



REPORT ON COURT PERFORMANCE ■





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PERFORMANCE MEASUREMENT

Introduction

The changing landscape of the family law system has had a major effect on the Family Court and the processes it uses to progress its cases. The process and case management changes have been outlined in the previous chapters of this report. The 2006–07 Family Court Annual Report indicated that these changes would make it necessary for the Court to review its performance measures.

During 2007–08 the Court proposed a new set of Portfolio Budget Statement (PBS) metrics that were accepted by the Department of Finance and will be used in 2008–09. To assist with the transition, some of the new PBS measures have been introduced into this year's report.

This year will be the last year the Family Court will measure its performance against the targets which it has used for number of years, as set out in the Attorney-General's PBS 2007–08. Table 3.1 provides a summary of performance against the existing targets.

This table shows that the Court has not met its performance targets in 2007–08. There are a number of factors impacting on this performance result which are discussed in this chapter.

Table 3.1: Performance overview

Performance measure	Performance in 2007–08
Output group 1.1 – Resolution	
Mediated agreements	
75 per cent of applications for final orders resolved through mediated agreement.	3940 mediated agreements were made. This represents 62 per cent of all applications for final orders.
90 per cent of applications filed that are resolved by mediated agreement do so within 6 months.	66 per cent of matters filed that were resolved by mediated agreement were resolved within 6 months.
Consent orders	
90 per cent of applications for compliant consent orders are finalised within 4 weeks of filing.	10 575 applications for consent orders were finalised of which 85 per cent were finalised within 4 weeks of filing.
Output group 1.2 – Determination	
Divorces	
90 per cent of divorce applications are determined within 3 months of filing	6357 divorces (including about 15 per cent of those filed in the Federal Magistrates Court) were granted by the Court during the year. 85 per cent were finalised within 3 months. By agreement, since 2004 almost all divorces have been filed in the Federal Magistrates Court. See page 49.
Applications in a case (interim orders)	
90 per cent of applications are determined within 3 months of filing.	5597 applications in a case were finalised. 64 per cent were finalised within 3 months. See page 52.
Final orders	
90 per cent of matters not resolved by a mediated agreement are finalised within 6 months of issuing a trial notice (commences the determination phase).	2116 applications for final orders were finalised, 31 per cent of these were finalised within 6 months of entering this phase. See page 53.
Appeals	
75 per cent of appeals finalised within 6 months of filing.	318 appeal cases were finalised in the year, 63 per cent within 6 months of filing.

Family Court process

To facilitate an understanding of the performance information in this chapter, the following outline of how a case progresses in the Family Court has been provided.

In the majority of applications filed in the Family Court, the dispute between the parties relates to children's issues, financial issues or both. Though the Court has a standard approach to case management, described as a case management pathway, every case is responded to in accordance with its specific need. Presently the average case involves five steps, although a step may involve more than one event. These steps are:

1. Filing an application.
2. Attending an initial assessment conference or first hearing event by a family consultant, registrar or judge.
3. Attempting to resolve the dispute with the professional assistance of a family consultant or registrar.
4. Attending a hearing before a judge.
5. The delivery of judicial decision.

Additional applications using an *'Applications in a Case'* form can be made in relation to substantive or procedural issues which arise in the course of the case's progress.

This case management process is more relevant to applications for final orders (the majority of the Court's work) than to divorce applications or applications for consent orders. These processes require minimal events.

The parties can come to an agreement and settle their case at any time during the case management process. More details about the Court's applications and processes can be found at: www.familycourt.gov.au.

Changes facing the Family Court

The changes in the family law system over recent years are reflected in changes to the way a case moves through the Court's case management processes and the resources that are applied to it. The impacts of these changes are now being more fully realised.

In brief:

- ❑ Early evidence suggests that more family disputes are being resolved by agreement without the need for court proceedings. These cases could be resolved in a Family Relationship Centre, Legal Aid conferences, through a community based organisation or through private lawyers diverting them from a Court determination. The apparent success of these interventions is reflected in the reduction in family law cases commencing in the Family Law Courts.
- ❑ Less complex cases that are not resolved and require court determination are dealt with in the Federal Magistrates Court.
- ❑ Only the most complex and intractable family law disputes are now being dealt with by the Family Court. At the same time the size of the Family Court is decreasing and there is growth in the Federal Magistrates Court. It is expected that the volume of cases commencing in the Family Court will decrease as a result.

- A shift in judicial resources reflecting the reallocation of case loads has occurred between the Family Court and the Federal Magistrates Court. In some locations this has occurred more markedly than in others.

This means that the Family Court, through its specialist judges and staff will increasingly:

- determine cases with the most complex law, facts and multiple parties
- cover specialised areas, such as applications pursuant to the Hague Convention on international child abduction, special medical procedures, child sexual abuse (Magellan cases) and international relocation, and
- provide national coverage as the appellate court in family law matters.

Data quality

The Family Court has a strong commitment to data quality and strives, through internal action plans, to ensure its electronic case records are as complete and consistent as possible. For this reason the Court made some minor adjustments to case data during 2007–08. The figures reported in this section for previous years have been affected by these minor changes and, as a result, some figures may differ from those published in previous annual reports.

OUTPUT STRUCTURE AND PERFORMANCE

The Court's current output structure and performance measures are detailed in Portfolio Budget Statement (PBS) 2007–08 Attorney General's portfolio, pp 320–321. The measures were reviewed during 2007–08 and as a result, a new set of metrics will be used by the Court for the 2008–09 financial year. Where it is appropriate, some of the measures have been mentioned in this report. This is to provide a guide to the reporting direction the Court will take next year and to act as a benchmark year, against which old and new measures can be compared

In order to comply with the current PBS, the Court has reported two output groups: resolution and determination. These groups are referred to as phases. The total workload of the Court includes the work undertaken in these two phases.

In accordance with government policy, the Family Court continues to expend a significant amount of its administration and professional resources supporting the Federal Magistrates Court. In particular the 'entry' functions, such as filing applications and allocating first return dates for both Courts, continue to be provided solely by Family Court resources. In addition, during 2007–08 Family Court staff conducted mediation and conciliation conferences and prepared family reports in a large number of Federal Magistrates Court cases.

Although the majority of figures in this report relate only to the Family Court's caseload, figures may include Federal Magistrates Court cases where the Family Court contributed resources. These instances are footnoted as required.

Workload in the Family Court of Australia

Applications

Table 3.2: Total applications filed 2007–08

Application	Filed	%
Final	4457	22%
Consent	10410	51%
Interim	4949	24%
Other	521	3%
Total	20337	100%

Applications for Final Orders by types of orders sought

Children Only	1730	39%
Financial Only	2178	49%
Children and Financial	525	12%
Other	24	1%

Figure 3.1: Total applications filed 2007–08

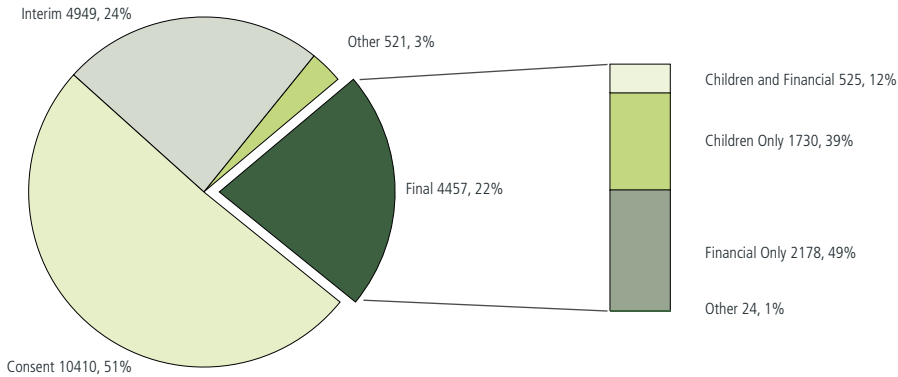


Figure 3.1 shows the total number of applications filed in the Family Court during 2007–08. Applications include those for final orders, applications in a case (interim orders), consent and others. The applications in the 'other' category include contravention, contempt, Hague Convention, maintenance and divorce applications.

Figure 3.1 also shows the proportion of substantive cases in which final orders were sought that deal with parenting and/or financial issues.

Fifty one per cent of the Court’s cases involved parenting disputes. This is a significant reduction from 64 per cent in 2006–07. Conversely, cases with financial issues have increased from 52 per cent to 61 per cent. These figures reflect the fact that the most complex children’s matters, such as Magellan cases, are being dealt with by this Court.

Figure 3.2: Applications filed by type of application 2004–05 to 2007–08

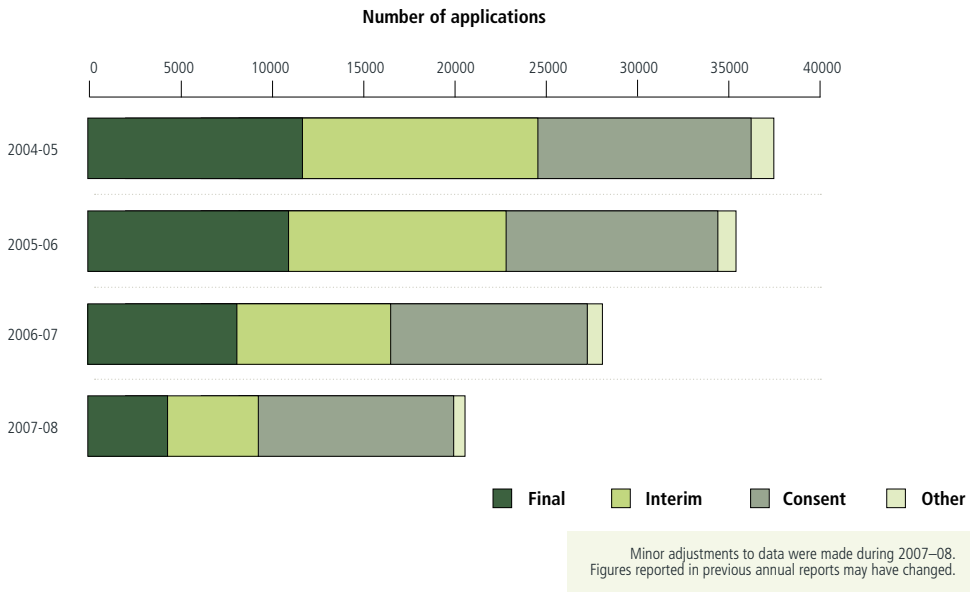
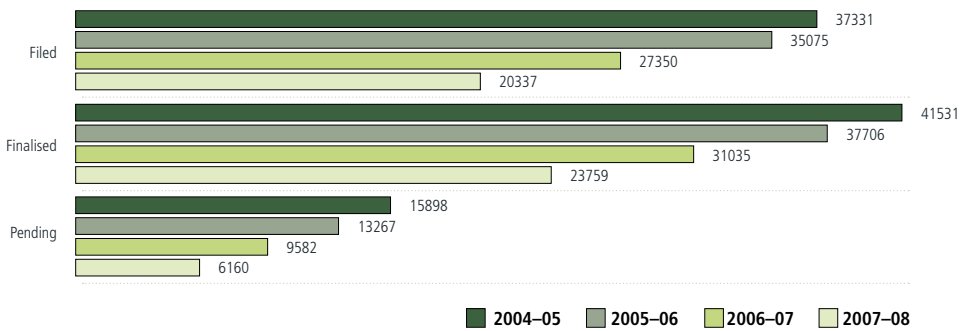


Figure 3.2 shows that the downward trend in the number of incoming applications in the Family Court is continuing. Although the Family Court has had a significant reduction in new cases, it is consistent with government policy that the Court deals with the most complex cases and directs simpler cases to the Federal Magistrates Court. However, it should be noted that the Federal Magistrates Court has also experienced a reduction in the number of cases commencing. The Court believes this is anecdotal evidence of the impact of the family relationship centres and pre-filing requirements, however no figures confirming this have been published.

Figure 3.3: Filed, finalised and pending applications 2004–05 to 2007–08

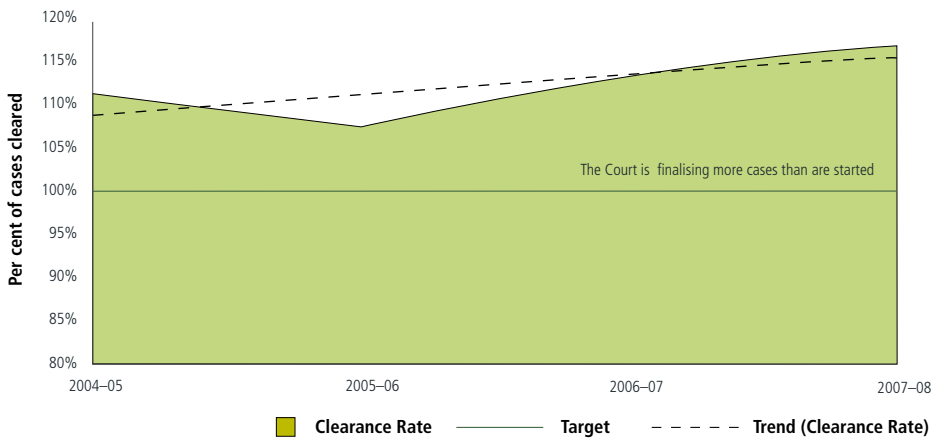


Minor adjustments to data were made during 2007–08. Figures reported in previous annual reports may have changed.

Figure 3.3 displays the applications filed, finalised and pending in the past four financial years.

Clearance rate

Figure 3.4: Clearance rate for all Family Court cases 2004–05 to 2007–08



Minor adjustments to data were made during 2007–08. Figures reported in previous annual reports may have changed.

Figure 3.4 displays the Court’s clearance rates for the past four financial years. The clearance rate compares completed cases to commencing cases. A clearance rate of 100 per cent means the Court is keeping pace with its input workload. Over the past 4 years, the Court has been able to complete more cases than are starting each year and has consequently been able to decrease the volume of its backlog of cases. If the Court is able to continue this trend, its longer term goal is to progressively reduce the time taken to finalise cases.

Survival of Family Court cases

The rate at which cases ‘drop out’ greatly assists the Court to monitor the effectiveness of its case management process and the possible impact of its timeliness in determining and disposing of cases. Cases that progress towards a trial generally have more entrenched conflict and complexity. They require significantly more judicial and administrative resources and spend more time moving through the case management process. Focus on only complex work would suggest that a higher proportion of cases will more likely end in trial as indicated in Figure 3.5.

Figure 3.5: Attrition of cases from filing to finalisation in the Family Court 2004–05 to 2007–08

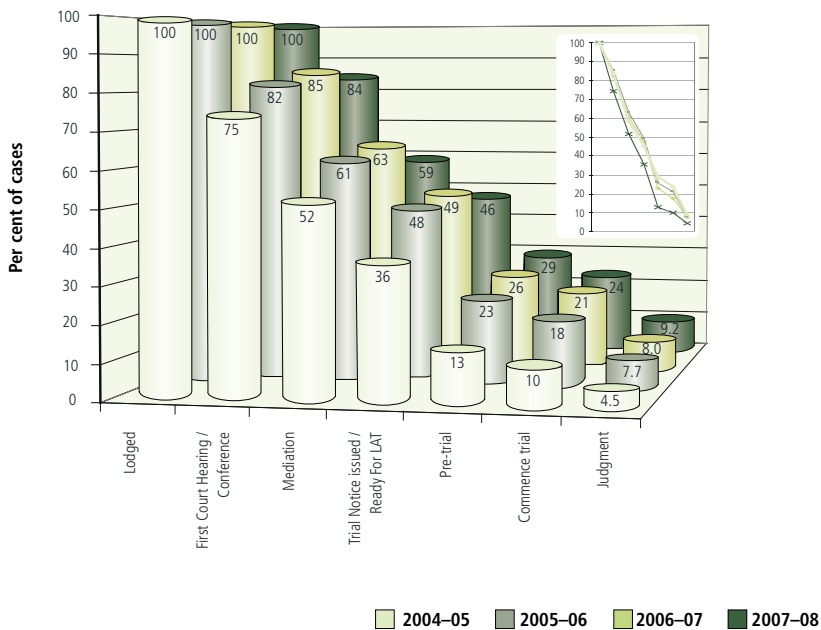


Figure 3.5 shows that, over the past four years, cases have remained in the Court for longer and have required more court hearings (and conferences). In 2007–08 a significantly larger proportion of cases required judges to make the final decision. This is a clear measure that this Court has a larger proportion of complex matters within its caseload mix.

This figure shows an increase from 10 per cent to 24 per cent in the proportion of cases that have progressed to trial between 2004–05 and 2007–08. More significantly, the proportion of cases that have needed a judicial determination has more than doubled from 4.5 per cent to 9.2 per cent during the same period.

Although the Court had a reduction in the number of cases commencing, a higher proportion of the cases went to trial. Also, these trials and pre-trial management processes are considerably longer and more intensive, in order to deal with complex issues and conflict. This indicates that the workload of the Court has remained relatively consistent.

The shift in the complexity of the Court's workload will be taken into account when the Court's new performance measures are reported in 2008–09. The following section relies on existing measures as defined in the Portfolio Budget Statements for 2007–08.

REPORT AGAINST CURRENT PERFORMANCE MEASURES

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,
- ❑ resolve financial cases without litigation.

Output 1.1.1 – Mediated agreements

Mediated agreements are outputs of the resolution process through which families seeking final orders reach an agreement (or settlement) in their case as 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
- ❑ child dispute services (previously mediation) in cases affecting children
- ❑ conciliation conferencing in property disputes.

Performance

The Court's performance target is to have three out of four (75 per cent) of its final orders cases resolved through mediated agreement. It further aims to finalise those mediated agreements (cases settled) within six months of their filing.

Table 3.3: Mediated agreements performance 2004–05 to 2007–08

	Target	2004–05	2005–06	2006–07	2007–08
% of Cases resolved by Mediated Agreements	75%	61	60	57	58
% change		-8	-1	-3	1
% Mediated Agreements finalised within months	90%	66	69	67	66
% change		-1	3	-2	-1
Number of months to finalise 90 per cent of mediated agreements	6 months	14.8	13.9	14.1	12.7
% change		12%	-6%	1%	-10%

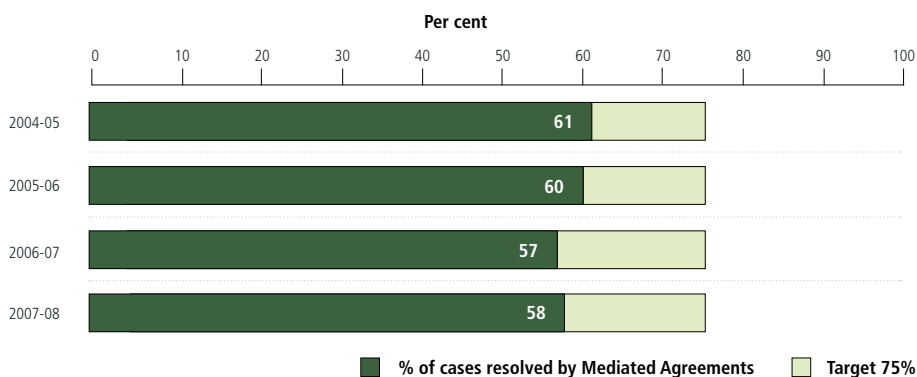
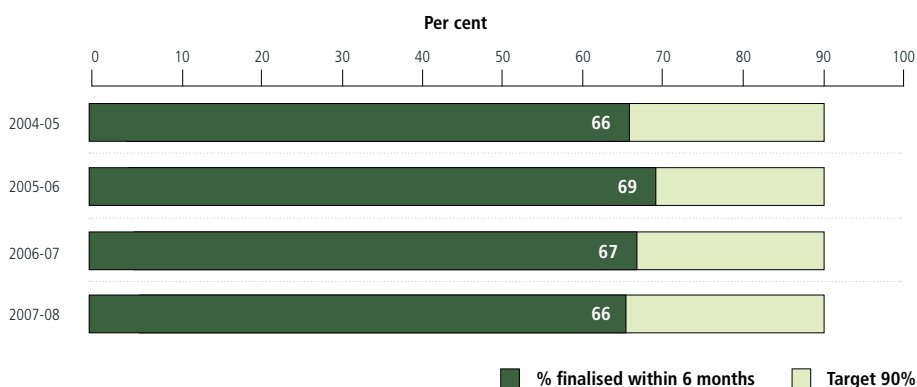
Figure 3.6: Per cent of cases resolved through mediated agreement**Figure 3.7: Per cent of cases resolved through mediated agreements finalised within 6 months**

Table 3.3, Figure 3.6 and 3.7 show the Court's overall performance against these targets for the past four financial years. Performance has been significantly below its target with the national percentage of cases resolved through mediated agreement below 60 per cent. The time taken to 'broker' the mediated agreement has also been consistent with approximately 66 per cent of those cases being finalised within six months.

With the Court's focus on dealing with the most complex cases, the likelihood of parties settling is expected to reduce. Therefore, the Court does not expect to be able to meet this 'old' target. The Court has adjusted its case management process to use this phase to ensure that the issues in the conflict are clearly understood should the parties progress to trial. The focus is no longer on settling the case, but rather on preparing the case for the trial and ensuring the trial process is more effective and efficient.

Output 1.1.2 – Consent order applications

Families often do not require the direct services of the Court to resolve their dispute but come to an agreement on their own or with help from other people or organisations. If families are able to achieve an early agreement then they may seek to have that agreement made binding by the Court through filing an *Application for Consent Orders*. These orders are typically approved by a registrar.

Figure 3.8: Incoming, finalised and pending consent order applications 2004–05 to 2007–08

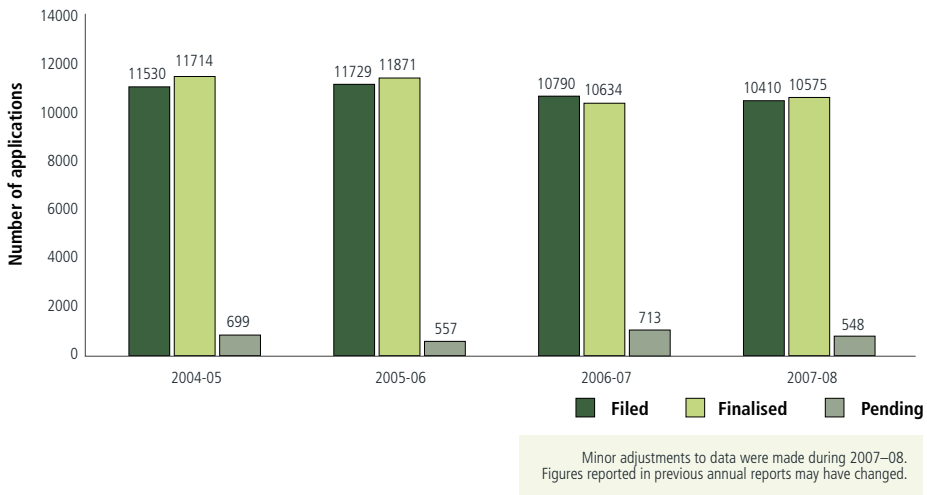


Figure 3.8 displays the total number of consent order applications filed, finalised and pending in the past four financial years. The clearance rate has remained close to 100 per cent.

Performance

The Court aims to have 90 per cent of valid and correctly lodged consent order applications approved and finalised within one month of being filed.

Table 3.4: Consent orders performance 2004–05 to 2007–08

	Target	2004–05	2005–06	2006–07	2007–08
% of Consent Orders Applications finalised within 1 month	90%	84	89	86	85
% change		3	5	-3	-1
Number of months to finalise 90 per cent of Consent Orders applications	1 month	1.4	1.1	1.3	1.4
% change		-18%	-21%	-18%	8%

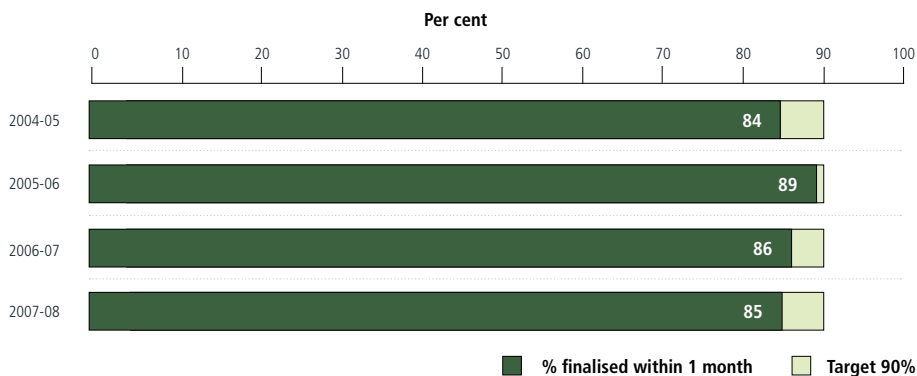
Figure 3.9: Per cent of consent orders applications finalised within 1 month

Table 3.4 and Figure 3.9 show the Court has almost reached this target consistently over the past four years.

Though these cases involve parties that are in agreement, not all cases are automatically accepted and approved. With the introduction of rules associated with superannuation splitting, many agreements require superannuation schemes to provide the necessary information before the splitting order can be approved. This delay, which is outside the Court's control, is the main cause for the Court to just fall short of this target.

Output Group 1.2 – Determination

Output 1.2.1 – Divorces

The Family Court and the Federal Magistrates Court agreed that, from 13 November 2003, all applications for divorce should be filed in the Federal Magistrates Court (Family Court of Australia Practice Direction No. 6 of 2003). The Family Court agreed to continue to conduct some divorce hearings on behalf of the Federal Magistrates Court, principally at some circuit locations. In recent years, nearly all divorce applications were filed in the Federal Magistrates Court. The following results relate only to the Family Court.

Figure 3.10: Applications for divorce filed 2003–04 to 2007–08

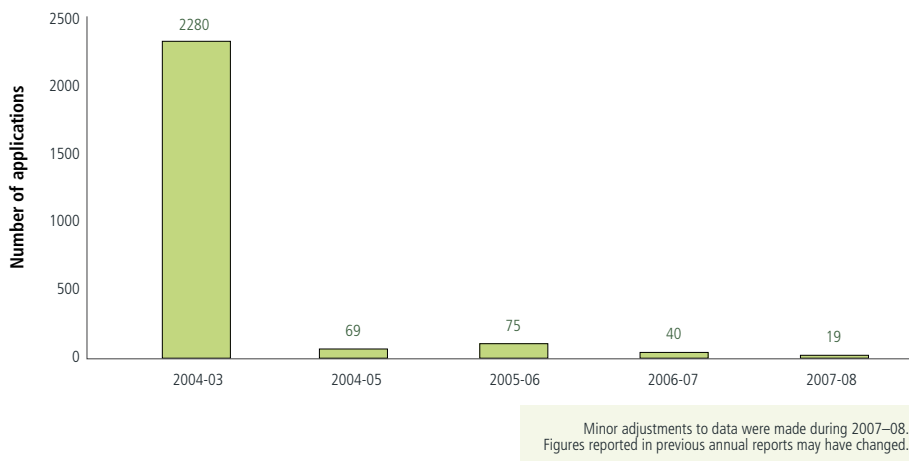


Figure 3.10 shows a decline in the number of divorces filed with the Family Court, in accordance with the agreement it has with the Federal Magistrates Court.

Performance

As a result of the small number of divorce applications that are initiated in the Family Court, the performance figures related to these applications are not presented in this report.

However, in accordance with its agreement with the Federal Magistrates Court, the Family Court continues to use its resources to hear some divorce applications filed in the Federal Magistrates Court. In 2007–08 the Family Court granted 6357 divorces, a majority of which were granted on behalf of the Federal Magistrates Court. Additionally, the Family Court granted 85 per cent of divorces within the three month target.

Output 1.2.1 – Applications in a case

Clients may seek, through an *Application in a Case* (since 29 March 2004 in accordance with the *Family Law Rules 2004*), to have interim, procedural, ancillary and miscellaneous orders made by the Court while their case progresses towards a final hearing. These applications may be filed for issues such as interim parenting and interim financial orders, enforcement summonses, appeals from summary jurisdiction and costs.

Figure 3.11: Incoming, finalised and pending applications in a case 2004–05 to 2007–08

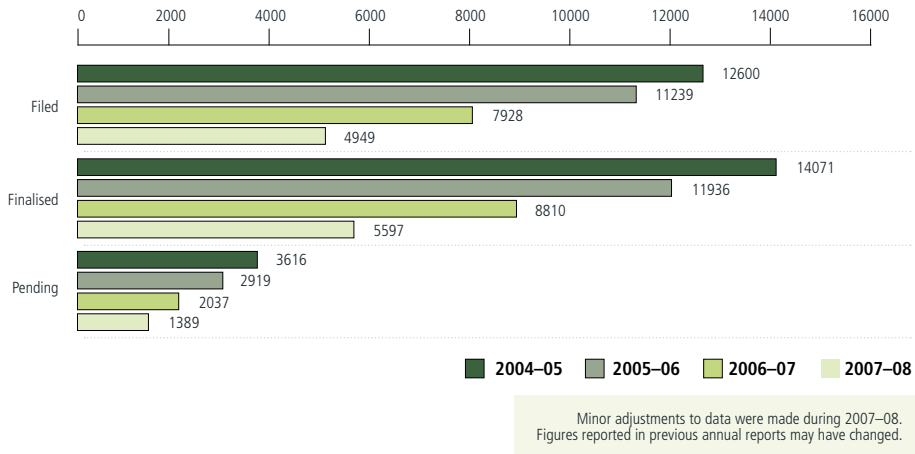
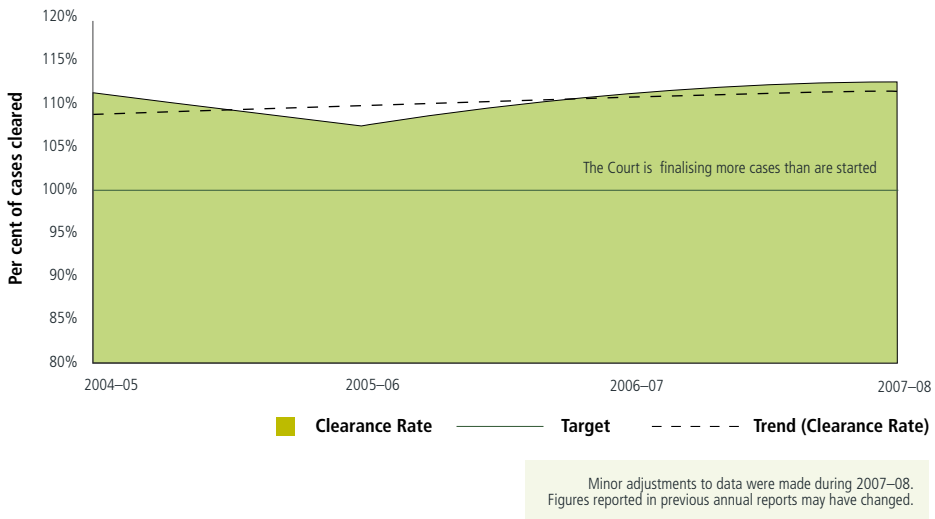


Figure 3.11 displays the national results for Applications in a Case filed, finalised and pending in the past four financial years.

Figure 3.12: Clearance rate of applications in a case



Consistent with the decrease in filings of final applications in the Family Court, filings and finalisations of *Applications in a Case* have been decreasing over the past four financial years. The Court however, still has consistently achieved a clearance rate over 100 per cent each year, thus reducing the size of its backlog.

Performance

The Court's performance target is to finalise 90 per cent of *Applications in a Case* within three months of their filing.

Table 3.5: Applications in a case performance 2003–04 to 2006–07

	Target	2004–05	2005–06	2006–07	2007–08
% of Application in a Case finalised within 3 months	90%	66	66	63	64
% change		3	0	-3	1
Number of months to finalise 90 per cent of Applications in a Case	3 months	7.9	8.0	8.5	9.7
% change		4%	1%	6%	14%

Figure 3.13: Per cent of applications in a case finalised within 3 months

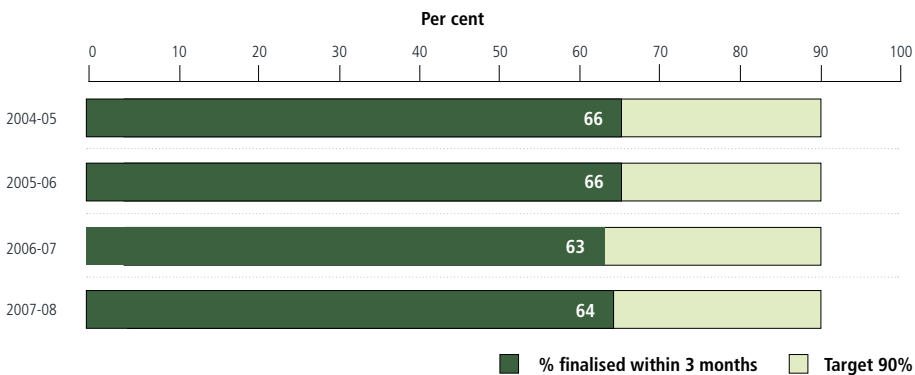


Table 3.5 and Figure 3.13 details the Court's achievements against its target.

Over the past four financial years, the Court has consistently finalised about two thirds of *Applications in a Case* within three months. Ninety per cent were finalised within 9.7 months in 2007–08. This aspect of the Court's performance has been significantly affected by the changes in workload and resources that are discussed elsewhere in this report.

Judges' workloads have increased as the number of senior and judicial registrars has declined and judges have taken on some of their responsibilities. The higher proportion of complex cases being dealt with by this Court reduces the likelihood of settlement, meaning more issues are not dealt with until the substantive final orders case reaches trial. These factors are all having an impact on the Court's capacity to meet the target.

Output 1.2.2 – Final orders

Applications for final orders require the majority of the Family Court’s effort and resources to resolve or determine. The majority of applications for final orders have continued to be resolved through the intervention of the Court’s mediation services, without proceeding to determination by a judge. Additionally, many of the cases which enter the determination phase also settle, leaving a small but important proportion of cases proceeding to final hearing and judgment.

Figure 3.14: Applications for final orders filed 2004–05 to 2007–08

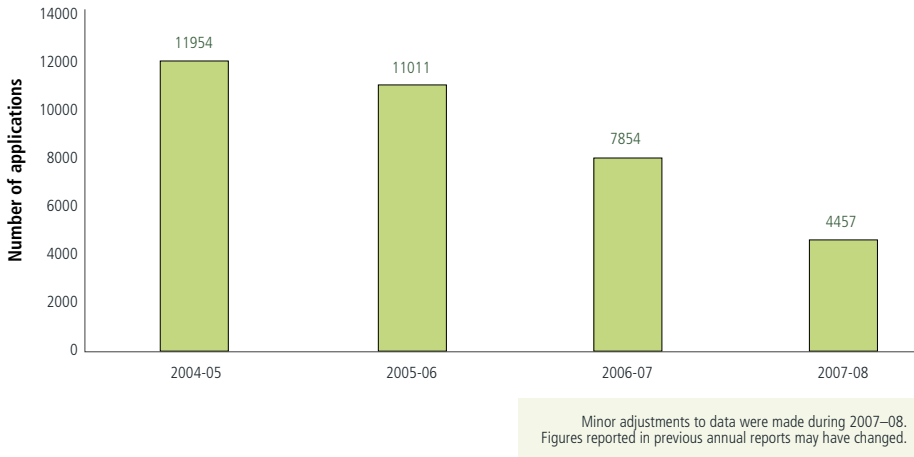


Figure 3.15: Applications by state for final orders filed 2004–05 to 2007–08



Figure 3.15 shows the applications for final orders lodged by state over the past four financial years.

Figure 3.16: Incoming, finalised and pending applications for final orders 2004–05 to 2007–08

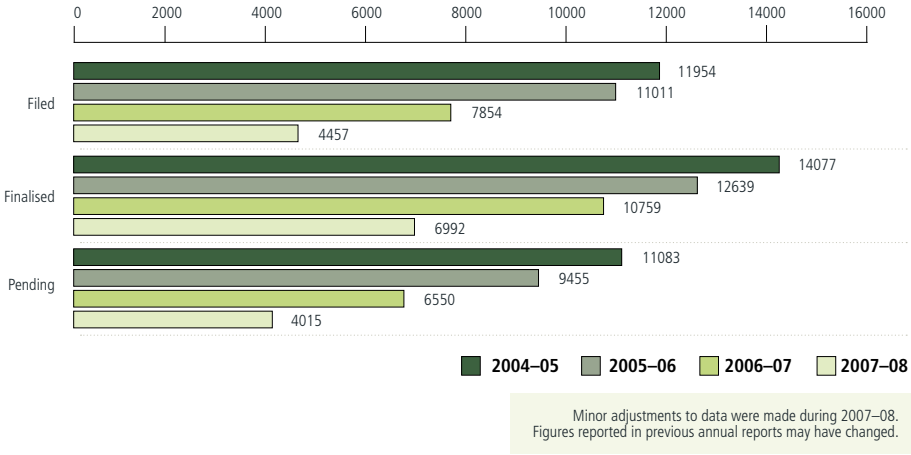
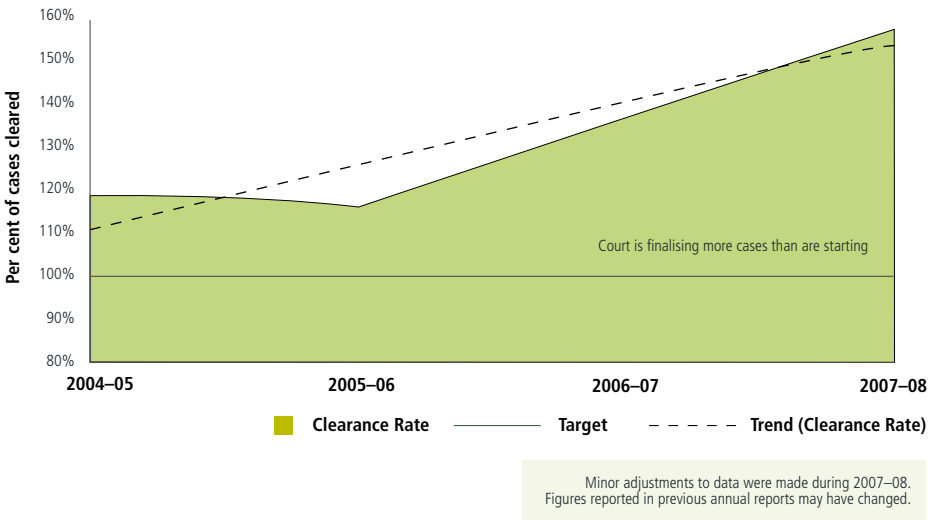
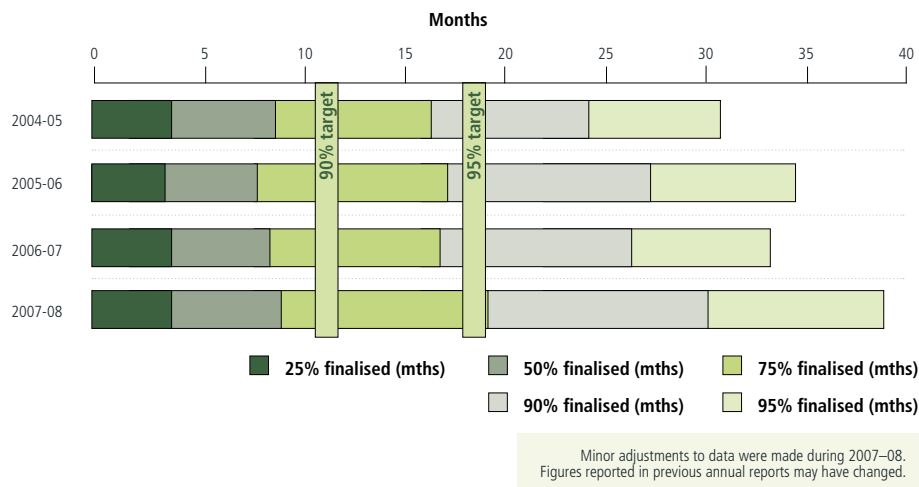


Figure 3.16 displays the national applications for final orders filed, finalised and pending in the past four financial years. This figure also shows that the cases pending in each year have been declining, most significantly from 2005–06 to 2007–08.

Figure 3.17: Clearance rate of applications for final orders



The number of applications for final orders filed in the Court has steadily declined, commensurate with the growth in the Federal Magistrates Court and in accordance with government policy. There has been a fall of 43 per cent between 2006–07 and 2007–08. Figure 3.17 show that the Court consistently finalises more cases than it receives and therefore reduces the size of its backlog of active cases through a clearance rate above 100 per cent.

Figure 3.18: Time to finalise applications for final orders 2004–05 to 2007–08**Table 3.6: Time to finalise applications for final orders 2004–05 to 2007–08**

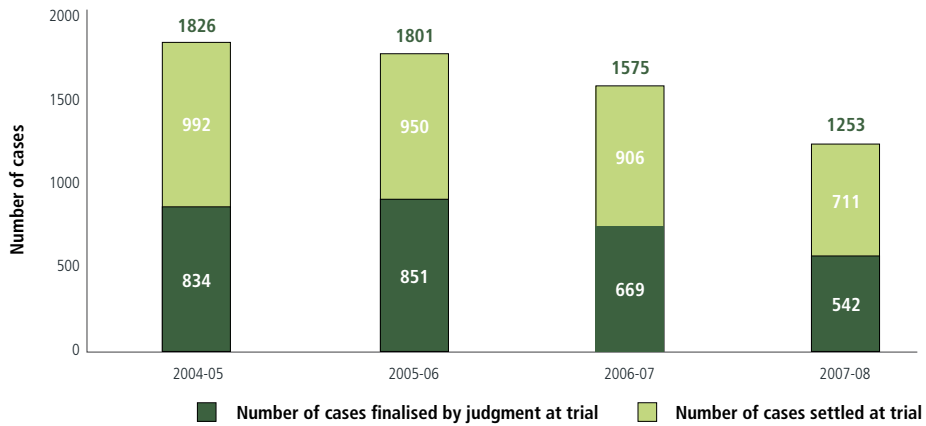
	Target	2004–05	2005–06	2006–07	2007–08
25% of cases		3.4	3.2	3.5	3.7
50% of cases		8.3	7.5	8.1	8.5
75% of cases	6	16.7	17.0	17.0	18.0
90% of cases	12	24.7	26.9	25.8	28.7
95% of cases	18	31.3	33.7	33.3	36.9

Figure 3.18 and Table 3.6 show the time from filing to finalisation either by settlement or judicial decision. The Court's target is to dispose of three out of four (75 per cent) of these cases in under six months and 95 per cent within 18 months.

In 2007–08 it took 18 months to finalise three out of four (75 per cent) of cases, and 28.7 months to finalise 90 per cent of cases.

As the Court continued to reduce the number of pending cases significantly between 2006–07 and 2007–08, many of the cases finalised were older cases. This has had an impact on the average time taken to finalise cases in 2007-08. This effect will continue until older cases in the pending cases list are finalised.

Figure 3.19: Cases finalised at trial 2004–05 to 2007–08



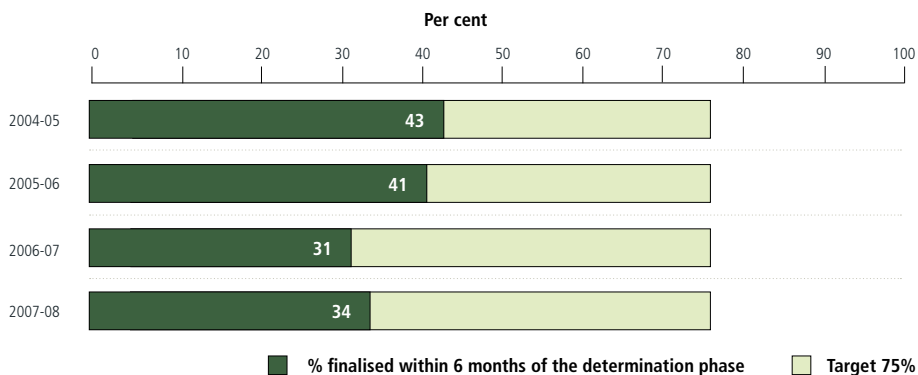
Minor adjustments to data were made during 2007–08. Figures reported in previous annual reports may have changed.

Figure 3.19 details the Family Court’s trials in the past four financial years.

Commensurate with the growth of the Federal Magistrates Court, the number of the less complex cases that have been transferred to that Court, particularly in 2006–07, has increased. Coupled with the Federal Magistrates Court’s growth, there has been a reduction in the number of Family Court judges and judicial registrars and so the Court is now concentrating solely on the complex and lengthy cases. The progressive change in the Court’s caseload mix towards a higher proportion of complex matters is reflected in the number of matters being determined at trial.

Table 3.7: Final orders determination phase performance 2003–04 to 2007–08

	Target	2004–05	2005–06	2006–07	2007–08
% of Final Orders Applications finalise within 6 months of Trial Notice issued	75%	43	41	31	34
% points change		-6	-2.0	-10.0	3.0
Number of months to finalise 75 per cent of Final Orders Applications in the determination phase	6 month	15.2	18.9	19.0	22.5
% change		35%	24%	1%	18%

Figure 3.20: Per cent of cases finalised within 6 months of Trial Notice issued

Performance

The Court aims to finalise three out of four (75 per cent) cases that enter the determination phase within six months of a trial notice. A case enters the determination phase when all options for resolution have been exhausted and it becomes necessary to prepare the case for trial. Figure 3.20 details the percentage of cases finalised within 6 months of entering the determination phase over the past four financial years.

As a result of changes in case management within the Court, this performance measure is no longer relevant or accurate. Since the introduction of the less adversarial trial, a trial notice is no longer issued. This further reduces the relevance of the measure. Therefore, 2007–08 figures are not reflective of all cases in the Court.

Performance measures for 2008-09

In 2008–09 the Court will introduce new performance measures. Below is a summary of those performance measures and the 2007–08 actual performance against the proposed targets:

- ❑ *A clearance rate of more than 100 per cent.* The 2007–08 figures show that the Court's clearance rate (final orders) is over 150 per cent.
- ❑ *More than 75 per cent of matters finalised within 12 months.* The figures for 2007–08 show that the Court is finalising 61 per cent of matters (final orders) within 12 months.
- ❑ *More than 75 per cent of reserved judgments delivered within three months.* During 2007–08, 70 per cent of reserved judgments were delivered within three months.
- ❑ *More than 75 per cent of matters pending (final orders) are less than 12 months old.* The 2007–08 figures show that approximately 60 per cent are less than 12 months old.
- ❑ *More than 75 per cent of matters awaiting reserved judgment have been waiting for less than three months after the trial (i.e. less than 25 per cent waiting longer than three months).* As at 30 June 2008, 38 per cent awaiting a judgment have been waiting less than three months (i.e. 62 per cent waiting more than three months).

Self represented litigants

In previous years a large proportion of the Court's clients have not used the services of a legal representative. However, as the Court's focus has shifted to dealing with the most complex of cases, it has become obvious that there has also been an increase in the percentage of clients using legal representatives. This appears to be a measure of the increasing complexity of the caseload mix being dealt with by the Court.

Figure 3.21: Legal representation as a percentage of all cases 2004–05 to 2007–08

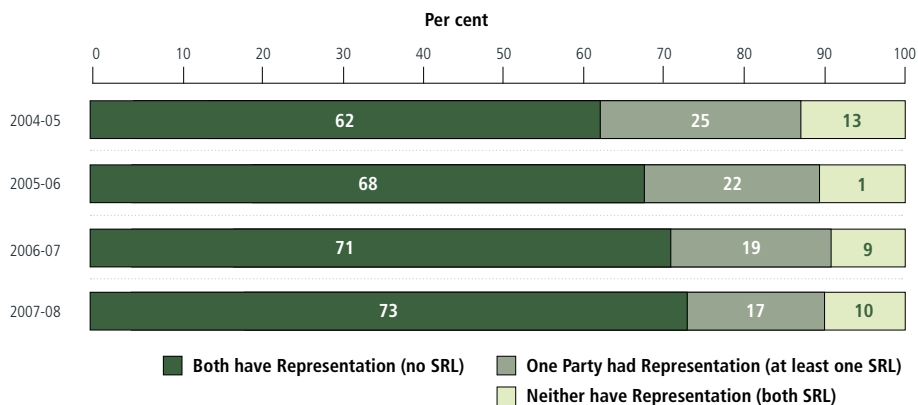


Figure 3.21 provides an indication of the level of legal representation in the Family Court during the life of cases. The results include representation at some or all court events.

Figure 3.22: Legal representation as a percentage of cases at trial 2004–05 to 2007–08

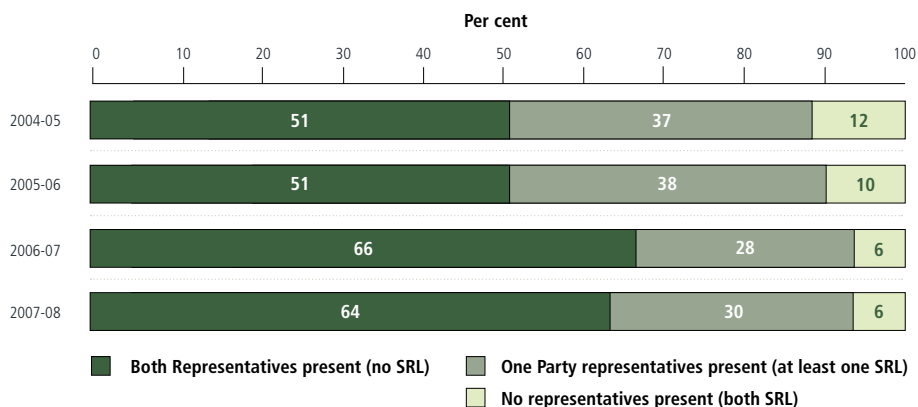


Figure 3.22 shows the level of representation specifically at trial over the past four financial years.

Figures 3.21 and 3.22 illustrate that an increasingly higher proportion of cases in the Family Court have both parties to the matter represented, and a lower proportion of clients and cases where there is no legal representation at all.