

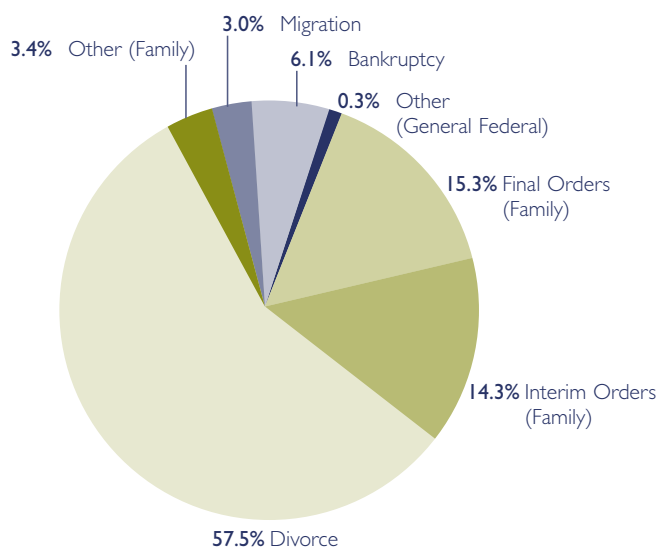
PART THREE Performance

The work of the Court by jurisdiction

The Federal Magistrates Court's jurisdiction encompasses both general federal law and family law. While family law still accounts for ninety per cent of filings, general federal law applications are increasing as the Court gains the confidence of the legal profession and the public, and as new jurisdictions are added and new federal magistrates appointed.

Figure 1 National statistics for Federal Magistrates Court filings

	Total	% of Total
FAMILY LAW		
Final Orders	12,399	15.3%
Interim Orders	11,578	14.3%
Divorce	46,512	57.5%
Other	2,798	3.4%
Total Family Law	73,287	90.6%
FEDERAL LAW		
Bankruptcy	4,900	6.1%
Migration	2,429	3.0%
Other	232	0.3%
Total Federal Law	7,561	9.4%
Grand Total	80,848	100%



General federal law

Jurisdiction in general federal law matters is conferred on the Court under subject-specific legislation and is concurrent with the jurisdiction of the Federal Court. The Court is increasingly becoming a court of general federal law jurisdiction, with jurisdiction continuing to expand in 2005-06 to include admiralty law and workplace relations and increased trade practices jurisdiction. As part of the anti-terrorism legislation, the Court is now an issuing court for the purpose of the control order regime. Amendments to the *Migration Act 1958* by the *Migration Litigation Reform Act 2005* ('Migration Reform Act') mean the Court now hears most first instance judicial reviews of migration matters.

The passage of the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006* ('Jurisdiction Amendment Act'), which commenced on 4 May, was of particular significance.

This Act included the conferral of jurisdiction on the Court in relation to any matter transferred to it by the Federal Court or Family Court, as recommended by the 2003 Review of the Federal Magistrates Court. This review of the first two years of the Court's operation found the Court to be successfully dealing with less complex family and general federal law disputes.

The Explanatory Statement accompanying the Jurisdiction Amendment Act stated:

It was always the Government's intention that the FMC would deal with a wide range of lower level work of the Family and Federal Court, and thus provide more time and resources in the superior courts to deal with more complex matters. The Bill also provides further opportunities for litigants to take advantage of the streamlined and accessible forum offered by the FMC.

The Court also has jurisdiction with respect to associated claims.

In 2005-06, 7561 general federal law applications were made to the court, representing a 16 per cent increase on 2004-05. The majority of applications were bankruptcy and migration filings (4900 and 2429 respectively), but increases in other areas are expected in 2006-07 given the Court's new jurisdiction.

There were marked variations between 2004-05 and 2005-06 in terms of regional filings and the type of matters filed. Decreases in new filings occurred in Darwin (20 per cent) and Hobart (33 per cent) but increases, some significant, occurred in all other locations: Adelaide (40 per cent), Brisbane (13 per cent), Canberra (33 per cent), Melbourne (10 per cent), Perth (39 per cent) and Sydney (16 per cent). There was a slight decline in new filings of migration matters (1 per cent) and more significant decreases in new filings of trade practices (15 per cent) and unlawful discrimination (7 per cent) matters, but significant increases in new filings of bankruptcy (27 per cent) and copyright (14 per cent) matters.

The Court was able to deal with matters more efficiently and to finalise more outstanding matters, as shown by the increase in matters that were finalised (7831).

Figure 2 General federal law applications filed in the Federal Magistrates Court in 2005-06

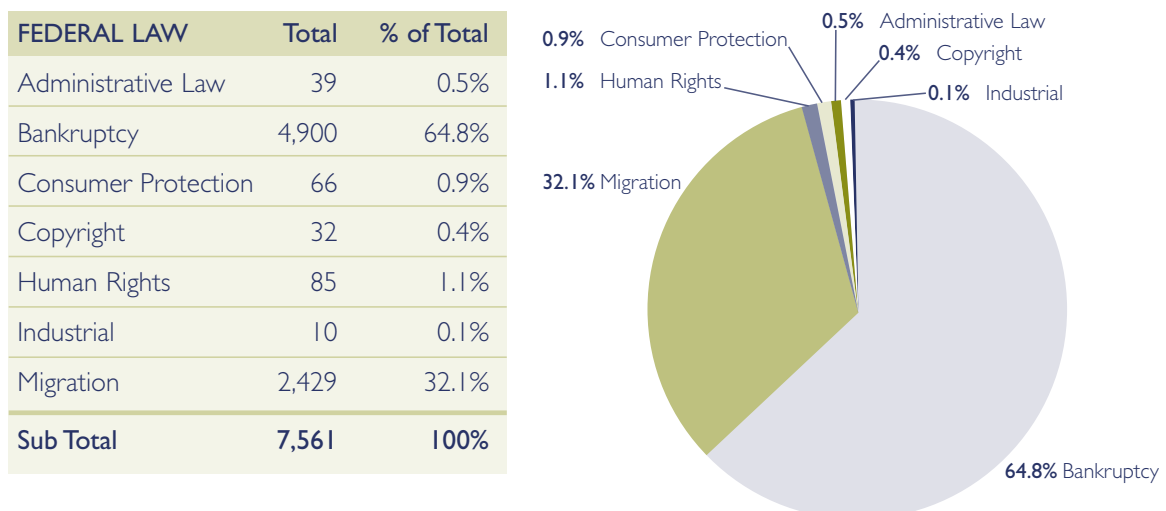
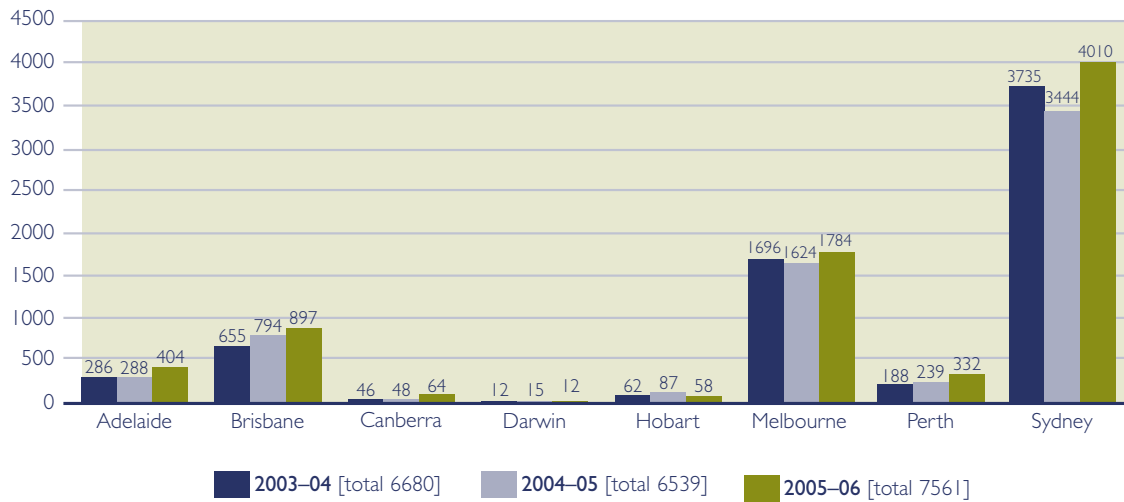


Figure 3 Total number of general federal law applications filed in the Magistrates Court in 2005-06 by location



Admiralty law

Admiralty law jurisdiction was conferred on the Court by the Jurisdiction Amendment Act and commenced on 4 May 2006. It is expected the Court will provide an alternative venue for the hearing of smaller cargo claims within the federal system. The admiralty and maritime work of the Court is limited to proceedings under ss.9, 27 and 28 of the *Admiralty Act 1988* (Cth) and any matters referred by the Federal Court. It is expected parties will always seek an early resolution of matters and consider mediation for the resolution of claims in a speedy and inexpensive manner. It is envisaged that the admiralty work of the court, in conjunction with the more extensive Federal Court jurisdiction, will result in an integrated Federal Admiralty and Maritime Jurisdiction for matters of all types and sizes.

A notice has been issued setting out national arrangements whereby nominated federal magistrates are listed to undertake the conduct of admiralty matters. A copy of this notice is on the Court's website.

Administrative law

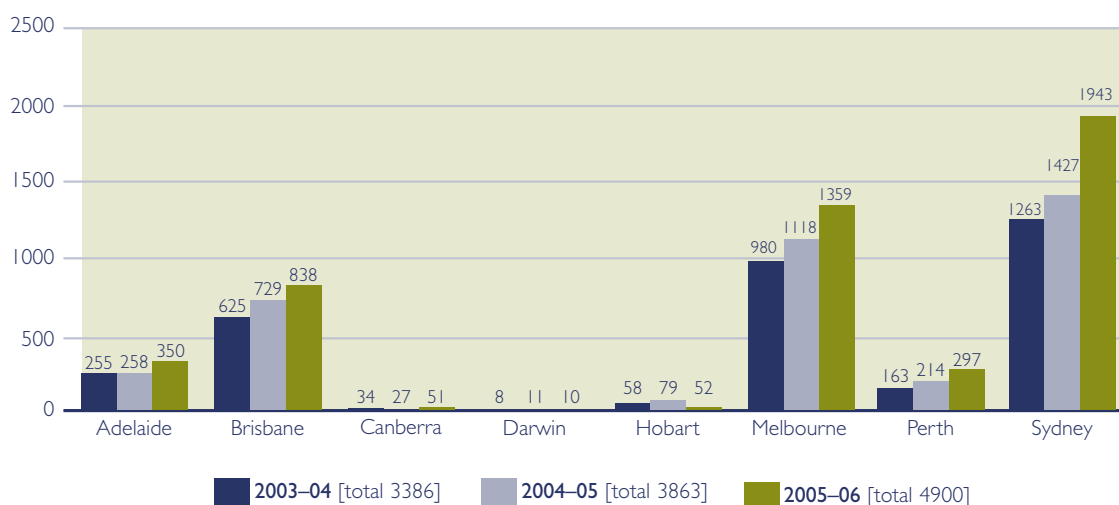
The number of applications in the Court in administrative law is small.

In relation to appeals from decisions of the Administrative Appeals Tribunal, the Court has jurisdiction only upon remitter from the Federal Court. In addition, decisions by Presidential Members (including Deputy Presidents) cannot be transferred. The number of matters transferred is not large.

There is no similar restriction on the jurisdiction of the Court to hear applications under the *Administrative Decisions (Judicial Review Act) 1977* and the Court has concurrent jurisdiction in such matters with the Federal Court.

Bankruptcy law

Figure 4 Number of bankruptcy applications filed by location



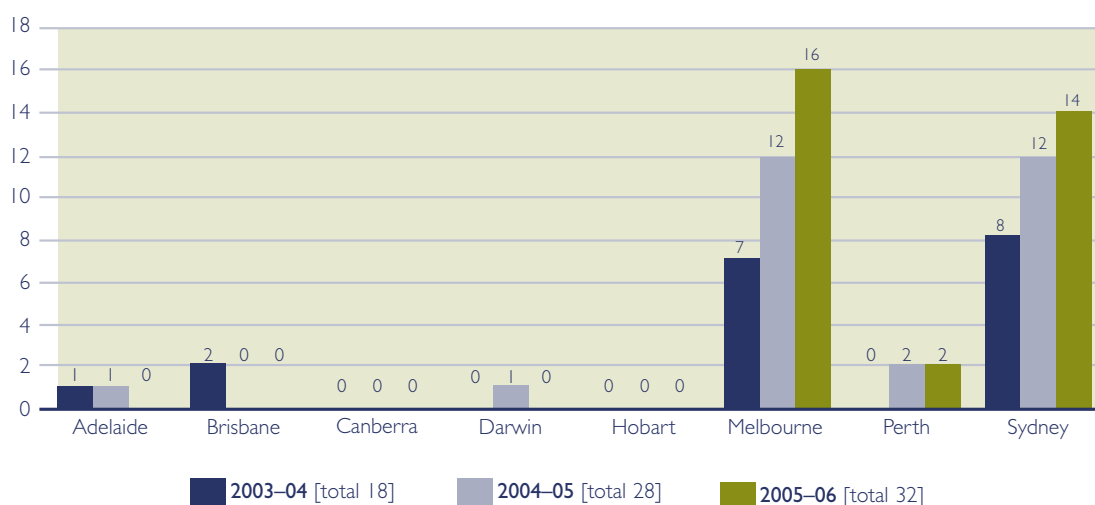
The Court continued to deal with most bankruptcy applications filed, with 94 per cent of applications in 2005-06 compared to 92 per cent in 2004-05. There were 4900 bankruptcy applications, accounting for 64.8 per cent of applications in general federal law matters and 6.1 per cent of all filings in the Court. This was a 27 per cent increase over the previous year. The Court acknowledges the significant role of the registrars in facilitating the work of the Court in its bankruptcy jurisdiction.

In 2001, the Federal Court and the Federal Magistrates Court initiated a joint project to develop harmonised rules for proceedings under the Bankruptcy Act. Following consultation, the new harmonised Bankruptcy Rules commenced on 6 February 2006 in the Federal Magistrates Court and the Federal Court, *Federal Magistrates Court (Bankruptcy) Rules 2006* and *Federal Court (Bankruptcy) Rules 2005*, respectively.

The High Court decision in April 2006 of *Adams v Lambert* [2006] HCA 10 (*Adams*), was of some significance in overturning the 'form over substance' approach adopted by the majority in *Australian Steel Company (Operations) Pty Ltd v Lewis* [2000] 109 FCR 33 (*Australian Steel*) where the High Court agreed that *Australian Steel* should be overruled. Section 306 of the Bankruptcy Act provides that a bankruptcy notice is not invalidated by a formal defect or an irregularity, unless substantial injustice has been caused. An example of a decision made in the Court following the High Court decision in *Adams* is *Crown Diagnostic v Sood (No 2)* [2006] FMCA 265 (on appeal). In this case, the Court considered whether a proceeds of crime order, which prevented the debtor from disposing of her interest in property, invalidated the bankruptcy notice by staying proceedings. The Court held that the effect of the order was not to prevent payment of the judgment debt as the *Proceeds of Crime Act 2002* has provision for a debtor to apply to release moneys for the payment of the debt.

Copyright

Figure 5 Number of copyright applications filed by location



The number of copyright applications filed in the Court is relatively small. Only 32 applications were made in 2005-06, 0.4 per cent of all general federal law applications, but a 14 per cent increase on the previous year. The jurisdiction is limited to civil claims and matters under Parts V, VAA, IX and section 248] of the *Copyright Act 1968*, such as claims for injunctions and damages for breach of copyright. The Court also has jurisdiction with respect to associated claims.

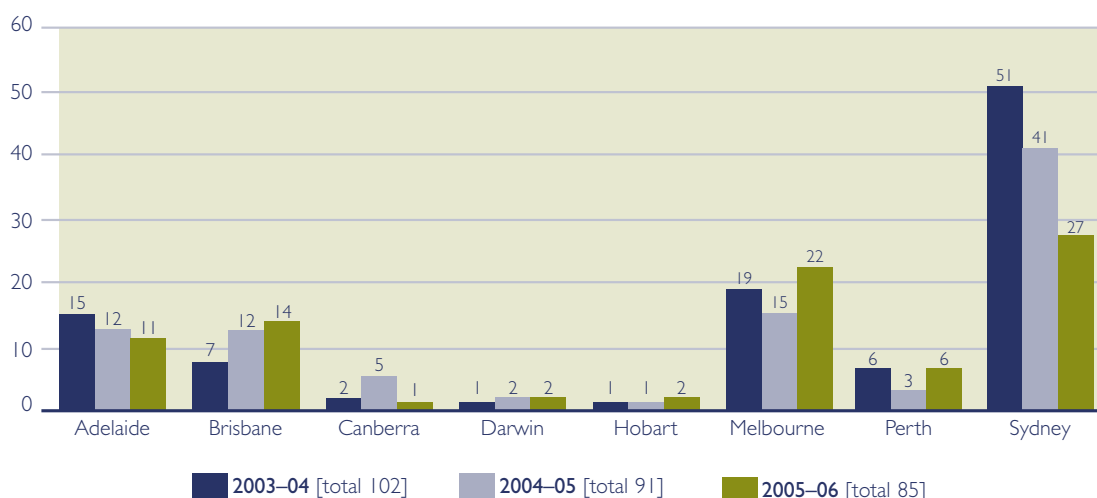
As highlighted in some cases which have come before federal magistrates, the Court has the facility to grant urgent relief in the nature of Anton Pillar orders and Norwich Pharmacal relief. In *MG Distribution Pty Ltd & Ors v Knah & Anor* [2005] FMCA 500, such relief was considered appropriate, but in *Australian New College v Li & Ors* [2005] FMCA 984, the Court did not consider there to be sufficient special circumstances for the making of such an order. In *Phonographic Performance & Ors v Adelaide City Entertainment* [2005] FMCA 92, additional damages of \$85,000 were awarded where there was found to be a flagrant breach of copyright. The federal magistrate noted:

To totally ignore a series of 30 letters over a period of three years, and to play recorded music, clearly the copyright of third parties, to large audiences in a popular nightclub is, to my mind, flagrant activity. It is activity designed to insult the copyright owners and to bring the existence of copyright protection into disrepute.

Subsection 115(4)(1a) was deliberately inserted into the Act because of pressure upon the parliament from copyright owners in this field, and in the field of motion pictures, who notoriously have been the victims of unlicensed activity. Any steps which the court can take to prevent the continuance of this type of activity should be taken [14-15].

Discrimination

Figure 6 Number of unlawful discrimination applications filed by location



The decisions of the Court continue to be of significance in this expanding area of federal jurisprudence. Although the number of applications filed in federal courts under this head of jurisdiction is not large, the Federal Magistrates Court hears 70 per cent.

A useful summary of the expanding jurisprudence is found in the May 2006 supplement to the *Federal Discrimination Law* by the Human Rights and Equal Opportunity Commission. This covers significant cases decided in the federal unlawful discrimination jurisdiction since the release of the publication in March 2005.

While the Court has jurisdiction to deal with applications under the four anti-discrimination Acts, there have not been any applications under the *Age Discrimination Act 2004*. The majority of applications relate to proceedings under the *Sex Discrimination Act 1984*. The scope of the Sex Discrimination Act and its application to acts done in the territories was clarified in the Full Court decision of *South Pacific Resort Hotels Pty Ltd v Trainor* [2005] FCAFC 130, which upheld the decision of the federal magistrate that the *Sex Discrimination Act (1984)* applies generally to acts done in territories such as Norfolk Island.

The Court has made a number of determinations as to whether there has been discrimination in the context of employees who return to part-time work following pregnancy and maternity leave. The extent to which employees with family responsibilities can seek protection under the discrimination laws is likely to be further tested in the courts following recent changes to the workplace relations laws.

Furthermore, allegations of sexual discrimination in the workplace may be of increasing significance. For example, in *Phillis v Manic* [2005] FMCA 330, the Court found in favour of the applicant for sexual harassment and awarded damages. The applicant had also sought an apology but this was not ordered as the federal magistrate considered:

I have made it clear in previous decisions that I do not believe that there is any utility in forcing someone to apologise. An apology should come from the heart and not be required of someone by an order of the court.

While the number of applications under the Racial Discrimination Act is relatively small in comparison to the overall number of applications for discrimination, the decision of *AB v New South Wales* [2005] FMCA 1113 was of some significance. This case involved the refusal of a selective high school to admit a child on the basis the child was not an Australian citizen or permanent resident. The applicant alleged discrimination on the basis of his Romanian national origin (the argument was one of indirect discrimination). In dismissing the application, the federal magistrate had to consider the possible relevance of an Article of an international convention. He concluded that:

Nothing in this Convention may be interpreted as affecting in any way the legal provisions of the States' Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.

The High Court decision of *Purvis v New South Wales (Department of Education and Training)* [2003] 217 CLR 92 has been followed by the Court in a number of cases of alleged disability discrimination. In *Tyler v Kesser Torah College* [2006] FMCA 1 the Court relied upon *Purvis* and dismissed an application for disability discrimination where a student had been temporarily excluded from the respondent school. The federal magistrate found that the exclusion by the school was to ensure it complied with its duty of care and not because of the disability of the child.

The case of *Wiggins v Department of Defence* [2006] FMCA 800 attracted some publicity, being an application by a former officer of the Royal Australian Navy claiming unlawful discrimination pursuant to the *Sex Discrimination Act 1984* (the SDA) and the *Disability Discrimination Act 1992* (the DDA). While the Court was not satisfied on the appropriate standard of proof that the applicant had proved the claim of unlawful discrimination arising out of the SDA, it upheld her claim under the DDA in relation to the disability, namely depressive illness, and the different treatment, namely her sick leave led to adverse comments and removal from her post without consultation.

Migration law

Migration filings in the Federal Magistrates Court remained relatively stable, with 2429 applications comprising 32.1 per cent of federal law filings, a one per cent decrease on the previous year. However, the demographics of migration filings changed, with a twelve per cent decrease in the Melbourne registry and a three per cent increase in the Sydney registry. Filings in other registries increased from 2004-05 to 2005-06; for example, Adelaide increased from 16 to 38 and Perth from 7 to 17. It is significant to note there was also a 12 per cent increase in the number of migration matters finalised during the year (3070).

Figure 7 Number of migration applications filed and finalised



Figure 8 Number of migration applications filed by location

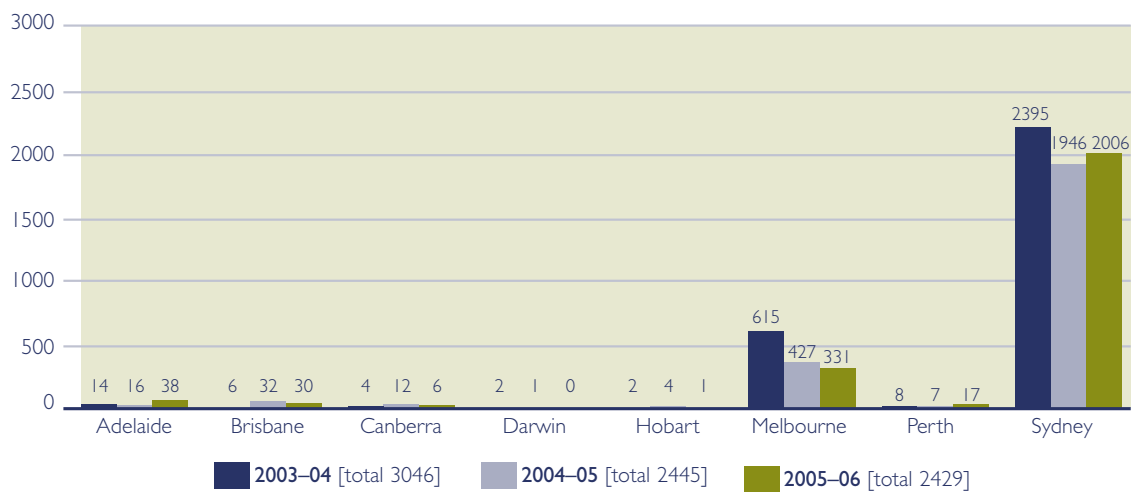
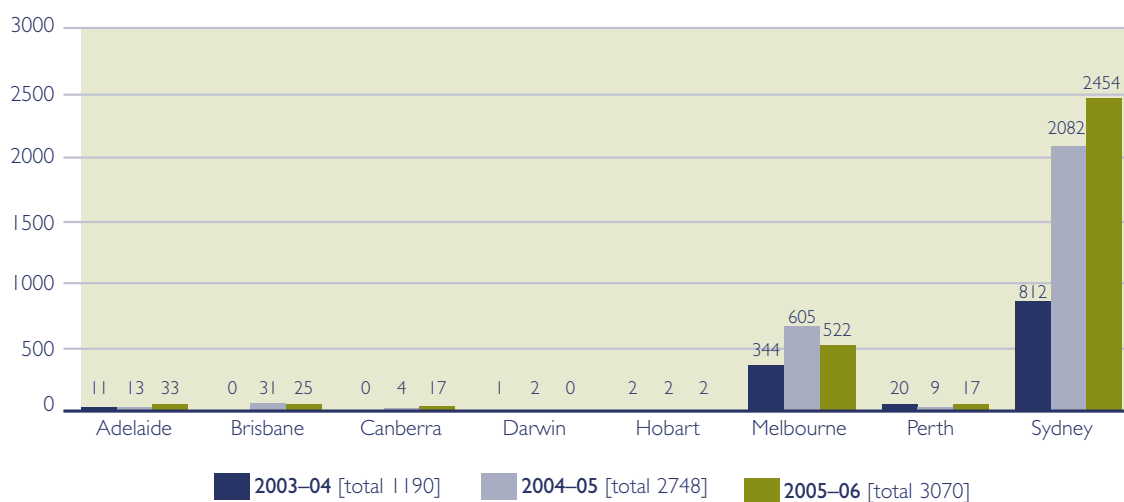


Figure 9 Number of migration applications finalised by location



The *Migration Litigation Reform Act 2005* ('the Migration Reform Act'), which commenced on 1 December 2005, made some significant amendments to the *Migration Act 1958*. One of the stated aims of the Migration Reform Act was to direct first instance migration review to the Federal Magistrates Court. The Court now has the same migration jurisdiction that the High Court has under section 75(v) of the Constitution.

There were consequential amendments made to the *Federal Magistrates Court Rules 2001* with the addition of a new Part 44, which gives the Court wide discretion in dealing with migration matters, including proceeding by way of a show cause application. An example of the different approaches being adopted by the Court is illustrated in *MZXFA v Minister for Immigration & Anor* [2006] FMCA 245, where the Court relied on the summary dismissal power in preference to making an interlocutory order pursuant to the show cause procedure. In contrast, in *SZHFI v Minister for Immigration & Anor* [2006] FMCA 41, the federal magistrate relied on the show cause power to dismiss on the first court date and commented on the circumstances in which such an order may be appropriate. In *SZHZI v Minister for Immigration & Anor* [2006] FMCA 662, the federal magistrate made observations on the evidentiary impact of a show cause order:

[6] In my view, the consequence of making a show cause order pursuant to rule 44.12(1)(b) of this Court's rules is to place upon the Minister a burden of active participation in the judicial review process from that point. I see no other consequence. A show cause order is made by the Court where an applicant is able to demonstrate an arguable case. That is a relatively low threshold test. It logically follows, in my view, that the burden of proof in order to obtain final relief must remain with an applicant. That said, the Minister would be at serious risk of final orders being made in favour of an applicant if the Minister did not comply with the show cause order. In practice, however, no additional burden is placed upon the Minister by a show cause order than that which would in the ordinary course be met by the Minister without such an order having been made, at a final hearing. A show cause order may be met by evidence or by submissions. In practice the Minister almost invariably does both. The effect of a show cause order made at the interlocutory stage is to indicate a preliminary view of the Court as to those issues which might support final relief. It is no more than that.

In *Tran v Minister for Immigration* [2006] FMCA 961, the federal magistrate highlighted that the role of the Court in judicial review of migration decisions is not a mere 'rubber stamp' process.

New Rule 44.15 and Schedule 1 of the Federal Magistrates Court Rules also introduced a specific scale of costs for migration matters and provision for automatic costs where proceedings are discontinued.

The Act also made consequential amendments to the *Federal Magistrates Act 1999* by inserting a new section 17A which introduces a new test for the summary disposal of proceedings before the Court. This provision applies generally to all proceedings commenced on or after the commencement day, 1 December 2005. It is not confined to migration proceedings. An

identical provision was inserted in the *Judiciary Act 1903* (s. 25A) and the *Federal Court of Australia Act 1976* (s.31A). Consequential amendments were made to the *Federal Magistrates Court Rules 2001* incorporating the new statutory test of *no reasonable prospect of success*. There has been limited judicial consideration of the federal test; however, in *MZXES v Minister for Immigration* [2006] FMCA 316, the Court stated when referring to new section 17A:

[11] That section does not effectively diminish the responsibility the Court undoubtedly has in considering summary dismissal, having regard to the well known authority of Dixon J, as he then was, in Dey v Victorian Railways Commissioner (1949) 78 CLR 91.

The consequential amendments made to the *Migration Act 1958* have the stated aim of deterring unmeritorious claims in the courts. They include strict time limits, the requirement for lawyers to certify that the proceedings have a prospect of success and a requirement on the courts to impose personal costs orders where such consideration has not been given. In addition, applicants are now required to disclose previous applications for judicial review. The scope of these provisions awaits judicial clarification.

Trade practices

Trade practices matters represent a small proportion of the overall work of the Court. However, the impact of increased jurisdiction during the year may result in an increase in the number of such applications filed in the Court.

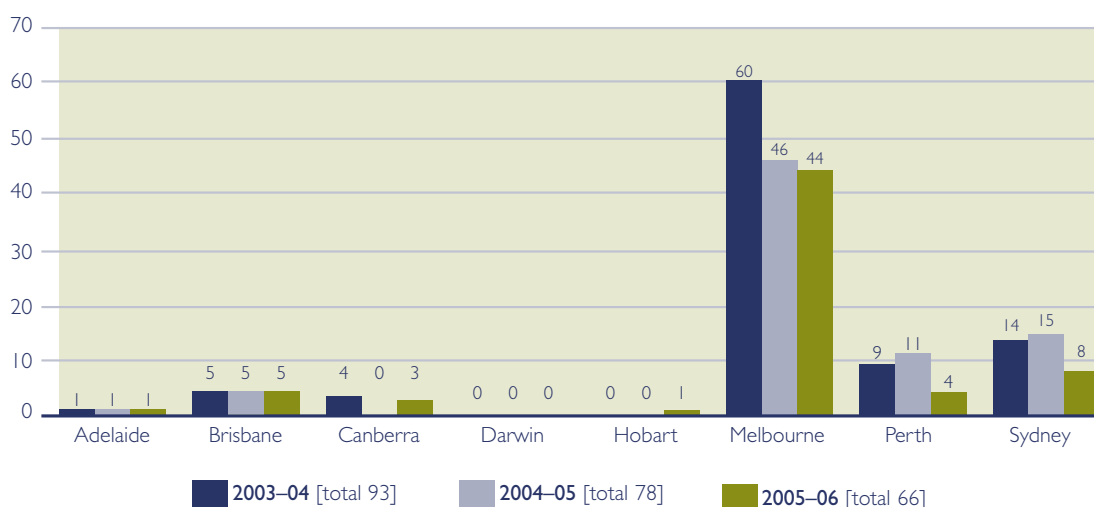
The Jurisdiction Amendment Act of 4 May 2006 also included amendments to the *Trade Practices Act 1974*. The Explanatory Statement accompanying the Amendment noted that:

The amendments expanding the FMC's trade practices jurisdiction implement recommendations of the FMC Review and the Government's response in June 2004 to the Senate Economics References Committee's March 2004 report, The Effectiveness of the Trade Practices Act 1974 in Protecting Small Business. The new jurisdiction would replicate as closely as possible the jurisdiction of lower level State courts. It would enable the FMC to deal with claims under Parts IVA, IVB, V and VA of the TP Act and to award damages up to an amount of \$750,000 rather than \$200,000.

The Court now has a broad trade practices jurisdiction with respect to the following heads and associated common law and equitable claims, can provide injunctive relief under section 80 and award damages up to \$750,000:

- Part IV A - Unconscionable conduct
- Part IVB - Breach of industry codes
- Part V - Consumer protection, including Division 1 (unfair practices, including misleading and deceptive conduct), Division IAAA (pyramid selling schemes), Division IA (product safety and product information), and Division 2A (actions against manufacturers and importers of goods), and
- Part VA - Liability of manufacturers and importers of defective goods

Figure 10 Number of trade practices applications filed by location



This trade practices jurisdiction is still not as extensive as that conferred on the Federal Court. However, there is now a general power conferred on the Federal Court to transfer matters within its jurisdiction which would otherwise not be within the jurisdiction of the Federal Magistrates Court. The explanatory statement to the Amending Act noted:

This amendment will give the FMC non-appellate jurisdiction in matters in which it would not otherwise have jurisdiction because the jurisdiction has not been conferred under another provision or there is a limit on the FMC's jurisdiction, such as a limit on the amount of damages that can be awarded (eg section 86AA of the Trade Practices Act).

To complement its trade practice jurisdiction, the Court considers it would be desirable for conferral of jurisdiction in relation to financial services under the *Australian Securities and Investments Commission Act 2001* and in relation to less complex corporate insolvency matters under the *Corporations Act 2001*.

Workplace relations

On commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*, the Court was given similar jurisdiction to the Federal Court in relation to workplace relations matters except for matters under Schedule 1B (registration and accountability of organisations).

The Court has jurisdiction in a number of matters under the *Workplace Relations Act 1996* including:

- unlawful termination
- breaches of the Australian Fair Pay and Conditions Standard
- business transmission rules
- workplace agreements
- right of entry and certain types of industrial action

As a result, the Court also has jurisdiction in matters arising under the *Building and Construction Industry Improvement Act 2005* with respect to unfair contracts for services in the building industry.

Ten workplace relations applications were made to the Court in the four months of 2005-06 after the jurisdiction was given. However, it is expected that the less formal processes of the Court will provide an attractive alternative for proceedings under the new workplace relations laws.

Specialist Panels

During the year the Court commenced the progressive introduction of specialist panels for its general federal law cases nationally. Subject to workload demand, specialist panels may be established in each registry in the following specialist areas:

- commercial (including bankruptcy, copyright and trade practices)
- administrative law
- human rights
- employment
- national security
- admiralty

Federal magistrates appointed to each specialist panel have or will quickly acquire knowledge, experience and expertise in the area of specialisation. Federal magistrates assigned to the various panels are allocated work in strict rotation in accordance with the Court's docket system.

The establishment of specialist panels is an important development in the Court's continuing growth and will enable the Court to better target judicial resources in these specialist areas as required and to maintain the Court's commitment to the economical, less formal and prompt disposition of its workload. The specialist panels system also provides an opportunity for panel members to develop further their expertise in the areas of specialisation.

The operation of the panel system is of even greater significance following the commencement on 4 May 2006 of the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*, which provided for an increase in the Court's monetary jurisdiction in trade practices matters to \$750,000 and gave the Court jurisdiction in any matter referred to it by the Federal Court.

The Court now has a significant presence in Sydney in general federal law and maintains its commitment to serving the community in rural and regional Australia by travelling to country centres to hear cases when requested and facilitating hearings through the use of video link, telephone directions and electronic filing.

Family law and child support

The family law work of the Court continued to increase, with 73,287 filings made with the Court including 46,512 divorces. While divorce filings decreased by five per cent, other family law filings increased by seven per cent. Of the non-divorce filings, the majority were applications for final and interim orders (12,399 and 11,578 respectively).

There were marked regional variations between 2004-05 and 2005-06 as to the filings. Slight decreases in new filings, excluding divorces, occurred in Adelaide (0.5 per cent) and Darwin (0.25 per cent), while more significant decreases occurred in Dandenong (25 per cent) and Newcastle (12 per cent). Non-divorce filings remained steady in Canberra, while slight increases occurred in Hobart (0.4 per cent) and Parramatta (0.2 per cent). However, more significant increases were experienced in Brisbane (16 per cent), Melbourne (13 per cent) and Townsville (33 per cent). In Sydney, there was a 174 per cent increase in new filings, excluding divorces, following the commencement of two resident federal magistrates on 27 February 2006.

The Combined Registry Program of the Federal Magistrates Court and Family Court will lead to more family law applications being filed in the Federal Magistrates Court. A major aspect of the program is the staged implementation of a 'single point of entry' into the Family Law Courts, with the Court dealing with most family law applications at the initial stage. This will be facilitated by a common application form for the Courts.

To accommodate the expected increase in work, the Court has a number of pilot projects where registrars assist federal magistrates with the management of duty work. Another aspect of the Combined Registry Program is consideration of greater harmonisation of rules and forms at the initiating stage of proceedings.

There were significant amendments to the Family Law Act by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, the substantive provisions of which commenced on 1 July 2006. This Act implements a number of recommendations of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation.

The key changes in the Act are to:

- introduce a new presumption of shared parental responsibility
- require parents to attend dispute resolution before taking a parenting matter to court
- change the enforcement of parenting orders through the power to impose cost orders, bonds, 'make up' time and compensation
- implement a number of legislative amendments to support a less adversarial approach in child-related proceedings; these amendments reflect the legislative powers federal magistrates already have to adopt less adversarial procedures pursuant to provisions in the *Federal Magistrates Act 1999*, and

- introduce changes to the law of evidence which will impact on all courts exercising family law jurisdiction. New section 69ZT provides that courts must not apply the rules of evidence referred to in subsection 190(1) of the Evidence Act in child-related proceedings unless the court considers that the circumstances are exceptional and it has taken into account the factors set out in paragraph 69ZT(3)(b).

The Act also introduced amendments which give the Court unlimited property jurisdiction by the repeal of section 45A of the Family Law Act; the Court was previously limited, in the absence of the consent of the parties, to property matters where the value of the property did not exceed \$700,000. This gives the Court almost the same family law jurisdiction as the Family Court. In addition, the Family Court has power to transfer any matter within its jurisdiction to the Federal Magistrates Court by virtue of consequential amendments made to the Family Law Act by the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*.

Family law statistics

Figure 11 Family law applications, by type, filed in the Federal Magistrates Court

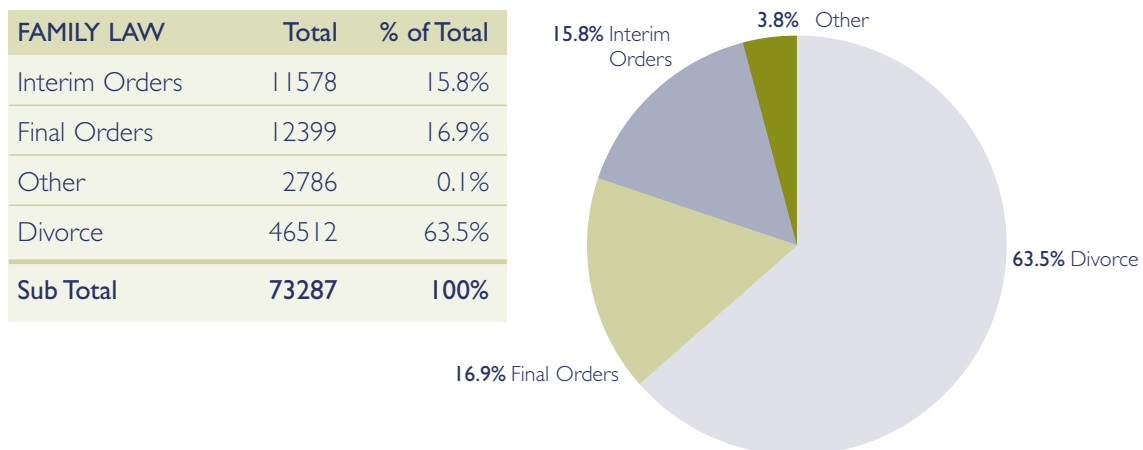


Figure 12 Number of family law applications filed (including divorce applications) by location

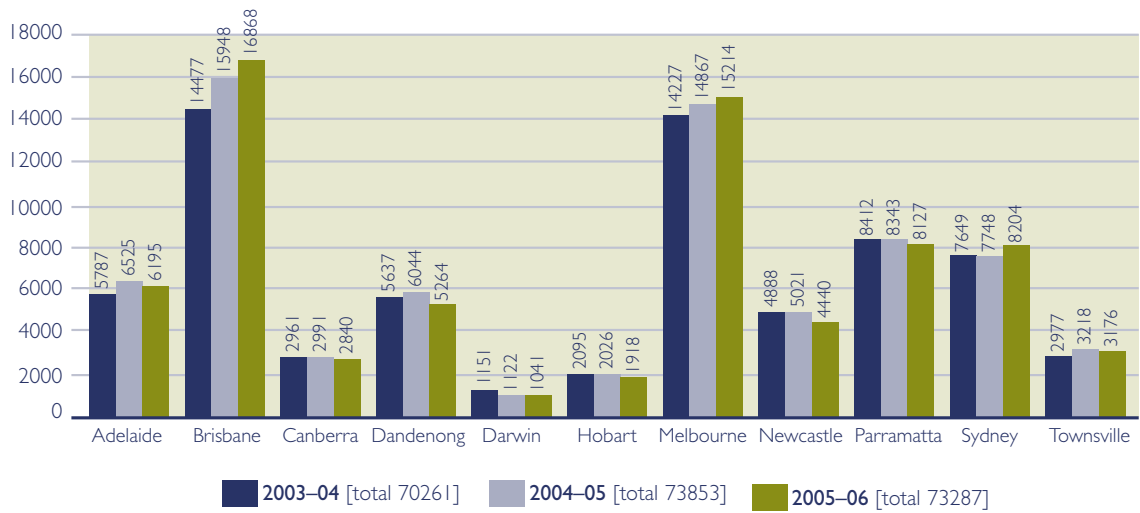


Figure 13 Number of family law applications filed (excluding divorce) by location

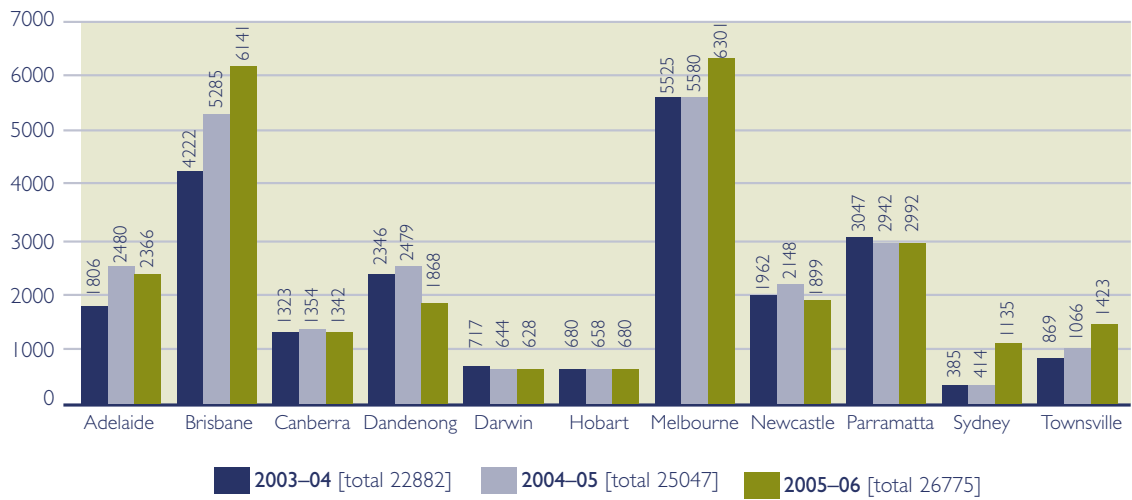


Figure 14 Number of divorce applications filed by location

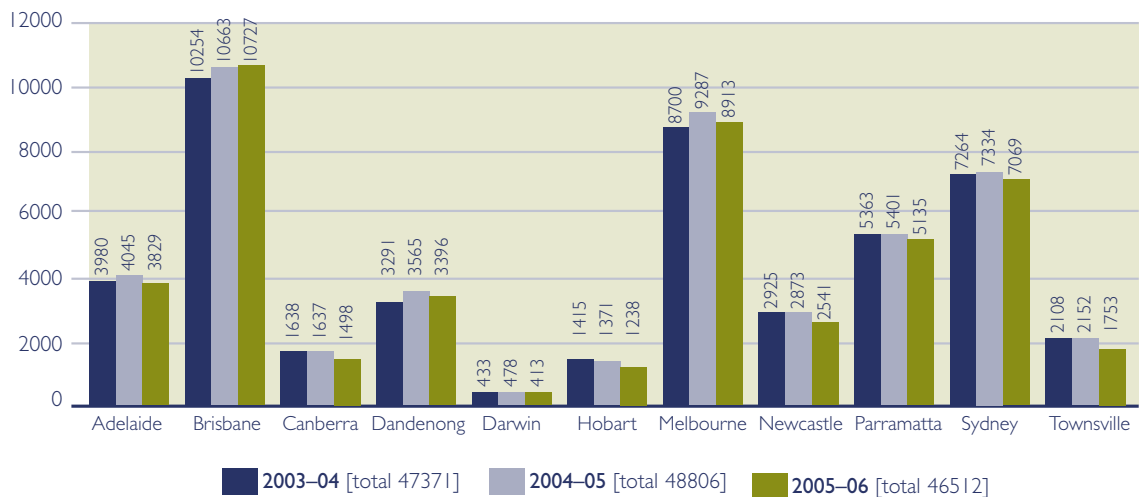


Figure 15 Number of divorces finalised by location

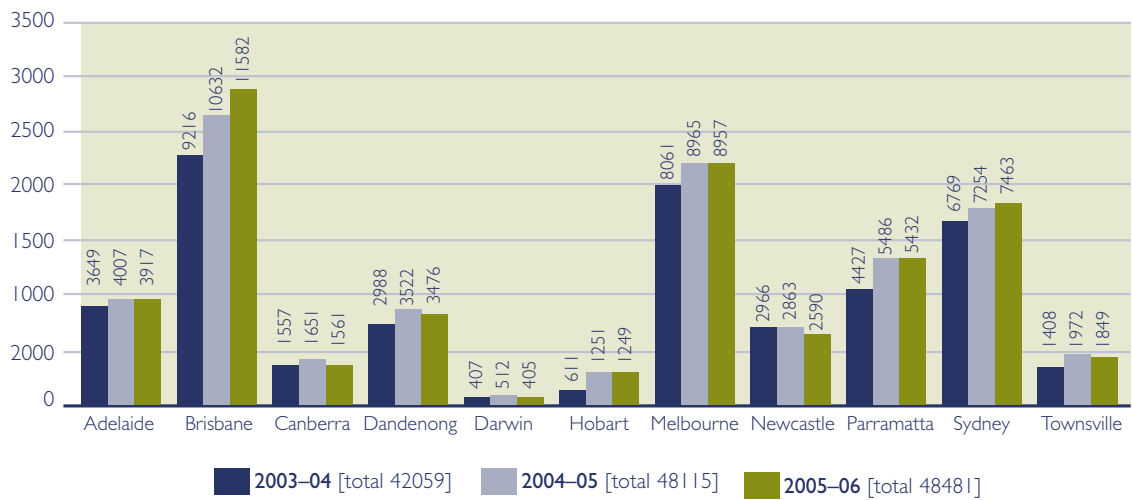


Figure 16 Number of all applications filed seeking final orders, by location

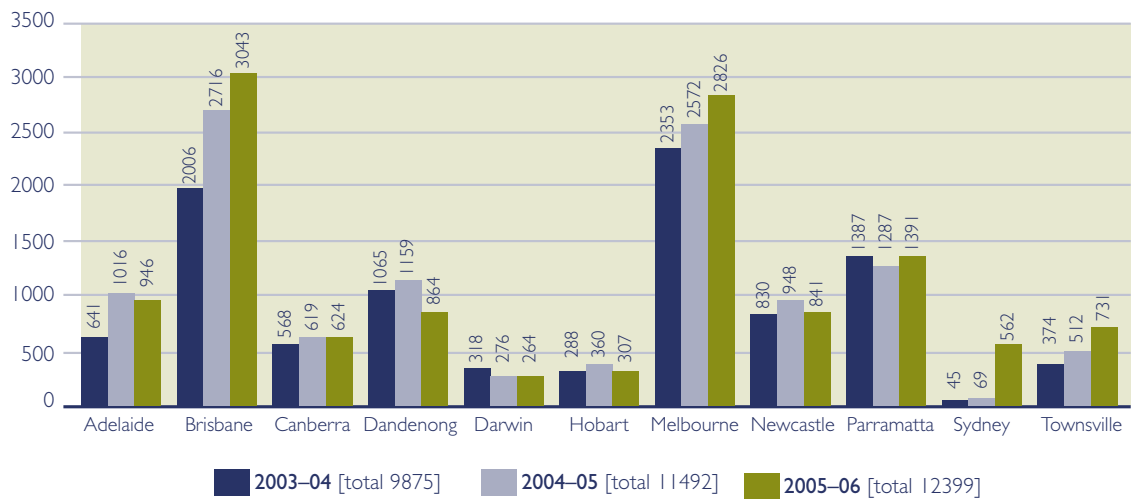


Figure 17 Number of applications filed seeking interim orders by location

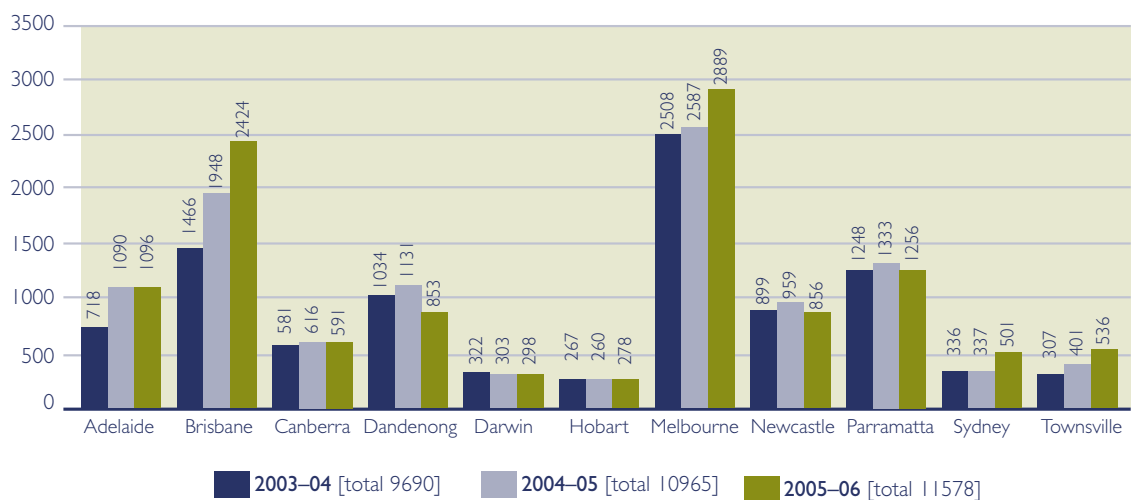


Figure 18 Number of family law matters transferred from the Family Court to the Federal Magistrates Court

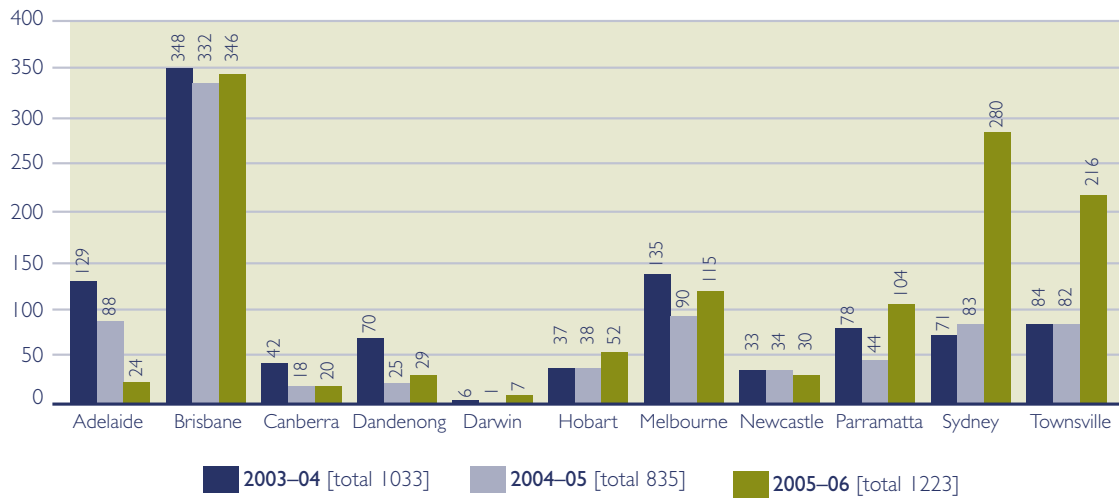
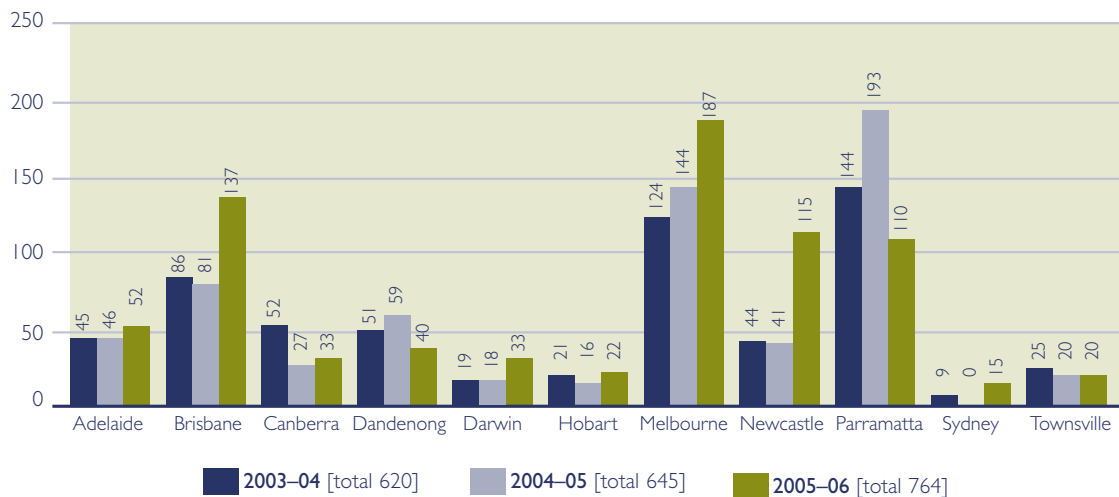


Figure 19 Number of family law matters transferred from the Federal Magistrates Court to the Family Court



Divorce

The 46,512 divorce filings in 2005-06 represented 63.5 per cent of family law matters and 57.5 per cent of total Court filings. The Court heard over 95 per cent of divorce applications in all states and territories except Western Australia, which has its own family court. Most divorces are heard in the Federal Magistrates Court by registrars engaged on a sessional basis by the Court.

The *Family Law Amendment Act 2005* included amendments to terminology; for example, the term 'divorce' has replaced 'dissolution of marriage' and 'divorce order' has replaced 'decree nisi' and 'decree absolute'.

To assist clients, particularly self-represented litigants, the Court is rewriting the Divorce Kit and preparing a Divorce Service Kit for the new year.

Child Support

Most child support proceedings are heard in the Federal Magistrates Court, which can deal with such applications in a more summary manner.

The Government announced significant changes to the child support system and the *Child Support Legislation Amendment (Reform of the Child Support Scheme - Initial Measures) Bill 2006* is currently before Parliament. The bill represents the first stage in the implementation of the Government's reform of the Child Support Scheme, in response to the report *In the Best Interest of Children*, which was produced by the Ministerial Taskforce on Child Support. The Government has announced that the phased response to implementing the changes to child support will continue, with further significant changes including a new child support formula.

It is anticipated that a number of recommendations will impact on the Court when implemented, further increasing the child support workload of the Court. These will include recommendations in relation to the powers of the courts to access information, the conduct of enforcement proceedings and judicial review of child support matters generally.

Combined Registry

In July 2004 the Family Court and the Federal Magistrates Court commenced work on a combined family law registry. The Combined Registry Program is being oversighted by a steering committee comprising the two Heads of Jurisdiction, the Deputy Chief Justice, a Federal Magistrate, the two Chief Executive Officers and a representative from the Attorney-General's Department.

The Combined Registry Program has five key aims:

- reduce confusion for clients through a single point of filing and the introduction of a common form
- reduce the number of times clients need to attend court and ensure each event adds value and progresses the case towards a conclusion
- provide earlier access to a judicial officer
- provide a single entry point – it has been agreed by both Courts that the Federal Magistrates Court will ultimately provide the single entry point, and
- provide services that make the process timelier, including improving the community perception of both Courts.

Sixteen individual projects are being progressed as part of the initiative. The Federal Magistrates Court continued its work under the Combined Registry Program during 2005-06 with a number of significant projects being completed.

Over the past 12 months, the Family Court and Federal Magistrates Court have:

- established a national Family Law Courts telephone enquiry centre, accessible for the cost of a local call. Clients are able to obtain information about family law, applying to the Family Law Courts and the forms and publications of both courts. General information about a client's case, for example the date of the next court event, can also be provided
- implemented the first stage of the family law courts website, www.familylawcourts.gov.au, which provides information, brochures and forms for both the Family Court and the Federal Magistrates Court
- developed a series of pilot projects involving the use of registrars to support federal magistrates in Brisbane, Melbourne, Parramatta and Canberra registries
- standardised, where appropriate, the more than 200 letters commonly used by registries under the Family Law Courts banner
- developed a nationally consistent approach for registries to handle transfers between the Family Court, the Federal Magistrates Court and state courts
- integrated the Family Court and Federal Magistrates Court hard copy files into one Family Law Courts file cover, to be used from 1 January 2007 onwards, and
- developed and installed consistent signage to identify family law registries in each location.

Primary Dispute Resolution (PDR)

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* introduced significant changes in the area of dispute resolution. As part of these amendments, the term Primary Dispute Resolution (PDR) will be replaced by the term Dispute Resolution from 1 July 2006.

Dispute resolution refers to procedures and services to help resolve disputes; federal magistrates may order parties to attend dispute resolution in an attempt to resolve their matter before a judicial decision is required. The Court places significant priority on the dispute resolution process, which can provide an affordable and timely option for resolving disputes. It also allows parties greater personal control and management of the process and the outcome.

In 2005-06, PDR services were sourced from the Federal Court, the Family Court and community-based organisations. From July 2006, the Court's clients will be required to attend a dispute resolution process before they file family law proceedings. In particular, clients will have access to Family Relationship Centres before court proceedings and will be able to access the centres as needed during proceedings.

During 2005-06, the Court's PDR processes included counselling, mediation and conciliation. The processes included:

- **Counselling** (to be known as family counselling from 1 July 2006) in family law, where a social worker, psychologist or other appropriately qualified professional assists parties to deal with personal and interpersonal issues in relation to their marriage.

- **Mediation** (in family law to be known as family dispute resolution from July 2006), where a neutral third party (the mediator) assists parties to identify the disputed issues, develop options, consider alternatives and try to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or its outcome.
- **Conciliation**, which is a similar process to mediation but where the neutral third party (the conciliator) may give advice on the content of the dispute or its outcome. The conciliator has no determinative role in regard to the content of the dispute or its outcome. This is the dispute resolution process used in family law property proceedings in the Federal Magistrates Court.

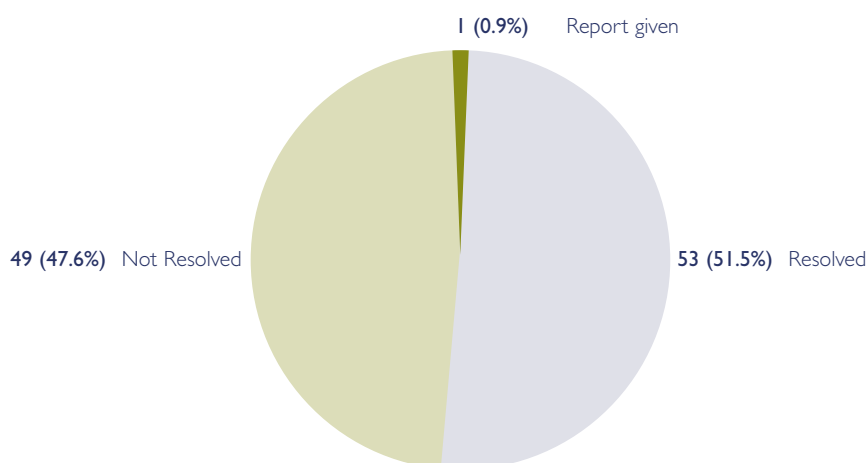
Dispute resolution in general federal law

Mediation is the usual dispute resolution process used in general federal law matters. Federal magistrates may order parties to attend mediation when they consider it a suitable process to help resolve a dispute. The mediation may be conducted by a registrar of the Federal Court or a private mediator.

A total of 116 new matters were referred to mediation in 2005-06, with 103 mediations held, including some matters carried over from 2004-05. Of the new referrals to mediation, 40 were in the area of trade practices, 43 in human rights, 17 in bankruptcy, 13 in copyright and 3 in other areas of jurisdiction.

The outcomes of these mediations are indicated in figure 20.

Figure 20 Outcomes of mediation sessions in general federal law



PDR in family law matters

PDR services in family law were provided by the Family Court and community-based organisations. Federal magistrates ordered parties to attend the service and venue that was the most relevant and convenient for them.

Parties could be ordered to undertake dispute resolution at various stages of the court process. To attempt to resolve issues before going to court, clients were given an appointment for mediation when they first filed. (This appointment will not be required in future as parties will attend a dispute resolution process before filing their application.) If parties did not resolve the matter before the first court date, they were ordered to attend a further PDR process; counselling or mediation in children's matters and conciliation in property matters.

PDR services provided by community-based organisations

In 2005-06, the Court had agreements with 35 community-based organisations for the delivery of counselling, mediation and conciliation services on a fee-for-service basis. One organisation also provided family reports. When parties were ordered to attend PDR with a community-based organisation, the Court chose and arranged the service provider and met the provider's expenses in full. This was done through a centralised booking system in the Court's National Administration Office.

During 2005-06, 991 matters were referred to community-based organisations, compared to 950 matters in 2004-05. Of these, 775 matters were referred to a dispute resolution process. A total of 565 dispute resolution referrals were returned completed to the Court, with the remainder still to be completed.

The average time taken between the date of a PDR order and the return date to the Court as complete was 73 days (66 days in 2004-05). The appropriation for community-based PDR referrals in 2005-06 was \$727,000 compared to \$625,000 in 2004-05).

During 2005-06, 25.7 per cent of matters sent to community-based organisations were fully settled and 14.7 per cent of matters partially settled.

Counselling

During 2005-06, 573 of the matters referred to community-based organisations were for counselling. This compared to 679 in 2004-05.

Figure 21 Settlement rates for all PDR conferences conducted by community-based agencies

ALL SERVICES	YTD: 2005-06	% of Total
Dispute Resolution		
Fully Settled	145	25.7%
Partially Settled	83	14.7%
Not Settled	319	56.5%
Incomplete Referrals	18	3.2%
Referrals Returned	565	100.0%
Referrals Outstanding	210	
Total DR Referrals Ordered	775	
Total Post order Counselling - Ordered	10	
Total Post Separation Parenting - Ordered	206	
Grand Total Referrals Ordered	991	

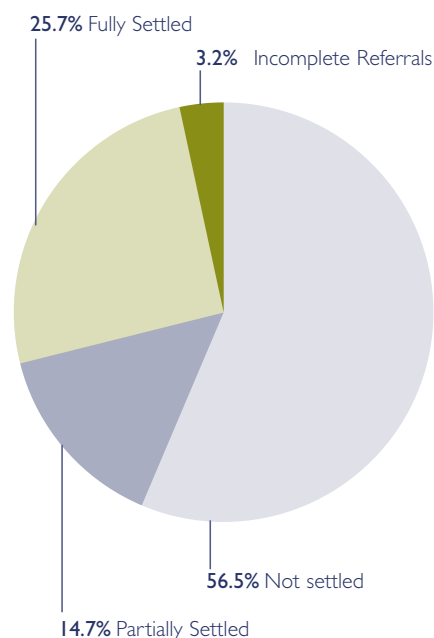
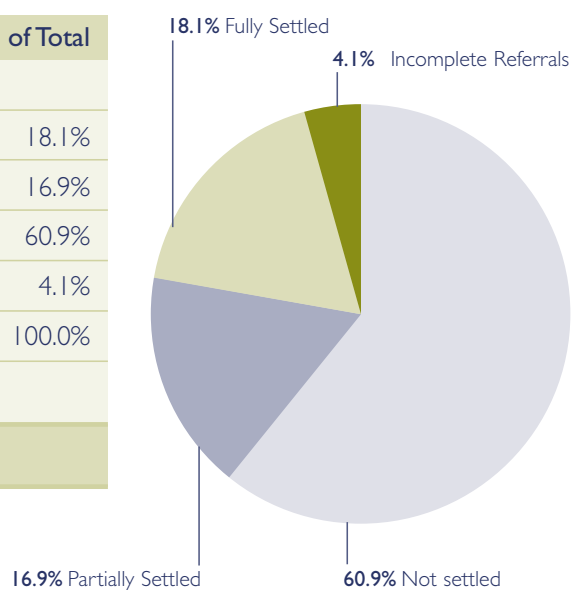


Figure 22 Settlement rates for all counselling sessions conducted by community-based agencies

COUNSELLING ONLY	YTD: 2005-06	% of Total
Dispute Resolution		
Fully Settled	75	18.1%
Partially Settled	70	16.9%
Not Settled	252	60.9%
Incomplete Referrals	17	4.1%
Referrals Returned	414	100.0%
Referrals Outstanding	159	
Total DR Referrals Ordered	573	



Mediation

Mediation services provided by the Family Court

The first order for parties to attend mediation in family law is made by a registrar when parties file their material in the Court. It ensures parties have at least one opportunity to resolve matters before attending court. In children's matters, this first session is conducted by the Family Court's mediation section.

In 2005-06, the Family Court's mediation section held 8077 interviews with Federal Magistrates Court clients, compared to 4226 in 2004-05.

Following the amendments to the Family Law Act, from 1 July 2006 the Family Court will no longer provide a confidential mediation service; Court mediators have been re-named 'family consultants' and all communications with them will be admissible in court.

Mediation services provided by community-based organisations

The *Family Law Act 1975* provides that the Court may direct family law parties to attend a conference with a family and child counsellor or welfare officer to try to resolve differences that affect the care, welfare and development of their children. When a counselling order is made under this provision, the Court makes arrangements with a community-based agency, which conducts an intake session with the clients and assesses which type of service best suits them, such as mediation. The client must also agree to attend that type of service.

Property conciliation

Conciliation services provided by the Family Court

Registrars of the Family Court generally conduct conciliation conferences in family law property matters for the Federal Magistrates Court. During 2005-06, 3076 conciliation conferences were conducted for the Court compared to 1986 matters in 2004-05. Of these, 23 per cent of matters settled at the conference, 10.4 per cent of the conferences were adjourned, and 62.1 per cent of matters continued to another court event. A small number of matters resolved before the conference (see Figure 23).

Property conciliation services provided by community-based organisations

Relationships Australia has recruited a panel of experienced family lawyers to conduct conciliation conferences in property matters for the Court in Victoria and Queensland. During 2005-06, 171 conciliation conferences in property matters were referred to community-based agencies, with 132 returned completed. Of those, 48.5 per cent fully settled, 6.1 per cent partially settled and 42.4 per cent did not settle (see Figure 24).

Figure 23 Settlement rates for all property conciliation conferences conducted by the Family Court

PROPERTY CONCILIATION	YTD: 2005–06	% of Total
Property Conciliation - Outcomes		
Fully Settled	707	23.0%
Continued to other sitting	1910	62.1%
Adjourned	320	10.4%
Resolved before	139	4.5%
Conferences Conducted	3076	100.0%

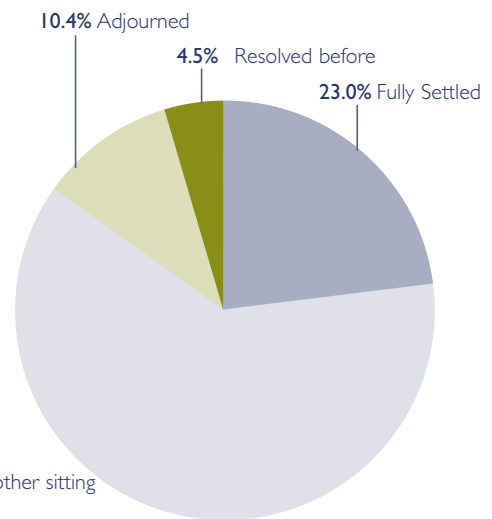
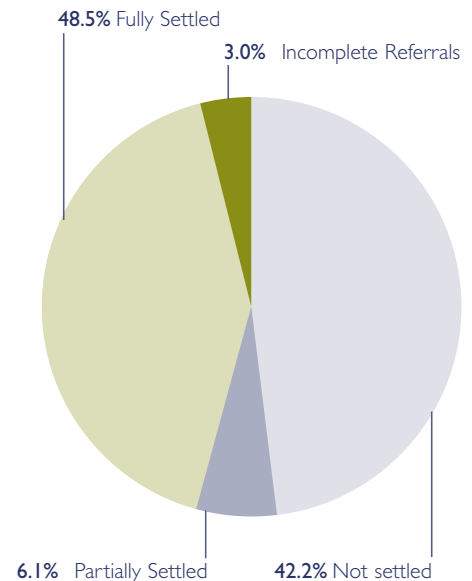


Figure 24 Settlement rates for all conciliation conferences conducted by community-based agencies

PROPERTY CONCILIATION	YTD: 2005–06	% of Total
Dispute Resolution		
Fully Settled	64	48.5%
Partially Settled	8	6.1%
Not Settled	56	42.2%
Incomplete Referrals	4	3.0%
Referrals Returned	132	100.0%
Referrals Outstanding	39	
Total DR Referrals Ordered	171	



Conciliation in child support matters

The Court continued a program begun in 2004-05 to refer some child support matters to a conciliation conference. A federal magistrate assesses matters before the day's hearing commences and sends those matters that appear to be likely to settle to a registrar for a conciliation conference. The program runs in the Court's child support lists in Melbourne only. The conferences have been a valuable tool in managing busy child support lists.

Settlement at PDR events

While the time of settlement of matters cannot always be clearly defined, the Court works on the basis that about two thirds of family law matters are resolved either at PDR or shortly thereafter and will proceed to consent orders at the next court date. Some matters settle between the PDR event and the next court date, but these are not recorded as settled at PDR. The Court does not keep records that indicate whether subsequent settlements were linked to the PDR event.

Post-separation parenting programs

Of the 991 family law matters referred to community-based organisations, 206 were orders for parties to attend a post-separation parenting program to assist parties to parent their children cooperatively after they have separated. Federal magistrates are making orders to post-separation parenting programs in preference to making orders for parties to attend post-order counselling. As a consequence, only ten matters were ordered to post-order counselling in 2005-06 compared with 73 in the previous year.

Family reports

The Court often requires family reports be prepared to assist the Court reach decisions in family law matters. A family report is prepared by a family and child counsellor who interviews the parties and the children and may interview other people significant to the lives of the children. The counsellor also observes the interactions between the children and all parties. Based on those interviews and observations, the counsellor makes an assessment of the issues that are in dispute and may make a recommendation to the Court as to what arrangements will be in the best interests of the children.

The Family Court's mediation section prepared 1,023 family reports for the Federal Magistrates Court in 2005-06, compared with 1,108 in 2004-05. A further 728 family reports were ordered through arrangements the Court has with one community-based organisation and 45 private report writers who are qualified to prepare family reports. Of these, 569 reports were prepared, compared to 493 in the previous year, and the remainder are still to be submitted.

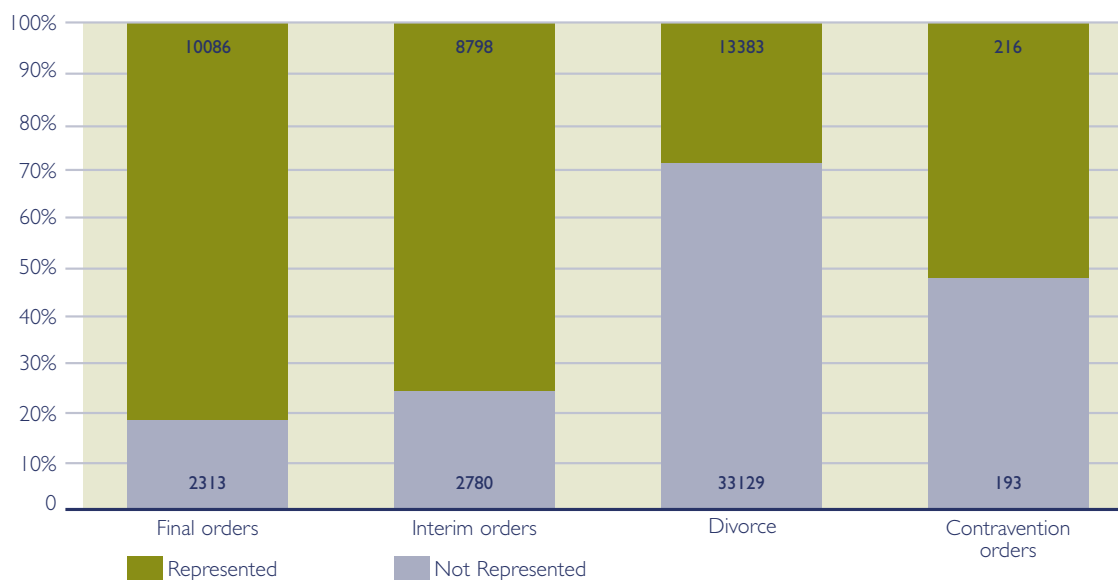
Preliminary reports pilot

A pilot to test a shorter form of family report (a Preliminary Report) was run in the Sydney and Canberra registries and on the Dubbo circuit of the Family Court and Federal Magistrates Court. The pilot tested a form of report that is produced following a reportable family conference that is ordered with a mediator of the Family Court. When the family attends the conference, the mediator explains that the conference is reportable and that anything they say can be included in a report for the court. A conference is conducted with all members of the family and, if the issues are not resolved, a report is prepared for the court. The pilot will be evaluated in July 2006.

Self-represented litigants

The Court continues to have a significant number of people representing themselves during the court process, particularly in the areas of family law, child support and migration.

Figure 25 Self-represented litigants involved in family law*



* These figures only include the applications that provide data on representation.

Pro bono scheme for self-represented litigants

A court-based pro bono scheme, similar to schemes which operate in a number of Australian courts including the Federal Court, is in operation. Referrals to the scheme have generally been confined to general federal law matters, particularly migration matters. In Sydney a legal advice scheme continued to operate, comprising a panel of barristers and solicitors nominated by the Bar Association of New South Wales and Law Society of New South Wales respectively and funded by the Department of Immigration and Multicultural Affairs. Another scheme for general pro bono assistance also operates in Sydney and comprises a panel of solicitors representing the larger firms who provide initial advice and, in appropriate cases, representation at the hearing.

The Court is very conscious of the demands that are placed upon members of the profession who agree to act on a pro bono basis.

Family law duty lawyer schemes

Self-represented litigants with family law matters before the Court are assisted by duty lawyer schemes operating in capital cities and regional areas. The Court works cooperatively with legal aid commissions and other organisations which provide lawyers to assist litigants at court on the day of their hearing. Assistance may include legal advice, negotiating consent orders and, in urgent matters, the preparation of documents and representation.

Publications to assist SRL

The Court continued to monitor and implement the 12 key recommendations of its October 2004 report, *An Evaluation of Services for Self-Represented Litigants in the Federal Magistrates Court*. In particular, the Court reviewed its forms and publications to identify how to assist self-represented litigants, who usually require additional information and resources. The Court and the Family Court of Australia developed a *Self-Represented Litigant Information Pack* that provides helpful hints about self-representation, information about the Family Law Courts and contact details for local legal and support agencies. A three-month pilot of the kit at the Adelaide, Melbourne and Parramatta family law registries concluded on 30 June 2006.

The Court also piloted a *Contravention Information Pack* in the six months to 30 June 2006. The pack advises litigants of the available options when court orders are not working. The pack was piloted at the Brisbane registry due to the large number of contravention proceedings filed at that registry, particularly by self-represented litigants.

To assist self-represented litigants, the Court is undertaking a complete review of its forms and the information accompanying them. In recognition that over 70 per cent of divorce applications are filed by self-represented litigants, the Court is also reviewing the Application for Divorce and accompanying divorce service forms. Detailed kits will provide information about completing the forms, serving the divorce application and the court process.

The Court will continue to work with the Family Court to produce publications and provide information at www.familylawcourts.gov.au to assist self-represented litigants with the family law process. The *Self-Represented Litigant Information Pack* and *Contravention Information Pack* pilots will be evaluated and, if successful, introduced nationally.

Information, knowledge, electronic and records management

The Court continues to manage its corporate information and record-keeping orderly, efficiently and accountably and to allow maximum re-use of knowledge gained. In 2005-06, the Court implemented a records and electronic management system within its National Administration Office. This system controls records in a secure environment that includes timely access to and retrieval of the records. The system will ensure a consistent and unified approach to records, document management and record-keeping across the Court's administration.

As previously noted, during the year the Court contributed, as part of the Combined Registry Program, to the creation of intranets for both the Family Court and the Federal Magistrates Court. Shared by both courts, the intranets will be a single point of access in each court for information when launched in late 2006. The Court's intranet will provide federal magistrates and court staff with personal access to the information and knowledge they require in the family law jurisdiction and will avoid duplication in the management of information in the two courts, thus achieving economies of scale and distribution.

In addition, general federal law information and the Federal Magistrates Court's corporate administrative information have also been incorporated into the overall information architecture for the Court's intranet.

Public information

During 2005-06, the Court continued to improve the information available to the public in printed and electronic form.

To fulfil their responsibility under the Combined Registry Program, the Federal Magistrates Court and the Family Court developed a new website, www.familylawcourts.gov.au, a package of 15 new fact sheets and brochures, a kit for self-represented litigants and a CD mailer. These publications are in plain English and also address the new family law legislation.

The Court also maintained its own website as a source of public information on how the Court operates, corporate information, jurisdiction, legislation, Court activities, Court lists, forms and publications.

The Court received a greater share of media attention during the year. This included a number of factual articles about Court cases, particularly surrounding discrimination and workplace relations. There were also a number of articles about the Court's workload and the appointments of federal magistrates. The Court issued several media statements in response to journalists' enquiries.

Only one publication order was issued during the year, allowing the Court to seek public assistance through the media to recover a child taken by a parent in breach of Court orders; the child was recovered. A Court-initiated television news item in December 2005 led to the recovery of another child who had been missing for eight months.

Performance measures

The Federal Magistrates Court continues to measure its performance against a number of agreed targets. These were included in the 2005-06 Attorney-General's Portfolio Budget Statements. Outlined below are details of performance against these targets, including cross-reference to other relevant information on performance against those targets that appears elsewhere in this annual report.

Figure 26 Quality

Performance measure	Performance in 2005-06
Less than 1 per cent of cases litigated or divorces processed are subject to complaint	The number of complaints represented 0.1 per cent of cases. Further details are on page 46.
The time taken from filing to disposition is less than six months in 90 per cent of cases	Eighty per cent of all matters were completed within six months of filing. Almost 100 per cent of divorces and 71 per cent of final orders in family law (excluding divorce) were completed within that time. In general federal law, 67 per cent of matters were completed within six months. Further details are on page 5.
Sixty per cent of matters are resolved before trial	The Court finalised 33,143 cases, excluding divorces. However it needed to deliver only 2,389 judgments following a hearing. The Court continues to place significant priority on dispute resolution without a judicial determination. Further details on the latter are on page 39.
<p>Feedback from clients as to whether they are satisfied that their disputes have been handled quickly and simply</p> <p>Feedback from clients regarding the simplicity and effectiveness of court Rules</p> <p>Feedback from clients regarding the availability of information about the Court</p>	<p>Surveys of the perceptions of legal practitioners who regularly represent parties in proceedings in the Court in both family law and general federal law over a number of years and again this year indicate:</p> <ul style="list-style-type: none"> ■ a high level of satisfaction with the service of the Court ■ the time taken for the Court to finalise matters was less than or equal to what had been expected ■ proceedings are at an appropriate level of formality ■ the Court's written materials and website were viewed favourably ■ the Court continues to be quicker, cheaper and more accessible ■ the procedural innovations (for example, lack of pleadings) adopted by the Court are useful, and ■ the Court's rules are simpler than those of the superior federal courts. <p>For further details see pages 44-45.</p>

Figure 27 Quantity

Performance measure	Performance
Number of cases litigated and divorce cases processed	80,848 new cases were filed in the Court and 81,624 cases were finalised. Further details, including a breakdown between family law and general federal law and cause of action type, are in Part 3.
Number of counselling, mediation, conciliation and other primary dispute resolution services delivered	A total of 12,431 dispute resolution events were delivered. For general federal law this included 116 mediations. For family law, it included 991 primary dispute resolution events and 171 property conciliation events by community-based organisations, and 8077 mediations and 3076 property conciliation events by the Family Court.
Number of presentations to organisations representing clients regarding the Court, and publications issued.	Details of presentations made during the year are in Appendix C. See also page 42.

Access and performance

In its first five years of operation, the Court undertook three surveys of perceptions of legal practitioners who regularly represented parties in proceedings in the Court. These indicated that the Court had been successful in providing a simple and accessible forum for resolving less complex disputes with lower costs than in the superior federal courts.

In November 2005 a further client satisfaction survey was completed by Profmark Consulting Pty Ltd of Adelaide practitioners in anticipation of relocating the registry into the new Roma Mitchell Commonwealth Law Courts Building and consideration of altered practice, procedures and systems in the new environment.

The survey was undertaken by interview with fifty practitioners, all of whom had dealings with the Court in either family or general federal law matters. The relevant findings of the review included:

- Over 50 per cent of respondents felt that the time taken for the Court to finalise matters was less than or equal to the expected time.
- While less than 60 per cent of the respondents felt able to comment on the Court's written material and website, they commented favourably, averaging close to four on a satisfaction scale of one to five.
- In terms of overall service to clients, responses were well above average in all areas except facilities, which has since been rectified with the move to the new building. The Court scored particularly highly for courteous staff (satisfaction level of 4.5 out of 5), knowledgeable staff (4.2) and rapid response to letters (4.1). It scored around 3.5 for having sufficient information about practices and procedures, helping self-represented litigants understand the process and in maintaining consistent practices.

- Responses were also above average on questions about conduct of proceedings. Of particular significance was the recognition that federal magistrates encourage parties to work out an agreement and that proceedings are at an appropriate level of formality (4.1 out of 5). The lowest level of satisfaction surrounded time for hearings and judgment delivery, adjournments and preparation for cases (between 3.2 and 3.5).
- Respondents were asked what the Court did well and what it could improve in Adelaide. The answers were wide-ranging, but focused on problems related to excessive workload, court procedures and communication.

Following the completion of the survey, the Court held a workshop in Adelaide involving Federal Court and Family Court judges, federal magistrates, staff of the Federal Court, Family Court and Federal Magistrates Court and barristers and solicitors who regularly represent litigants in both general federal law and family law in the Federal Magistrates Court in Adelaide. The focus of the workshop was the examination of best practice for the Federal Magistrates Court in Adelaide. As a result the Court has, following the relocation of the registry to the new building, introduced new listing approaches and varied a number of pre-existing practices relating to the provision of information about court events, co-ordination of general federal law work and liaison about work of the Court.

Fees

Fees for filing and other services in the Federal Magistrates Court have historically been set by regulation at a lower rate than for equivalent fees in the Federal Court and the Family Court. Fees are normally increased biennially by government regulation, based on movements in the consumer price index, with the next biennial increase on 1 July 2006. However, a separate regulation was introduced to increase the fee for filing an Application for Divorce in the Federal Magistrates Court from 1 July 2005.

Under the regulations, an exemption from payment of fees may be granted to people who are eligible for legal aid or qualify for certain government social security benefits. Fees may be waived if they would cause financial hardship. The value of exemptions and waivers in 2004-05 was \$8.2 million or 38 per cent of the value of total applications to the Court.

Details of fees and eligibility criteria for exemption or waiver are available on the Court's website.

Transfer of matters between courts

Transfers between the Federal Magistrates Court and the superior federal courts and state courts have occurred since the Court began operations and are expected to increase with new legislation.

Transfers are mandated in the federal courts' legislation and reflect the courts' objectives to have matters handled in the court that is most appropriate to the litigants' needs. The decision to transfer generally reflects the complexity of the matters.

In family law matters, transfers are also related to how long the final hearing is expected to last, with two days being the current standard for Federal Magistrates Court hearings. In 2005-06, 1223 matters were transferred from the Family Court (a 46 per cent increase), while 764 matters were transferred to the Family Court (an 18 per cent increase). (see Figures 18-19)

The number of transfers is expected to increase. The *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006* empowers the superior courts to give the Federal Magistrates Court jurisdiction in any matter transferred to it, including matters in which it would not otherwise have jurisdiction. This is expected to lead to more general federal matters being transferred to the Court. The *Family Law Amendment Act 2005* empowers state courts of summary jurisdiction to transfer matters directly to the Court rather than transferring them to the Family Court for transferral to the Court.

Complaints

There was a significant reduction in the number of complaints relating to overdue judgments, from 70 in 2004-05 to 25 in 2005-06. This highlights the efforts made by the Court during the year to focus on the timely delivery of judgments through the allocation of adequate judgment writing time and by recording and monitoring the process of reserved judgments.

Complaints and compliments provide valuable information about community perceptions of the Court's work, client satisfaction and service delivery. For this reason, one of the performance targets of the Court is to have fewer complaints than one per cent of cases litigated or divorces processed. At 0.1 per cent, the number of complaints received was well within this performance benchmark.

During 2005-06, the Federal Magistrates Court received 134 complaints, six less than the previous year. The complaints related to issues relating to the legal process (41), the conduct of federal magistrates and chambers staff (28), overdue judgments (25), mediation/primary dispute resolution services (22), registry issues (5), case outcomes and appeals (2) and other miscellaneous matters (11).

The Court's complaint handling procedures ensure that complaints are dealt with expeditiously. 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 Court of Australia
Lionel Bowen Building
97-99 Goulburn Street
Sydney NSW 2000

Enquiry service

The Federal Magistrates Court maintains both telephone and email enquiry services.

Over a thousand email enquiries were managed through the Court's customer service email facility. Enquiries were received from members of the legal profession, litigants and the general public and related to a range of topics including administrative matters, child support and child-related issues, court circuits, divorce, court forms, fees, judgments and the legal process.

Consistent with the Combined Registry Program objectives, the Federal Magistrates Court and the Family Court now manage all family law enquiries through a combined service known as the National Enquiry Centre. Telephone enquires are made through the 1 300 352 000 number, which was launched in October 2005, and email enquiries through enquiries@familylawcourts.gov.au. The transition to this new email arrangement occurred in late June 2006.

The Court continues to operate a separate email service (customerservice@fmc.gov.au) for enquiries about forms, fees and general administrative matters related to its general federal law jurisdiction.

Judgments

The majority of judgments are delivered *ex tempore* (orally) at the time of the hearing or shortly afterwards. Other judgments are reserved at the hearing and delivered at a later date, normally in writing. Improving timeliness in the delivery of reserved judgments has been a major focus for the Court throughout the year. Of the 2389 reserved judgments delivered in 2005-06, 95.8 per cent were delivered within 6 months of the matter being heard, 3.7 per cent within 6 to 12 months and 0.5 per cent beyond 12 months.

In line with the other federal courts, the Court decided to provide access to decisions directly through a link to AustLII on the Court's website. This process commenced on 1 July 2005 and during the year, 1972 written judgments were provided this way. The number of decisions published in Law Reports was 62.

Appeals

Generally, appeals are possible as of right from final decisions of federal magistrates to the Federal Court or Family Court. Leave is required to appeal from interlocutory decisions.

The jurisdiction of the Federal Court and Family Court on appeals from federal magistrates is to be exercised by the Full Court unless the Chief Justice of the respective court considers that it is appropriate for the jurisdiction of the court to be exercised by a single judge. In fact, most appeals from federal magistrates are assigned to a single judge.

In appeals from federal magistrates under the Migration Act, recent amendments now provide that such decisions are to be heard by a single Federal Court judge unless considered appropriate to be heard by a Full Court of the Federal Court: see *Migration Litigation Reform Act 2005*. This legislative change was designed to facilitate the efficient handling of the allocation of migration appeals by removing the administrative burden imposed on the Chief Justice to consider the assignment of every migration appeal from the Federal Magistrates Court.

Appeals in general federal law

There were 1033 appeals filed from the Federal Magistrates Court to the Federal Court during 2005-06, compared to 933 in 2004-05. Of these, 963 (93.2 per cent) related to migration matters, 8.8 per cent more than in 2004-05.

Of the 1142 appeals that were heard during the year (822 in 2004-05), 73 per cent were dismissed, 5 per cent were discontinued or withdrawn, 17 per cent were allowed and 5 per cent had other outcomes, including those transferred from other courts. Of the 94 appeals that were not migration-related, 64 per cent were dismissed, 27 per cent were allowed and the remainder were discontinued or set aside. Of the 1048 migration appeals that were heard during the reporting year, 78 per cent were dismissed, 5 per cent were discontinued or withdrawn, 15 per cent were allowed and 2 per cent had other outcomes, including those transferred from other courts.

Of those appeals heard, only 68 (approximately six per cent) were heard by a Full Court.

Appeals in family law/child support

There were 104 appeals from the Federal Magistrates Court to the Family Court during 2005-06, a similar number to the previous year. The jurisdiction in all but seven of the appeals heard during the year was exercised by a single judge.

Of the 79 appeals heard during the year, 24 (30.4 per cent) were dismissed, 22 (27.8 per cent) were allowed, 32 (40.5 per cent) were withdrawn and one abandoned.

Five applications for leave to appeal were heard, half the number of the previous year. Of these, two were allowed, two were withdrawn and the other was not completed at the end of the year.

Figure 28 Appeals against Federal Magistrates Court decisions by type

APPEALS	Total	%	% of Total
General Federal Law			
Bankruptcy	44	4.3%	3.9%
Human Rights	12	1.2	1.1%
Migration	963	93.2	84.7%
Consumer Protection	5	0.5%	0.4%
Copyright	3	0.3	0.3%
Other	6	0.6%	0.5%
General Federal Law Total	1033	100%	90.9%
Family Law	104	100%	9.1%
Grand Total	1137		100.0%

Working throughout Australia

The Federal Magistrates Court maintained its commitment to provide access to justice for regional and rural Australian communities. This commitment is met by federal magistrates travelling to 'circuit' locations to conduct hearings. Circuit hearings allow parties to have their matters heard locally and avoid travelling to major cities. The court conducted circuits to 28 locations in 2005-06 (see figure 29).

Summary List Circuits continued in Southport (Gold Coast region), Maroochydore (Sunshine Coast region) and Toowoomba (south-west Queensland region). Parties from the regions file documents in Brisbane to be listed for a first court date at the appropriate location, thus reducing costs to court users. A federal magistrate travels to each location monthly and is able to deal with interim applications and direct people to mediation, if appropriate. All matters continuing to a defended hearing are listed in Brisbane for determination.

Dandenong remained a circuit location for Melbourne-based federal magistrates. A circuit pilot, which was introduced to address the backlog of matters accruing in that location, was successful in ensuring matters previously listed out to 2007 were heard and determined this financial year. The Court's waiting list times for defended hearings are now within the desired six-month period. Any matter that is urgent or requires more lengthy trial time (about two per cent of Dandenong matters) may be transferred to Melbourne for hearing if it cannot be accommodated within the circuit schedule.

In the 2004-05 Annual Report it was forecast that additional judicial appointments would enable the court to expand its circuits into more regional centres. This expansion occurred in Victoria and NSW, with the following regional centres being added to the circuit schedule: Armidale, Ballarat, Bega, Dubbo, Orange, Tamworth and Wagga Wagga.

In addition to the regular circuits, special hearings (or fixtures) were conducted in a number of locations. Special fixtures are usually arranged according to the specific needs of a case. For instance, it may be more effective to hear a matter with a large number of witnesses at the place where they reside.

The court continues to use technology to provide greater access to parties in rural and regional Australia. During 2005-06, telephone and video links were used to assist in the hearing of matters in remote locations and for call overs in preparation for circuits. Portable court recording equipment is also used because of the flexibility it provides in circuit locations, enabling the Federal Magistrates Court to conduct hearings in non-court premises.

Perth circuit

Western Australia remained the only Australian state or territory which did not have a resident federal magistrate in 2005-06. The Family Court of Western Australia serves the needs of Western Australians in family law; however, the Federal Magistrates Court continued to meet the needs of Western Australians by bringing general federal law matters to the Court by circuits.

During 2005-06, the Court conducted eight circuits to Perth in general federal law, each circuit being one week. Of 332 applications filed in the Perth registry, the majority were bankruptcy (297) with four trade practices, seventeen migration, six human rights, one industrial, two copyright and five administrative law filings.

Eighteen judgments were delivered in Perth including eight bankruptcy, three migration, three trade practices, one administrative law and three human rights judgments.

Figure 29 2005-06 circuit locations and details

Victoria	Regular circuits were conducted to Bendigo (including Castlemaine), Dandenong, Geelong, Gippsland (Traralgon), Shepparton and Warrnambool. Ballarat was added to the Victorian circuit schedule during 2005-06.
New South Wales	Regular circuits were conducted to Coffs Harbour, Lismore and Wollongong. New circuit locations of Armidale, Tamworth, Orange and Dubbo were added to the circuit schedule in 2005-06.
Australian Capital Territory	Canberra based Federal Magistrates introduced circuits to Bega and Wagga Wagga in 2005-06.
Queensland	The Federal Magistrates Court circuted to Bundaberg, Cairns, Hervey Bay, Mackay and Rockhampton. Summary lists were held at Toowoomba, Southport and Maroochydore.
Tasmania	Regular circuits were conducted to Devonport and Hobart.
South Australia	No circuits were conducted in South Australia. Circuits are held in Berri and Whyalla on an as-needs basis.
Northern Territory	The Federal Magistrates Court regularly circuted to Alice Springs.
Western Australia	The court sits only in its general federal law jurisdiction in Perth as the Family Court of Western Australia exercises family law and child support jurisdiction exclusively in that state. The Federal Magistrates Court conducted eight circuits of one week's duration to Perth.