

PART 4
APPEALS



Appeal Division

Sections 21A, 22 (2AA), (2AB) & (2AC) of the *Family Law Act 1975* provide for an Appeal Division for the Family Court.

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.

At 30 June 2009, the judges assigned to the Appeal Division were:

- Justice Finn
- Justice Coleman
- Justice Warnick
- Justice May
- Justice Boland
- Justice Thackray (Chief Judge Family Court of Western Australia)
- Justice O’Ryan

The Full Court of the Family Court of Australia is made up of three or more judges of the Court; the majority must be members of the Appeal Division (*Family Law Act 1975* ss4 and 21A).

Appeals

The appellate jurisdiction of the Family Court is defined in Part X of the Family Law Act, in Part VIII of the *Child Support (Registration and 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 and (with leave) under the Child Support Acts.

An appeal also lies to the Full Court of the Family Court from a decree of 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 and (with leave) under the Child Support Acts.

An appeal also lies to the Family Court of Australia from a decree of the Federal Magistrates Court (FMC) exercising jurisdiction under the Family Law Act and (with leave) the Child Support Acts. The jurisdiction of the Court in relation to such appeals is to be exercised by a Full Court unless the Chief Justice considers it appropriate for a single judge to exercise the jurisdiction of the court in relation to such an appeal (s94AAA(3)).

Full Court sittings

During 2008–09 the Full Court sat for 26 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:

- Northern—Queensland, northern New South Wales and Northern Territory
- Eastern—eastern, western and southern New South Wales and the Australian Capital Territory
- Southern—Victoria, South Australia and Tasmania.

Western Australia is separately administered by a registrar of the Family Court of Western Australia.

Trend in appeals

The number of new appeals has increased in the past five years. In 2008–09, the number of appeals increased 4 per cent compared to 2007–08. The increase in appeals filed was matched by a 14 per cent increase in the appeal cases finalised. This ensured that the number of pending cases remained relatively steady, with a small increase of 6 per cent.

The number of interlocutory applications in relation to appeals continues to increase. These include applications for security for costs in relation to an appeal, applications for summary dismissal of an appeal, applications for the admission of new evidence, applications for extension of time to appeal and applications for costs. The number of interlocutory applications in 2008–09 was similar to the number in 2007–08.

Appeal registrars originally conducted procedural directions hearings to have the appeal ready for its final hearing, however in more recent years judges of the Appeal Division conducted this function. Many directions hearings are again being conducted by appeal registrars (as was the practice originally). The registrar's conduct of these directions hearings and chambers events has increased by about 250 per cent, which has freed up judges assigned to the Appeal Division to undertake the final hearings. This has resulted in an increase in the number of appeals finalised.

Table 4.1 and Figure 4.1 show the appeal notices filed, finalised and pending in the past five financial years.

Table 4.1 Notice of appeals filed, finalised and pending by jurisdiction, 2004–05 to 2008–09

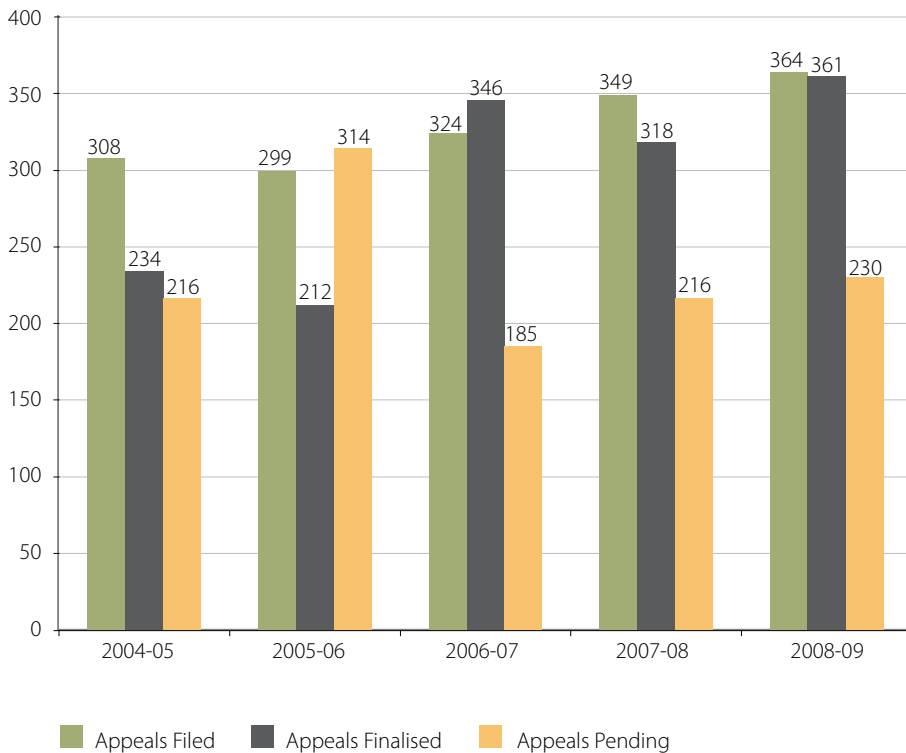
Filed	2004-05	2005-06	2006-07	2007-08	2008-09	% Change
FCoA *	199	195	202	153	160	5%
FMC*	109	104	122	196	204	4%
Appeals files	308	299	324	349	364	4%
From FCoA	65%	65%	62%	44%	44%	0%
From FMC	35%	35%	38%	56%	56%	0%
Finalised						
FCoA	149	133	228	171	170	-1%
FMC	85	79	118	147	191	30%
Appeals Finalised	234	212	346	318	361	14%
From FCoA	64%	63%	66%	54%	47%	-7%
From FMC	36%	37%	34%	46%	53%	7%
Outstanding/Pending						
FCoA	162	234	139	121	124	2%
FMC	54	80	46	95	106	12%
Appeals Finalised	216	314	185	216	230	6%
From FCoA	75%	75%	75%	56%	54%	-2%
From FMC	25%	25%	25%	44%	46%	2%

* The jurisdiction is where the decree being appealed was originally heard.

The figures show that in 2008–09 appeals from decrees of the Federal Magistrates Court increased by 4 per cent, while appeals from decrees of the Family Court increased by 5 per cent. This has resulted in an overall 4 per cent increase.

The majority of appeals have arisen from Federal Magistrates Court first instance decisions. This is to be expected as the Federal Magistrates Court deals with approximately 80 per cent of first instance family law matters. However, many Federal Magistrates Court appeals are dealt with by a single judge and do not require the convening of a bench of three or more judges.

Figure 4.1 Appeals filed, finalised and pending, 2004-05 to 2008-09



Note: The court has updated a number of case records in its electronic system. Therefore the 2008-09 pending figure does not reconcile correctly when the 2008-09 'filing' and 'finalised' figures are applied to the previous year's pending figure. Additionally, the computer system now used has highlighted a number of 'pending' cases at the end of 2005-06 was considerably overstated and that many records in the legacy system may have been incomplete. Not all records in the legacy system have been, or will be updated (due to the decommissioning of the Court's Appeals Information System), and therefore a break in sequence to interpreting this data is advised. The data for previous years has only been supplied as a guide.

Figure 4.2 indicates the proportion of appeal filings in relation to first instance orders made either in the Federal Magistrates Court or in the Family Court. In the past two years, the proportion of appeals from decrees of the Federal Magistrates Court has remained consistent at about 55 per cent; 45 per cent were from the Family Court of Australia and the Family Court of Western Australia.

Figure 4.2 Appeals filed by jurisdiction, 2004-05 to 2008-09

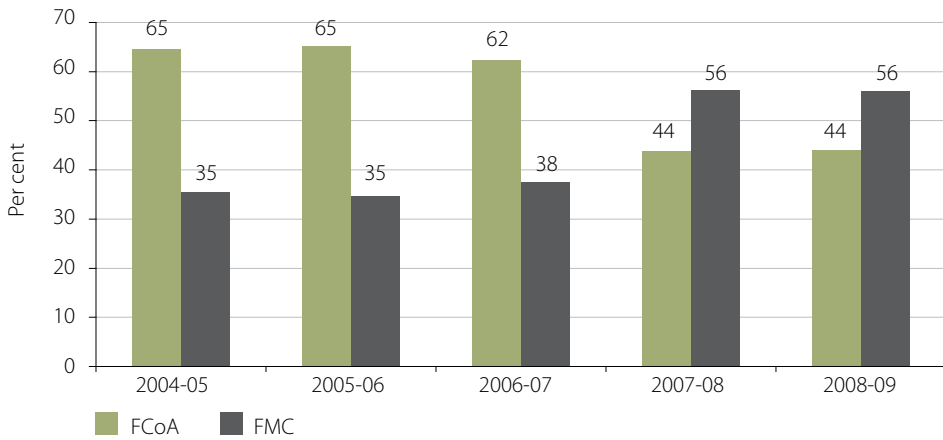
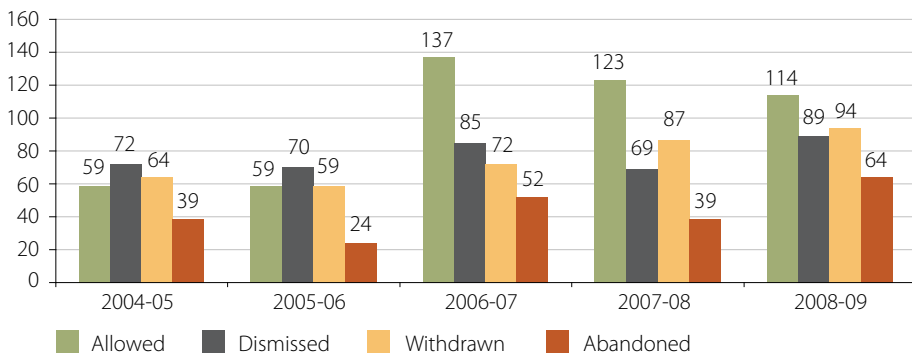


Figure 4.3 shows that the number of appeals with judgment delivered (dismissed and allowed) rose from 192 in 2007-08 to 203 in 2008-09, an increase of 6 per cent. The total number of appeals finalised increased by 14 per cent in 2008-09. The number of appeals allowed made up the largest proportion of finalisations (32 per cent), and the largest increase was in the number of appeals abandoned (from 12 per cent in 2007-08 to 18 per cent in 2008-09).

Figure 4.3 Appeals finalised by type of finalisation, 2004-05 to 2008-09



Other significant statistics are:

- 34 per cent of all issues raised on appeal were related to property or finances (Figure 4.4)
- 47 per cent of all issues raised on appeal were related to children (Figure 4.6)
- 42 per cent of appellants were female and 50 per cent were male (the remaining 8 per cent were corporate entities or statutory authorities) (Figure 4.5)
- 53 per cent of appellants were self-represented (Figure 4.6)

Figure 4.4 Issues raised in appeals lodged in 2008–09

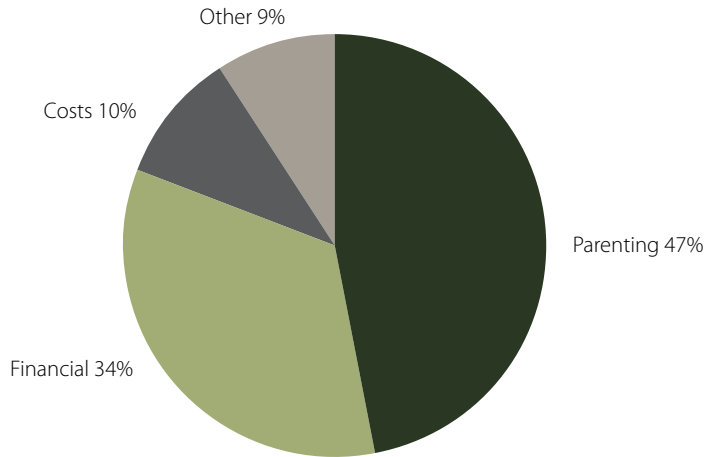


Figure 4.5 Appellants by gender, 2004-05 to 2008-09

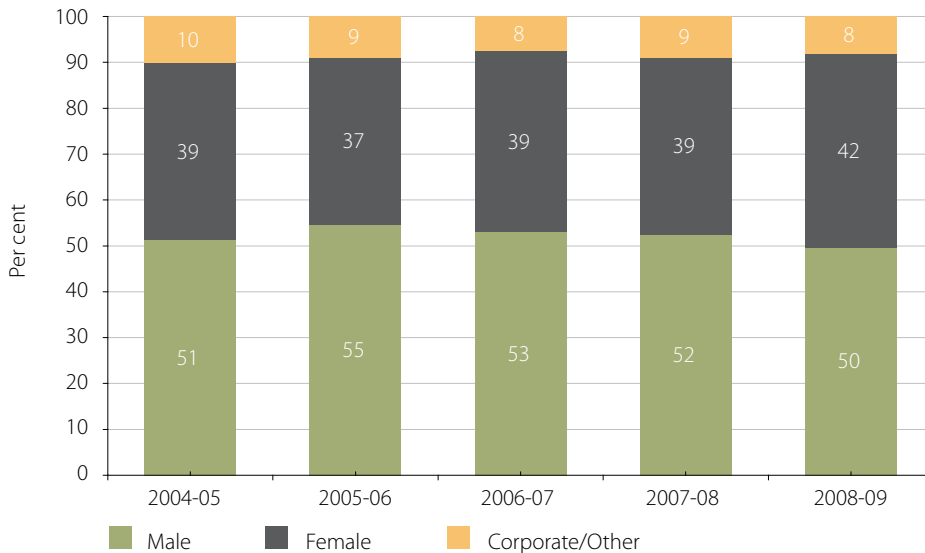
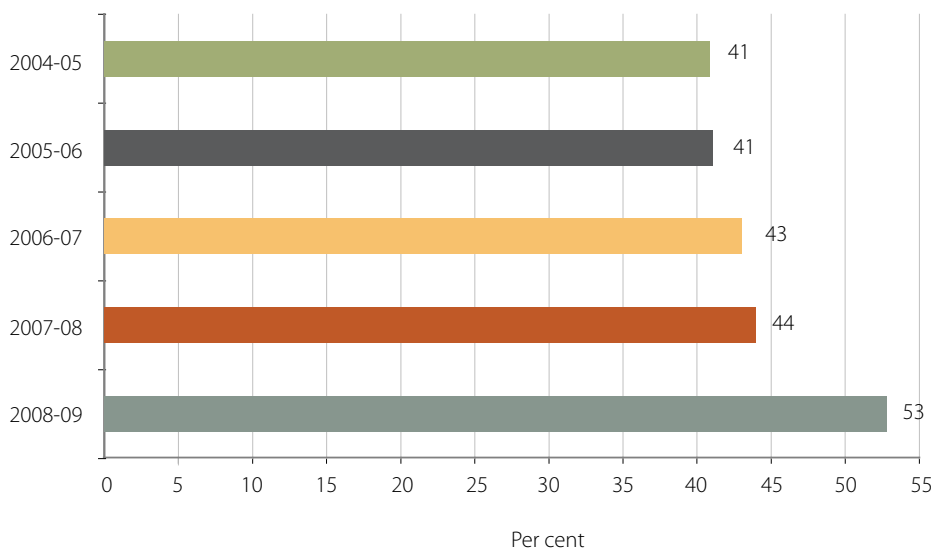


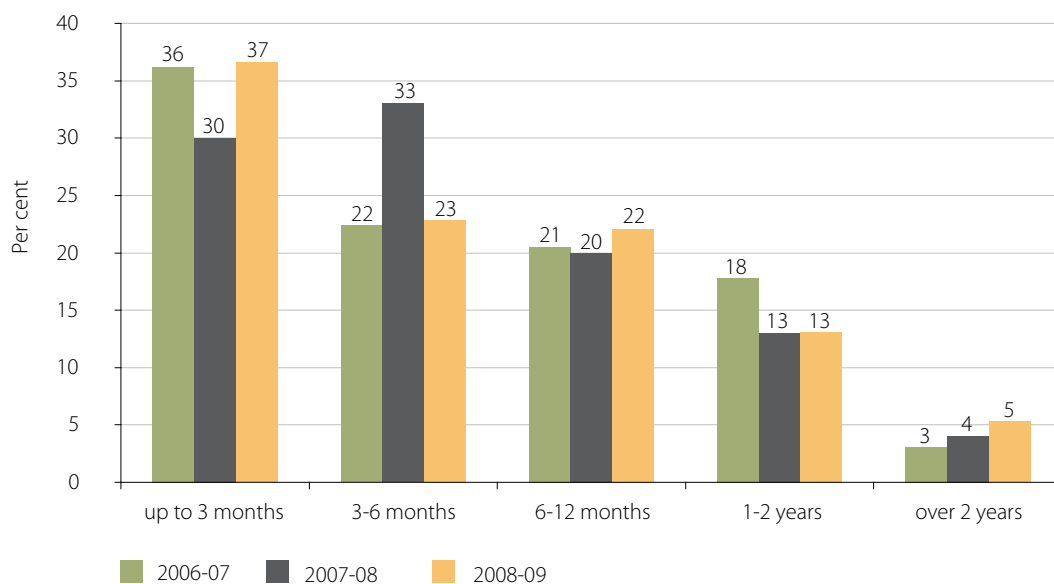
Figure 4.6 Self-represented appellants, 2004-05 to 2008-09



Timeliness to finalise appeals

The Appeal Division aims to finalise 75 per cent of appeals within six months of filing. In 2008–09, the Court finalised 60 per cent of appeals within six months (63 per cent in 2007–08). Figure 4.7 shows the time taken to finalise appeals over the three years from 2006–07 to 2008–09.

Figure 4.7 Months to finalise appeals, 2004-05 to 2008-09



Note: Data prior to 2006–07 is not included because of formatting restrictions in legacy systems.

Importantly, the Court finalised 41 per cent of cases older than six months (an increase from 37 per cent in 2007–08), reflecting the priority the Court has given to finalising older cases. Once the older cases are finalised, the appeal judges will concentrate on more recent cases which will ultimately reduce the average time it takes to finalise appeals. This can only be achieved if the Appeal Division has the appropriate number of judges to deal with the number of appeals coming before it. A number of Appeal Division judges may retire during 2009–10, and if these judges are not replaced quickly, the time to finalise appeals is likely to increase, as these cases age while waiting to be heard.

Appeals to the High Court of Australia

Section 95 of the *Family Law Act 1975* 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.

In 2008–09, 10 applications for special leave to appeal were filed in the High Court from judgments of the Family Court (four from Sydney, one from Melbourne, four from Brisbane and one from Adelaide).

Seven applications for special leave were determined by the High Court (three from Sydney, one from Melbourne, two from Brisbane and one from Perth); six were refused and one was granted.

Three appeals from the Family Court were decided in 2008–09; one was allowed and two were dismissed.



