

REPORT ON COURT PERFORMANCE





PERFORMANCE MEASUREMENT

INTRODUCTION

The family law system in Australia is undergoing significant change in line with key federal government reforms. For example, the first 15 Family Relationship Centres (FRCs) commenced operations on 1 July 2006. The number of federal magistrates in family law also continues to increase while the number of Family Court judges has reduced from 48 to 41 since the introduction of the Federal Magistrates Court in 2000. Since January 2004, five retired Family Court judges have not been replaced. In their stead, five federal magistrates have been appointed to deal substantially with family law matters.

The establishment of Family Relationship Centres and the growth in numbers of federal magistrates in the family law jurisdiction have refocused the principal function of the Family Court of Australia (FCoA). It is clear that the FRCs are intended to resolve family law disputes outside the court system where that is appropriate. Equally, it is clear that the Federal Magistrates Court is intended to deal with the less complex family law disputes that do not resolve through the intervention of community-based service providers. Accordingly, from 1 July 2006, the Family Court should increasingly deal with the most complex family law disputes, reducing the emphasis on the provision of dispute resolution (mediation) services.

This significant shift in focus considerably alters the Court's role and purpose. As Australia's superior family court and centre for excellence in family law, the Family Court of Australia through its specialist judges and staff:

- determines cases with complex law and facts including cases with jurisdictional issues, multiple parties or involving parties who are not parties to the marriage, bankruptcy cases, and cases with complex commercial and valuation issues
- covers specialised areas such as Hague Convention cases, special medical procedures, serious cases of child abuse and international relocation, and
- provides national coverage as the appellate court in family law matters.

The figures presented in this report relate only to the Family Court (i.e. the Federal Magistrates Court figures are excluded even though the FCoA continues to expend a significant amount of administration and professional resource effort supporting that Court). In particular the 'entry' functions, such as filing applications and allocating first return dates, for both Courts is wholly undertaken by Family Court resources. In addition, staff of the Family Court conduct mediation and conciliation conferences and prepare Family Reports in some Federal Magistrates Court cases. These facts should be considered when interpreting the figures in this report.

DATA QUALITY

The introduction of the Family Court of Australia's new case management system, Casetrack, a single system to replace a number of legacy systems, was a major achievement. However, such a large undertaking has meant the Court experienced a number of data completeness and accuracy issues. The Court has identified areas to improve its data completeness and has undertaken a Data Quality Action Plan. The project has been ongoing for more than 10 months and in that time has made significant improvements to data accuracy and completeness. As a result of this 'cleaner' data, the financial figures from previous years have been refreshed. For this reason some figures in this section of the report may differ from those published in previous annual reports.

OUTPUT STRUCTURE

The Family Court's output structure and performance measures are detailed in *Portfolio Budget Statement 2005-2006*, Attorney-General's portfolio, pp 273-277.

These performance measures are currently under review as a result of the reforms to the family law system which will lead to significant changes to the overall complexity of cases in the Family Court and the processes for handling them.

The Court has two output groups, or phases:

- Resolution
- Determination

The total workload in the Family Court of Australia comprises both of the above phases.

Figure 1 shows the total number of applications that initiate work filed in the Family Court of Australia during 2005-06. The Court undertakes cases for Final Applications, Applications in a Case (Interim), Consent, and Other applications. The 'Other applications' category includes Contravention, Contempt, Hague Convention, Maintenance and Divorce applications.

Figure 1: Total number of filings

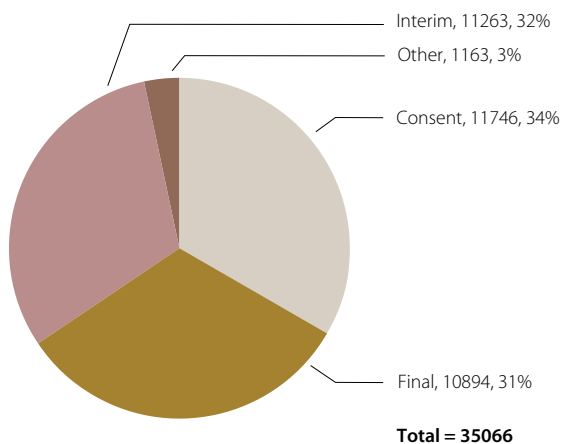
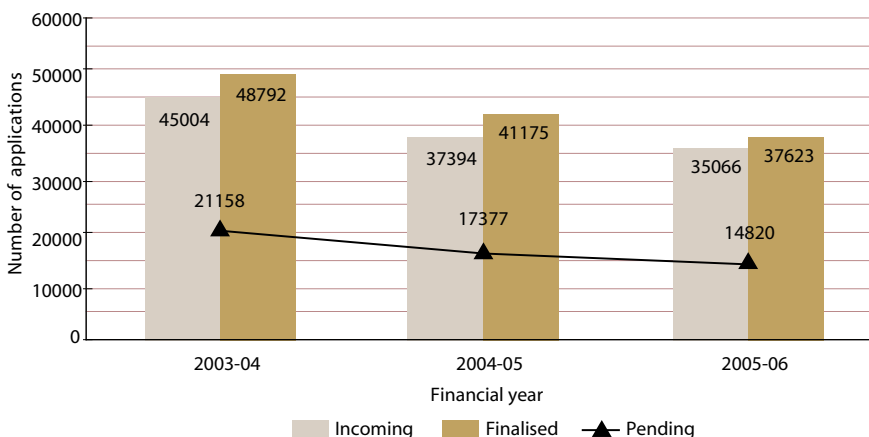


Figure 2 displays all applications filed, finalised and pending over the past three financial years.

Figure 2: Total incoming, finalised and pending applications by financial year



OUTPUT GROUP 1.1 RESOLUTION

Providing dispute resolution services to assist separated families to:

- reach agreements about the future residence and contact arrangements for their children, and
- resolve financial cases without litigation.

CONSENT ORDERS

Many families do not require the direct services of the Court to resolve their disputes and will often come to an agreement on their own or perhaps with help from other people or organisations. If families are able to reach an agreement then they may seek to have that agreement made binding by the Court. This is done by filing an Application for Consent Orders. These orders are typically approved by a registrar.

Figure 3 shows Application for Consent Orders filed in the Family Court, for each state, for the past three financial years.

Figure 3: Applications for Consent Orders filed by state

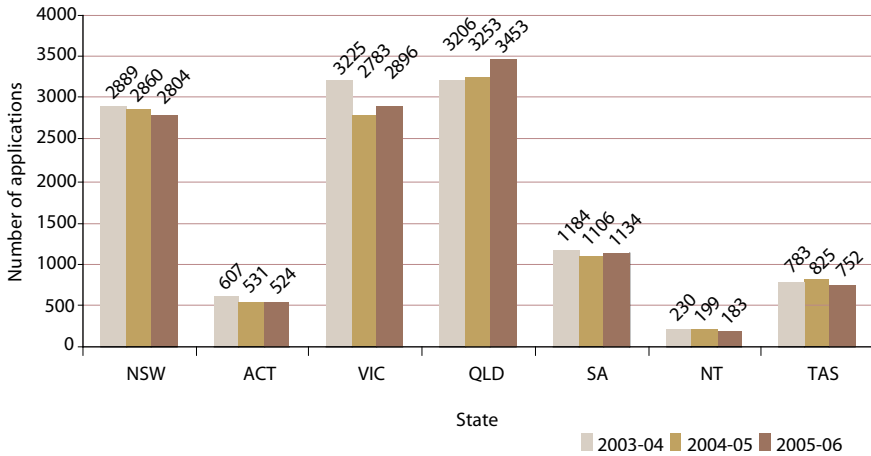
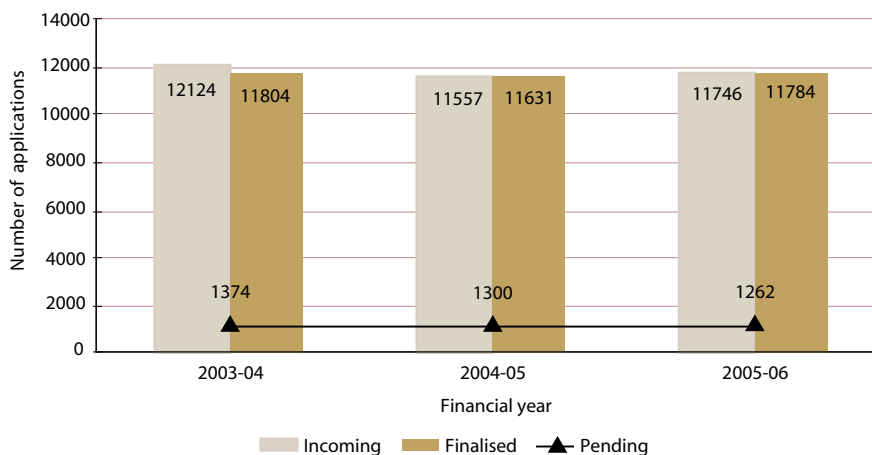


Figure 4 displays the applications for Consent Orders filed, finalised and pending nationally in the past three fiscal years.

Figure 4: Incoming, finalised and pending consent orders applications by financial year



Performance

The Court aims to have 90 per cent of valid and correctly lodged Consent Orders applications approved and finalised within one month of being filed. During 2005–06 the Court finalised 89 per cent of applications within one month, and 90 per cent within 1.1 months.

MEDIATED AGREEMENTS

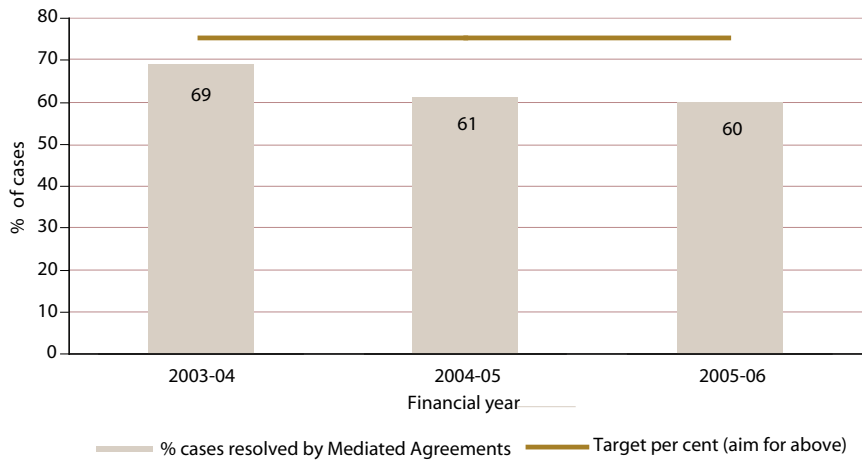
Mediated agreements are outputs of the resolution process. Families may reach an agreement or settle their case during the resolution process a result of using one or more of the Court's services. These services comprise:

- case assessment conferencing as an early intervention strategy to better assess the needs of families in dispute, narrow and define the issues in dispute, and tailor the provision of future services accordingly
- mediation in cases affecting children, and
- conciliation conferencing in property disputes.

Performance

The Court's case management guidelines indicate that it aims to have 75 per cent of final orders cases resolved through mediated agreement. Figure 5 shows the percentage of cases that were resolved by mediated agreement for the past three financial years. The Court aims to have 90 per cent of mediated agreement cases resolved within six months of filing. During 2005-06 the Court finalised 69 per cent of mediated agreements within six months, and 90 per cent of mediated agreements in 13.9 months.

Figure 5: Percentage of cases resolved through Mediated Agreements by financial year



The proportion of more complex cases in the workload of the Family Court of Australia has increased as the intake of simpler cases in the Federal Magistrates Court has grown. In addition to these cases being more complex, the parties involved tend to be more entrenched in their disputes and are therefore less likely to resolve and more likely to require a judicial decision. These factors make it more difficult for the Family Court to achieve 75 per cent of cases being resolved by mediated agreement.

OUTPUT GROUP 1.2 DETERMINATION

DIVORCES

An agreement reached in 2003 between the Family Court and the Federal Magistrates Court provided that from 13 November 2003 all Applications for Divorce should be filed in the FMC (Practice Direction No. 6 of 2003). The Family Court agreed, however,

to continue to conduct 10 per cent of divorces on behalf of the Federal Magistrates Court, primarily in circuit locations. In recent years more than 99 per cent of divorce applications have been filed in the Federal Magistrates Court.

Figure 6 shows divorce applications filed, by state, in the Family Court of Australia over the past three financial years.

Figure 6: Applications for Divorce filed by state

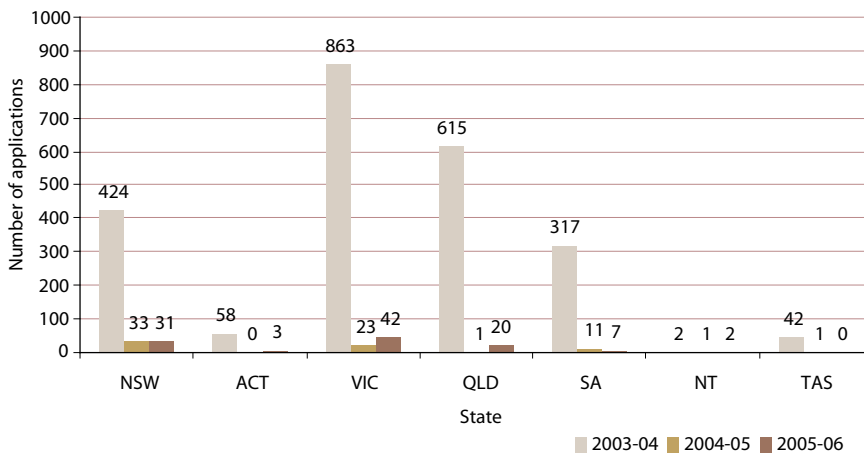
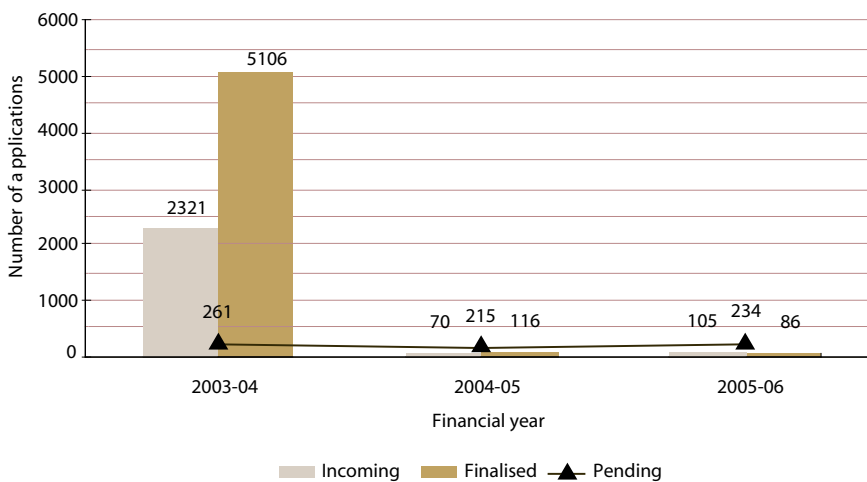


Figure 7 displays the Applications for Divorce filed, finalised and pending in each of the past three fiscal years.

Figure 7: Incoming, finalised and pending Applications for Divorce by financial year



Since very few divorce applications are initiated in the Family Court, the performance for divorces is not valid or significant, and is therefore not presented in this report.

APPLICATIONS IN A CASE – INTERIM ORDERS

Clients may seek to have interim, procedural, ancillary and miscellaneous orders made by the Court while awaiting a final hearing of their Application for Final Orders. Since 29 March 2004, in accordance with the *Family Law Rules 2004*, these orders are sought through an Application in a Case. This application is an expansion of the previous Interim Orders application and now includes issues such as enforcement summons, appeals of summary jurisdiction and costs.

The filing figures for Applications in a Case however, are not directly comparable to interim orders applications of previous years and figures prior to 2004-05 have been provided as a guide only to the changes in this type of workload.

Figure 8 shows the Applications in a Case (interim orders) filed by state, over the past three financial years.

Figure 8: Applications in a Case filed by state, over the past three financial years

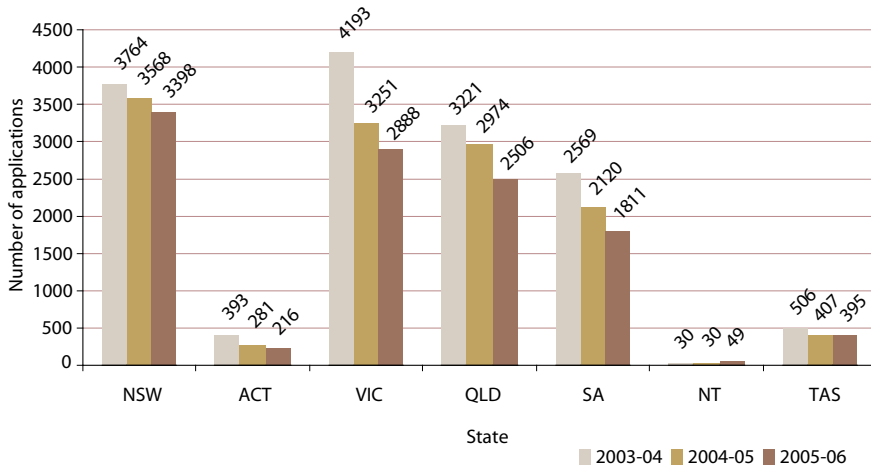
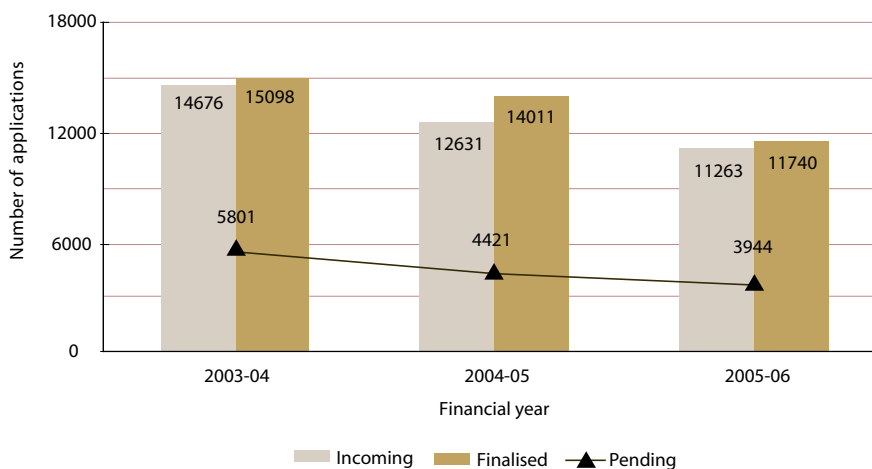


Figure 9 displays the Applications in a Case (interim orders) filed, finalised and pending nationally for the past three reporting years.

Figure 9: Incoming, finalised and pending Applications in a Case by financial year



Performance

The Court aims to finalise 90 per cent of Applications in a Case within three months of being filed. During 2005-06 the Court finalised 66 per cent of applications within three months, and 90 per cent of applications within eight months.

FINAL ORDERS

Applications for Final Orders are considered the substantive work of the Family Court because they require the most significant effort by Court resources to resolve or determine. If these applications are not resolved during the resolution phase they begin preparation for final determination by a judge (or judicial registrar) at trial. The majority of Applications for Final Orders made in the Family Court of Australia have continued to be resolved through the intervention of the Court's mediation services without proceeding to judicial determination. Additionally, many of the cases which enter the determination phase also settle, leaving only a small proportion of cases proceeding to final hearing and judgment.

Figure 10 shows the Applications for Final Orders lodged with the Family Court, by state, for the financial years from 2003–04 to 2005–06.

Figure 10: Applications for Final Orders filed by state

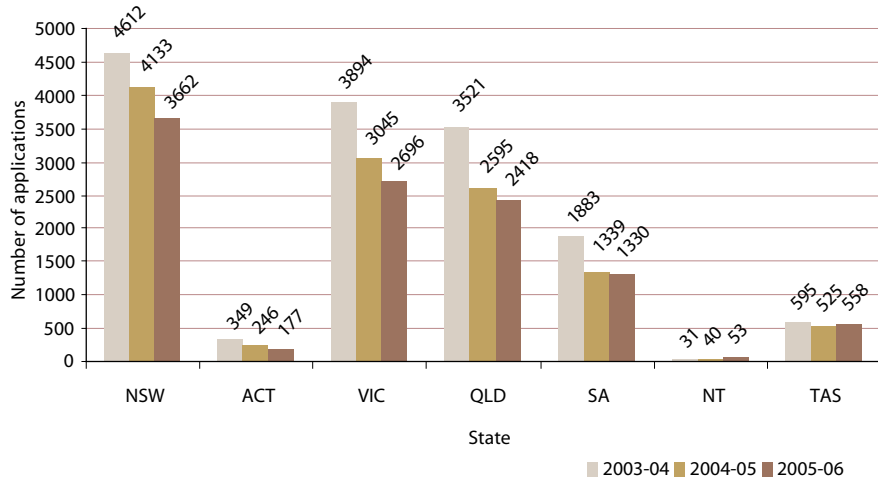


Figure 11 displays the Applications for Final Orders filed, finalised and pending nationally for the past three financial years.

Figure 11: Incoming, finalised and pending Applications for Final Orders by financial year

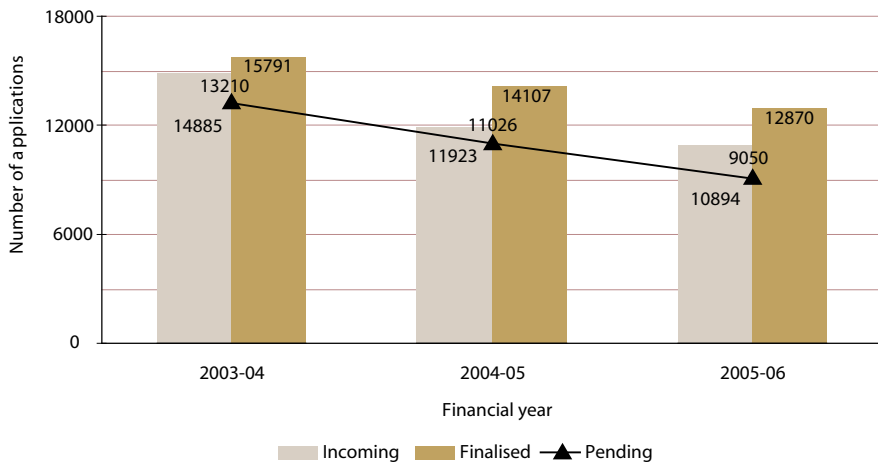
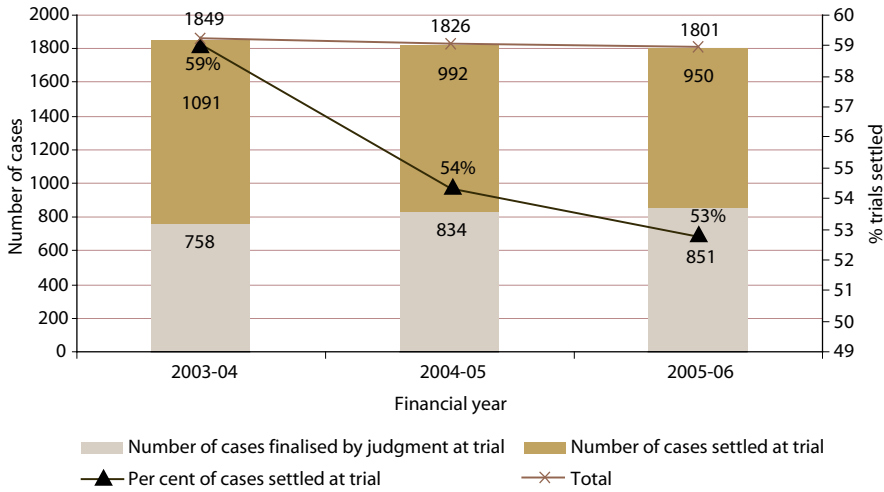


Figure 12 shows the number of cases at trial that are finalised by either judicial determination or settlement, in each of the past three financial years.

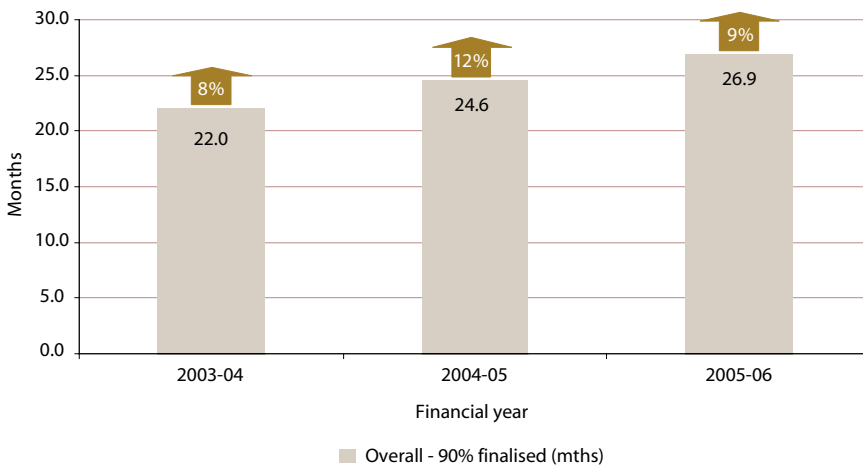
Figure 12: Number of cases finalised at trial by type of finalisation



Performance

The Court aims to have 90 per cent of Final Orders applications finalised within 12 months. Figure 13 displays the Court's performance against this target over the past three financial years.

Figure 13: Overall months to finalise 90 per cent of Applications for Final Orders

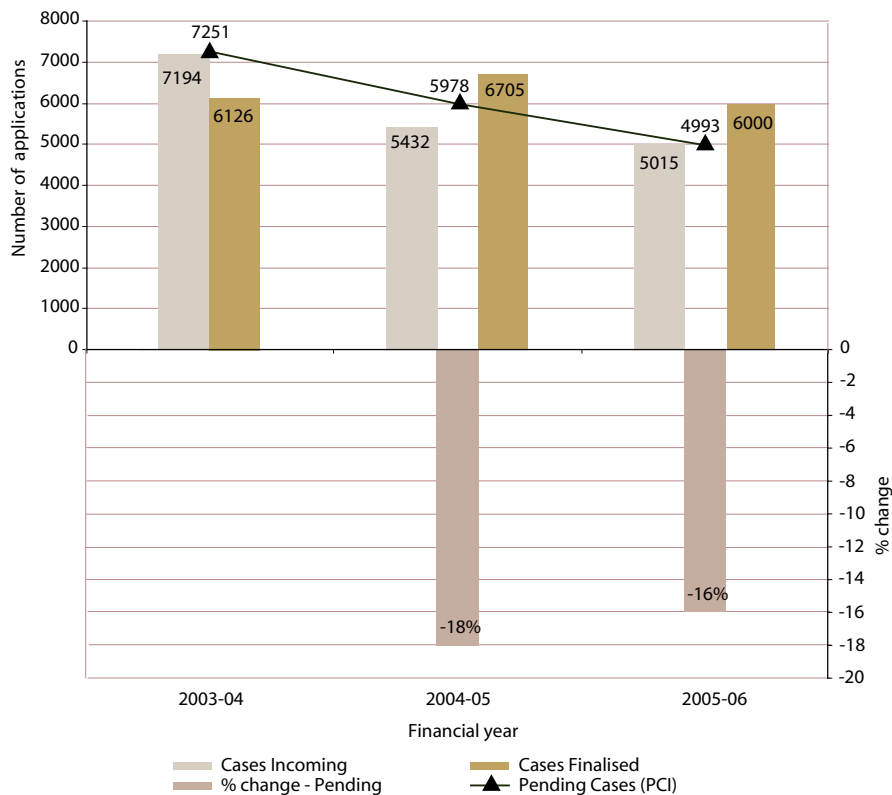


The Court also aims to have 75 per cent of cases that enter the determination phase finalised within six months of being issued with a trial notice. A case enters the determination phase when all immediate options for resolution have been exhausted and it becomes necessary to prepare the case for trial. During 2005-06 the Court finalised 41 per cent of cases issued with a trial notice within six months. Seventy-five per cent of cases were finalised within 11.4 months, after a trial notice was issued.

A number of factors have affected the Court's ability to meet its targets for disposing cases in the determination phase. These include delays in the replacement of retired judges during 2004 and 2005, and the increasing proportion of complex cases handled by the Family Court.

It is also important to consider that at any one time there is a large number of cases pending (active) in the determination phase. This is referred to as the Pending Cases Inventory (PCI). The Court must continue to reduce the backlog of older cases in its PCI before there is improved performance against the targets. Figure 14 shows the number of cases entering, finalising and pending in the determination phase.

Figure 14: Incoming, finalised and pending final orders applications (determination phase) by financial year

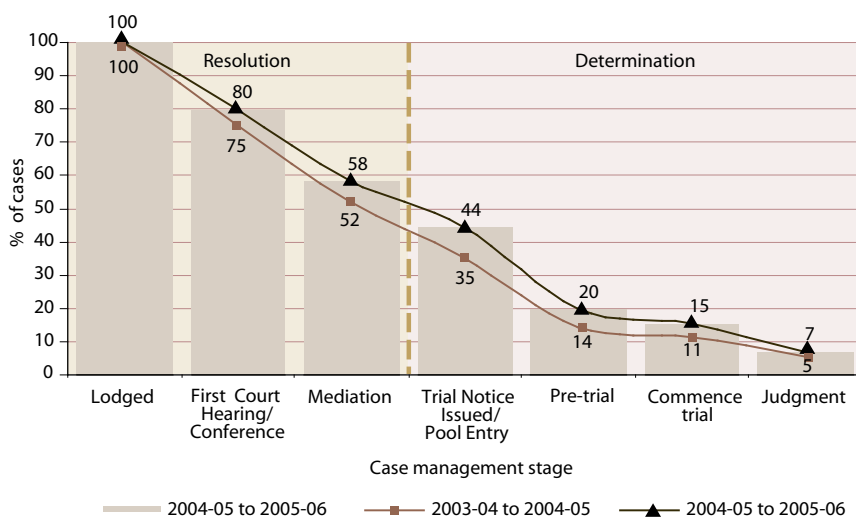


TYPICAL PATHWAY OF FINAL ORDERS APPLICATIONS

The Court continues to monitor its caseload over a longitudinal timeframe. That is, it reviews how its cases have progressed and settled at its varying case management stages from start to finish. This provides the Court with evidence about the effect that different case management events may have on cases. All but a small proportion of cases that commence in the Family Court are finalised within two years.

Figure 15 shows the attrition rates and stages at which cases were finalised in the two-financial year periods, 2003-05 and 2004-06.

Figure 15: Attrition of cases from filing to finalisation



The outward shift of both lines further highlights the Court's increased proportion of complex cases that now have a higher propensity, and likelihood, to remain on a litigious path and progress to the determination phase and ultimately judicial judgment.

SELF-REPRESENTED LITIGANTS

For the past several years the Family Court of Australia has accepted and understood that a large proportion of its clients will not have legal representation. In 2002-03 the Court's Self-Represented Litigants Committee released a report on the achievements of the first two years of its project to better assist clients' use and understanding of the Family Court's services. In 2003-04 the Court established a working group including representatives of key external bodies, such as Legal Aid, other courts and the legal profession, to work in partnership to continue to deliver better services for self-represented litigants.

Figure 16 provides an indication of the level of legal representation in the Family Court, during the life of a case. Figure 17 shows the level of representation specifically at trial over the past three financial years.

Figure 16: Percentage of final orders applications by representation status

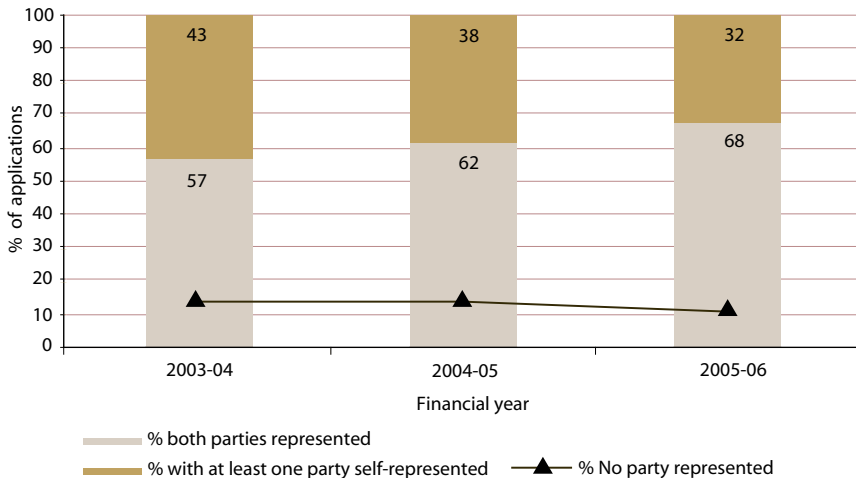
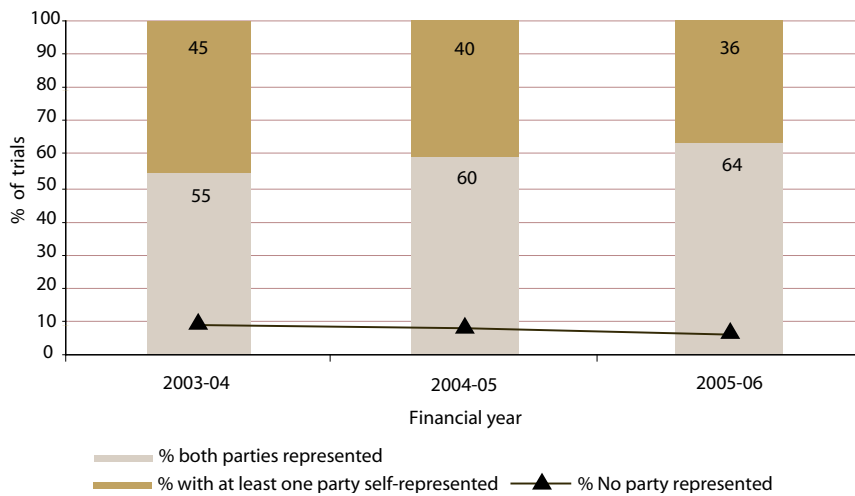


Figure 17: Percentage of trials by representation status



The figures show that the proportion of cases in the Family Court that are represented during the life of the case, and particularly at the trial, is increasing. This further reflects that the Family Court of Australia is dealing with a growing number of complex cases, and indicates that parties, because of the complexity of their cases, are more likely to engage legal representatives.