

APPEALS



**THE
FAMILY
LAW
REPORTS**

**11
LR**

**THE
FAMILY
LAW
REPORTS**

**THE
FAMILY
LAW
REPORTS**

APPEAL DIVISION

The Full Court of the Family Court of Australia is constituted by three or more judges of the Court, the majority of whom are required to be members of the Appeal Division (*Family Law Act 1975* ss.4 and 21A). The members of the Appeal Division of the Court are the Chief Justice, the Deputy Chief Justice and such other judges, not exceeding nine in number, as are assigned to the Appeal Division.

As at 30 June 2006, the judges assigned to the Appeal Division were:

Justice Finn

Justice Kay

Justice Holden (Chief Judge Family Court of Western Australia)

Justice Coleman

Justice Warnick

Justice May

Justice Boland

APPEALS

The right of appeal and the powers of the Full Court on appeal are set out in Part X of the Family Law Act, in Part VIII of the *Child Support (Registration & Collection) Act 1988* and Part 7 of the *Child Support (Assessment) Act 1989*.

An appeal lies to the Full Court from a decree of the Family Court, constituted otherwise than as a Full Court, exercising jurisdiction under the Family Law Act.

An appeal also lies to the Full Court of the Family Court from a decree of the Family Court of a state (i.e. the Family Court of Western Australia) or the Supreme Court of a state or a territory, constituted by a single judge exercising jurisdiction under the Family Law Act.

An appeal also lies to the Family Court of Australia from a decree of the Federal Magistrates Court. The jurisdiction of the Court in relation to such appeals is to be exercised by a Full Court unless the Chief Justice considers that it is appropriate for the jurisdiction of the court in relation to such an appeal to be exercised by a single judge (*Family Law Act 1975*, s.94AAA(3)).

FULL COURT SITTINGS

During 2005-06, the Full Court sat for 29 weeks (or part weeks). Appeals are also heard by way of video-link from time to time.

ADMINISTRATION OF APPEALS

Appeals are administered by an Appeals Registrar in three areas, namely:

- Northern which covers Queensland, Northern Territory and northern New South Wales
- Eastern which covers the balance of New South Wales and the Australian Capital Territory, and
- Southern which covers Victoria, Tasmania and South Australia.

In addition, there is a nominated registrar to locally administer appeals in each major registry of the Court. Western Australia is separately administered by a registrar of the Family Court of Western Australia.

REPLACEMENT OF APPEALS INFORMATION SYSTEM

The Court, during the first quarter of 2006–07, will replace its system for monitoring appeals, the Appeals Information System, and commence using its case management system, Casetrack, to manage its appeal work.

GENERAL TRENDS IN APPEALS

The activities of the Appeal Division reported upon under the existing system do not permit an accurate calculation of the time spent on a number of matters which significantly impinge upon the Appeal Division's ability to hear and determine appeals.

The number of interlocutory applications in the Appeal Division is increasing. These include, but are not limited to, applications for security for costs in relation to the appeal, applications for summary dismissal of an appeal, applications for the admission of new evidence (the *Allesch v Mauntz* requirement) and applications for costs.

In addition, during the reporting year judges of the Appeal Division have been engaged in dealing with procedural hearings which are essentially directions hearings for appellants. Due particularly to the numbers of appellants who are self-represented litigants, this task is both time consuming and difficult.

Figure 18 shows the Appeal Notices filed, finalised, and those pending with the Full Court Appeals Division for the past three financial years.

Figure 18: Appeals filed, finalised and pending by financial year

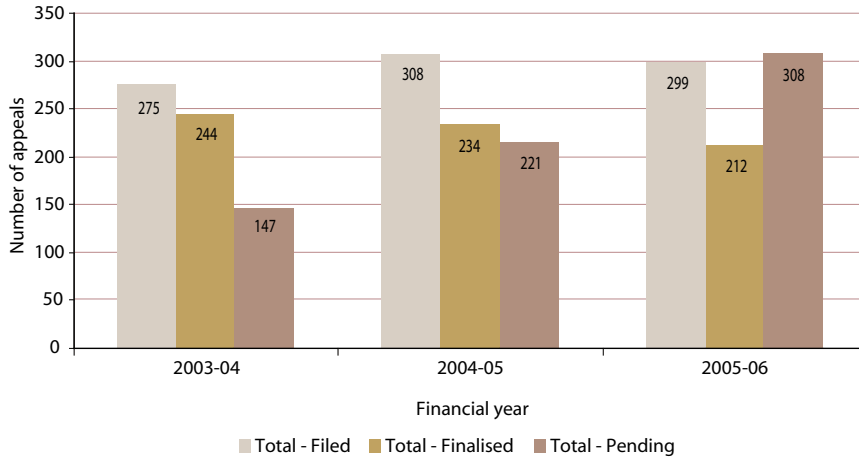
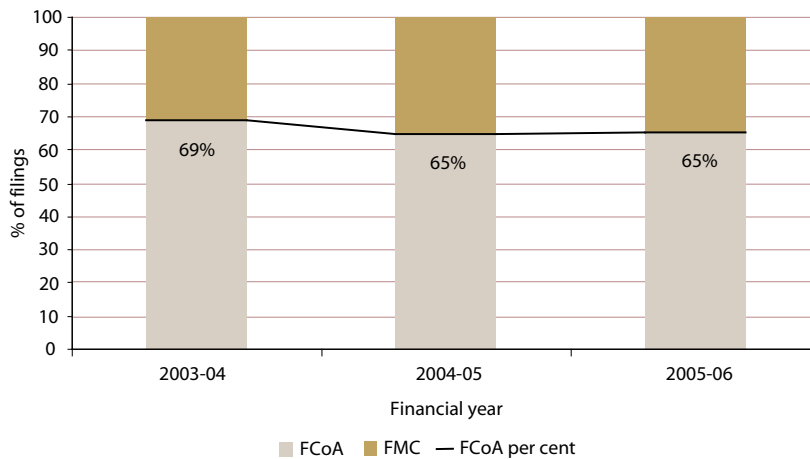


Figure 19 indicates the proportion of filings that were a result of decrees made in the Federal Magistrates Court and the Family Court.

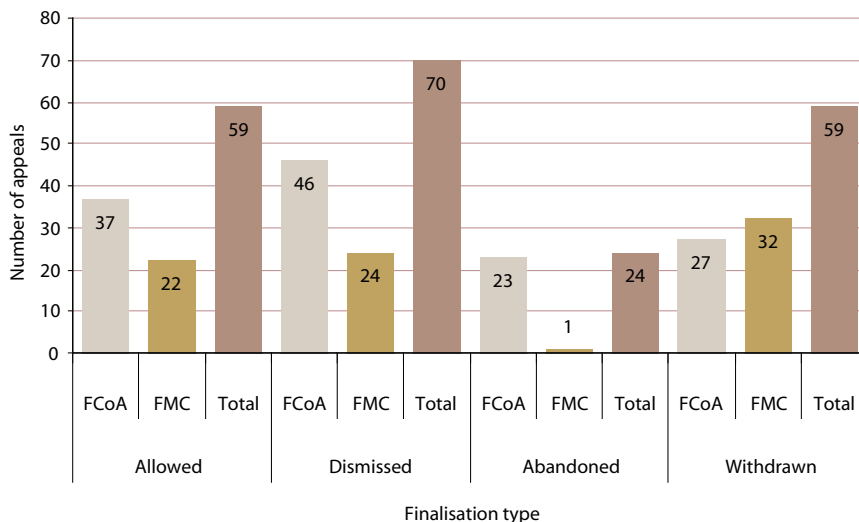
Figure 19: Proportion of appeals filed by jurisdiction



The Court heard 83 appeals, other than appeals from decrees made in the Federal Magistrates Court, during the year. Of those appeals 37 (45 per cent) were allowed and 46 (55 per cent) were dismissed.

Figure 20 details the disposal of appeal cases.

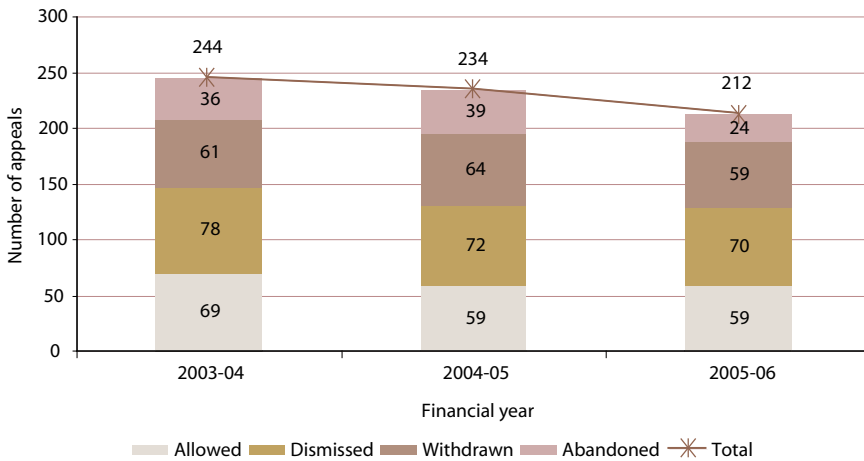
Figure 20: Appeals finalised in 2005-06 by finalisation type



In addition, the Court heard 46 appeals from decrees of the Federal Magistrates Court, of which 22 (48 per cent) were allowed and 24 (52 per cent) were dismissed. A further 24 appeals were abandoned, only one of which was an appeal from the Federal Magistrates Court, and 59 appeals were withdrawn, of which 32 were appeals from the Federal Magistrates Court. The total number of appeals disposed of during the year was 212.

Figure 21 illustrates the appeals disposed of in the past three financial years.

Figure 21: Appeals finalised by financial year and finalisation type



There were 14 applications for leave to appeal filed during the year, including four relating to decrees made by the Federal Magistrates Court. The Family Court heard 10 applications for leave to appeal during the year, half of which were allowed, including two from a decree made in the Federal Magistrates Court. The remaining five applications for leave were dismissed, including one from a decree made in the Federal Magistrates Court. In addition, four such applications were withdrawn (including two from a decree made in the Federal Magistrates Court). At 30 June 2006, 37 applications for leave to appeal were outstanding, comprising three for which judgment was reserved and 34 awaiting hearing.

Other significant matters to be drawn from the statistics include:

- property/financial matters were an issue in 40 per cent of appeals filed
- residence, interim residence, contact, interim contact and specific issues were in question in 42 per cent of appeals filed
- 37 per cent of appellants were female and 55 per cent were male (the remaining eight per cent were corporate entities or statutory authorities), and
- 41 per cent of appellants were self-represented.

Figure 22: Issues raised in appeals 2005-06

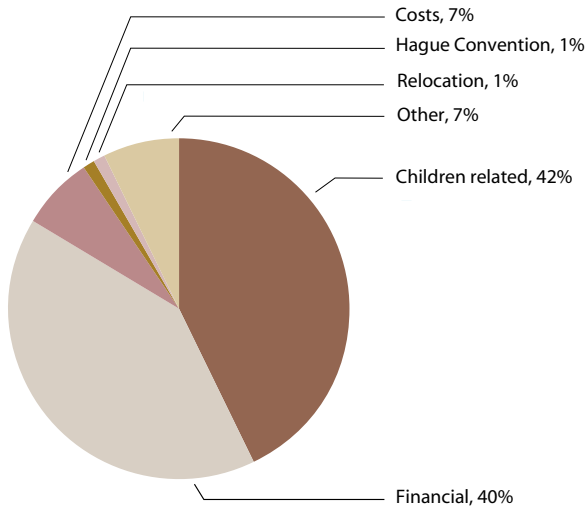
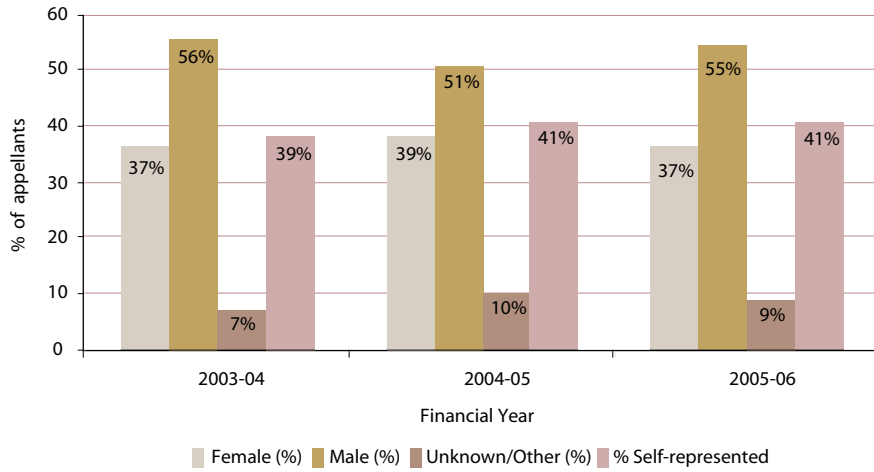


Figure 23: Appellants by gender and self-representation

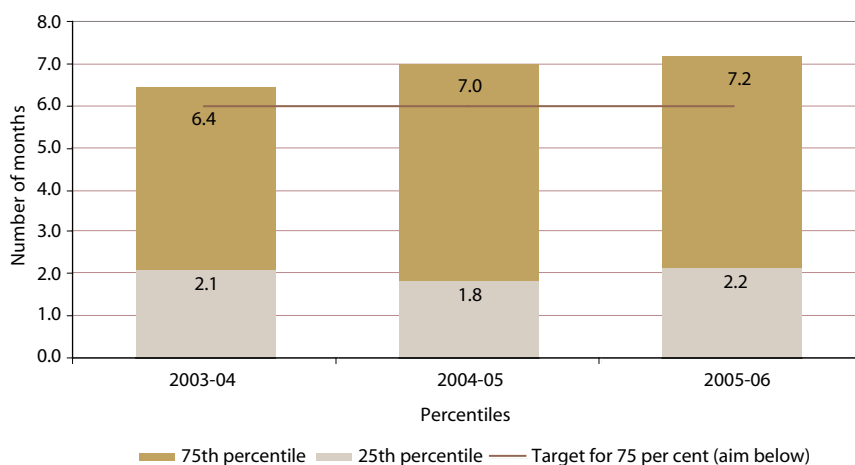


PERFORMANCE

The Appeals Division of the Full Court aims to finalise 75 per cent of appeals within six months of filing.

Figure 24 shows the Court's performance against this target for the past three financial years.

Figure 24: Months to finalise 25 per cent and 75 per cent of appeals



APPEALS TO THE HIGH COURT OF AUSTRALIA

Section 95 of the Family Law Act provides that an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under the Family Law Act, whether original or appellate, except by special leave of the High Court.

During the year, 14 applications for special leave to appeal were filed in the High Court from judgments of the Family Court (10 from Sydney Registry and four from Melbourne Registry).

Also during the year, 10 applications for special leave were determined by the High Court (six from Sydney and four from Melbourne). All 10 were refused.

