



APPEALS

APPEAL DIVISION

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

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 2008 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 Kay, previously a judge of the Appeal Division, retired on 15 February 2008.

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 & 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 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 (s.94AAA(3)).

Full Court sittings

During 2007–08 the Full Court sat for 20 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 New South Wales and the Northern Territory
- ❑ **Eastern**, which covers the balance of New South Wales and the Australian Capital Territory, and
- ❑ **Southern**, which covers Victoria, South Australia and Tasmania.

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

Appeals information system

Last years annual report advised that during 2006–07 the Court replaced its system for monitoring appeals and commenced using the Court’s case management system, Casetrack, to manage its appeal cases. Despite the data coming from the new system, it is still important to recognise that there is clearly a break in series from the end of 2005–06 and the beginning of 2006–07.

Last years report also highlighted a number of issues that may have caused aberrant data, in particular the appeal cases managed by the Family Court of Western Australia could not be reported causing the figures to be under-represented. During 2007–08 minor adjustments were made to the data and the Family Court of Western Australia supplied their 2006–07 appeals data. As a result the 2006–07 figures in this report have been updated.

For these reasons, figures prior to 2006–07 may not reconcile fully with the most recent years and therefore the information should be interpreted with these factors considered.

General trends in appeals

The number of interlocutory applications in relation to appeals continues to increase. Interlocutory applications include, but are not limited to:

- ❑ 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.

Between 2006–07 and 2007–08 there has been a 14 per cent increase in the number of interlocutory applications. From these applications, there was over a 100 per cent increase in the number of applications seeking ‘leave to extend time to comply with Rules’, and a 72 per cent increase in the number of applications seeking ‘security of costs’.

In addition, judges of the Appeal Division continue to conduct procedural hearings (essentially directions hearings for appellants), which have increased by approximately 40 per cent in the last year. The numbers of self representing litigants who are appellants makes this task time consuming and difficult. Consideration is being given to Registrars conducting most of the directions and procedural hearings in future years (as was the practice some years ago).

Table 4.1 and Figure 4.1 show the *Notice of Appeals* filed, finalised, and those pending* with the Appeal Division for the past four financial years.

* Pending matters are appeals which have not yet been finalised by judgment or otherwise.

Table 4.1: Notice of Appeals filed, finalised and pending

Filing	2004–05	2005–06	2006–07	2007–08	% change
FCoA	199	195	202	153	-24%
FMC	109	104	122	196	61%
Total - Filing	308	299	324	349	8%
<i>FCoA per cent</i>	65%	65%	62%	44%	-19%
<i>FMC per cent</i>	35%	35%	38%	56%	19%

Finalised	2004–05	2005–06	2006–07	2007–08	% change
FCoA	149	133	228	171	-25%
FMC	85	79	118	147	25%
Total - Finalised	234	212	346	318	-8%
<i>FCoA per cent</i>	64%	63%	66%	54%	-12%
<i>FMC per cent</i>	36%	37%	34%	46%	12%

Outstanding/pending	2004–05	2005–06	2006–07	2007–08	% change
FCoA	162	234	139	121	-13%
FMC	54	80	46	95	107%
Total - Pending	216	314	185	216	17%
<i>FCoA per cent</i>	75%	75%	75%	56%	-19%
<i>FMC per cent</i>	25%	25%	25%	44%	19%

The figures show that appeals from decrees of the Federal Magistrates Court have increased by 61 per cent, while appeals from decrees of the Family Court have decreased by nearly 25 per cent. The majority of the changes can be attributed to the Federal Magistrates Court now hearing a larger proportion of the first instance cases.

However, Figure 4.5 indicates that appeals for financial issues have increased from 28 per cent in 2006–07 to 42 per cent in 2007–08. This suggests that first instance financial cases are more complex and are more likely to be the subject of an appeal. Overall there has been an eight per cent increase in the number of appeals filed.

Figure 4.1: Appeals filed, finalised and pending

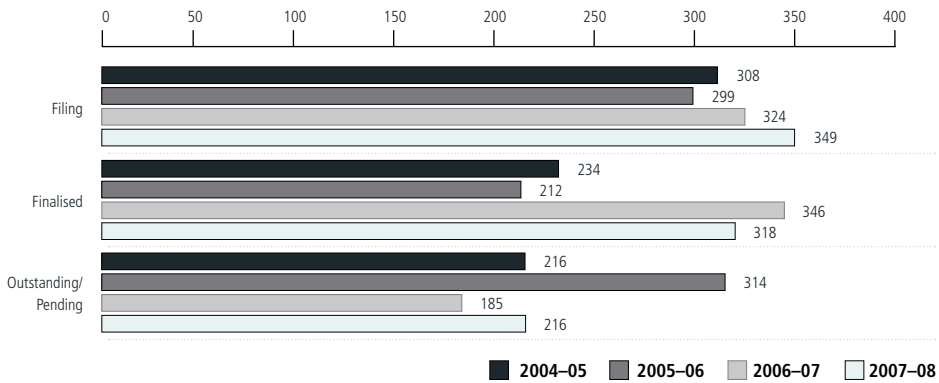
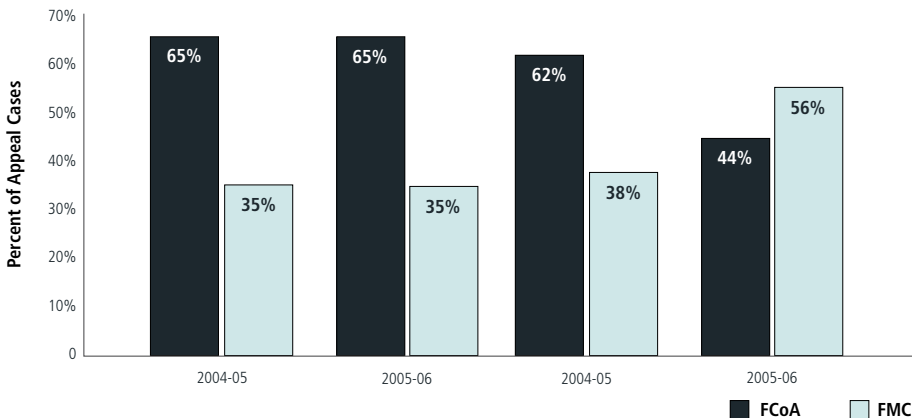


Figure 4.2 indicates the proportion of filings in relation to orders made either in the Federal Magistrates Court or in the Family Court.

Note: The system used to record appeal cases has highlighted that the ‘pending’ cases as 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.

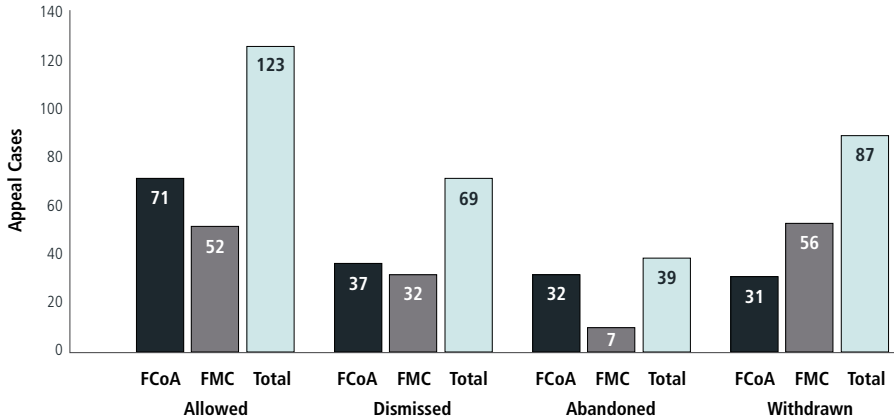
Figure 4.2: Appeals filed by jurisdiction



The Appeal Division delivered judgments on 108 appeals from decrees made in the Family Court and Family Court of Western Australia during the year, of which 71 (66 per cent) were allowed and 37 (34 per cent) were dismissed.

Figure 4.3 shows the disposal of appeal cases.

Figure 4.3: Appeals finalised by type of finalisation 2007–08



In addition, the Appeal Division delivered judgments on 84 appeals from decrees of the Federal Magistrates Court of which 52 (62 per cent) were allowed and 32 (38 per cent) were dismissed.

In the Appeal Division, a further 39 appeals were abandoned, seven of which were appeals from the Federal Magistrates Court, and 87 appeals were withdrawn of which 56 were appeals from the Federal Magistrates Court. The total number of appeals finalised during the year was 318.

Figure 4.4 shows appeals finalised in the past four financial years and Figure 4.5 shows the proportion of finalised cases by the means they were finalised.

Figure 4.4: Appeals finalised by finalisation type and financial year

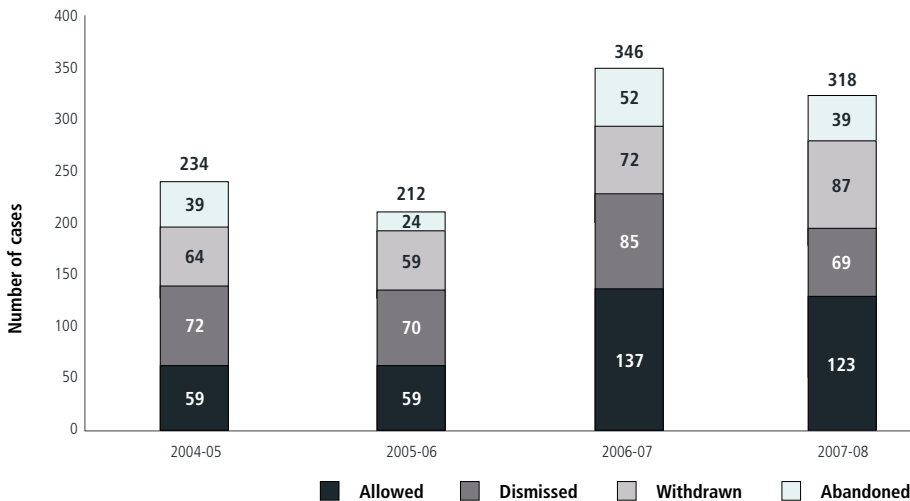
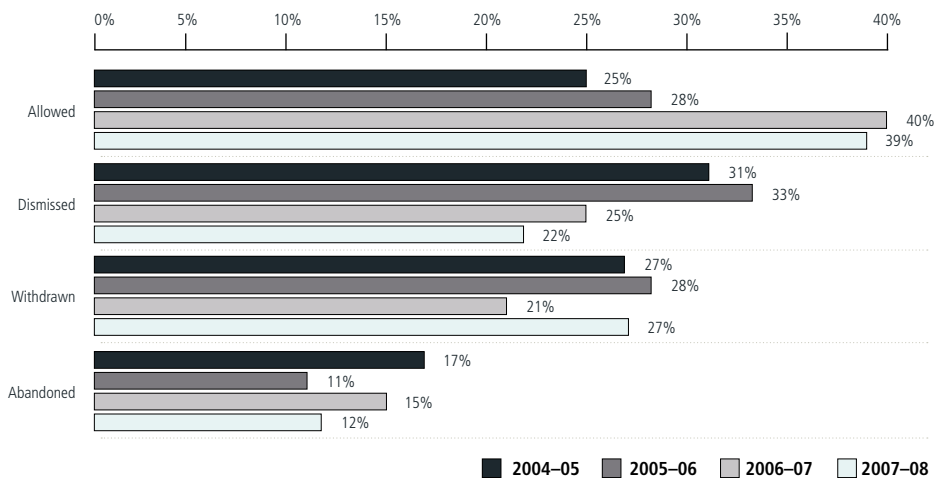


Figure 4.5: Proportion of appeals finalised by finalisation type and financial year



The figures show that the number of appeals with judgment delivered (dismissed and allowed) has fallen from 222 in 2006–07 to 192 in 2007–08, a decrease of 14 per cent. Overall, the total number of appeals finalised decreased by eight per cent during 2007–08.

Additionally, there were 47 applications for leave to appeal filed during the year. The Court heard 24 applications for leave to appeal during the year, 12 of which were allowed, and 12 were dismissed.

Other significant matters to be drawn from the statistics:

- ❑ 42 per cent of all issues raised on appeal were property/financial related
- ❑ 31 per cent of all issues raised on appeal were children related
- ❑ 39 per cent of appellants were female and 52 per cent were male¹, and
- ❑ 44 per cent of appellants were self-represented.

¹ The remaining nine per cent were corporate entities or statutory authorities

Figure 4.6: Issues raised in appeals lodged in 2007–08

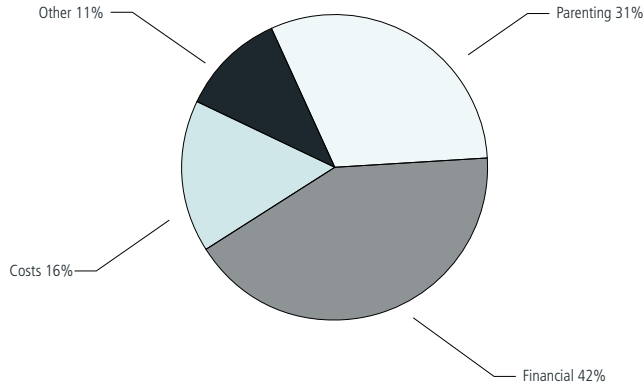


Figure 4.7: Appellants by gender

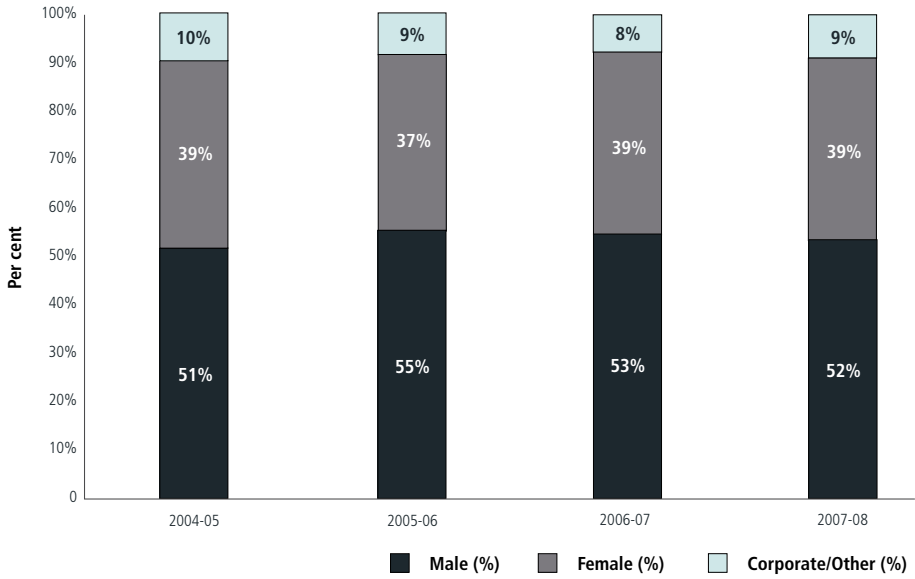
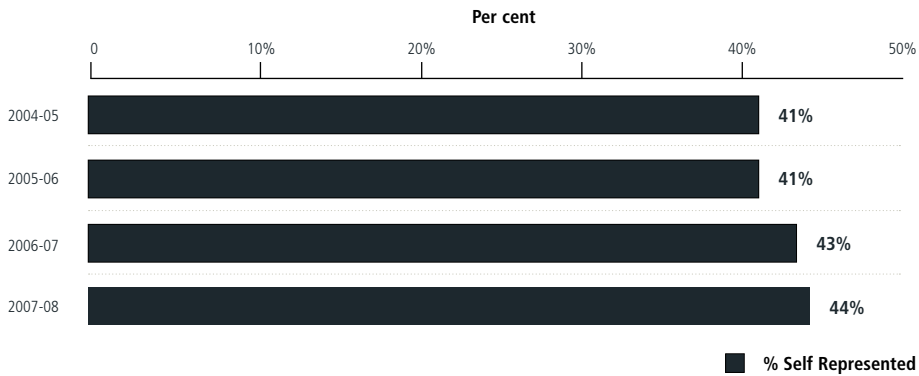


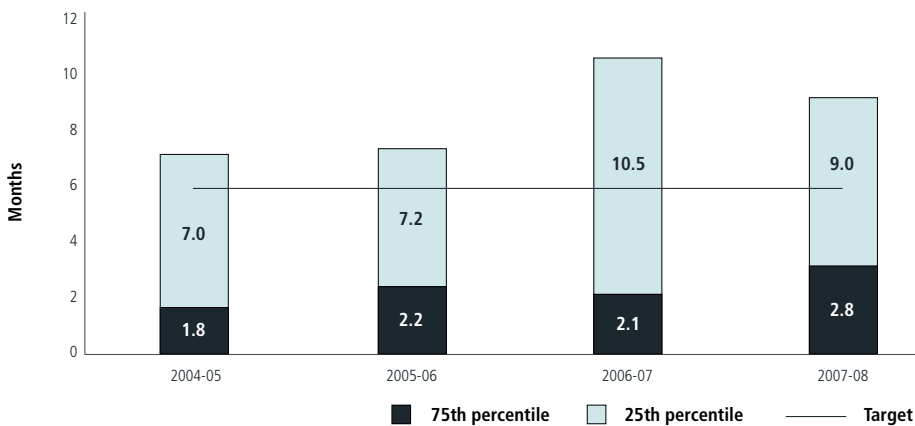
Figure 4.8: Self represented appellants



PERFORMANCE

The Appeal Division aims to finalise 75 per cent of appeals within six months of filing. Figure 4.9 shows the Court’s achievement against this target for the past four financial years.

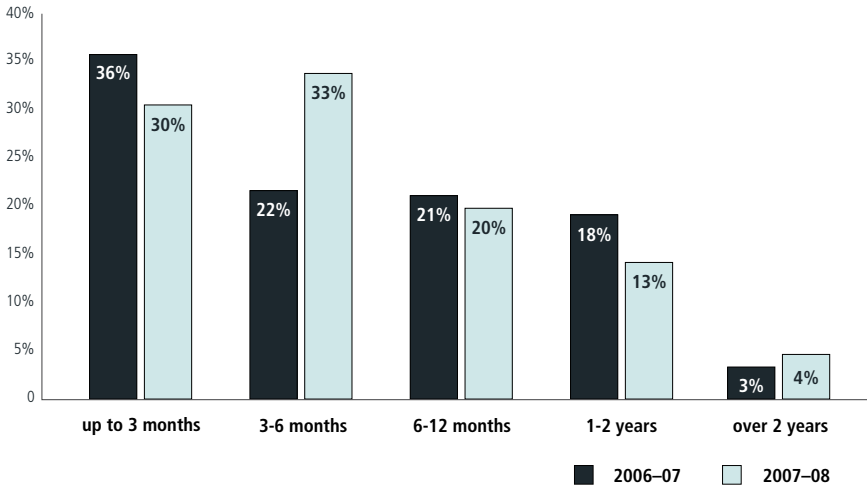
Figure 4.9: Months to finalise 25 per cent and 75 per cent of appeal cases



The time to completion of 25 per cent of matters for 2007–08 has slightly increased to 2.8 months, while for 75 per cent it has decreased to approximately 9 months. The Full Court has again finalised more cases than two years ago and are therefore still finalising a number of remaining older matters (though there were a smaller proportion of older cases being heard).

During 2007–08 the Court was able to achieve 63 per cent of finalised cases within six months, compared to 58 per cent last year.

Figure 4.9 shows the age distribution of finalised cases for the past two years. This shows that a higher proportion of younger cases were finalised, while a lower proportion of older cases were finalised. This would account for the overall improved performance in the time to finalise cases.

Figure 4.10: Months to finalise appeals

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.

During the year, 10 applications for special leave to appeal were filed in the High Court from judgments of the Family Court (three from Sydney, four from Melbourne, two from Perth and one from Canberra).

Also during the year 16 applications for special leave were determined by the High Court (six from Sydney, six from Melbourne, and one each from Brisbane, Perth, Adelaide and Canberra). 13 were refused.

There was only one appeal from the Family Court decided during 2007–08. This appeal related to a matter arising under the Hague Convention on the Abduction of Children, and was allowed.