

The work of the Court in 2007–08

Introduction

The Federal Magistrates Court of Australia aims to provide accessible and timely justice at a lower cost to the community. This chapter reports on the Court's performance against this objective. In particular it outlines the Court's case management system, reports on work within its jurisdiction and strategies employed to improve access to the Court by interested parties.

The Court's performance

Figure 4 Federal Magistrates Court's performance measures for the Attorney-General's Portfolio Budget Statements

Performance measure	Performance
Time goal: the time taken from filing to disposition is less than six months in 90 per cent of cases.	In 2007–08, 85.9 per cent of all family law matters were completed within six months of filing, and 95.8 per cent were completed within twelve months. 98.8 per cent of divorces were completed within six months, as were 51.3 per cent of final orders (excluding divorce). In general federal law, 73.1 per cent of matters were completed within six months, and 91.1 per cent were completed within twelve months.
Performance goal: less than 1 per cent of cases litigated or divorces processed are subject to complaint.	The number of complaints in 2007–08 represented 0.2 per cent of cases. Further details are on page 62.
Performance goal: sixty per cent of matters are resolved before trial.	In 2007–08 the Court finalised 38 336 cases (excluding divorces), and it needed to deliver only 31 18 judgments following a hearing. This is evidence of the significant priority that the Court places on dispute resolution. Further details are on page 49.



Federal Magistrate Grant Riethmuller; Family Law Conference, Adelaide April 2008

Workload

The Court has jurisdiction in family law and general federal law. The Court shares the same family law jurisdiction as the Family Court of Australia (with the exception of adoption and applications for nullity or validity of marriage) and shares jurisdiction with the Federal Court of Australia in a number of areas of general federal law.

During 2007–08, 84 173 matters overall were filed in the Federal Magistrates Court and 82 689 matters were finalised. By comparison, 84 485 matters were filed and 80 000 matters were finalised in 2006–07.

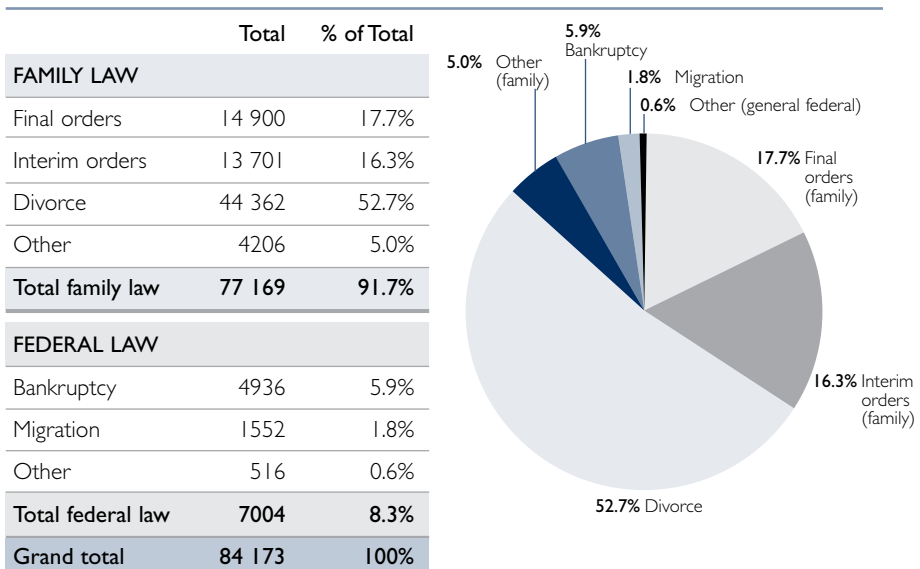
In family law, 77 169 applications were filed and 75 097 matters were finalised. Compared to the previous year, applications for final orders were down by 5.2 per cent, from 15 725 last year to 14 900 this year. Applications for interim orders and divorce remained steady.

By the year's end, family law matters accounted for 92 per cent of the Court's workload—an increase of one per cent from the last reporting period.

As the filing figures suggest, the workload in family law is large. Nationally, federal magistrates in family law have an average of 74 new family law matters added to their docket each month and are managing approximately 400 matters at any given time.

In general federal law there was an 8.7 per cent decrease in filings from the 2006–07 year. This can be largely attributed to the 22 per cent reduction in applications filed in the migration area which traditionally account for a significant proportion of the total general federal law filings. By contrast, filings in the industrial law jurisdiction increased by 89 per cent, from 119 in 2006–07 to 225 this year. General federal law matters now constitute eight per cent of the Court's workload—a one per cent decrease from last year.

Figure 5 National statistics for Federal Magistrates Court filings 2007–08



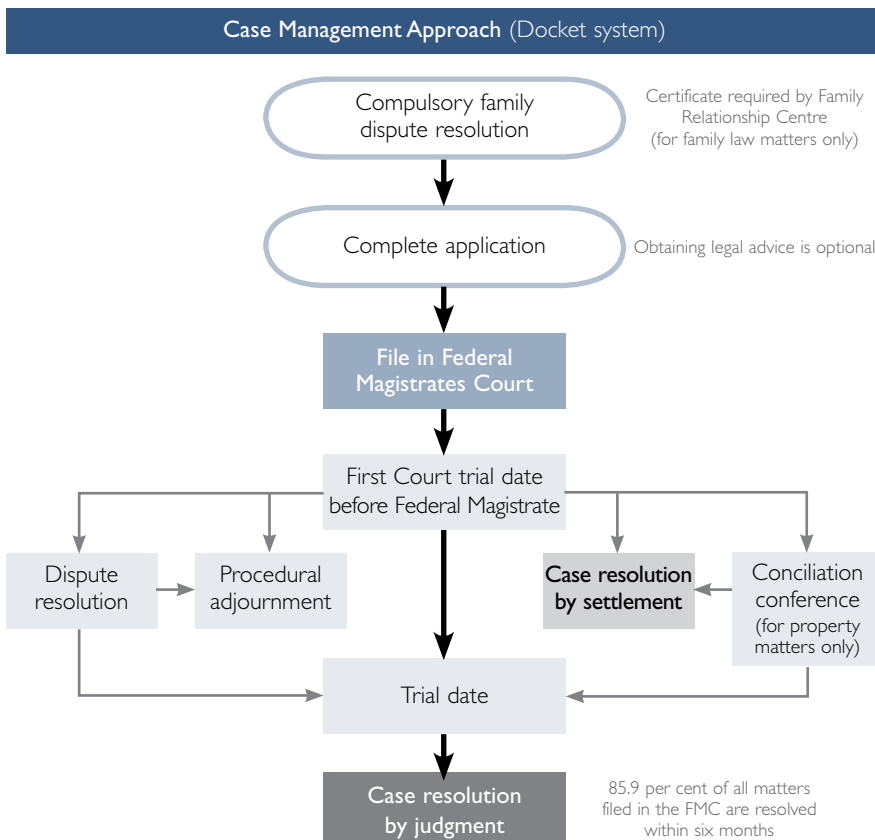
Case management

The Court uses a docket system to manage its cases. When an application has been filed, cases are allocated to a federal magistrate, and that federal magistrate generally manages the case from commencement to disposition. This is in contrast to the traditional master calendar system in which a different judicial officer may hear each court event.

The docket system provides the following benefits to parties:

- There is no need for parties to explain a case at each court event; this results in savings in time and costs due to the federal magistrate's familiarity with the case.
- It allows for consistency throughout the case.
- It results in fewer formal directions and reduces the number of appearances in court.
- It helps to identify cases that are suitable for primary dispute resolution.
- It allows issues to be identified quickly and promotes cases to be settled early.
- The overall result is improved management of individual cases.

The docket system allows cases to be managed in accordance with their individual needs. This is evidenced by the Court's ability to issue orders in a majority of matters with a same-day turnaround.



Transfers between the Courts

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

In 2007–08, the Family Court transferred 1544 matters to the Federal Magistrates Court which was a decrease of 36 per cent from 2006–07. The higher figure last financial year (2395 matters) is attributable to the joint call-overs conducted in Adelaide and Brisbane. In these special call-over sittings, a judicial officer from the Family Court and Federal Magistrates Court sat on the bench together to transfer matters between the courts. This was done to expeditiously transfer a large volume of matters between the courts and to reduce the Family Court's backlog in those locations. The joint call-overs last year significantly increased the number of transfers in those locations (by 96 per cent) for that year, thus explaining the decrease in transfers during 2007–08. In 2007–08 transfer rates from the Family Court to the Federal Magistrates Court increased in Melbourne, Hobart, Newcastle and Canberra.

Figure 6 Total family law transfers to the Court from the Family Court as at 30 June 2008

	Adelaide	Brisbane	Canberra	Dandenong	Darwin	Hobart	Melbourne	Newcastle	Parramatta	Sydney	Townsville	TOTAL %Change
2007-08	118	306	43	46	1	105	394	87	164	227	53	1544 -35.5%
2006-07	412	905	23	73	4	46	240	53	197	354	88	2395 95.8%
2005-06	24	346	20	29	7	52	115	30	104	280	216	1223 46.5%

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

In 2007–08 the Federal Magistrates Court transferred 535 matters to the Family Court—a decrease of 30 per cent from last year. The Court transferred 65 per cent fewer matters to the Family Court (535 matters) than the Family Court transferred to the Federal Magistrates Court (1544 matters).

Figure 7 Total family law transfers to the Family Court from the Court as at 30 June 2008

	Adelaide	Brisbane	Canberra	Dandenong	Darwin	Hobart	Melbourne	Newcastle	Parramatta	Sydney	Townsville	TOTAL %Change
2007-08	48	109	20	28	2	7	80	51	110	54	26	535 -30.0%
2006-07	45	122	35	43	12	7	104	124	146	99	27	764 0.0%
2005-06	52	137	33	40	33	22	187	115	110	15	20	764 18.4%

Number of general federal law matters transferred from the Federal Court to the Federal Magistrates Court

The number of matters transferred to the Federal Magistrates Court from the Federal Court decreased by 40 per cent in 2007–08. Last year 48 matters were transferred and in 2007–08, 29 matters were transferred.

Figure 8 Total federal law transfers to the Court from the Federal Court as at 30 June 2008

YEAR	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	TOTAL	% Change
2007-08	1	1	0	0	0	10	7	10	29	-39.6%
2006-07	1	3	0	0	0	22	2	20	48	-41.5%
2005-06	6	1	0	0	0	19	2	54	82	-44.2%

Number of general federal law matters transferred from the Federal Magistrates Court to the Federal Court

In 2007–08, the Federal Magistrates Court transferred 19 matters to the Federal Court—an increase of 58 per cent from the 12 matters transferred last year. The majority of transfers occurred in the Sydney registry which has the greatest number of general federal law filings.

Figure 9 Total federal law transfers to the Federal Court from the Court as at 30 June 2008

YEAR	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	TOTAL	% Change
2007-08	0	1	0	0	0	4	1	13	19	58.3%
2006-07	4	0	0	0	0	3	0	5	12	-53.8%
2005-06	4	1	0	0	0	13	1	7	26	23.8%

Report on work in family law

On its commencement, the Court was largely reliant on work transferred to it from the Family Court. Gradually the family law workload of the Court has increased to the extent that during 2007–08 over 79 per cent of all family law applications were filed at first instance in the Federal Magistrates Court, compared to 69 per cent in 2006–07. In some registries this figure increased to 90 per cent or more. For example, in Brisbane, 92 per cent of family law matters commenced in that registry were filed in the Federal Magistrates Court.

Figure 10 Family law applications, by type, filed in the Federal Magistrates Court

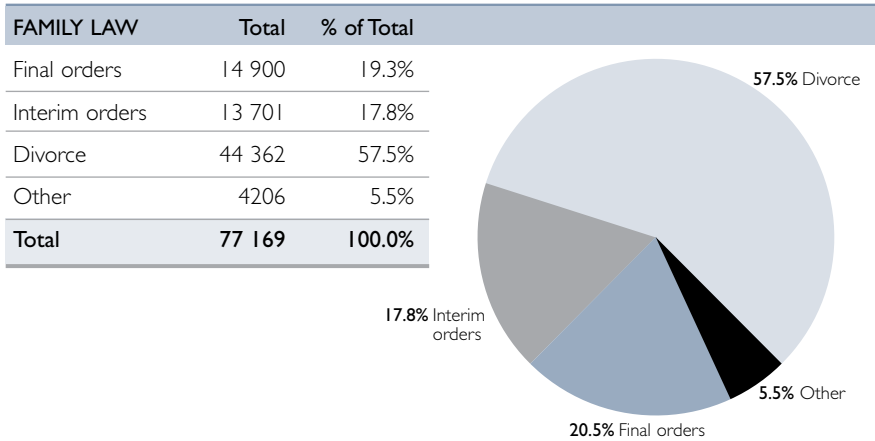


Figure 11 Total family law applications in the Court (including divorce applications) as at 30 June 2008

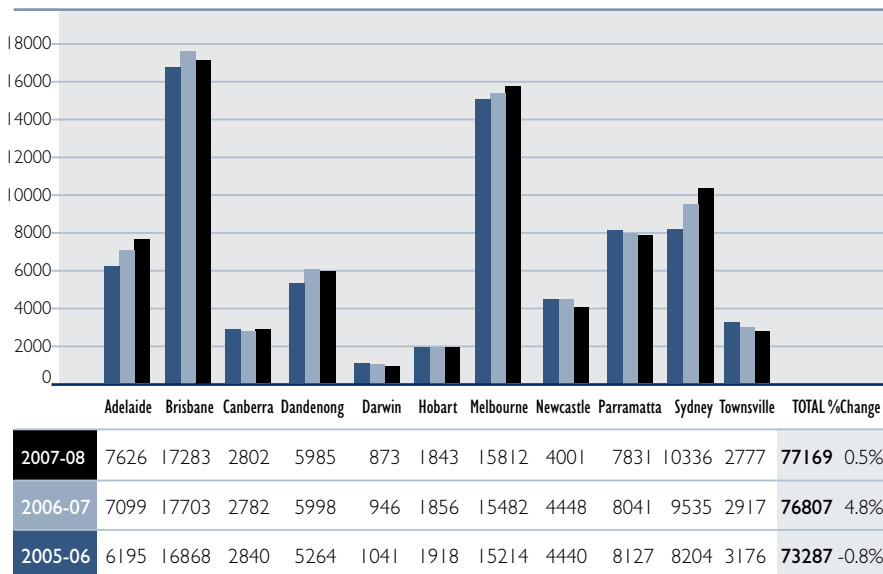


Figure 12 Total family law applications in the Court (excluding divorce applications) as at 30 June 2008

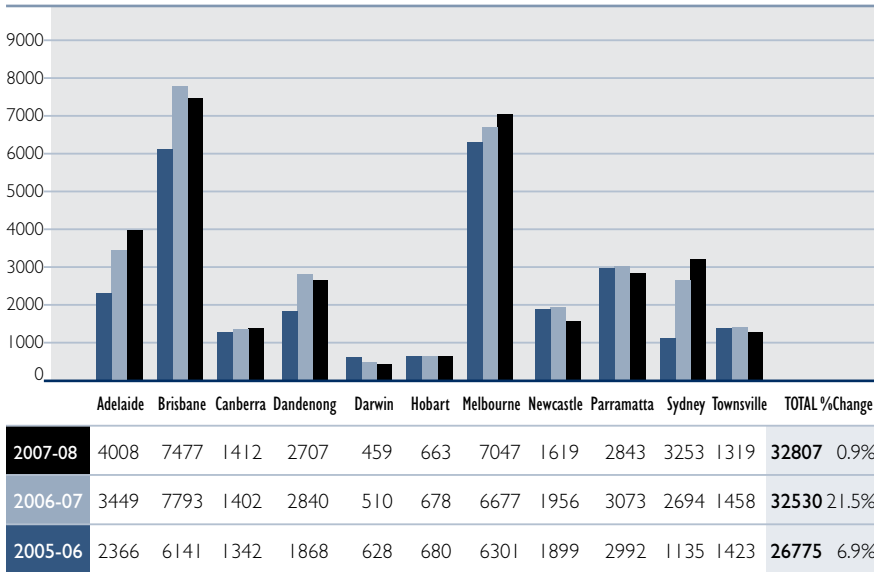


Figure 13 Total family law applications in the Court seeking final orders as at 30 June 2008

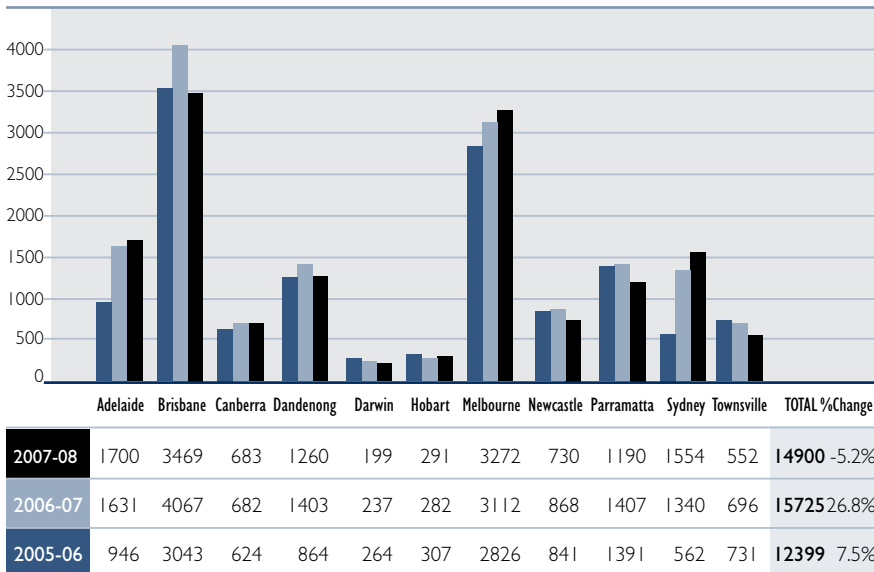
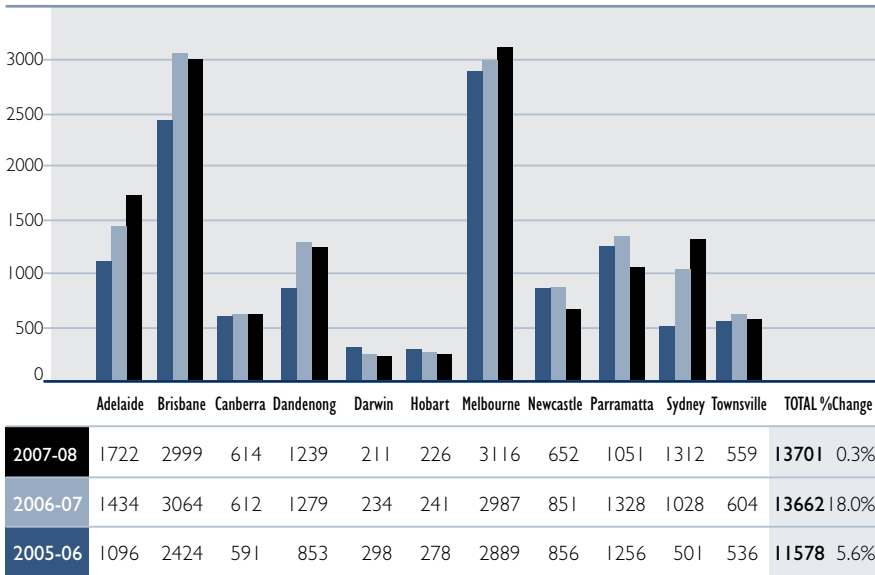


Figure 14 Total family law applications in the Court seeking interim orders as at 30 June 2008

The Court's family law jurisdiction is largely the same as the jurisdiction of the Family Court. In light of this, the Federal Magistrates Court, until recently, used a 'two day rule' (Rule 8.02 (4)(f) of the Federal Magistrates Court Rules) to help identify in which court the matter should be heard. If the matter was anticipated to take longer than two days to be heard, it was deemed to be better dealt with by the Family Court.

The Court has decided to remove the two day rule from its Rules because the bulk of the Court's workload involves applications for children or financial orders where the issues, although sometimes difficult, are well defined. They are matters that can generally be resolved without significant hearing of oral evidence and do not involve novel legal arguments. The Court considers that the range of work that it is undertaking to be appropriate and to seek to apply a two day rule to divide the workload of the courts. The removal of the two day rule also reflects the inadequacy of measuring the complexity of a matter by reference to the estimated to the hearing time.

Divorce

Divorce applications represent a large volume of the Court's workload—53 per cent. In 2007–08, 44 362 applications for divorce were filed—a small increase from last year: Ninety-nine per cent of applications for divorce were finalised in less than six months and a total of 44 353 divorces were granted.

Figure 15 Number of divorce applications filed in the Court as at 30 June 2008

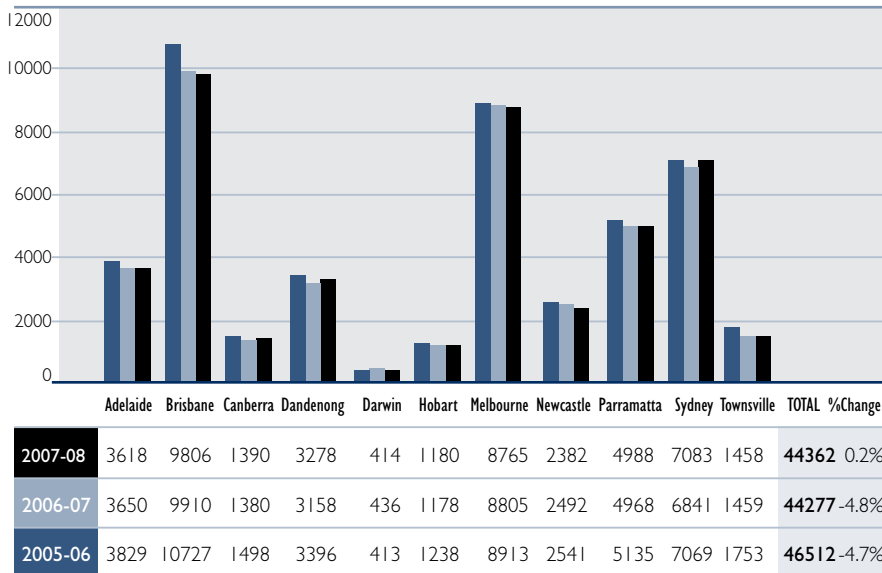
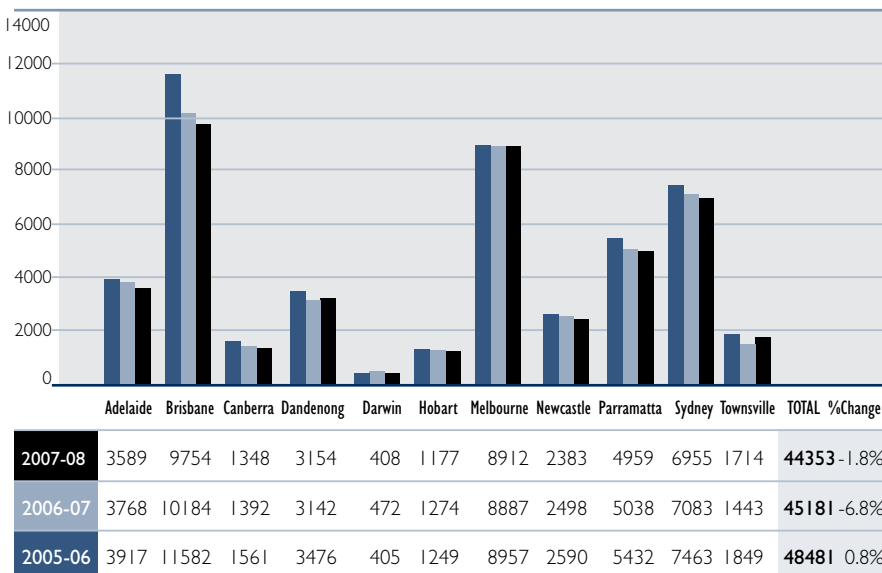


Figure 16 Number of divorces finalised in the Court as at 30 June 2008



The Court's sessional registrars hear uncontested divorce applications. This enables divorce matters to be finalised in an efficient manner and frees up federal magistrates to adjudicate more complex matters. Sessional registrars perform a valuable role in allowing the Court to efficiently and quickly manage large volume divorce lists.

A divorce subcommittee meets regularly to consider issues raised in relation to divorce proceedings. During the year, sessional registrars attended a conference convened by the Court to further develop their expertise and discuss best practice protocols and guidelines.

In April 2008 a revised version of the online divorce application form was launched at the 13th Annual Family Law Conference. The online form is an electronic web-based format and is accessible at www.divorce.gov.au. The online application is designed to be easier for parties to complete as irrelevant questions are removed while the form is completed. It also highlights incomplete questions that need to be answered before it can be finalised.

Less adversarial processes

The Court places considerable emphasis upon adopting less adversarial processes, particularly in parenting matters. The docket case management system used by the Court enhances less adversarial processes by ensuring that cases are not confined to a rigid process but managed flexibly according to their respective needs. The benefits to litigants are savings in time and cost, fewer direction hearings and court events, earlier narrowing of the issues in dispute and identification of cases suitable for dispute resolution, and earlier settlement.

The introduction of Division 12A of the *Family Law Act 1975* by the *Family Law Amendment (Shared Parenting Responsibility) Act 2006* set out new principles and rules relating to the conduct of children's proceedings. The amendments were closely modelled on the less adversarial approach adopted in the Children's Cases Program, an initiative set up by the Family Court. The Federal Magistrates Court did not need to adopt this program as it has operated in a less adversarial manner since its inception.

De facto financial matters

The Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 was introduced into the Parliament in June 2008. The Bill, if enacted, will amend the *Family Law Act 1975* to confer federal jurisdiction in de facto financial matters on the Federal Magistrates Court, the Family Court, and state and territory courts of summary jurisdiction. The Bill seeks to extend both courts' jurisdiction under the Family Law Act to provide financial adjustment similar to that already applying to married couples by implementing references of legislative powers from all states (except South Australia) and legislating for the territories. The proposed legislation aims to place de facto heterosexual and same-sex couples in a similar position under the Family Law Act to that of married couples.

Child support

Following the recommendations of the Ministerial Taskforce on Child Support, as contained in the report *In the Best Interests of Children—Reforming the Child Support Scheme* (2005), there have been staged legislative changes to the child support regime. The final stage comes into effect on 1 July 2008 and included a change to the formula.

While the Federal Magistrates Court hears most child support applications filed, the legislative amendments limit the type of first-instance child support matters that can be filed in the courts.

The majority of child support applications are seeking enforcement orders or appealing a child support decision of the Social Security Appeals Tribunal; however, appeals from decisions of the Social Security Appeals Tribunal are limited to appeals on questions of law. These appeal decisions are available on AustLII and other online legal information sites.

The Court has established a child support panel comprising federal magistrates in New South Wales, South Australia, Queensland and Victoria. Panel members deal with:

- appeals from the Social Security Appeals Tribunal
- appeals from the child support registrar
- appeals from the Administrative Appeals Tribunal with respect to child support transferred from the Federal Court of Australia
- international child support and child maintenance cases.

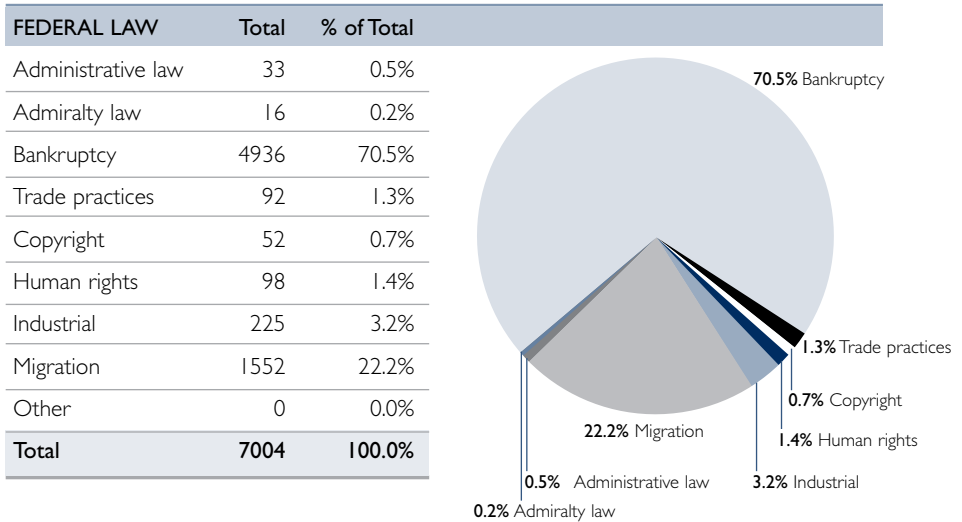
Other child support and child maintenance applications are listed in accordance with existing listing practices.

Some residual Administrative Appeals Tribunal review processes for miscellaneous child support matters remain with the Court, although the Social Security Appeals Tribunal has been conferred significant jurisdiction to review child support matters. There is a need for greater consistency and simplicity in the review processes in relation to child support as there are still a number of pathways such matters can come before the Court and different layers of review.

Report on work in general federal law

Filings in general federal law represent eight per cent of all filings in the Federal Magistrates Court. The clearance index of finalised to filed matters is 1.08, which means that the Court is disposing of more matters than are being filed. This is a measure of the Court's efficiency and is in part due to the Court's docket system of case management.

Figure 17 Federal law applications, by type, filed in the Federal Magistrates Court



The Court received two new areas of general federal law jurisdiction in 2007. The Federal Magistrates Court was conferred limited enforcement jurisdiction under the *Water Act 2007* and concurrent jurisdiction with the Federal Court under the *National Greenhouse and Energy Reporting Act 2007*.

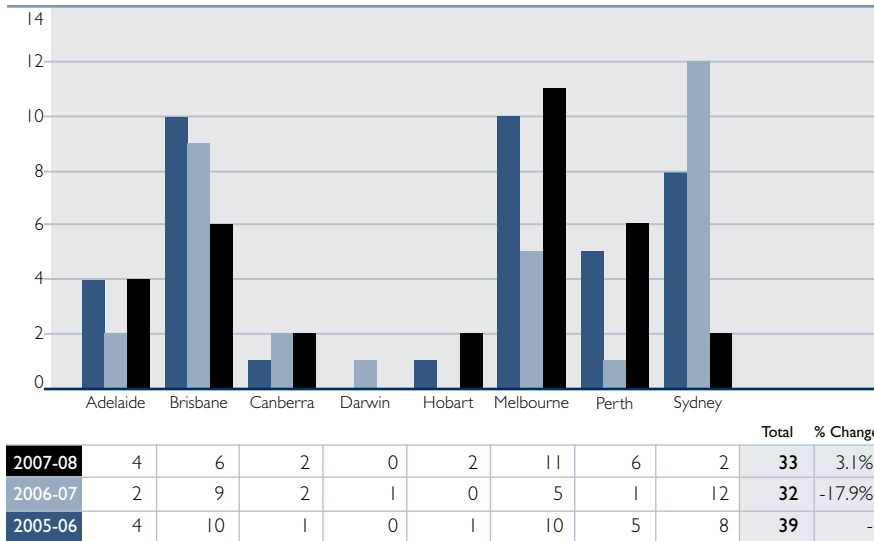
Part eight of the *Water Act 2007* sets out the enforcement mechanisms that may be used in response to contraventions of provisions of this Act. These include injunctions, declarations, civil penalty orders, infringement notices, enforceable undertakings and enforcement notices.

The *National Greenhouse and Energy Reporting Act 2007* comes into effect on 1 July 2008. The Federal Magistrates Court and the Federal Court have jurisdiction in relation to the enforcement of mandatory information and reporting obligations under this Act.

Administrative law

The administrative law work of the Court is only a small component of the overall work of the Court. Thirty-three administrative law applications were made in 2007–08, 33 per cent of which were filed in the Melbourne registry. Compared to last year, the number of administrative law filings received by the Court was stable.

Figure 18 Total administrative law applications filed in the Court as at 30 June 2008



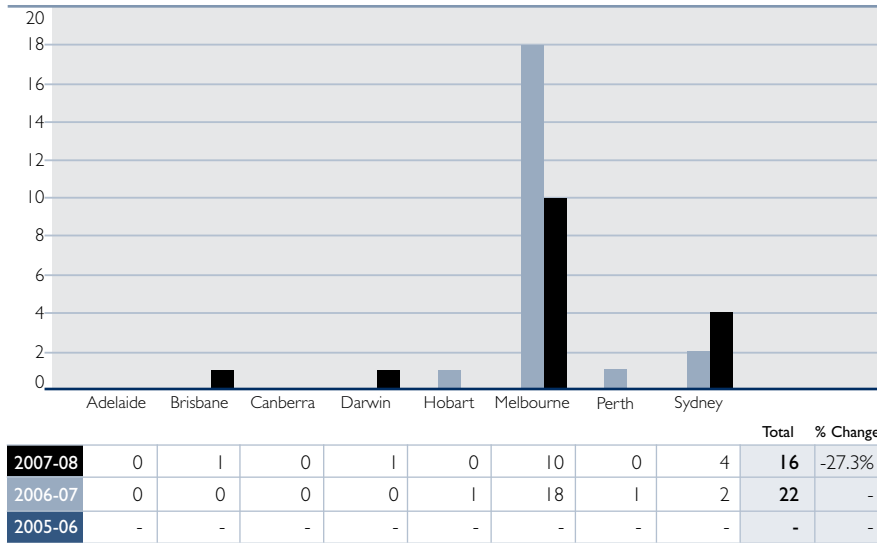
The Court's administrative law jurisdiction includes appeals from the Administrative Appeals Tribunal and applications under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court shares concurrent jurisdiction under the *Administrative Decisions (Judicial Review) Act* with the Federal Court. However, appeals of Administrative Appeals Tribunal matters can only be heard by the Court upon remitter from the Federal Court.

Admiralty

The Court has limited jurisdiction in admiralty law. Filings for admiralty applications have decreased nationally by 27 per cent from the last reporting period. Similar to the trend in 2006–07, the majority of admiralty law applications (62 per cent) were filed in Melbourne.

Figure 19 Total admiralty law applications filed in the Court as at 30 June 2008



A combined Federal Court–Federal Magistrates Court admiralty user group met during the year. In light of an issue raised in relation to the form requirements for admiralty applications in the Federal Magistrates Court, the *Notice to Practitioners—Conduct of Admiralty and Maritime Work in the Federal Magistrates Court of Australia*—was revised and reissued. The revised version clarifies that the use of Federal Court forms constitutes sufficient compliance with the admiralty proceedings form requirements in the *Federal Magistrates Court Rules 2001*. In addition, the Court arranged for all general federal law forms to be available from its website in an unprotected format, consistent with the practice adopted by the Federal Court and a number of other courts. This enables practitioners to make changes to the Court’s *General Federal Law Application* to comply with requirements under the Admiralty Rules.

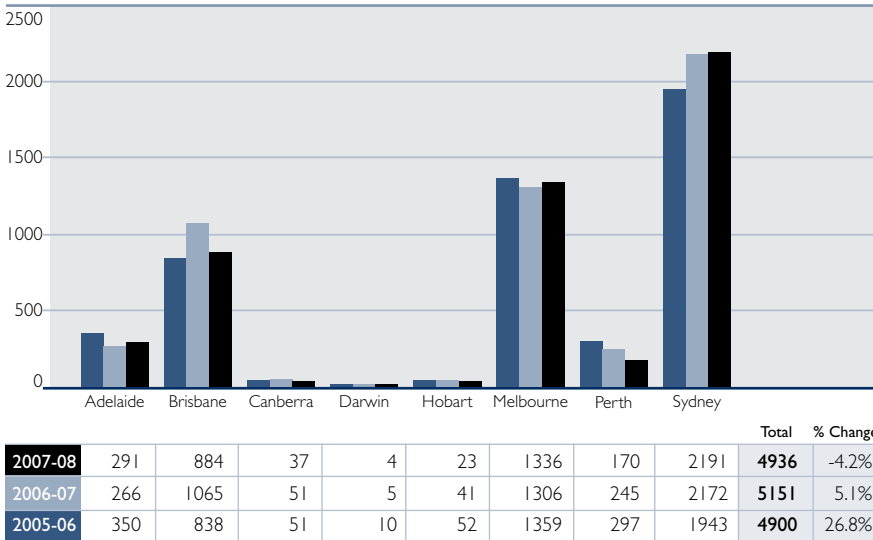
The Court is aware of an impediment to the exercise of its admiralty jurisdiction which may have impacted on the number of filings. Concerns have been raised in relation to the enforceability of decisions of the Court in many jurisdictions where flag carriers, charterers, shippers or stevedores are located. The Court has asked the Attorney-General’s Department to consider ways in which these difficulties may be overcome. In the interim, cases in which enforcement concerns are raised are transferred to the Federal Court.

Bankruptcy

Filings for bankruptcy applications have remained relatively stable with only a slight decrease nationally (four per cent) from last year.

In 2007–08, Melbourne, Adelaide and Sydney had more filings compared to 2006–07, but Brisbane and other locations experienced a decrease in the number of bankruptcy applications filed.

Figure 20 Total bankruptcy applications filed in the Court as at 30 June 2008



While bankruptcy represents a significant workload in terms of overall filing statistics, a considerable amount of the bankruptcy work has been delegated to registrars. The significant role performed by registrars is recognised by the Court.

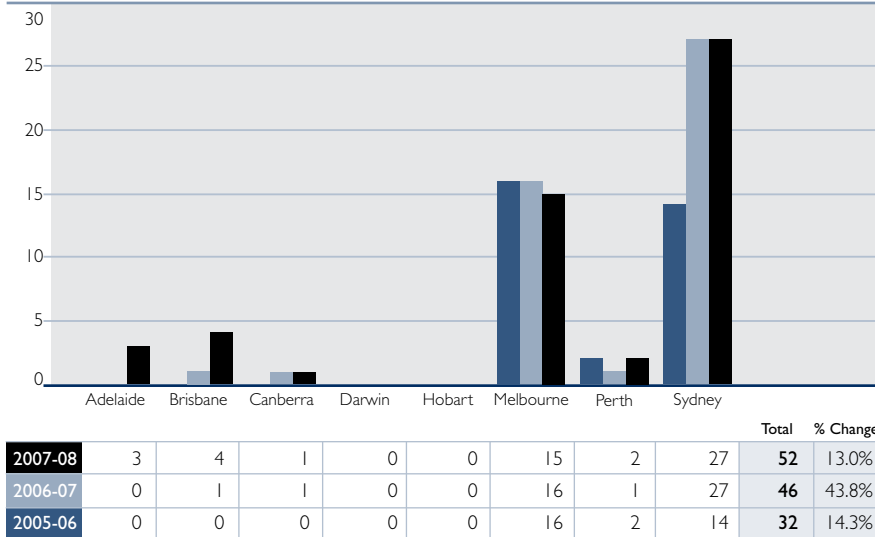
The Full Federal Court decision in *Totev v Sfar* [2008] FCAFC 35 considers the scope of review powers exercised by a federal magistrate in the context of an application to set aside a sequestration order made by a registrar. The Court decided that because a hearing of an application for review of a sequestration order is a hearing de novo, the reviewing federal magistrate must have the statutory affidavits updated before the hearing except in the case of a review on the same day as the sequestration order is made.

In the Federal Court decision of *Zdenek Simandl v Deputy Commissioner of Taxation* [2008] FCA 450, Justice Cowdroy also considered issues surrounding the nature of delegated powers under the *Federal Magistrates Act 1999*. One of the arguments raised by the applicant was a challenge to the power of registrars to make an order for substituted service and to amend a bankruptcy notice. In dismissing the application, Justice Cowdroy noted that the Federal Magistrates Court is a court created under Chapter III of the Constitution and the performance of such a function by registrars was clearly a permissible function.

Copyright

Although a relatively small proportion of the Court's overall workload, there has been a 13 per cent increase in copyright applications since last year. Those increases occurred in Adelaide and Brisbane.

Figure 21 Total copyright applications filed in the Court as at 30 June 2008



The Attorney-General's Department undertook a statutory review of the operation of the amendments to the *Copyright Act 1968* made by Schedule 4 of the *Copyright Amendment (Parallel Importation) Act 2003* and sought views on whether the amendments had been effective and whether further amendments could improve their operation in any way. The review concluded that it would be premature to change the law at this time but noted the divergent views on how copyright law should adapt to changes in digital technology and consumer expectations.

Many copyright actions are commenced seeking injunctive relief in the nature of an Anton Piller order or Norwich Pharmacal relief. The panel facilitates the expeditious hearing of these matters. In *APRA v Cougars Tavern* [2008] FMCA 396, the applicant commenced proceedings against four respondents in respect of alleged infringements of copyright in recorded music being played at two different venues and at a nightclub. The Federal Magistrate, having found an infringement, granted injunctive relief and considered the conduct in making an award of additional damages. The Court noted:

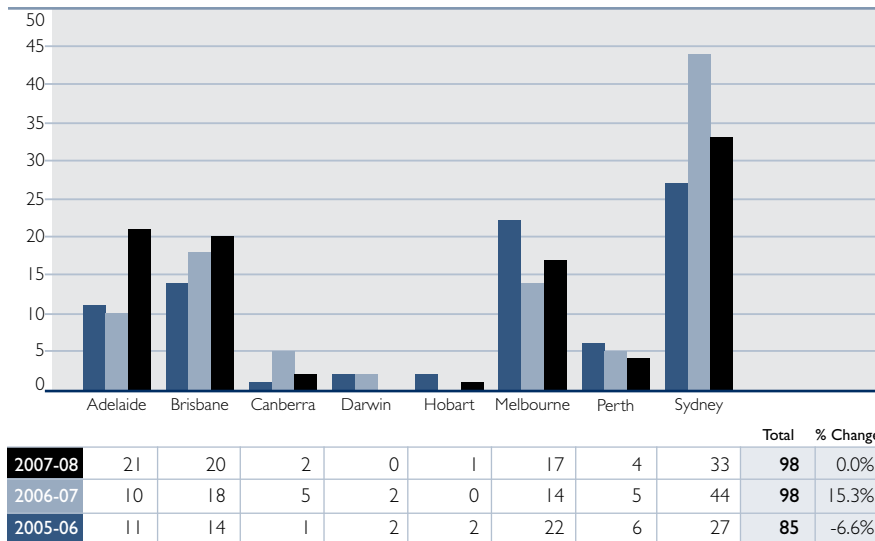
'I hardly think it is necessary today to labour too long in the vineyard of necessity for the deterrence of similar infringements of copyright. I am satisfied from the evidence in this case that infringement by operators of taverns or nightclubs is a matter of serious concern. It is also not uncommon: PPCA v Adelaide City Entertainment [2005] FMCA 923. The conduct of the respondents after being advised of the acts constituting the infringement was, to say the least, reprehensible.' [para 23]

In 2003, the Advisory Council on Intellectual Property recommended an expansion of the Court's jurisdiction to include the wider intellectual property jurisdiction of trademark and design. The Court considers that providing an additional option to intellectual property rights owners would facilitate greater access to enforcement procedures and an alternate avenue to those who may otherwise not have pursued their dispute.

Human rights

In 2007–08 the number of filings in the human rights jurisdiction (98) was unchanged from the previous year. Despite the decline in filings in the Sydney registry (from 44 last year to 33 this year), the majority of human rights applications were filed in this registry.

Figure 22 Total human rights applications filed in the Court as at 30 June 2008



There was some concern about issues of access and equity when the hearing function of the Human Rights and Equal Opportunity Commission (HREOC) was transferred to the federal courts. However, the more informal and accessible processes of the Federal Magistrates Court have helped ease such concerns. As Justice Gordon noted in *Sterling Commerce (Australia) Pty Ltd v Iloff* [2008] FCA 702:

The Federal Magistrates Court has abandoned pleadings in favour of affidavits. In doing so, it has recognised that the Court has been created to offer relatively inexpensive and expeditious justice. It is a court which should proceed without undue formality and should ensure that the proceedings are not protracted: section 42. It has abandoned the formal procedures of superior courts. That course is consistent with the Act and the FMC Rules.

The filing fee for such applications has been set at \$50 and does not rise in accordance with biennial fee increases. This fee is considerably less than the usual filing fee for other applications. Proceedings are commenced by the filing of an application and a copy of the notice of termination. New application and response forms were approved for use in human rights proceedings and litigants now only need to file the approved application and response form without the need for a separate information sheet. A large number of applications are commenced by self-represented litigants and a single form approach is considered to be simpler than the previous two form requirement.

Even though applicants will have had conciliation via the HREOC processes prior to filing, directions to attend mediation are often given at the first date. Mediation will often result in a settlement without the need for the matter to proceed to a defended hearing.

In human rights proceedings the onus of proof lies with the complainant to establish unlawful discrimination. There has been some case law surrounding the standard of proof and, in particular, whether the so-called *Briginshaw* test should be applied. (*Briginshaw v Briginshaw* (1935) 60 CLR 336) The principle has been given statutory recognition in section 140 of the *Evidence Act 1995* and was recently considered by the Full Court of the Federal Court in *Qantas Airways Ltd v Gama* [2008] FCAFC 69. In this case the appellant asserted that the federal magistrate erred by using the *Briginshaw* test when applying the balance of probabilities standard with respect to some of his allegations under the Racial Discrimination Act and the Disability Discrimination Act. While rejecting this ground of appeal the Full Court noted:

The so-called Briginshaw test does not create any third standard of proof between the civil and the criminal. The standard of proof remains the same; that is proof on the balance of probabilities. The degree of satisfaction that is required in determining that that standard has been discharged may vary according to the seriousness of the allegations of misconduct that are made out. [Paragraph 110]

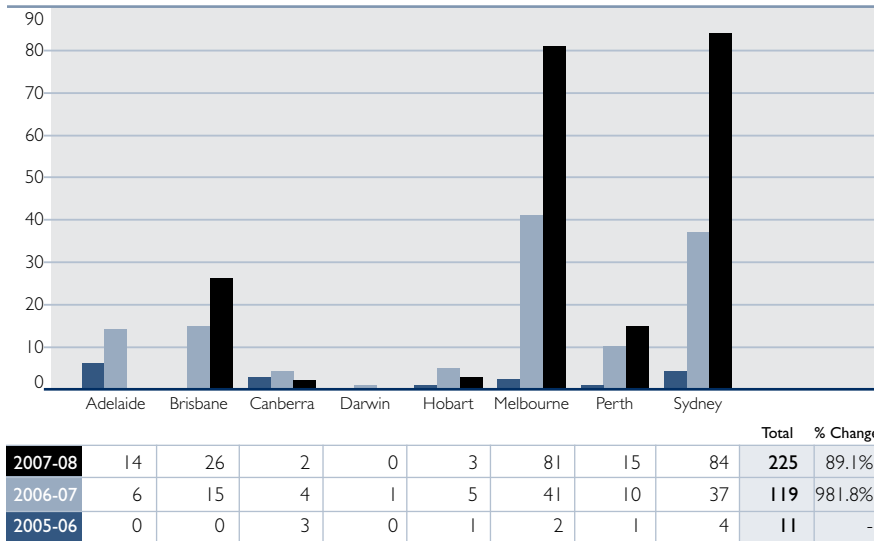
Federal discrimination law is a relatively new area of law for federal courts and the decisions of the Court are of significance as they often involve novel issues of jurisprudence. The HREOC publication *Federal Discrimination Law* provides a comprehensive overview of decisions in the jurisdiction as well as issues of practice and procedure.

Industrial law

In the second full year since jurisdiction in workplace relations matters was conferred on the Court, the Court's work in this area continues to grow. There has been an 89 per cent increase on filings from last year. Excluding bankruptcy, industrial law action represents 11 per cent of the Court's general federal law workload.

During 2007–08 there were 225 workplace relations matters filed with the Court, an average of 19 per month. There were 84 matters filed in Sydney and 81 in Melbourne, 26 in Brisbane, 15 in Perth, 14 in Adelaide, 3 in Hobart and 2 in Canberra.

Figure 23 Total industrial law applications filed in the Court as at 30 June 2008



Along with the jurisdiction under *Building and Construction Industry Improvement Act 2005* and the *Independent Contractors Act 2006*, the Court's jurisdiction under the *Workplace Relations Act 1996* is largely concurrent with the Federal Court. The work of the Court in this area includes proceedings for civil penalties, unlawful termination, underpayment of wages and interpretation of workplace agreements.

Consistent with the importance placed by the *Workplace Relations Act 1996* on compliance with minimum obligations, the majority of the Court's work in this area has concerned applications for the imposition of penalties for breaches of awards, applicable provisions, or the rules for the making of workplace agreements. Recent examples include:

- *Brobbel v Darrell Lea Chocolate Shops Pty Ltd* [2008] FMCA 714, which resulted in penalties of \$120 000 for duress in connection with making of workplace agreements.
- *Jones v Hanssen Pty Ltd* [2008] FMCA 291, where penalties of \$174 000 were imposed for lodgement of unapproved workplace agreements and failure to lodge workplace agreements.
- *Jarvis v Imposete Pty Ltd (No.2)* [2008] FMCA 101, where the Court ordered penalties of \$93 000 in respect of underpayments and breaches of awards.

As well as matters for the imposition of penalties, there continues to be a steady increase in the number of matters involving claims of unlawful termination. Recent examples include:

- *Barhoum v All Districts Coating Pty Ltd & Ors* [2008] FMCA 172, which concerned whether a former employee's work-related injury was the reason, or part of the reason, for the termination. In concluding the employee was terminated unlawfully, the Court found the applicant was singled out and treated differently to all other employees and a penalty was imposed at the high end of the scale.
- *Gordon v Express Gas Operations Pty Ltd* [2007] FMCA 1059, where the Court found that an employee had been terminated for a prohibited reason, namely temporary absence from work due to illness or injury.

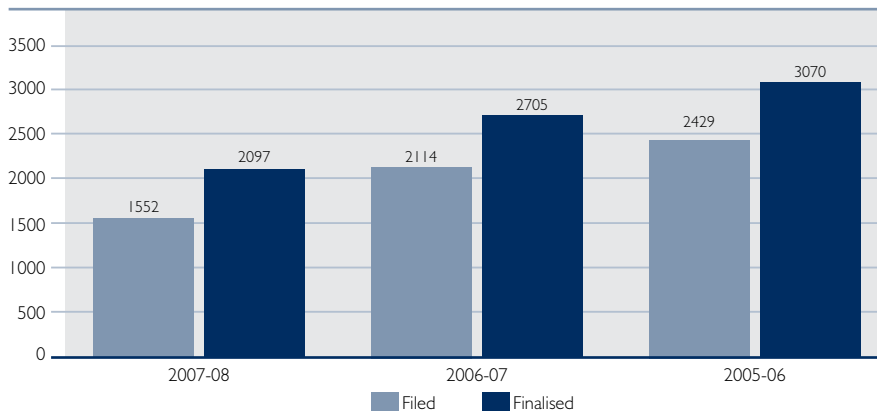
The work of the Court in this area continues to grow as litigants pursue enforcement and breaches of minimum terms and conditions of employment.

Migration law

There has been a general downward trend in the number of migration applications filed in the Court; during the year filings have decreased by 27 per cent. Despite this reduction, the Court's workload in the migration area is still significant. The migration workload makes up 22.2 per cent of the Court's total general federal law workload; and, excluding bankruptcy matters (largely heard by registrars), represents 75 per cent of the general federal law work of federal magistrates.

In 2007–08 the Court finalised 545 more migration matters than it received. This means that matters are being disposed of in an increasingly timely manner. Eighty-three per cent of migration matters were finalised within 12 months compared to 67 per cent in 2006–07.

Figure 24 Total migration applications filed in, and finalised by the Court as at 30 June 2008



Total migration applications finalised by the Court as at 30 June 2008

									Total	% Change
2007-08	14	20	1	1	4	212	21	1824	2097	-22.5%
2006-07	34	20	1	0	2	322	16	2310	2705	-11.9%
2005-06	33	25	17	0	2	522	17	2454	3070	11.7%

Figure 25 Total migration applications filed in the Court as at 30 June 2008

									Total	% Change
2007-08	16	24	1	1	0	168	23	1319	1552	-26.6%
2006-07	27	17	1	0	5	293	16	1755	2114	-13.0%
2005-06	38	30	6	0	1	331	17	2006	2429	-0.7%

The bulk of the migration workload is in the Sydney registry. The rules in relation to migration proceedings facilitate the early disposition of unmeritorious claims (that is, applications that have no reasonable prospect of success) and include an option for proceeding by way of a show-cause application. The new legislation which came into force in 2006 does not require the Court to conclude that an application is hopeless or bound to fail for the Court to summarily dismiss it on the basis that it has no reasonable prospect of success.

There have been some significant High Court and Full Federal Court decisions during the year which have affected the migration jurisdiction of the Court.

In *Bodruddaza v Minister for Immigration and Multicultural Affairs* (2007) 228 CLR 651 the High Court unanimously decided that Parliament did not have the power to impose time limits on applications for relief under the High Court's original jurisdiction under section 75(v) of the Constitution.

More recently the High Court in *MZXOT v Minister for Immigration and Citizenship* [2008] HCA 28, considered whether it had power to remit migration proceedings to the Federal Magistrates Court under an inherent Constitutional power, notwithstanding the express statutory exclusion of the Court's power to deal with such matters outside the statutory time limit. The High Court unanimously held that remitting the application to the Court was not possible under the legislation. The department's decision was a 'primary decision' as defined by section 476 of the *Migration Act 1958* and only the High Court has jurisdiction to review it. The practical effect of the decision is to preserve the High Court's exclusive jurisdiction to determine matters outside the time limits.

The Full Federal Court in *Minister for Immigration and Citizenship v SZKKC* [2007] FCAFC 105 held that the time limit imposed in section 477 (in relation to the Federal Magistrates Court) only begins to run if the applicant is personally served with the Refugee Review Tribunal's written statement of reasons by a person authorised by the registrar of the tribunal. This decision means that, in practice, the time limits in section 477 (and section 477A relating to the Federal Court) are rendered ineffective.

Another recent Full Federal Court decision of practical significance is *SZKTI v Minister for Immigration & Citizenship* [2008] FCAFC 83. In this case the Full Court held that the obligation to give a written invitation to a person to provide additional information is mandatory. This decision was recently confirmed by another Full Federal Court decision in *SZKCQ v Minister for Immigration* [2008] FCAFC 11.

The Migration Legislation Amendment Bill (No. 1) 2008 as introduced into the Parliament originally included provisions for the reinstatement of time limits for applying to the courts for judicial review to overcome the problems identified in these decisions. However, during the course of legislative debate, amendments were moved to take the time limit provisions out of this Bill with the intention of introducing a separate Bill to deal with time limits and other miscellaneous issues.

As most first-instance migration matters come before the Federal Magistrates Court, the jurisdiction is significant not only in terms of workload, but also in view of the evolving jurisprudence. The Court is grateful for the assistance which members of the legal profession play in providing pro bono assistance in migration matters.

National security

The Federal Magistrates Court is an issuing court under the *Criminal Code Act 1995*. Two applications have been filed in the Court for issuance of control orders to limit a person's movement or association under the anti-terrorism legislative scheme.

In *Thomas v Mowbray* [2007] HCA 441; (2007) 237 ALR, 194 the High Court, by a majority of 5–2, upheld the validity of the control order provisions of the Criminal Code. In this case Mr Thomas brought proceedings against the Federal Magistrate who made an interim control order on an ex parte application, challenging the order on the basis that the control order provisions were unconstitutional. The majority held that these provisions are not unconstitutional, that they do not infringe the separation of powers under the Constitution, and can be supported by the defence powers.

In the matter of *Jabbour v Hicks* [2007] FMCA 2139, the Federal Magistrate issued an interim control order. In doing so the Federal Magistrate concluded:

The controls will protect the public and assist Mr Hicks to reintegrate into the community and adapt back into the Australian society and culture. Without these controls, Mr Hicks could be exploited or manipulated by terrorist groups. Due to his knowledge and skills, he is a potential resource for the planning or preparation of a terrorist act [para 5].

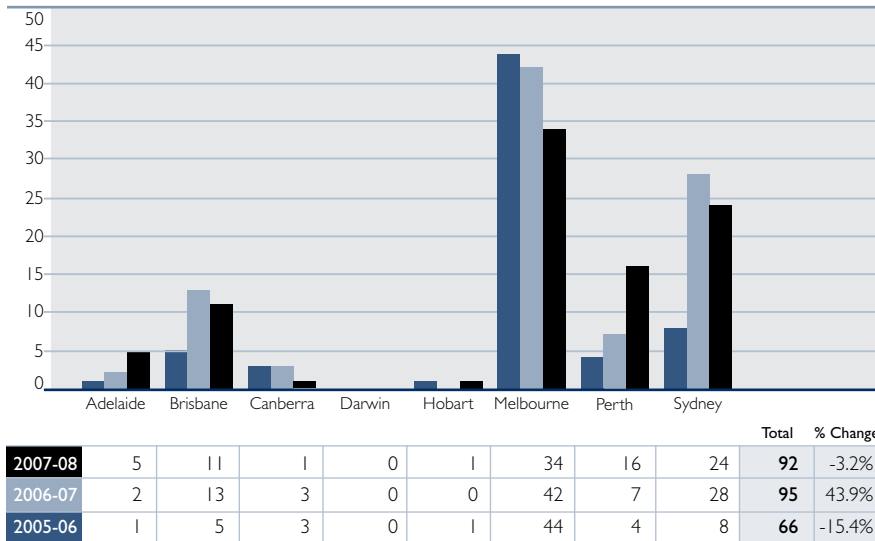
Further proceedings came before the Court seeking to confirm and vary the interim control order (see *Jabbour v Hicks* [2008] FMCA 178). The Federal Magistrate noted that although the legislation does not specifically provide guidance, he was satisfied that the scheme of the Act provides for applications for interim orders to be normally dealt with on an ex parte basis. He concluded the legislative structure of the relevant provisions:

[C]learly establishes that an application is normally made in the absence of the Respondent with the resultant orders having no effect until personally served on him. The Respondent then has the opportunity of returning to the Court where Orders are able to be confirmed, varied or discharged in circumstances where the evidence is then able to be tested and where the Respondent is able to give evidence on his own behalf and make submissions. However, in this matter the Respondent was given notice of the interim proceedings. His legal representatives appeared on the application for interim orders and were able to participate to the extent permissible in proceedings of this type [see para 2-3].

Trade practices

The Court's trade practices workload represents a small proportion of its total general federal law workload. In 2007–08 92 applications were filed compared to 95 in the previous year.

Figure 26 Total trade practices applications filed in the Court as at 30 June 2008



Although the trade practices jurisdiction of the Court is not as extensive as that exercised by the Federal Court, the Federal Court has a general power to transfer matters to the Federal Magistrates Court (even if such matters are not within the Court's jurisdiction). However rather than relying on the general transfer power in individual cases, the Court considers it would be preferable to confer concurrent trade practices jurisdiction on the Federal Magistrates Court.

The Trade Practices Legislation Amendment Bill 2008 has been introduced into Parliament and referred to the Senate Economic Committee for a report back by 27 August 2008. One of the proposed amendments in this Bill is the conferral of jurisdiction on the Court in matters arising under section 46 (misuse of market power) in respect of which civil proceedings are instituted by a person other than the Minister or the Australian Competition and Consumer Commission (ACCC). If passed by Parliament, it is proposed that the section 46 jurisdiction would include a monetary limit of \$750 000, which is consistent with the current monetary imposed on the Court's current trade practices jurisdiction.

Issues have arisen in relation to the extent of the Court's accrued and associated jurisdiction in trade practices matters: see *Ogawa v Phipps* [2006] FCA 361. The Court considers that the current jurisdictional impediments have had an impact on the small number of trade practices applications filed in the Court. The current jurisdictional impediments have practical implications for the Court. For example, often a minor part of the dispute may also be found in another provision of the *Trade Practices Act 1974*. Litigants may be required to abandon that part of their pleading or have the matter transferred between courts to be assured of jurisdiction. The Court considers that the most desirable solution would be to confer coextensive trade practices jurisdiction with the Federal Court and remove the monetary limit.

Judgments

The nature of the Court's workload means that a substantial proportion of the matters coming before it will result in the delivery of *ex tempore* judgments. In 2007–2008 85.8% of the judgments handed down in family law were delivered *ex tempore*. Reserved judgments are delivered at a subsequent hearing and are given a citation—a unique title that identifies the case. The number of judgments that were accorded a citation in 2007–08 was 3118.

The Court's published judgments are available from the website of the Australasian Legal Information Institute (AustLII). The Court has been a financial supporter of AustLII over the past four years and, in line with a request by the Attorney-General, increased its funding to AustLII from \$15 000 in 2006–07 to \$25 000 in 2007–08. The Court notes that 2302 judgments made in the Court were published on AustLII in 2007–08; of these, 1951 were general federal law judgments and 311 were family law or child support decisions. Ninety-two judgments handed down by federal magistrates were reported in Law Reports throughout the year.

Timely delivery of reserved judgments is an area of particular focus for the Court. The Court actively assists federal magistrates to discharge their responsibility in this regard by allocating 25 days annually to federal magistrates to provide time for the preparation of reserved judgments. The Court regularly reviews the number of outstanding judgments each federal magistrate has on hand for longer than three months and provides assistance where required to promptly dispose of the workload. The Court is pleased to report that 98.1 per cent of reserved judgments allocated a citation in 2007–08 were delivered within six months of the matter being heard, and 99.0% were delivered within 12 months.

During the year the Court updated its policy with regard to the publication of judgments that require anonymity. The Court now uses pseudonyms in published judgments in lieu of the past practice of using initials. The Court is very aware of balancing the competing requirements of the right to personal privacy against the core principle of open justice and will continue to review its policies in this regard to ensure they reflect contemporary practice.

Appeals

Generally appeals are possible as of right from final decisions of federal magistrates to either the Federal Court or Family Court, depending on the jurisdiction of the decision under appeal.

In regard to appeals (other than migration appeals), the Chief Justice of the relevant superior appeal court can determine whether it is appropriate for the appellate jurisdiction in a matter on appeal to be exercised by a single judge. The majority of appeals are heard and determined by single judges. However, appeals from migration decisions of federal magistrates are usually heard by a single judge, unless the judge considers that it is more appropriately heard by a full court.

General federal law

In 2007–08, 1066 appeals from the Federal Magistrates Court were filed with the Federal Court, compared to 1107 in 2006–07. Of these, 976 (91.6 per cent) were appeals in migration matters, which was slightly less than the previous year (93.5 per cent).

Figure 27 A summary of appeals from general federal law decisions by area of jurisdiction

Case Type	Number	% of total
Administrative law	3	0.3%
Bankruptcy	35	3.3%
Copyright	2	0.2%
Human rights	12	1.1%
Industrial law	12	1.1%
Judicial review	14	1.3%
Migration	976	91.6%
Trade practices	10	0.9%
Miscellaneous	2	0.2%
Total	1066	100.0%

Of the 1180 appeals that were heard during the year, 995 (84.3 per cent) were dismissed, 126 (10.7 per cent) were allowed, and 57 (4.8 per cent) discontinued or withdrawn. Figure 29 is a summary of outcomes of appeals heard in migration matters in comparison with the outcome of appeals heard in the other areas of general federal law.

Figure 28 Outcome of general federal law appeals

	Number	% of total
Finalised—dismissed	995	84.3%
Finalised—granted/allowed	126	10.7%
Finalised—discontinued/withdrawn	57	4.8%
Finalised—preliminary question answered	2	0.2%
Total	1180	100.0%

Figure 29 Outcome of migration appeals heard

	Number	% of total
Finalised—dismissed	930	85.8%
Finalised—granted/allowed	106	9.8%
Finalised—discontinued/withdrawn	48	4.4%
Total	1084	100.0%

Figure 30 Outcome of all general federal law matters other than migration

	Number	% of total
Finalised—dismissed	65	67.7%
Finalised—granted/allowed	20	20.8%
Finalised—discontinued/withdrawn	9	9.4%
Finalised—preliminary question answered	2	2.1%
Total	96	100.0%

Figure 31 Number of general federal law appeals heard by a full court

	Number	% of total
Migration	121	72.9%
Other general federal law matters	45	27.1%
Total	166	100.0%

Family law and child support

There were 84 appeals from decrees of the Federal Magistrates Court. This is an increase from the 69 appeals filed in 2006–07. Of those appeals which were heard, 52 (62 per cent) were allowed compared to 39 (56 per cent) in 2006–07. Thirty-two (38 per cent) were dismissed in 2007–08 compared to 30 (44 per cent) in 2006–07. Seven appeals were abandoned and 56 were withdrawn. The increase in the number of appeals during 2007–08 reflects the increasing family law workload of the Court.

Dispute resolution

Dispute resolution is a term that encompasses a range of processes and services designed to assist parties to resolve disputes other than by way of judicial decision. In some circumstances pre-filing dispute resolution is compulsory, federal magistrates can also order parties to attend dispute resolution in an attempt to resolve their matter rather than continuing down the litigation path.

The Court places significant emphasis on dispute resolution services and recognises the numerous benefits it can deliver for litigants. It is an affordable and timely option for resolving disputes and allows parties greater personal control and management of the process and the outcome.

As figure 32 indicates, a total of 8191 dispute resolution services were delivered in 2007–08.

Figure 32 Number and type of dispute resolution services delivered as at 30 June 2008

ITEM	YEARS						INC/DEC
	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	
Family Court mediation	2755	4250	4226	8077	6007	2451	-59.2%
Family Court property conciliation	1322	1691	1986	3076	3023	4051	34.0%
Community dispute resolution	1234	1154	980	991	1207	1452	20.3%
Family law total	5311	7095	7192	12 144	10 237	7954	-22.3%
Trade practices	55	57	38	40	29	47	62.1%
Human rights	39	47	44	43	34	55	61.8%
Bankruptcy	18	21	28	17	14	23	64.3%
Copyright	0	5	7	13	14	19	35.7%
Migration	0	0	2	0	0	0	0.0%
Industrial law	n/a	n/a	n/a	1	37	85	129.7%
Other	3	4	3	3	6	8	33.3%
Federal law total	115	134	122	117	134	237	76.9%
TOTAL	5426	7229	7314	12 261	10 371	8191	-21.0%

Dispute resolution in general federal law

Mediation is the dispute resolution process usually adopted to resolve disputes in general federal law matters. It is a process where a neutral third party (the mediator) assists the parties to identify 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.

When a federal magistrate orders parties in dispute to attend mediation, the mediation is, in most cases, conducted by a registrar of the Federal Court. In other cases the mediation is conducted by a private mediator. The Court tries to identify cases that would benefit from mediation to avoid unnecessary delay and undue costs to litigants.

In 2007–08 237 mediation services were provided in general federal law matters. The majority of mediation services were delivered in the jurisdictions of industrial law (85 matters) and the unlawful discrimination (55 matters).

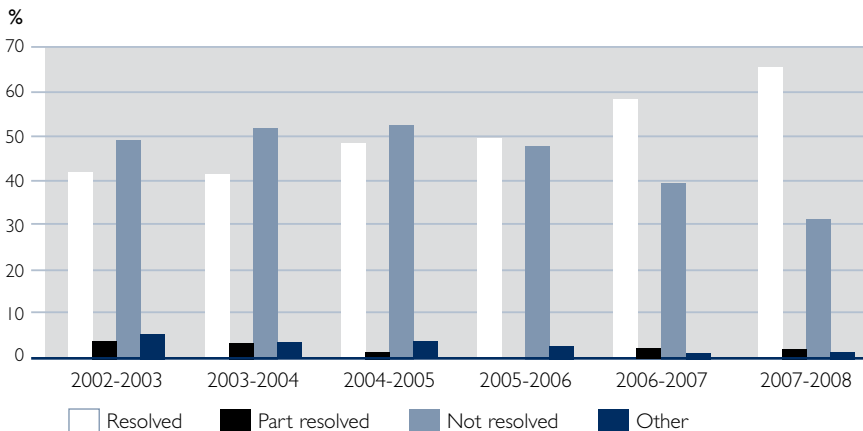
There was an increase in mediation services provided in general federal law matters in this reporting period from 134 in 2006–07 to 237 this year.

The outcomes of mediations that took place in 2007–08 are indicated in figure 33.

Figure 33 Federal law mediations finalised – provided to the Court as at 30 June 2008

ITEM	YEARS						INC/DEC
	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	
Resolved	41.7%	41.2%	48.3%	49.5%	58.0%	65.6%	157
Part resolved	3.7%	3.5%	0.8%	0.0%	2.0%	2.1%	5
Not resolved	49.1%	51.8%	48.3%	47.7%	39.3%	31.0%	74
Other	5.5%	3.5%	2.6%	2.8%	0.7%	1.3%	3
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	239*

* Figure represents number of outcomes; in some cases there can be more than one outcome for a matter.



Dispute resolution in family law matters

In 2007–08, as part of the Court's move to a regionalised administrative model, the management of family law dispute resolution services was devolved from a centralised function to each of the four main regional registries—Adelaide, Brisbane, Sydney and Melbourne. The move to decentralise emanated from the review into the Court's governance completed by Des Semples and Associates in June 2007. Four regional dispute resolution co-ordinators have been appointed, one to each registry. The dispute resolution co-ordinators are experienced and professionally qualified social workers or psychologists. They work closely with the judiciary to provide effective and targeted dispute resolution service delivery to litigants in their region.

In December 2007, family consultants from several regional areas around Australia accepted an offer of transfer to the Federal Magistrates Court from the Family Court where the Family Court regional registry had closed. These included Cairns, Lismore, Darwin, Wollongong, Dubbo, Albury and Launceston. In all, there are 11.8 full-time equivalent family consultants now employed by the Federal Magistrates Court. Family consultants offer dispute resolution services to clients in regional Australia and prepare family reports in matters listed before federal magistrates in those regions. In regions where there is a permanent federal magistrate, such as Cairns and Launceston, the family consultant is available to assist in the management of cases before the Court on a daily basis. They offer dispute resolution services and joint conferences with a registrar, advise federal magistrates in matters relating to children, and are generally available to assist in urgent matters before the Court. In regions where the federal magistrate circuits at a scheduled time, the family consultant is able to offer dispute resolution or family assessments in matters that are filed in the Court and are listed before the federal magistrate while on circuit.

Although there are only a small number of family consultants in the Court, they provide a very valuable and useful service to the Court, the parties and the federal magistrate in those regions.

In family law parties may be ordered to attend any or a combination of the following dispute resolution processes:

- **Family counselling**—a family counsellor assists parties to deal with personal or interpersonal issues relating to separation or divorce, including issues relating to the living arrangements of children. It is a therapeutic process that is not directly aimed at reaching an agreement.
- **Family dispute resolution**—a family dispute resolution practitioner, who is independent and impartial, adopts mediation techniques to assist the parties to resolve disputes relating to the living arrangements of children. The practitioner assists the parties to identify disputed issues, develop options and try to reach an agreement.
- **Conciliation**—this is the dispute resolution process adopted in family law property disputes. Conciliation is a similar process to mediation but the conciliator, an independent and impartial third party, may give advice on the content of the dispute and its outcome. The conciliator does not have any determinative role.

Dispute resolution procedures

Pre-filing requirements in relation to parenting applications are mandated for all courts exercising family law jurisdiction pursuant to the *Family Law Act 1975*. From 1 March 2008, the Court adopted the same processes as the Family Court for the filing of such applications.

The Court has not adopted the pre-action protocols for financial matters which the Family Court has applied by way of the *Family Law Rules 2004*. However, there is an expectation that all parties to proceedings filed in the Court will engage in pre-action negotiations in a meaningful way.

Family law dispute resolution services provided by community-based providers

The use of community dispute resolution services in family law continued to increase in 2007–08; 1452 services were provided by community-based providers compared to 1207 in the previous year.

The number of community-based dispute resolution providers and government-funded dispute resolution services has increased in recent years and legislative changes now require parties to attempt to settle their dispute before commencing a matter in court.

Family Relationship Centres, which are funded by the Commonwealth Attorney-General's Department, have been providing a range of services to families since 2006. The centres provide information, advice and dispute resolution services to separating families. The Court may order parties to attend a Family Relationship Centre to participate in counselling and/or family dispute resolution. Fifteen centres were opened in 2006 with a further 25 opened in 2007. Twenty-four new centres opened on 1 July 2008 and a further centre at Broome is expected to open before the end of 2008. These will take the total number of centres to 65.

In addition to orders to attend a Family Relationship Centre most parents wishing to apply for a parenting order are required to attend a Family Relationship Centre or another registered dispute resolution provider prior to filing their application.

During the year the parties to 1025 matters were ordered to participate in community-based dispute resolution. Of those 1025 matters, in 939, parties were ordered to attend family dispute resolution, in 42, parties were ordered to attend property conciliation and in 44, parties were ordered to attend family mediation (counselling). In addition, 424 parties were ordered to attend post-separation parenting counselling and 3 parties were ordered to attend post-order counselling.

This represented an increase of 20 per cent on orders to attend community-based dispute resolution made in the previous year.

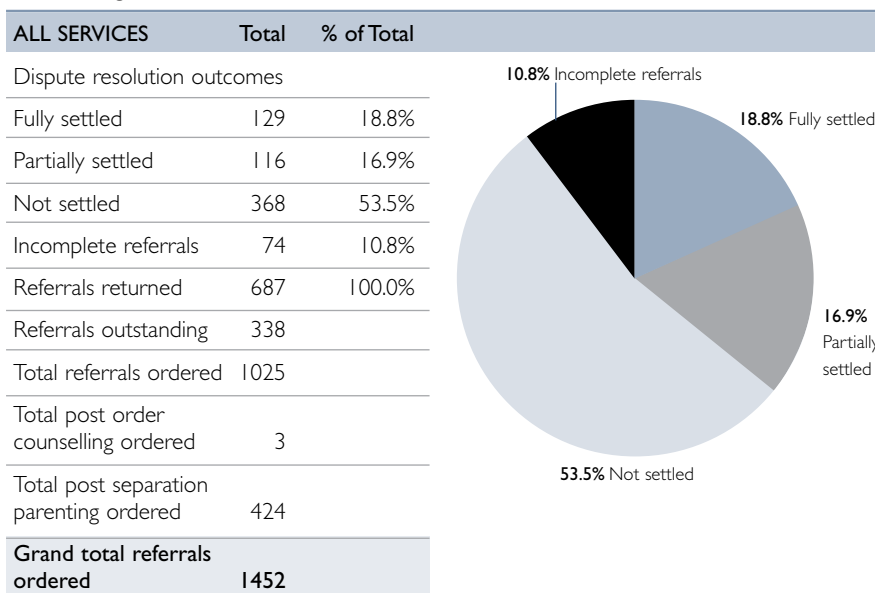
The 1452 orders requiring parties to participate in dispute resolution processes translated into the provision of 2442 community-based dispute resolution sessions. This indicates that in many cases parties will require multiple sessions in order to resolve their dispute.

Figure 34 Settlement rates for all family law disputes conducted by community-based agencies as at 30 June 2008

ITEM	YEARS					
	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08
Fully settled	23.0%	35.1%	29.9%	25.6%	22.9%	18.8%
Partially settled	15.0%	17.5%	16.1%	14.7%	15.5%	16.9%
Not settled	38.0%	41.7%	48.3%	56.5%	54.7%	53.5%
Incomplete referrals	24.0%	5.7%	5.7%	3.2%	6.9%	10.8%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Referrals returned	1043	936	732	565	678	687
Referrals outstanding	36	164	217	210	205	338
Total referrals ordered	1079	1100	949	775	883	1025
Total post order counselling ordered	155	54	31	10	5	3
Total post separation parenting ordered	0	0	0	206	319	424
Grand total referrals ordered	1234	1154	980	991	1207	1452

Outcomes for family law community-based dispute resolution

Of the 1025 orders made for community-based dispute resolution (which excludes post order counselling and post-separation parenting), 35.7 per cent of matters fully or partially settled. In comparison with dispute resolution outcomes in 2006–07, the rate of settlement was relatively steady.

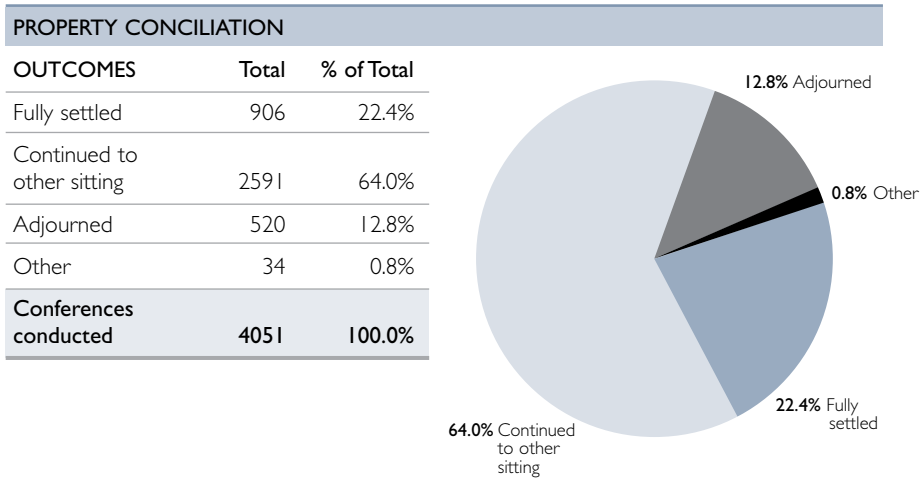
Figure 35 Settlement rates for all family law disputes conducted by community-based agencies for 2007–08

Family law dispute resolution services provided by the Family Court of Australia

During the year, the Family Court of Australia provided 6502 family law conciliation conferences on behalf of the Federal Magistrates Court. Of those 6502 conferences, 4051 related to property matters and 2451 were matters involving children. While property conciliation conferences increased in 2007–08 (from 3023 in 2006–07 to 4051 this year), child mediation conferences decreased by 59 per cent (from 6007 last year to 2451 this year). This is largely due to the decrease in dispute resolution services provided by the Family Court. In addition, privileged mediation is no longer provided by the Family Court but is instead delivered by community-based providers.

Similar to the outcome rates last year, 22.4 per cent of property matters settled as a result of conciliation and 64 per cent of matters continued to another court event.

Figure 36 Property conciliation provided by Family Court



Dispute resolution services in matters relating to children

Since July 2007 there have been a number of changes to family law dispute resolution arrangements arising from amendments to the *Family Law Act 1975*. In most cases, it is now compulsory for parties to attempt to settle their matter through community-based dispute resolution services prior to filing an application in the family law courts. Parties are now required to file a certificate (unless exempted) from a registered family dispute resolution practitioner with their application. The certificate confirms that the parties have attempted to resolve their matter before taking court action.

There will be further changes in 2008–09 that will require all parties wanting to apply for a parenting order, including those wishing to change an existing order, to attend dispute resolution prior to filing an application. Participation in pre-filing dispute resolution will not be compulsory in cases where there are extenuating circumstances, such as alleged family violence or child abuse.

Conciliation of property disputes

Federal magistrates generally refer disputed property matters to registrars of the Family Court for conciliation. In some instances the Court may refer parties to community-based organisations that provide conciliation services. During 2007–08, 42 matters were referred for a community-based conciliation conference. Full settlement resulted from 35.5 per cent of those conciliation conferences.

Conciliation in child support matters

Continuing a program that commenced in 2004–05, the Court has the option to refer child support matters to a conciliation conference. Federal magistrates assess matters before the hearing commences and send those matters that are likely to settle to a Family Court registrar for a conciliation conference. The program runs in the Court's child support lists in Melbourne only and has proved to be a successful way of managing busy child support lists.

Post-separation parenting programs

Of the 1452 matters referred to community-based organisations in 2007–08, 424 were orders for parties to attend a post-separation parenting program. These programs are designed to assist parties to parent their children co-operatively after separation. Federal magistrates made orders to post-separation parenting programs in preference to making orders for parties to attend post-order counselling. As a consequence, only three matters were ordered to post-order counselling in 2007–08.

Family reports

A family report is a written report ordered by the Court under section 62G (2) of the *Family Law Act 1975* to assist the judicial officer in determining child dispute matters. It is an independent, professional psychosocial assessment of the family, including the children, prepared by social workers or psychologists with expertise in working with children and families. In the Court, family reports are, in the main, prepared by approved family consultants under regulation 7 of the *Family Law Act 1975*.

In 2007–08, the total number of family reports ordered by federal magistrates was 3643, a 25.5 per cent increase from the previous financial year. Of these, 2760 were ordered to be prepared by qualified report writers with whom the Court has arrangements. This represents an increase of 108.9% on the number ordered in the previous financial year (1321). The increase in the number of reports ordered is in part due to the increase in filings in the Court as well as a decrease in the number of family reports the Family Court had provided the previous year outside of the agreed quota.

Of the 2760 family reports ordered, 1656 were returned completed, leaving an outstanding amount of 1104. Recruitment and training of regulation 7 family consultants was undertaken nationally to absorb the increase in the demand for family reports.

The Family Court funded another 883 family reports, which were completed either by Family Court family consultants or regulation 7 family consultants, a 44.2 per cent decrease from 2006–07. The reduced quota from 1002 took into account the transfer of regional family consultants from the Family Court to the Federal Magistrates Court in December 2007.

Figure 37 Family reports ordered by the Court from external providers

EXTERNAL FAMILY REPORTS	
External family reports ordered	2760
External family reports returned	1656
External family reports outstanding	1104

Specialist panel arrangements

The Court's specialist panels, which were established during 2006–07, continued to provide the Court with the ability to effectively utilise judicial resources in specialist areas of general federal and family law. The panel system aims to appropriately allocate matters of a specialist legal nature to federal magistrates with expertise in that area.

The Chief Federal Magistrate established a working party to review current panel arrangements. The working party will consider the feasibility of reorganising the panels on a national, rather than registry, basis. Nationally organised panels would not interfere with the docket system of work allocation—one of the Court's greatest strengths—and should assist in ensuring a uniform and high quality exchange of ideas. The working party will report its finding early in the coming financial year.

The following panels currently support the work of the Court:

- commercial (including trade practices, copyright and bankruptcy)
- migration and administrative law
- unlawful discrimination
- industrial law
- national security
- admiralty law
- child support.

Members of the panels meet regularly with user groups and judicial colleagues from other courts to respond to issues of practice and procedure in these specialist jurisdictions. The specialist panels are an essential element of continuing judicial education within the Court.

Improving access to the Court

The Court's work throughout Australia

The Court expanded its circuit program in 2007–08 and now circuits to 36 non-metropolitan locations. Nationally, the Court sat for a total of 244 days in rural and regional locations. Circuit hearings allow parties to have their matters heard locally and to avoid the need to travel to major cities.

During the year the Court began circuits to Albury and Mildura in response to the withdrawal of Family Court circuits to those locations. In addition, a new circuit to Ipswich was initiated with the first sitting day on 25 June 2008.

As stated earlier, the Court is currently undertaking a review of its circuit arrangements in order to ensure circuits are properly targeted to demand and that their frequency and duration are in keeping with local needs. The Court remains committed to providing a convenient service to practitioners and litigants residing in non-metropolitan areas.

Federal magistrates have been engaging with legal practitioners based in rural and regional areas, providing them with information about the powers and role of the Court and the services it provides. The Court is encouraging local practitioners to apply to have general federal law matters heard in special sittings in circuit locations.

In Western Australia, family law matters are dealt with by the Family Court of Western Australia, which is a state court. However, the Federal Magistrates Court provides judicial services for general federal law matters in Western Australia.

Self-represented litigants

By its nature, the Court's jurisdiction is one in which a significant number of people present as self-represented litigants, particularly in the areas of family law, child support, bankruptcy and migration. This is facilitated by section 3 (2) of the Court's enabling legislation which provides for the Court to operate as informally as possible, use streamlined procedures and dispute resolution processes.

The following details are provided in respect of the percentage of filings by self-represented litigants in family law during 2007–08.

Figure 38 Percentage of filings by self-represented litigants in family law during 2007–08

	Filings by self-represented litigants	Total number of filings	% of total filings
Final orders	2033	14 900	13.6%
Interim orders	2585	13 701	18.9%
Contravention orders	151	368	41.0%
Total	4769	28 969	16.5%

As can be seen from the above figures, 16.5 per cent of applications heard by a federal magistrate in family law matters involved self-represented litigants. Details of divorce applications have not been included in the above table as most of these matters (uncontested divorce applications) are heard by a sessional registrar. However, it is of interest that 31 039 matters, representing 70.0 per cent of divorce filings, were made by self-represented litigants. At this stage, numbers of self-represented litigants in general federal law are not available; however, the Court is looking towards refining its case management systems to include these details in future.

The Court has produced a 'do-it-yourself' divorce kit which includes all the forms, explanations and instructions required to assist self-represented litigants.

Forms used in the Court for the filing of matters are available from the Court's website. To assist self-represented litigants each form contains an information page which provides a plain language response to the following questions:

- When is this form used?
- What else is filed with the form?
- What is filed in response?

The Court also has a wide range of information brochures and fact sheets written in plain language available on its website to assist self-represented litigants. These brochures cover a wide range of topics, such as:

- Going to court—tips for your court hearing
- Applying to the Court for orders
- Preparing an affidavit
- Appeal procedures
- Legal words used in court
- Marriage, families and separation
- Family law and superannuation.

Two new fact sheets were developed during the year to meet the needs of self-represented litigants. These fact sheets detail all aspects of the first court event including such things as court protocol, and sets out the sequence of events in court. The fact sheets will be made available on the Court's website in the very near future. In the interim, Court staff provide self-represented litigants with these fact sheets.

The Family Court and the Federal Magistrates Court have collaborated during the year to produce a family law publication in the following commonly used languages: Arabic, Filipino, Greek, Korean, Serbian, Simplified Chinese, Spanish, Traditional Chinese, Turkish and Vietnamese.

During the reporting period, the Court translated its migration brochure into 20 languages. As well as being available in simplified English, migration brochures are now available in the following languages: Arabic, Bengali, Chinese, Farsi, Filipino, Gujarati, Hindi, Indonesian, Korean, Malayalam, Mongolian, Nepalese, Punjabi, Russian, Sinhalese, Spanish, Tamil, Thai, Urdu and Vietnamese.

Pro bono scheme for self-represented litigants

A Court-based pro bono scheme is in operation. The scheme is similar to schemes which operate in a number of Australian courts, including the Federal Court. Referrals to the scheme have generally been confined to general federal law matters, particularly migration matters. In Melbourne, assistance to migration litigants is also available through Victoria Legal Aid, which has established a Migration Duty Solicitor Scheme. 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 extremely thankful to the members of the legal profession who agree to act on a pro bono basis for the Court.

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 co-operatively 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.

Public information

During 2007–08, the Court continued to provide a range of family law brochures and fact sheets. Two new fact sheets were developed in 2007–08, covering dispute resolution and family reports. A comprehensive review of the Court's family law fact sheet was also conducted during the year.

The Court relies heavily on its website to provide useful information about the Court. Information available on the site includes contact details, corporate information, information on how the Court works, Court forms, fees and charges, dispute resolution information, relevant legislation, publications, circuit details and daily court listings. The website is regularly updated and provides a subscription service which sends email notifications to subscribers when new material has been updated on the site. A survey of 654 legal practitioners who regularly appear in the Federal Magistrates Court found 88 per cent rated the Court's website as good or excellent.

The Court issued three publication orders during 2007–08. These types of orders provide authority to publish details relating to matters heard under the *Family Law Act 1975* and aim to help locate children who have been taken from one of their parents. The Court's communication manager works closely with the Australian Federal Police in the management of media engagement and coverage of these matters.

During 2007–08 the Court engaged in a number of media interviews, particularly in regional locations. This initiative of the Court was to develop further awareness of the Court's services to people living in regional areas.

Access to justice

Registry and court services are provided to the Federal Magistrates Court by the Federal Court and the Family Court. The Federal Magistrates Court is represented on the national Commonwealth law courts building management committee and works together with the Federal Court and Family Court to provide universal access to court facilities and information.

In its circuit work, the Court sits in state and territory courtrooms and in leased premises that are managed by the Family Court on behalf of the Federal Magistrates Court. Under these arrangements, the Court is reliant upon the facilities available in state and territory courts and the leased premises.

The Court's service charter provides that the Court will assist where possible to overcome any personal barriers to a person's dealings with the Court such as distance; physical, hearing or visual difficulties; or non-English speaking background.

People requiring access assistance are advised to contact the Court prior to their court event. Registry and assistance line staff can provide information to clients about interpreting services, the availability of hearing loops, wheelchair access to courts, access to Court buildings for guide dogs, and the type of assistance registry staff and duty solicitors can provide to vision-impaired litigants.

For parties who have difficulty attending court in person, the Court can provide telephone and video links. Further, as a result of the Court's circuit arrangements, disabled clients who live in regional or rural areas are not required to travel great distances to attend court in a capital city but can attend court in a more accessible location.

National Enquiry Centre

In order to provide a better telephone and email service to clients contacting the Family Court and the Federal Magistrates Court, the National Enquiry Centre (NEC) was established in April 2006 as part of the combined registry program.

The NEC has proved to be an essential part of the Family Law Courts. In what has been a successful approach to client services for the courts, general and simple case-related enquiries have been answered by the NEC from a centralised location, allowing service delivery by family law registries to focus on face-to-face services and case management in complex cases.

The NEC aims to provide a quality service to clients. Its service benchmarks are:

- 80 per cent of calls are answered within 90 seconds
- less than five per cent of calls abandoned
- less than 10 per cent of calls transferred to a family law registry
- 100 per cent of emails answered within seven days
- 100 per cent of requests for divorce certificates processed and sent within three working days of receipt.

The NEC answered over 90 per cent of the 300 000 calls and 9000 emails it received in the 2007–08 financial year without referral to a registry for additional information.

Complaints

Complaints and positive feedback provide valuable information about community perceptions of the Court's work, client satisfaction and service delivery. For this reason, one of the Court's performance targets is that less than one per cent of cases litigated or divorces processed are subject to complaint. In 2007–08 the number of complaints received was 0.2 per cent, which was well within this performance benchmark.

During 2007–08 the Court received 188 complaints, 63 more than the previous year. The complaints related to issues relating to costs (1), clerical and administrative issues (2), delays in application being heard (3), conduct of legal representatives (5), pending proceedings (7), conduct of Federal Magistrates (20), registry (17), dispute resolution (29), legal processes (22), and overdue judgments (62).

The increase from the previous year is largely due to the increase in complaints about overdue decisions.

The Court's protocol relating to the delivery of reserved judgments is designed to ensure that decisions are handed down, and reasons are given, as expeditiously as possible. The protocol provides a benchmark for the handing down of reserved judgments within three months of the hearing or receipt of written submissions. Complaints relating to the delivery of reserved judgments outside the three month benchmark can be addressed to the Chief Federal Magistrate or to the president of the appropriate state or territory law society, law institute or bar association.

The requirement that the Court proceed without undue formality does not detract from the other requirements—to give a fair hearing through procedural fairness and to give reasons. The legislative requirement to proceed without undue formality and expeditiously and deal with a high volume of work makes the task of judgment writing a time-consuming one for federal magistrates.

A reduction of the number of overdue decisions is a high priority of the Chief Federal Magistrate and processes have been put in place to manage complaints relating to outstanding decisions.

During the year the Court's complaints policy was revised to include guidance on how complaints against judicial officers are managed, to provide court users a better understanding of the Court's policy and procedures.

It should be noted that the complaint statistics include one matter where a formal complaint that was made to the Human Rights and Equal Opportunity Commission was subsequently terminated by the commission. There were also two matters where complainants sought compensation under one or other of the Commonwealth schemes for defective administration.