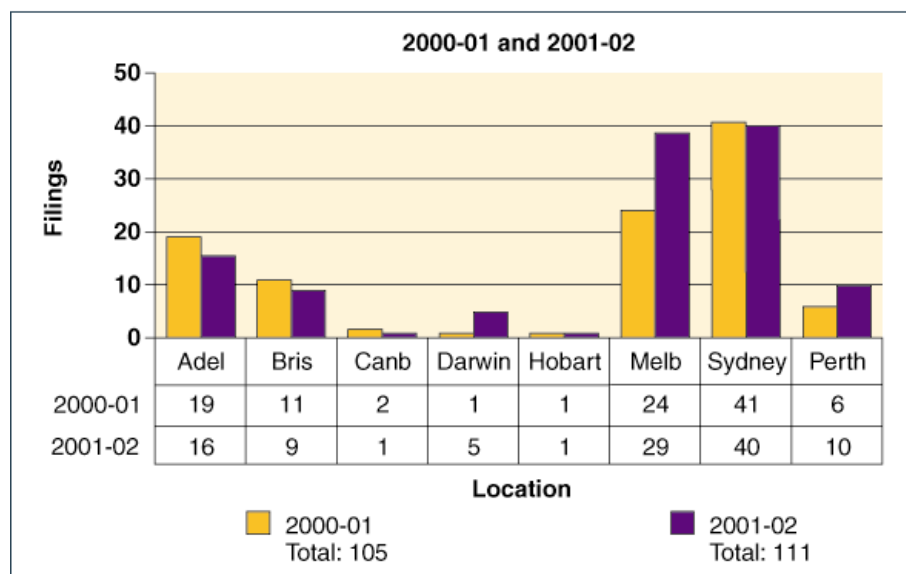
A case that dealt with section 52 in the context of employment was *O'Neill v MBF* [2001] FMCA 61. The applicant claimed that certain representations of the respondent were misleading and deceptive. Federal Magistrate McInnis held that representations made did constitute misleading and deceptive conduct but was unable to conclude that there was any loss and damage suffered as a result of this conduct.

Figure 3.9: Trade practices matters



Unlawful discrimination

Figure 3.10: Unlawful discrimination matters



The Federal Magistrates Court has concurrent jurisdiction with the Federal Court to deal with complaints under the *Sex Discrimination Act 1984*, the *Racial Discrimination Act 1975* or the *Disability Discrimination Act 1992*.

While the number of unlawful discrimination matters filed in the federal courts is relatively low, the statistics indicate that a significant proportion of these matters are being filed in, or transferred to, the Federal Magistrates Court, particularly in the Sydney registry (refer figure 3.10). The jurisdiction of the court is not limited and there is no cap on the amount of damages that can be awarded.

Examples of the court's work in 2001-02

In the matter of *Rainsford v State of Victoria* [2001] FMCA 115, Federal Magistrate McInnis identified a drafting problem in the *Human Rights and Equal Opportunity Commission Act 1986*. This meant that while the states were technically bound by prohibitions on discrimination in Commonwealth anti-discrimination law, complaints of unlawful discrimination could not be made against a State. The Government responded by introducing retrospective legislation to amend the Act.

In the case of *Font v Paspaley Pearls & Ors* [2002] FMCA 142, Federal Magistrate Raphael found that the applicant was sexually harassed and discriminated against in breach of the Sex Discrimination Act and made an award of exemplary damages.

A case that attracted considerable media attention was *Gardner v National Netball League* [2001] FMCA 50. Ms Gardner was successful in her application for an injunction to prevent the netball league from banning her from competing until the end of the season because she was pregnant. Ms Gardner had also lodged a complaint with the Human Rights and Equal Opportunity Commission alleging a breach of the *Sex Discrimination Act 1984* (Cwlth). Federal Magistrate McInnis concluded that in the circumstances the risks suggested by the respondent were not substantiated by medical evidence presented

to the court and on the balance of convenience it was appropriate that an interim injunction be granted.

In the matter of *Williams v Commonwealth* [2002] FMCA 89, the applicant alleged unlawful discrimination under the Disability Discrimination Act, claiming he was terminated by the Royal Australian Air Force because of his insulin dependent diabetes. In finding in favour of the applicant, Federal Magistrate McInnis held that there was no evidence that his disability should render him incapable of performing his normal duties. It was further held that should the applicant be required to serve in a combat situation then the provision of facilities to enable him to properly treat his disability would not impose unjustifiable hardship on the respondent.

In *Ball v Morgan* [2001] FMCA 127, the applicant failed in her claim to have been discriminated because of her disability. The court was satisfied that the respondent's behaviour toward the applicant was a result of her aggressive and offensive behaviour and not her disability. Federal Magistrate McInnis also held that the respondents conducted an activity that constituted an illegal brothel, and no order as to costs was made.

Privacy Law

The *Privacy Act 1988* was amended to extend the operation of the Act to certain private sector operations. The Act gave the Federal Magistrates Court concurrent jurisdiction with the Federal Court to enforce determinations of the Privacy Commission and private sector adjudicators. The new jurisdiction commenced on 22 December 2001.

There were no applications to the court under this legislation in 2001-02.

Administrative law

The Federal Magistrates Court has jurisdiction that is identical to the Federal Court in matters under the *Administrative Decisions (Judicial Review) Act 1977*. The court has jurisdiction to hear matters when an applicant is seeking judicial review of an administrative decision. However, in relation to appeals from the Administrative Appeals Tribunal (AAT) the jurisdiction of the Federal Magistrates Court is confined to those matters remitted by the Federal Court. Additionally, there are restrictions on the categories of appeal that the court can hear. An appeal from a decision by an AAT presidential member, for example, cannot be transferred to the Federal Magistrates Court.

Examples of the court's work in 2001-02

The cases that have come before the court covering administrative law matters in 2001-02 have related to a range of decisions in areas such as veterans' affairs entitlements and social security eligibility. In *Gentile v Secretary Department of Family and Community Services* [2002] FMCA 55, for example, the court dismissed an application for an extension of time to appeal a decision of the AAT. The AAT affirmed a decision of the Social Security Appeals Tribunal that the applicant was not a farmer for the purposes of the *Farm Household Support Act 1992*. Federal Magistrate McInnis dismissed the application on the grounds that there was no error of law on the part of the AAT and that

there was no merit in the application because the applicant was unable to satisfy the definitions in question.

In *Curacel International Pty Ltd v Department of Health & Aged Care* [2002] FMCA 15, the applicant sought the review of a decision to recall certain pharmaceutical goods. Federal Magistrate Raphael held that the decision was unlawfully made and referred the matter back to the respondent subject to certain directions. The case has a useful analysis of the law in relation to procedural fairness.

Figure 3.11: Administrative Appeals Tribunal matters

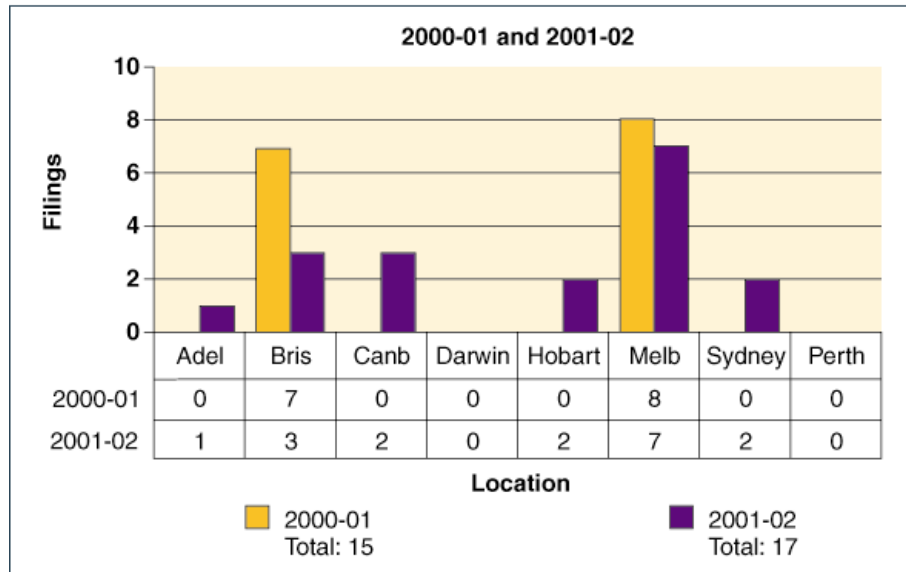
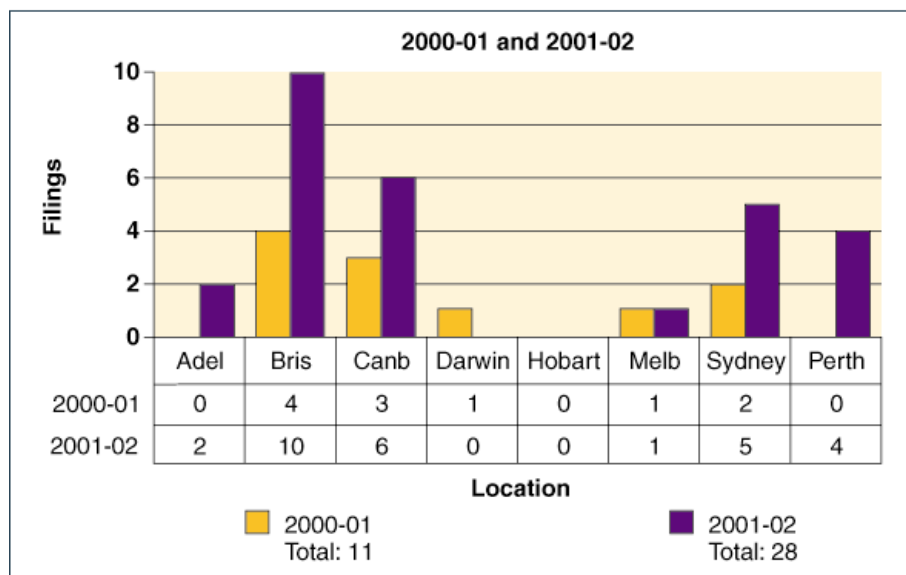


Figure 3.12: Administrative (judicial review) matters



Federal Magistrates Court Rules 2001

The Federal Magistrates Court has been mindful of the unique opportunity offered to it in starting afresh and creating new rules consistent with its legislative objectives. After extensive consultation with stakeholders, the *Federal Magistrates Court Rules 2001* (FMC Rules) commenced on 30 July 2001.

As the Federal Magistrates Court shares concurrent jurisdiction in many areas of law with the Federal Court and the Family Court it has, in some instances, relied upon the rules made by those courts. In the areas of bankruptcy, human rights and divorce, for example, the court has replicated the existing rules of the superior courts. This approach allows for some consistency with existing procedures. The FMC Rules depart significantly, however, in matters such as the conduct of defended proceedings.

The rules have been drafted to reflect the simpler and less formal case management practices of the court which aims to reduce the number of appearances and to hear most cases within six months of filing. The FMC Rules are instrumental in facilitating these aims, although the volume of the court's work, relative to the small number of federal magistrates to do that work, has made it challenging to achieve the target of hearing matters within six months.

While federal magistrates have applied the rules with flexibility, the rule requiring that all matters filed in the court (with an application or response) have an affidavit, will continue to be strictly applied. The court has found that the use of an affidavit in less complex matters helps the parties and the court to identify the issues quickly. As a result, costs are often reduced because the court's involvement in the dispute resolution is minimised.

Amendments were made to the FMC Rules on 18 April 2002 following feedback from members of the profession. As well as some minor drafting changes, amendments were made to the discretionary transfer and cost rules.

A significant feature of the FMC Rules is the cost regime. There are no rules prescribing solicitor-client costs. The FMC Rules do, however, provide a party-party cost regime that fixes costs on the basis of the events that have proceeded.

'Two day rule'

The amendments to the *Federal Magistrates Court Rules 2001* included the formalisation of the 'two day rule'.³ The new rule makes it clear that one of the factors that the court has to consider in determining whether a matter is appropriate to be continued in the Federal Magistrates Court is whether or not it is likely that the hearing of the matter will require more than two days of the court's time. The 'two day rule' aims to ensure some control by the Federal Magistrates Court over its family law workload by providing an objective indicator of the matters that are suitable for transferring to the Family Court. It has been determined that an objective criterion of two days hearing time will ensure that the court is hearing the range of matters that was intended by Parliament, including relatively simple contested residence and property proceedings.

³ Refer to sub-rule 8.02(4)(f) of the *Federal Magistrates Court Rules 2001*.

The court can also have regard to more subjective considerations, such as the court's opinion as to the complexity of the legal issues raised in the proceedings, although it is not obliged to do so.

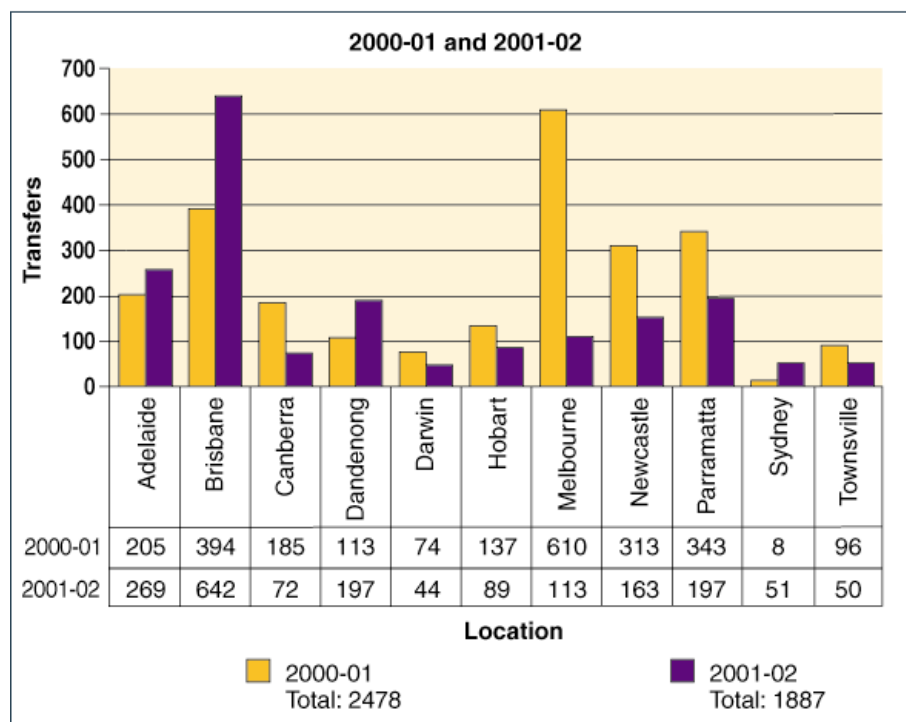
Federal Magistrates Regulations 2000

The Federal Magistrates Court's fees have increased from 1 July 2002 pursuant to the *Federal Magistrates Regulations 2000*, which provide for a biennial indexation of court fees.

Transfers

Family law and child support

Figure 3.13: Transfers from Family Court to Federal Magistrates Court

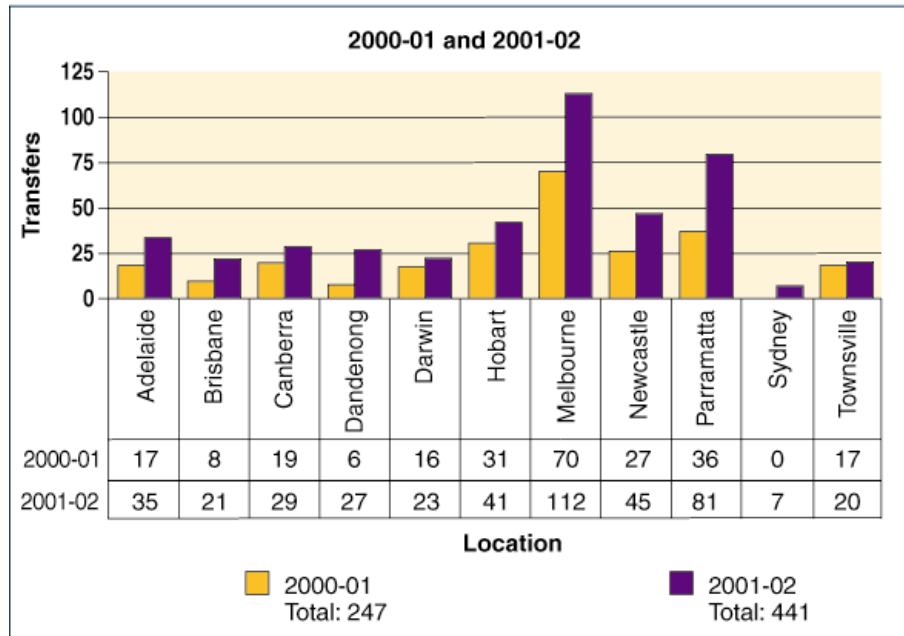


Last year's annual report noted that the court's workload was reliant on matters being transferred to the court, especially during the first six months of the court's existence. It also noted that the significance of transfers was decreasing. That trend continued in 2001-02 with transfers to the court now representing a very small proportion of the applications for final orders that come to the court. The majority of transfers are now in particular categories of work that have been identified by the Family Court as less complex, for example, child support, maintenance, contravention and enforcement applications.

Another significant category of transfers involves proceedings that have been transferred to the Family Court from state and territory courts of summary jurisdiction. Those matters cannot currently be transferred direct to the Federal Magistrates Court. The Federal Magistrates Court now receives nearly a third of all applications for final orders for family law and child support matters made in federal courts in the locations where

applications can be filed. This increase, from 17.4 per cent last year, indicates the high level of acceptance that the court can deal effectively and efficiently with less complex family law disputes.

Figure 3.14: Transfers from Federal Magistrates Court to Family Court



General federal law

There has been considerable growth in the demand for general federal law services in the court. While all areas of the court's general federal law jurisdiction have attracted increasing levels of work, the most significant growth has been as a result of the conferral of jurisdiction in migration matters in October 2001. A considerable amount of migration work is now transferred to the court from the Federal Court. Migration work now represents the largest jurisdictional category in the court's general federal law defended hearing list.

Figure 3.15: Transfers from Federal Court to Federal Magistrates Court

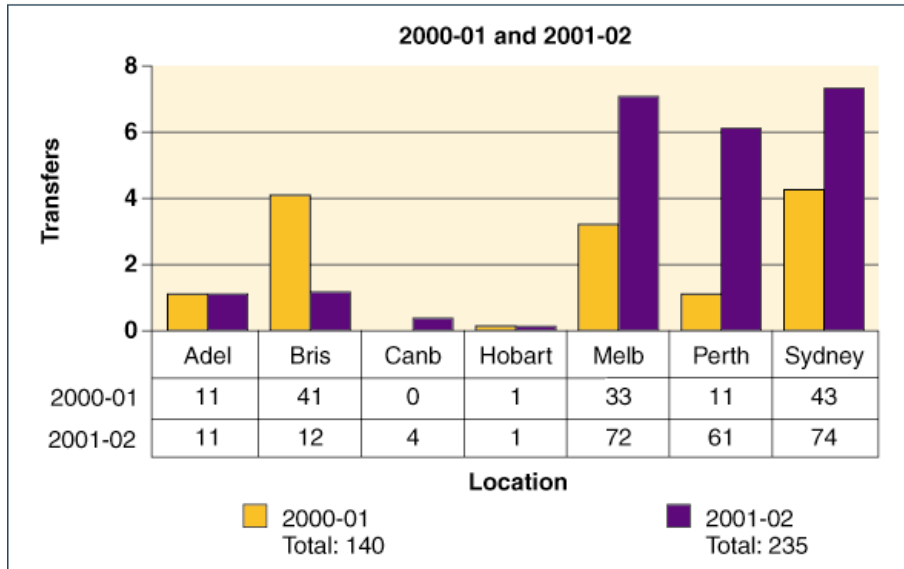
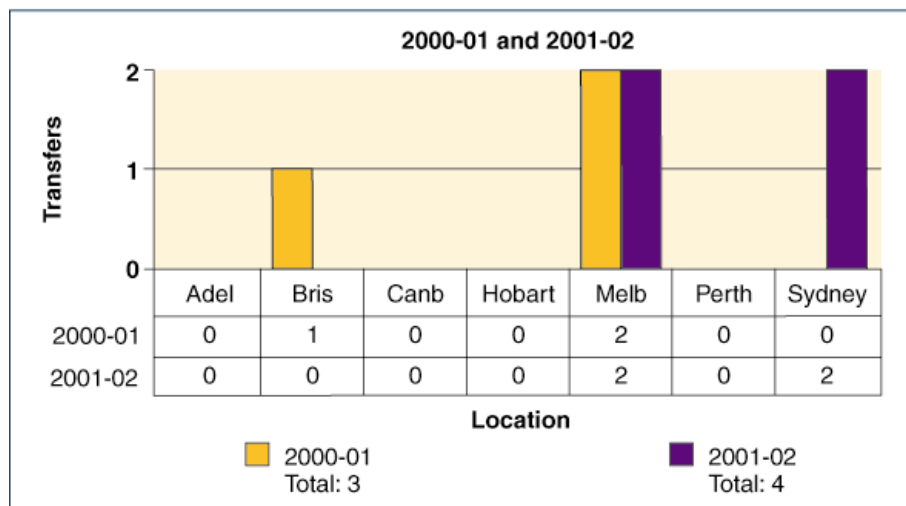


Figure 3.16: Transfers from Federal Magistrates Court to Federal Court



Casetrack

During 2001-02, the court dedicated significant resources, in conjunction with the Family Court, to developing and implementing a new case management system, Casetrack. Casetrack is an integrated case management system that was designed to replace other systems, including Blackstone. In 2001-02, the court had two staff members working full-time on the Casetrack project.

A staged implementation of Casetrack commenced in early January 2002 with the Newcastle registry first to 'go live' on 29 January 2002. It is anticipated that Casetrack will be implemented through all federal magistrate family law registries by late 2002.

The court is now working with the Federal Court to develop a system to replace the mainframe based system that now operates within that court.

Performance measures

The performance measures included in the Federal Magistrates Service Portfolio Budget Statements were:

Quality

- In the past year, less than 1 per cent of cases litigated or divorces processed were subject to complaint (see page 36).
- The time taken from filing to disposition is less than six months in 90 per cent of cases (see page 34).
- Primary dispute resolution services resolve disputes for people who are referred to them by the court in more than 60 per cent of cases (see page 42).
- Feedback from clients as to whether they are satisfied that their disputes have been handled quickly and simply (see page 36).
- Feedback from clients regarding the simplicity and effectiveness of court rules (see page 36).
- Feedback from clients regarding the availability of information about the service (see page 35).

Quantity

- Number of cases litigated and divorce cases processed (see pages 34 and 19).
- Number of applications to final orders were filed in the court (see page 19).
- Number of divorce decrees pronounced (see page 19).

- Number of counselling, mediation, conciliation and other primary dispute resolution services used (see pages 34 and 42).
- Number of information session conducted and publications issued (see pages 44, 59 and 96).

Actual performance

During the past year there has been consistent growth in the workload of the court.

Divorce applications constitute the single largest category of work done in the court. During the year, 32 061 applications were filed in the court, an increase from 26 105 in the previous year. In 2001-02, 30 743 divorce decrees were granted.

In 2001-02, 830 pre-first court date interviews for primary dispute resolution (PDR) were held for the court's family law matters, with a further 1 193 interviews held after the first court date.

Eighty-five of the court's general federal law matters were referred to mediation.

The court received 6 656 applications for final orders in family law matters, an increase from 4 112.

In addition, the court received over 1 420 applications for contravention of orders or for maintenance — an increase of over 700 applications.

In general federal law work, the court received 182 applications for migration matters, whereas none had been received in the previous year. There was a small increase in the number of unlawful discrimination matters, up from 105 to 111, and bankruptcy filings increased from 2 034 to 2 884.

A survey of files finalised in the family law area in the last quarter indicates that 72.8 per cent of all matters finalised are completed within six months of filing and 92.4 per cent within 12 months. 74.2 per cent of matters finalised have less than three court appearances and 90 per cent of family law matters finalised have less than five court appearances.

Survey on awareness and performance

For the second year, the Federal Magistrates Service undertook a survey to identify whether it was achieving its overarching objective to provide a relatively simple and accessible court service. The Federal Magistrates Service sought feedback from legal practitioners who have used the court to gain an understanding of their awareness of its services and whether their clients were satisfied that disputes had been handled quickly, efficiently and economically.

Summary of results

The survey sought responses to three major issues, they were:

- awareness of services provided by the Federal Magistrates Service;
- the use of primary dispute resolution; and
- satisfaction with services provided by the court.

Overall, 94 per cent of respondents rated the service as either good, very good or excellent. Most respondents (73 per cent) had been involved in family law matters in the court, which reflects the proportion of the work done by the court.

Awareness of the services provided by the Federal Magistrates Service

Availability of information

The survey results indicate an increase from the previous year in the level of satisfaction in the availability of information. 79 per cent of respondents indicated that there was sufficient information about the Federal Magistrates Service compared with 75 per cent the previous year.

Some respondents indicated areas of improvement such as the distribution of brochures. The Federal Magistrates Service will continue to pursue the development of public information in 2002-03.

For the first time, questions were asked regarding satisfaction with the court's web site, with the majority of respondents (87 per cent) indicating the web site is good or very good. Many respondents indicated that they used the web site for specific functions such as court listings or judgments. The provision of 'how to' features for self represented litigants was suggested to enhance the web site. The court will pursue this as part of its self represented litigants project.

Information on proceedings in the court

Approximately 88 per cent of respondents believed the court had kept them sufficiently informed about progress in matters they were involved in. This was a marginal increase from the previous year's findings. Positive comments were received in regard to the efficiency and helpfulness of staff and the court's docket system and procedures.

Satisfaction with the services provided by the Federal Magistrates Service

Overall rating of service

Approximately 24 per cent rated services by the court as excellent, 30 per cent very good, and 40 per cent good.

Quicker and simpler outcomes for clients

Approximately 76 per cent of respondents believed the Federal Magistrates Service was meeting its objectives of providing a simpler and more accessible forum. It is believed that the reduction from the previous year's results of 88 per cent can be attributed to the popularity and increased demand for the court's services, creating a perception that the service was slower. It was acknowledged, however, that the court's procedures were less bureaucratic and its personnel more helpful than other courts. In some locations, respondents raised concern with the time taken to deliver judgments.

Extent to which the Federal Magistrates Service operates informally

In line with the previous year's results, many respondents praised the federal magistrates for their ability to conduct proceedings informally, without sacrificing the dignity of the court. Approximately 77 per cent of the respondents believed that the Federal Magistrates Court had been less formal than superior courts. This was a reduction from 85 per cent experienced in last year's results.

Some respondents expressed concern that proceedings may be too informal, particularly with evidence. The *Federal Magistrates Act 1999* requires that the court act without undue formality. The federal magistrates are conscious of this requirement and will continue to monitor this area to ensure a balance is being achieved.

In response to the question of whether innovations adopted by the court were helpful, respondents commented favourably to the absence of formal pleadings, use of callovers, and email contact.

The main issue identified in comments by practitioners related to the requirement for affidavits in some matters. The requirement for an early affidavit ensures that the issues that are in dispute can be quickly identified by the court and by other parties. Early identification of these matters often results in shorter and less costly proceedings.

Complaints

Complaints and compliments are viewed as providing valuable information about community perceptions of the court's work, client satisfaction and service delivery. For this reason, one of the performance standards of the court is that less than one per cent of cases litigated or divorces processed are subject to complaint. The number of complaints filed is well within this performance benchmark.

Many complaints were in response to an adverse decision and very few raised an issue regarding the administration of the court. The court's administration is unable to review the vast majority of complaints because it is the function of the appeals process to provide an opportunity to review judicial decision-making. Alternatively, some complaints should be more appropriately referred to state or territory legal bodies or professional practice tribunals.

In 2001-02, 45 complaints were received. They related to registry issues (4), advice about court procedures (9), the conduct of proceedings by the federal magistrate (9), delays in the delivery of reserved judgments (5), primary dispute resolution services (5), the court's decision (7), refund of fees (1), enforcement of orders (1), the conduct of a lawyer (1), an allegation of perjury (1), and complaints by third parties who are purporting to act in the interests of a party (2). Not all of these matters are complaints that can be dealt with by the administration of the court.

The court has developed complaint-handling procedures to ensure that complaints are dealt with expeditiously and with a degree of urgency. The court has also developed a protocol to assist in responding to complaints about delays in the delivery of judgments. The protocols provide:

- A benchmark for the handing down of reserved judgments within six weeks of hearing or receipt of submissions in writing. A judgment that is outstanding for more than eight weeks will be regarded as outside the guidelines for delivery of judgments and reportable as outstanding.
- That complaints about delivery of a reserved judgment may be directed to the president of the appropriate law society or bar association. The president will then refer the inquiry to the Chief Federal Magistrate for attention without disclosing which of the parties raised the matter.

The court also receives favourable correspondence in relation to its work, particularly in regard to the fair and unbiased manner in which proceedings are undertaken by the federal magistrates.

Anyone may lodge a complaint with the court. If the complaint relates to specific proceedings, complainants are asked to provide a file reference number.

Complaints should be in writing and should be addressed to:

Chief Executive Officer
Federal Magistrates Service
305 William Street
Melbourne Vic 3000

Customer service line

During 2001-02, the court's customer service line received an average of 62 calls per day, with Monday being the busiest day.

The nature of the enquiries varied but approximately 30 per cent of the calls related to divorce inquiries, with a further 10 per cent of callers requesting divorce information and application kits. Approximately 47 per cent of callers were identified as self represented

litigants. Chambers staff generally deal with queries on individual cases that are on a federal magistrate's docket.

Appeal provisions

Appeals from the Federal Magistrates Court go directly to the Full Court of the Federal Court or Family Court. There is no intermediate step of appeal to a single judge, although the Chief Justice of the respective appeal court has discretion for the appeal to be heard by a single judge. This avoids the cost implications in comparison with an appeal bench of three judges. Any further appeal is to the High Court.

General federal law

There were 66 appeals from the Federal Magistrates Court to the Federal Court for the year 2001-02. At the end of 2001-02, 33 appeals were still current, two were discontinued, 21 dismissed, one set aside, one resolved by consent and eight were allowed.

In only two instances was the appellate jurisdiction of the court exercised by other than a single judge.

Family law and child support

During the year, 83 appeals were filed from decrees of the Federal Magistrates Court. Of these appeals, 34 have been heard, 16 (47 per cent) were allowed and 18 (53 per cent) were dismissed. The jurisdiction of the court, in relation to all appeals heard during the year, was exercised by a single judge. Four applications for leave to appeal were filed, none were granted and two were dismissed.

There is provision in the *Family Law Act 1975* enabling a federal magistrate to refer a question of law to the Full Family Court. In the event of such a referral, the federal magistrate must state the facts and question in the form of a special case. To date, there have been two case stated matters referred to the Full Court of the Family Court.

Authority of superior court single judge decision

In *NAAT & NABB v Minister for Immigration* [2002] FMCA 136, Federal Magistrate Raphael considered whether the court is bound by decisions of a single judge of the Federal Court. Federal Magistrate Raphael concluded:

Such judgments would be of the highest persuasive authority. The tradition of comity would encourage a Federal Magistrate to follow the decisions of a single judge of the Federal Court except in a situation where the Federal Magistrate believed and was able to demonstrate that the original judgment was wrong. Where there are several judgments of single judges of the Federal Court which are in opposition to one another the Federal Magistrate, like a Federal Court Judge has the option of choosing which of the conflicting judgments he or she prefers. On the other hand, when the Federal Court, either constituted by a Full

Bench of five, three or one have decided on an appeal from the Federal Magistrates Court or a single Judge of the Federal Court, Federal Magistrates are bound.

Transcript arrangements

All matters before the court are recorded, except for uncontested dissolution and bankruptcy matters. A transcript, however, is provided only when ordered by the court. The court will generally order transcripts only in long trials or where the judgment has been delivered verbally at the conclusion of a hearing. The court does not order transcripts in all circumstances but a party to an action may purchase a copy of the transcript from the court's contracted provider.

The court's contracted recording and transcription providers undertake the recording service. The contract providers are Spark and Cannon in Victoria, South Australia, Western Australia and Tasmania with National Transcription Services in New South Wales and the Northern Territory. Auscript provide services for general federal law matters conducted at the Commonwealth Law Courts in Sydney.

Working in rural and regional Australia

The Federal Magistrates Court is dedicated to servicing the judicial needs of rural and regional Australia. In addition to its ten principal locations, the court conducts regular circuits to 24 towns and cities throughout Australia.

This service underwent considerable expansion in 2001-02 with additional locations added to the circuit roster. In addition, the court sat in a number of non-circuit locations including Mudgee, Port Macquarie and Dalby.

The court made a considerable investment in new technology in 2001-02. This has enabled the court to provide a more accessible and efficient service throughout regional Australia. Audio and video links were used to conduct hearings in remote locations, prepare for circuits and service areas during times that were outside scheduled circuit times.

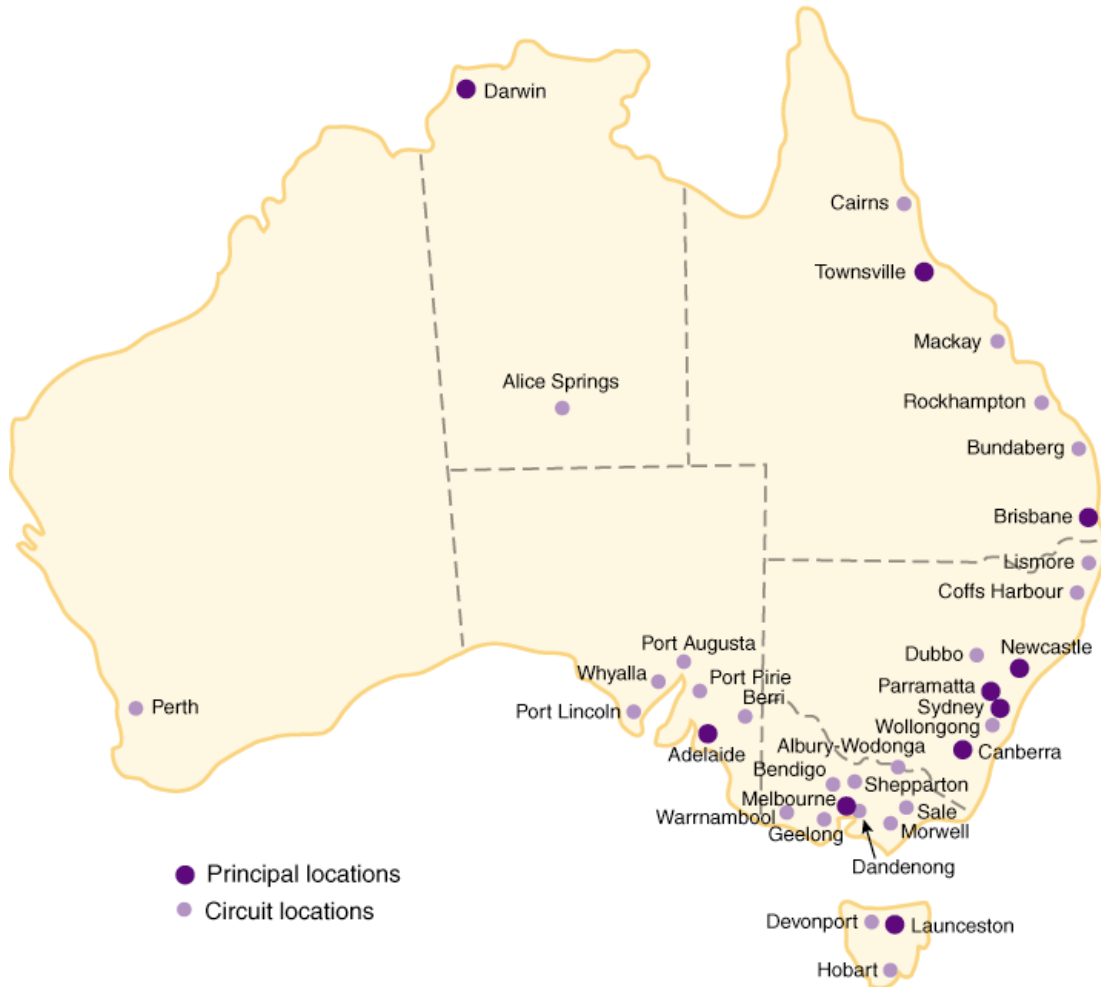
2001-02 circuit locations and details

The circuit program was established by the Federal Magistrates Court to provide additional judicial support throughout Australia. In 2001-02, the court serviced over 20 towns and cities as part of its circuit program.

2001-02 circuit locations and details

Victoria	Regular circuits were conducted in Warrnambool (sitting at Hamilton), Morwell, Geelong, Bendigo and Shepparton. The Federal Magistrates Court also sat in Dandenong for two and a half weeks per month.
New South Wales	Regular circuits were conducted in Dubbo, Lismore, Coffs Harbour and Wollongong. Special fixtures were conducted in Mudgee and Port Macquarie.
Queensland	The Federal Magistrates Court circuted to Mackay, Rockhampton, Cairns and Bundaberg. Special fixtures were held at Dalby and Gladstone.
Tasmania	Cases were heard in Devonport, Hobart and Launceston.
South Australia	The Federal Magistrates Court circuted to Berri, Port Augusta, Port Lincoln, Port Pirie and Whyalla.
Northern Territory	The appointment of a federal magistrate in Darwin has seen the court commence regular circuits to Alice Springs.
Western Australia	The court sits only in its general federal law jurisdiction in Perth because the state family court exercises family law and child support jurisdiction exclusively in that state. In Perth, the court sits for one week during each circuit. There are regular circuits, every two months, attended by federal magistrates from Melbourne and Sydney. In 2001 the court scheduled seven circuits throughout the year together with one special fixture. In 2002 the court scheduled eight sittings and arranged an additional special fixture of one week. In 2003 a further eight circuits have been scheduled with the opportunity for special fixtures to be arranged at short notice.

Figure 3.17: Federal Magistrates Court principal and circuit locations



Primary dispute resolution

Primary dispute resolution (PDR) refers to the procedures and services for resolving disputes other than through litigation. This may include counselling, mediation or conciliation. The court places significant priority on this process which provides an affordable option for resolving disputes. It also allows greater personal control and management of the process and the outcome.

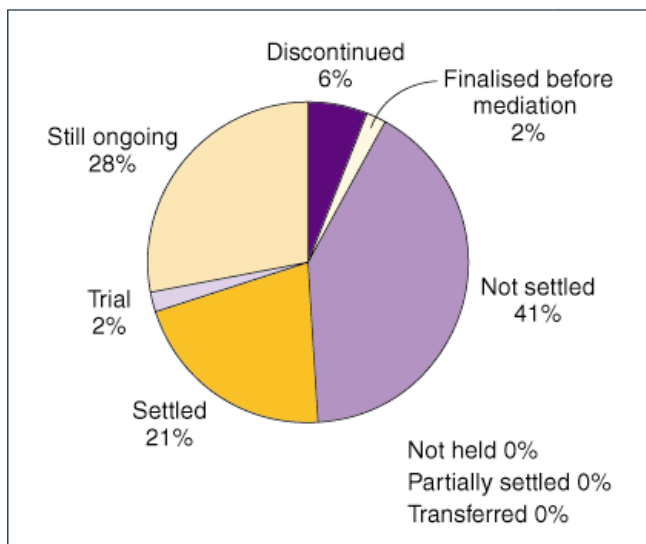
PDR services are provided to the Federal Magistrates Service by the Federal Court, the Family Court and community based organisations.

General Federal law

A federal magistrate may refer a matter to mediation after considering whether mediation is a suitable process to help resolve the dispute. A registrar of the Federal Court or a private mediator may conduct the mediation. To date, registrars of the Federal Court have conducted the vast majority of the mediations in the court's federal law jurisdiction.

In 2001-02, 85 matters were referred to mediation. Of those, five were discontinued, two were finalised before mediation, 34 did not settle, 18 settled, and two proceeded to trial. 24 were ongoing at the end of the 2001-02 financial year.

Figure 3.18: General federal law mediations



Family law

In family law matters, the focus of the court's PDR program is to deliver relevant and convenient services to its clients. These services are provided by the Family Court and community based organisations.

On the first court date a federal magistrate may order the parties to a PDR process. This is an order to either counselling (for children's matters) or conciliation (for property matters). The federal magistrate will assess which PDR process is most suitable for the

parties, based on geographic convenience, suitability of programs and timing of appointments.

Mediation and conciliation services provided by the Family Court

The mediation section of the Family Court provides mediation services and prepares most family reports for the court. Deputy registrars of the Family Court generally conduct conciliation conferences in property matters for the court. In 2001-02, 170 conciliation conferences were conducted for Federal Magistrates Service matters.

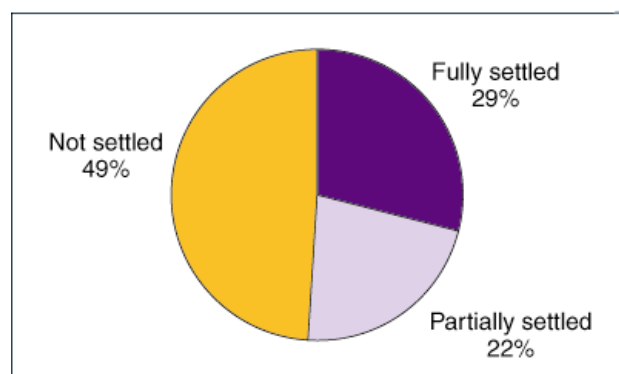
Parties are ordered to attend mediation at the time of filing documents to ensure they have attended one form of PDR before they first appear before the court. In 2001-02, 830 pre-first court date interviews were held for the Federal Magistrates Service.

On the first court date, the parties may be ordered to further PDR at the same time as the matter is set down for a final hearing. A total of 1 193 interviews (post-first court date) were conducted for the Federal Magistrate Service in 2001-02.

Mediation, counselling and conciliation services provided by community based organisations

The Federal Magistrates Service has agreements with 35 community based organisations for the delivery of PDR services on a fee-for-service basis. The services provided by the organisations include counselling, mediation and conciliation. Two organisations also provide family reports. The agreements are for two years from 1 July 2001 and will be evaluated at the end of those two years.

Figure 3.19: Primary dispute resolution (PDR) referrals



Process of referral to community based organisations

In 2001-02, 611 matters were referred to PDR with community organisations with 485 returned to the court as completed. Of those, by the next court date, 140 matters had settled, 109 matters had partially settled and 236 matters had not settled.

When parties are ordered to attend PDR with a community based organisation the court chooses and arranges the PDR service provider. This is done through a centralised booking system in the court's administrative office located in Melbourne. There is no cost

to the parties if they are ordered to attend PDR at a community based organisation. Participants are provided with information explaining the process.

PDR community information sessions

The Federal Magistrates Service commenced a series of PDR information sessions in 2001-02, which were held for the legal profession in Mackay and Townsville. The sessions provided information to the legal profession about the PDR processes in the Federal Magistrates Service and involved the community based organisations in the region. The sessions will continue to be held during 2002-03.

Family reports

During 2001-02, the Family Court prepared 561 family reports for the Federal Magistrates Service, including 205 reports by welfare officers appointed under Regulation 8 of the Family Law Regulations.

The Federal Magistrates Service also has arrangements with two community agencies and a number of private practitioners appointed to prepare family reports. Twenty-nine reports were prepared for the court under these arrangements in 2001-02.