

## PART THREE: PERFORMANCE

### The work of the Court by jurisdiction

#### General federal law

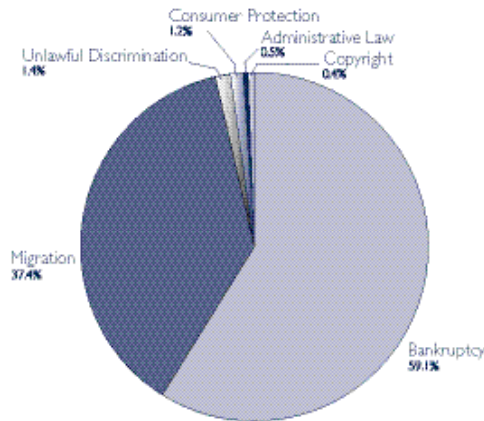
Bankruptcy and migration law provide the largest component of the Court's general federal law jurisdiction workload. The other areas of the Court's general federal law jurisdiction are unlawful discrimination, trade practices, administrative law, privacy law and some areas of copyright law.

The proportion of total general federal law applications lodged with the Federal Magistrates Court increased to 59 per cent in 2004-05 (53 per cent in 2003-04). Over 90 per cent of all bankruptcy filings were in the Federal Magistrates Court in 2004-05, and over 80 per cent of all migration filings. Around 70 per cent of applications relating to unlawful discrimination were also filed in the Federal Magistrates Court in 2004-05.

The number of general federal law matters finalised increased by approximately 35 per cent, from 4852 in 2003-04 to 6542 in 2004-05. This reflects the work of additional federal magistrates appointed during the year to deal primarily with migration matters. Migration matters finalised increased by 131 per cent, from 1190 in 2003-04 to 2748 in 2004-05.

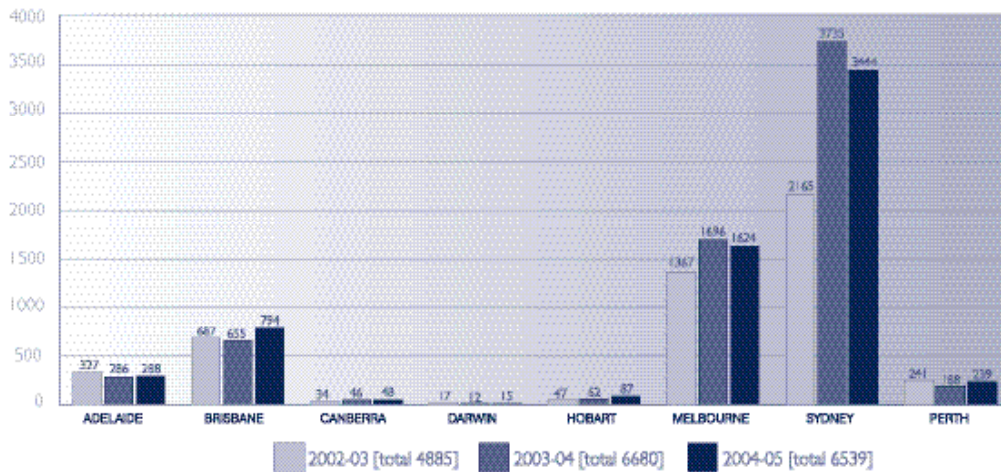
## General federal law statistics<sup>1</sup>

Figure 1: General federal law applications filed in the Federal Magistrates Court in 2004-05



Federal Law		% Federal Law
Administrative Law	34	0.5
Bankruptcy	3863	59.1
Consumer Protection	78	1.2
Copyright	28	0.4
Unlawful Discrimination	91	1.4
Migration	2445	37.4
<b>Sub totals</b>	<b>6539</b>	<b>100.0%</b>

Figure 2: Total number of general federal law applications filed



<sup>1</sup> A new computerised system was introduced in 2004-05 for the management of the Court's general federal law cases. Some categories have new classifications and this has resulted in slight differences between the general federal law data presented in this report and the data published in previous annual reports. During the migration of data, quality audits were carried out.

Figure 3: Number of migration applications filed and finalised

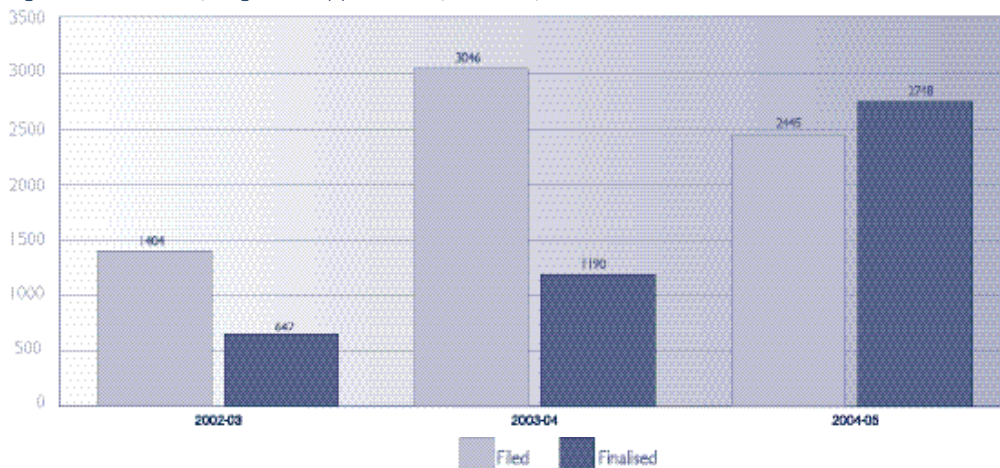


Figure 4: Number of migration applications filed by location

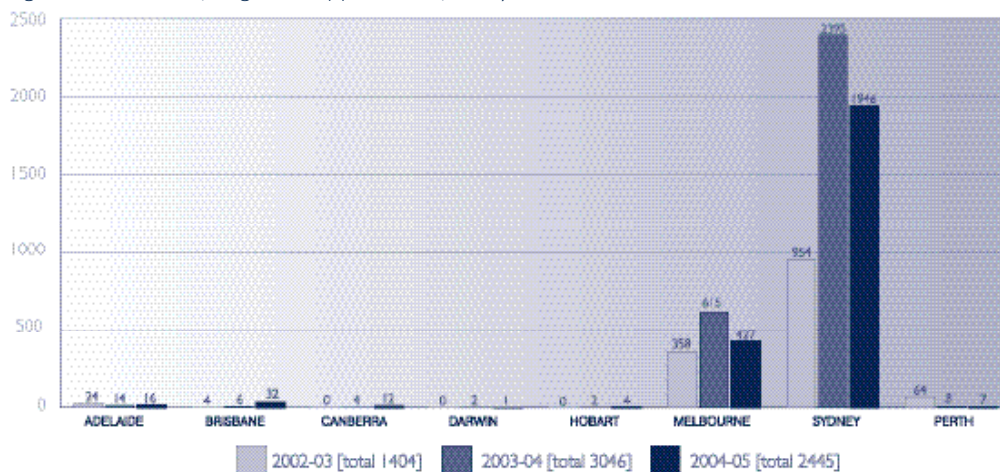


Figure 5: Number of migration applications finalised by location

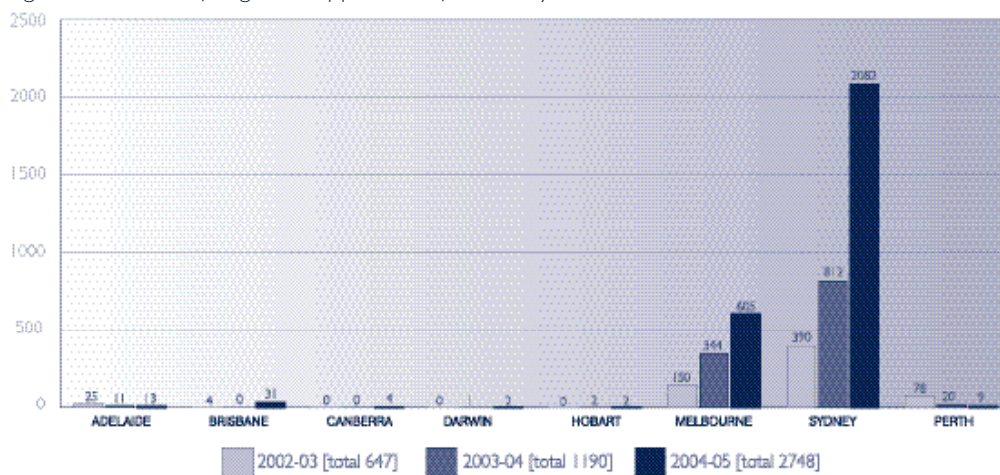


Figure 6: Number of bankruptcy applications filed

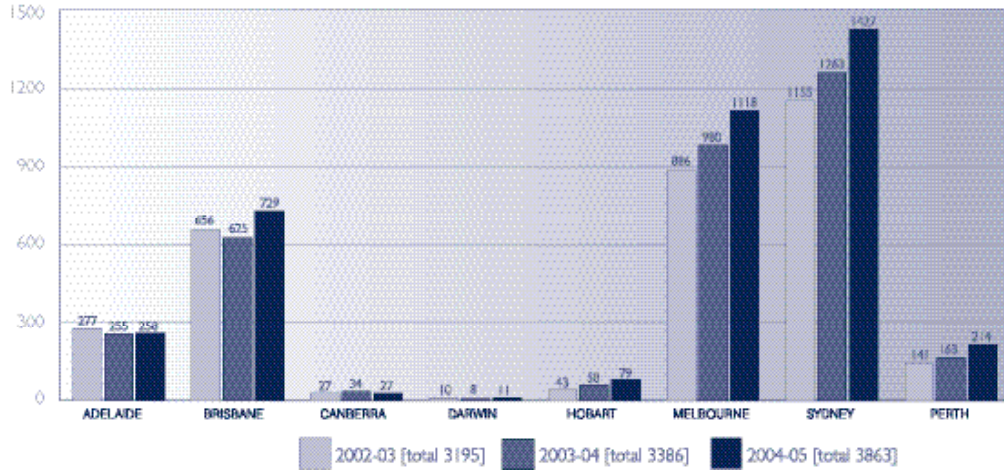


Figure 7: Number of consumer protection (trade practices) applications filed

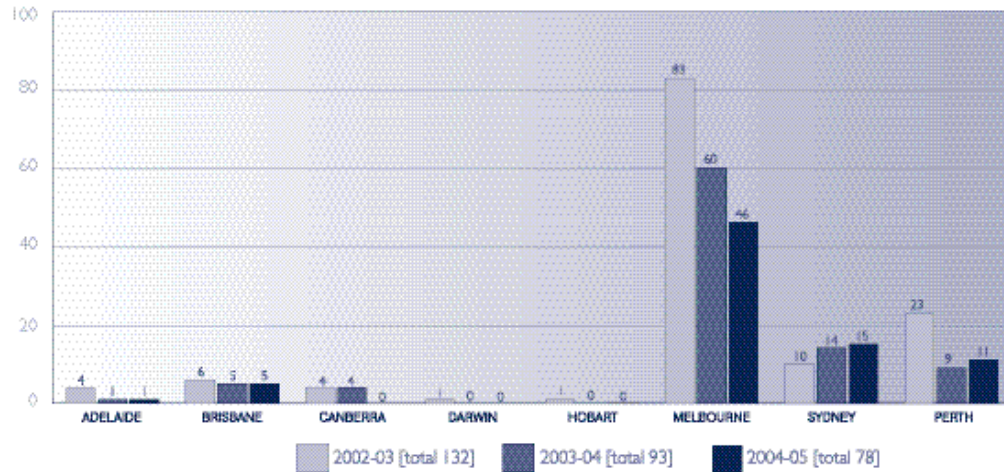


Figure 8: Number of unlawful discrimination applications filed

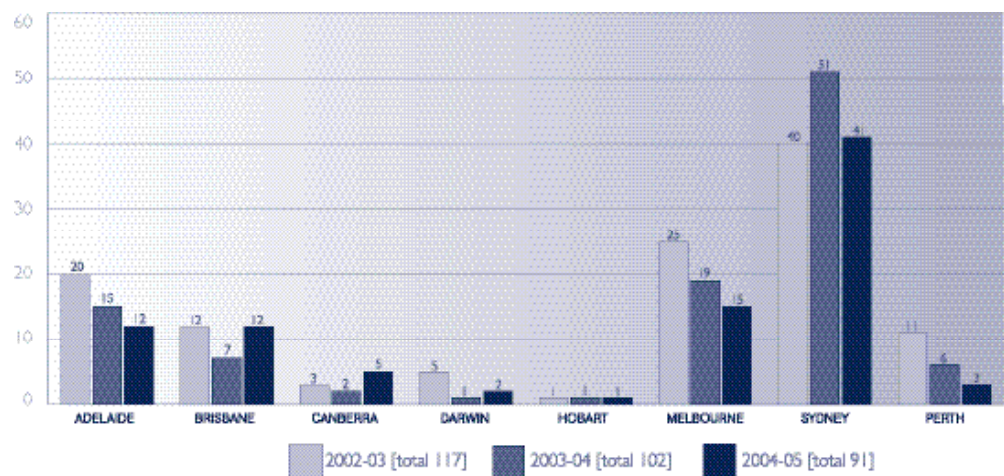
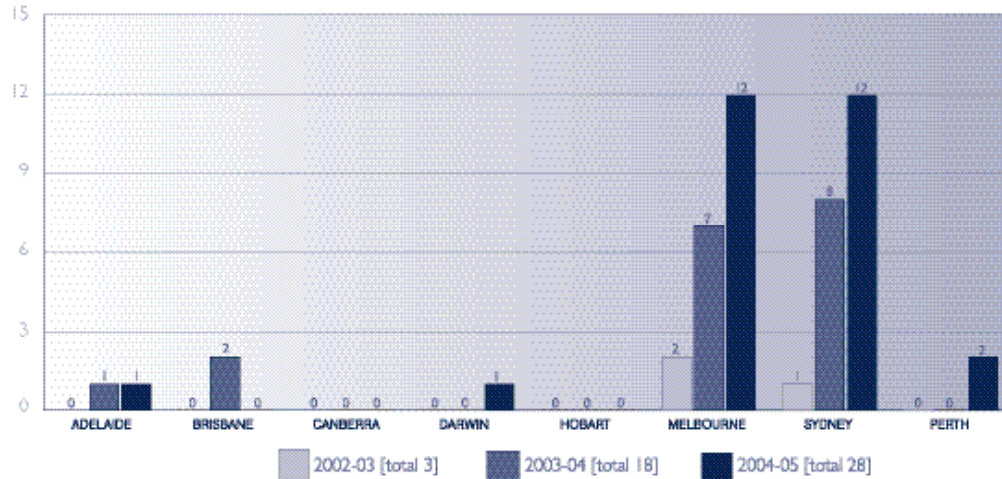


Figure 9: Number of copyright applications filed



## The Court's work in the general federal law jurisdiction

### Migration law

In October 2001, the Federal Magistrates Court received jurisdiction for the judicial review of decisions made by the Minister for Immigration and Multicultural and Indigenous Affairs, the Refugee Review Tribunal and the Migration Review Tribunal, under the *Migration Act 1958*.

As part of the Government's migration litigation reforms, eight new federal magistrates were appointed to the Court in 2004-05. As illustrated in figure 3, this has significantly increased the number of migration matters finalised. Migration matters finalised in 2004-05 exceeded applications filed in 2004-05, which enabled the Court to make some in-road into the backlog of migration cases transferred from the Federal Court. It is anticipated that the backlog of migration cases will be further reduced in the coming year with the full-year impact of the new appointments made in 2004-05.

The Court's migration workload is expected to increase in the coming year following legislative passage of the *Migration Litigation Reform Bill 2005*.<sup>2</sup> The proposed amendments, if passed, will have the effect of limiting first instance jurisdiction to review migration decisions to the High Court of Australia (High Court) and the Federal Magistrates Court (the Federal Court would retain appellate jurisdiction). The grounds of review in the Federal Magistrates Court will be the same as those in the High Court

<sup>2</sup> The Bill was before Parliament at the time of printing this report.

under section 75(v) of the Constitution. The Bill also proposes that matters filed in the High Court's original jurisdiction can be remitted directly to the Federal Magistrates Court and broadens the grounds on which federal courts can summarily dispose of proceedings generally.

Since the High Court decision in *Plaintiff S157/2002 v Commonwealth of Australia* [2003] HCA 2, the Federal Magistrates Court has had to consider what constitutes jurisdictional error in the context of decisions made under the Migration Act. The majority of appeals from the Federal Magistrates Court to the Federal Court were heard and determined by single judges exercising the appellate jurisdiction of the Court.

An amendment included in the *Migration Litigation Reform Bill 2005* is for appeals from migration decisions of federal magistrates to be heard by a single Federal Court judge, unless a judge considers the appeal should be heard by a court of three judges.

Most of the applicants who appear before the Court are seeking judicial review of a decision not to grant a protection visa by the Refugee Review Tribunal (and to a lesser extent judicial review of a decision of the Migration Review Tribunal). The key issue to be reviewed is whether or not the decision involves jurisdictional error and what constitutes jurisdictional error.

During the year the High Court held that where, pursuant to s39B of the *Judiciary Act 1903 (Cth)*, an applicant seeks the issue of a constitutional writ against the Tribunal, the Tribunal itself must be joined as a party: *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 24. This decision also provided some clarification on the provisions of s424A(1) of the Migration Act.

## Unlawful discrimination

The Federal Magistrates Court shares concurrent jurisdiction with the Federal Court in relation to unlawful discrimination under the *Human Rights and Equal Opportunity Commission Act 1986*. This jurisdiction is to hear and determine complaints of discrimination under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*.

The Court has the power to award unlimited damages and to give other relief. While unlawful discrimination is a relatively small component of the Court's general federal law workload, the Federal Magistrates Court handles approximately 70 per cent of unlawful discrimination applications filed in the federal arena.

A comprehensive overview of significant issues in federal unlawful discrimination law was prepared by the Human Rights and Equal Opportunity Commission (HREOC) in its publication *Federal Discrimination Law 2005*.

As most federal unlawful discrimination matters are heard in the Federal Magistrates Court, the Court's decisions are influential in providing guidance in this jurisdiction.

For example, in *Howe v Qantas Airways Ltd* [2004] FMCA 242<sup>3</sup>, Federal Magistrate Driver considered a claim for sex discrimination and whether the applicant (a long-haul flight attendant who returned to work following maternity leave and who was seeking more flexible work) had been directly discriminated against because of her pregnancy or indirectly discriminated against by being denied part-time work.

In *Access for all Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2004] FMCA 915<sup>4</sup>, Federal Magistrate Baumann found that the provision of disabled toilets with exterior hand basins (in full public view) was unlawful discrimination.

Another case involving alleged disability discrimination was the decision of Federal Magistrate Walters in *Ball v Silver Top Taxi Service Ltd* [2004] FMCA 967<sup>5</sup>. The applicant in the case claimed that a (wheelchair accessible) taxi operator failed to give priority to a wheelchair booking. While it was held that the applicant failed to demonstrate discrimination within the terms of the *Disability Discrimination Act 1992 (Cth)*, Federal Magistrate Walters recommended that the respondent take steps to introduce and enforce a disciplinary policy which penalises wheelchair accessible taxi operators who fail or refuse to comply with the terms of their licences by failing or refusing to give priority to wheelchair-bound hirers.

While the Federal Magistrates Court has not yet considered alleged discrimination on the grounds of age, in *Peacock v HREOC* [2004] FMCA 466 Federal Magistrate Raphael considered an application for judicial review of a decision by the President of HREOC not to inquire into a complaint where the applicant's employment with a government employer was terminated after refusing to exercise its discretion and extend his period of service beyond the age 65 years. The decision of Federal Magistrate Raphael to dismiss was upheld on appeal to the Full Court of the Federal Court which made the following observations:

*We can understand the appellant's frustration at having been compulsorily retired simply because he had reached the age of sixty-five. That is an age at which many individuals can, and do, function effectively. That fact has now been recognised with the repeal of the section.<sup>6</sup>*

It is expected that the Court's unlawful discrimination cases will continue to be of significance to the expanding federal unlawful discrimination jurisprudence.

3 (2004) EOC 93-359

4 (2005) EOC 93-372

5 (2005) EOC 93-370

6 See *Peacock v HREOC* [2005] FCAFC 45 at paragraph 81.

## Bankruptcy law

The Court deals with 92 per cent of all bankruptcy matters that are filed in the federal law arena. Registrars undertake much of the bankruptcy work of the Court.

The bankruptcy jurisdiction of the Court is limited to personal insolvency and the administration of the financial affairs of an insolvent person. The Government, however, is considering extending the jurisdiction of the Federal Magistrates Court to include less complex corporate insolvency matters (including winding up powers) under the *Corporations Act 2001*.

An exposure draft of the *Federal Magistrates Court Legislation Amendment Bill 2004* was released for public comment on 22 December 2004. It included a schedule of proposed amendments to the Corporations Act to confer jurisdiction in relation to those provisions dealing with corporations in financial difficulty or insolvency, for example, receivership and liquidation. If conferred, the proposed amendments would not remove any State and Territory jurisdiction. The transfer provisions under the Corporations Act would apply to facilitate transfers of matters between the Federal Magistrates Court and other courts, to ensure that corporate insolvency matters are dealt with in the most appropriate forum.

The Federal Magistrates Court considers that there are a number of matters under the Corporations Act of a routine nature that would be suitable for the Court and would complement its current bankruptcy jurisdiction.

The following cases demonstrate the range of matters that come before the Court within its bankruptcy jurisdiction.

In *Kalfus v Cassis* [2005] FMCA 143<sup>7</sup>, in the context of an application to set aside a bankruptcy notice, Federal Magistrate Driver was asked to extend the time of the application, and in doing so, to consider whether a special leave application was a proceeding to set aside the judgment or order in accordance with the Act.

A number of cases have come before the Court seeking to have notices set aside on the basis of omissions or defects. In *Haig-Young v Brennan* [2004] FMCA 253, for example, Federal Magistrate Raphael considered a creditors petition where a note and underlining were omitted. In setting aside the notice, the Federal Magistrate felt bound to follow the judgment of Justice Weinberg on hearing an appeal from the Federal Magistrates Court in *Kyriackou v Shield Mercantile Pty Ltd* [2004] FCA 490, who adopted the strict view of these forms taken in *Australian Steel and Marshall v GMAC* (2003) 127 FCR 453<sup>8</sup>.

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7 (2004) 214 ALR 655

8 Note the High Court has granted special leave to appeal the Full Court decision of *Adams v Lambert* [2004] FCAC 322, which may settle the law in relation to this issue.



In *Nguyen v Pattison* [2004] FMCA 517<sup>9</sup>, Federal Magistrate Riethmuller dismissed an application by a bankrupt to review the decision by the trustee not to withdraw his notice of opposition to a discharge from bankruptcy. On appeal to the Federal Court, Justice Weinberg upheld this decision and considered the supervisory jurisdiction under section 178 of the Act. See *Nguyen v Pattison* [2005] FCA 650.

The *Bankruptcy and Family Law Legislation Amendment Act 2005* aims to provide some clarification to the competing rights of creditors and a non-bankrupt spouse. The impact of these amendments will no doubt be tested in the courts (see page 29).

### Trade practices law

The Federal Magistrates Court currently has jurisdiction in relation to unfair trade practices under Division I of Part V of the *Trade Practices Act 1974* (TPA), product safety and information matters under Division 1A of Part V of the TPA and consumer protection matters in respect of non-financial services under Part V of the TPA. The jurisdiction is limited to awarding a maximum of \$200,000 damages, which appears to have had an impact on the small number of trade practice matters filed in the Federal Magistrates Court.

The Government has indicated that it proposes to extend the trade practices jurisdiction of the Federal Magistrates Court. An exposure draft of the *Federal Magistrates Court Legislation Amendment Bill 2004* provided for not only conferral of additional heads of trade practices jurisdiction on the Court but also an increase in the monetary limit on damages to \$750,000.

In *Nickhun Pty Ltd v Grifkam Pty Ltd* [2004] FMCA 994<sup>10</sup>, Federal Magistrate McInnis considered an action under the misleading and deceptive conduct provisions of the TPA which also involved a consideration of a trade mark breach. Another example is *Melbourne's Cheapest Cars Pty Ltd v Melbourne Street Cars* [2004] FMCA 606 in which injunctive relief was granted for "passing off" in the context of signage registered trade mark.

### Copyright law

The Federal Magistrates Court's jurisdiction in copyright is limited to civil actions under Parts V (remedies and offences), VAA (broadcast decoding devices), IX (moral rights) and s248J (performer's action for unauthorized use) of the *Copyright Act 1968*. The most significant area of jurisdiction is found in section 131D in Part V which deals with general infringements.

<sup>9</sup> (2004) 210 ALR 663 and (2004) 80 ALD 341

<sup>10</sup> (2003) ATPR 42-049

Although the copyright jurisdiction is limited to these heads of civil jurisdiction, there are no monetary or other limits on the amounts that might be recovered in the Federal Magistrates Court. The accrued or associated jurisdiction of the Court has been interpreted widely: See *Trainor v BMW Melbourne Pty Ltd* [2003] FMCA 7.

While copyright matters represent a very small component of the Court's general federal law work and an even smaller component of the overall work of the Court, a number of Federal Magistrate Court copyright decisions have been published in specialist legal reports. These cases display the variety of copyright applications dealt with by the Court and the full range of relief granted.

In *MG Distribution Pty Ltd & Ors v Luthra & Anor* [2004] FMCA 1027, for example, Federal Magistrate Connolly exercised his discretion to make an Anton Piller order and to grant an interlocutory injunction to hold the production of pirate copies of 'Bollywood' feature films.

An example of the Court's power to award damages for a copyright infringement, is the decision of Federal Magistrate Raphael in *Phonographic Performance v Adelaide City Entertainment* [2005] FMCA 923, where \$85,000 was awarded. In considering an appropriate award of damages, the Federal Magistrate noted that while this sum was large it ...would serve as a loud warning to other current and potential infringers.

The Advisory Council on Intellectual Property has recommended that the jurisdiction of the Federal Magistrates Court be extended to include patent, trade mark and design matters. See: *Should the jurisdiction of the Federal Magistrates Service be extended to include patent, trade mark and design matters?* 2004.

## Administrative law

The jurisdiction of the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) is concurrent with the Federal Court. The jurisdiction of the Federal Magistrates Court under the *Administrative Appeals Tribunal Act 1975* (AAT Act) is, however, confined to hearings transferred from the Federal Court. Appeals from decisions of the Administrative Appeals Tribunal (AAT) constituted by a Presidential Member cannot be transferred to the Federal Magistrates Court.

The *Administrative Appeals Tribunal Amendment Act 2005* received Royal Assent on 1 April 2005. The Act introduced operational changes to the AAT and its procedures. Amendments made to section 44 expanded the power of the Federal Court and the Federal Magistrates Court to make findings of fact not inconsistent with the AAT's where there has been an error of law by the AAT. This will allow the courts to completely dispose of matters rather than remitting them back to the AAT to take further evidence.

While administrative law is a small component of the workload of the Court, a significant number of Federal Magistrates Court administrative law decisions have been published in specialist legal reports.

In *Kroushev v Sec. Dep. Family and Community Services No 2* [2004] FMCA 455<sup>11</sup>, Federal Magistrate McInnis had to consider the precision required for a finding of psychiatric impairment sufficient for the purposes of section 94(1) (a) of the *Social Security Act 1991*. A preliminary issue was whether the applicant could pursue his claim under both the ADJR Act and AAT Act (as he sought). The Federal Magistrate relied on his earlier decision of *Duncan v Hotop & Anor* [2002] FMCA 56<sup>12</sup> and ruled, *that it is appropriate in matters of this kind where there is an application dealing with a final decision of the AAT that the proper course is for the applicant to pursue rights he may have under s.44 of the Administrative Appeals Tribunal Act*: See *Kroushev v Sec Dept Family and Community Services* [2004] FMCA 299<sup>13</sup>.

In *Paterson v Minister for Environment and Heritage and Anor* [2004] FMCA 924, Federal Magistrate Baumann considered the scope and meaning of standing, as defined under the ADJR Act in the context of the *Environment Protection and Biodiversity Conservation Act 1999*.

## Family law

Family law matters continue to represent the most significant workload of the Court. The proportion of family law applications lodged with the Federal Magistrates Court continues to increase. The Court now deals with nearly 50 per cent of all final orders about children and property, and almost 100 per cent of applications for divorce. The Court also receives a significant proportion of the applications for maintenance, child support and contravention of orders.

The total number of family law applications received by the Court in 2004-05, excluding applications for divorce, increased by approximately 9 per cent over the previous year. The number of matters finalised increased by 11 per cent.

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11 (2004) 83 ALD 362

12 (2002) 68 ALD 758

13 (2005) 83 ALD 282

### Family law statistics

Figure 10: Family law applications by type, filed in the Federal Magistrates Court in 2004-05

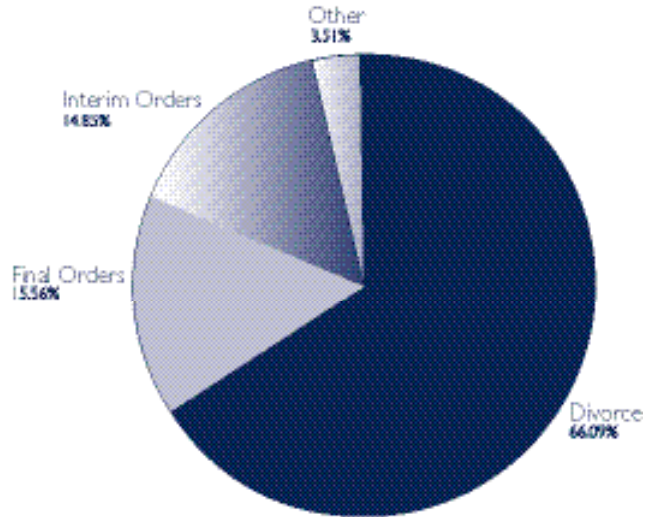


Figure 11: Number of family law applications filed (including divorce applications)

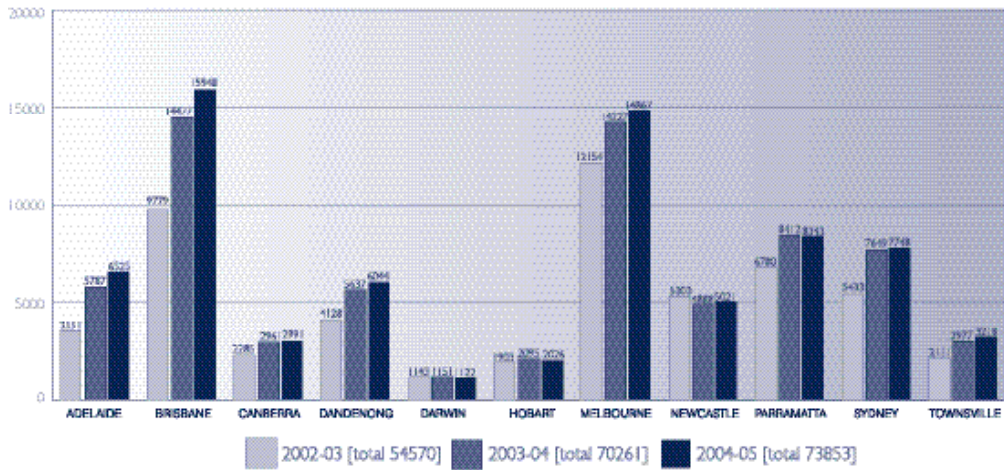


Figure 12: Number of family law applications filed (excluding divorce applications)

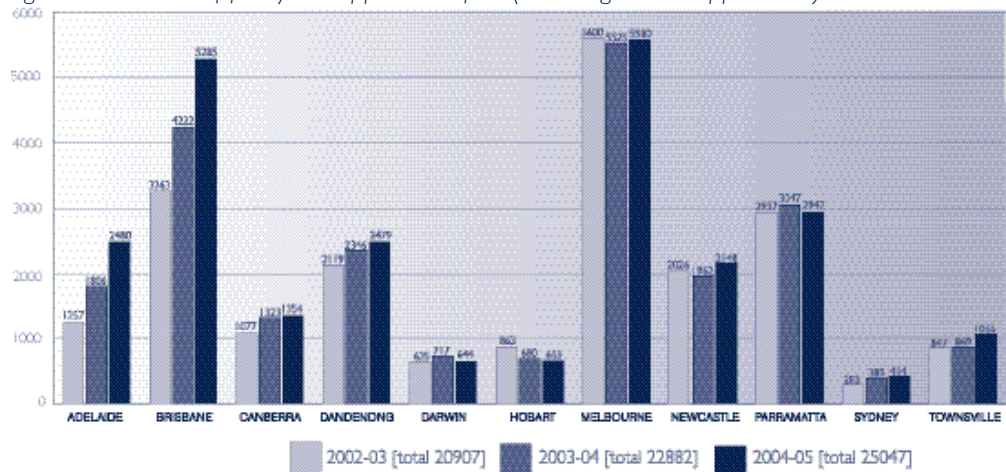


Figure 13: Number of divorce applications filed (see page 30)

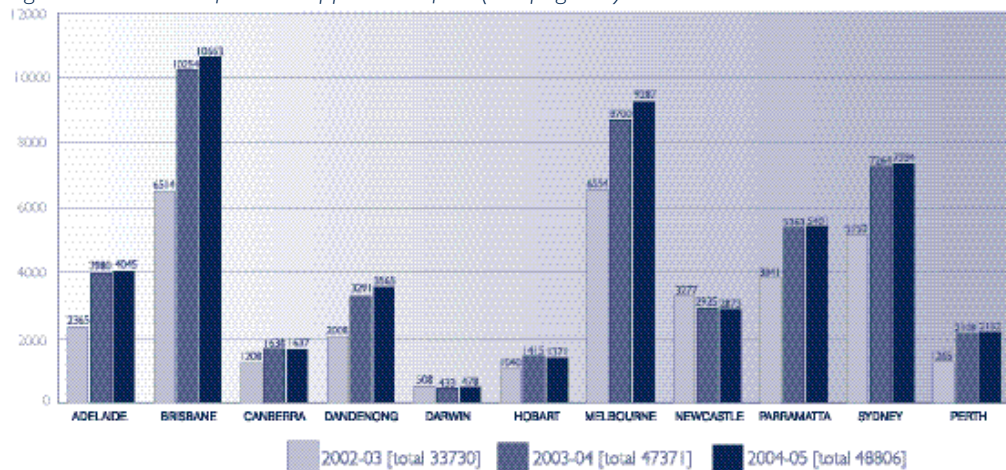
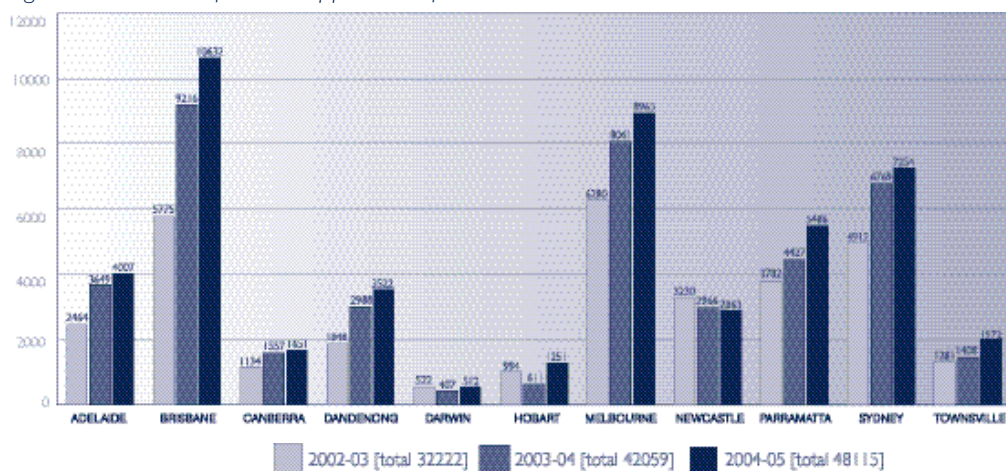


Figure 14: Number of divorce applications finalised\*



\*Note: Of the 48115 divorces finalised during 2004-05, 46809 divorces were granted

Figure 15: Number of all applications filed seeking final orders

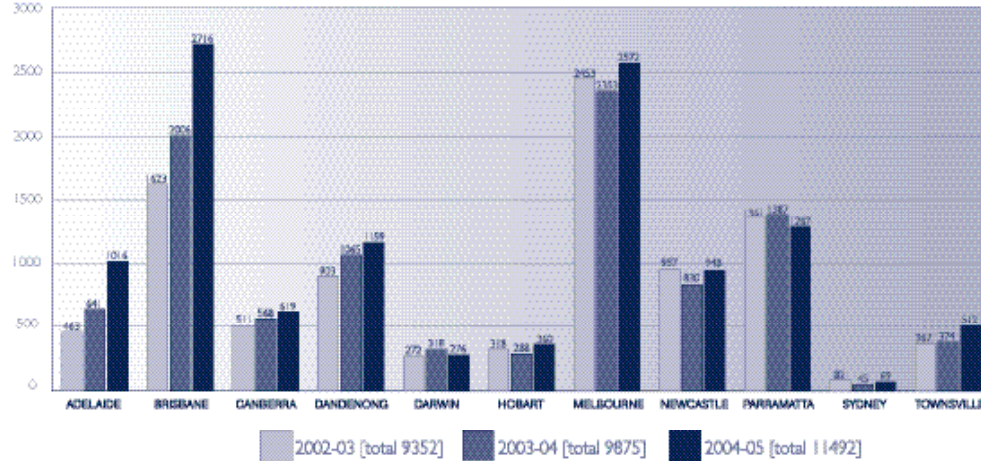
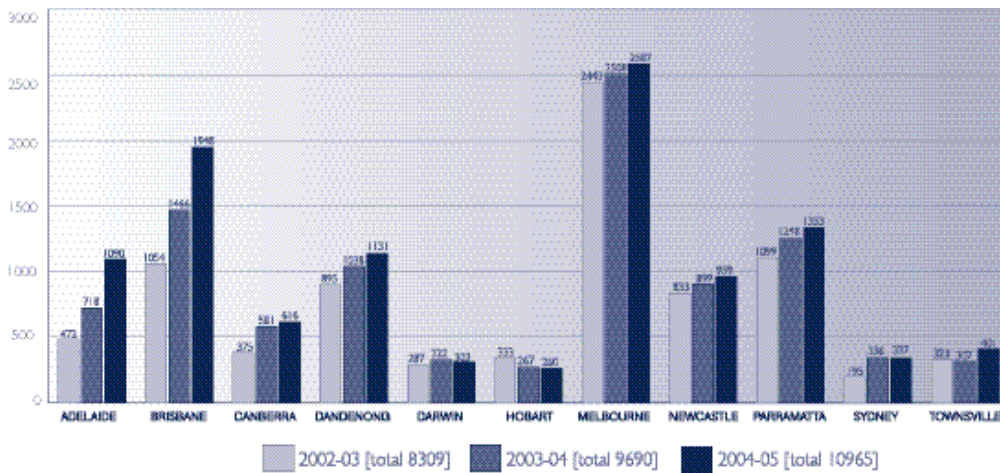


Figure 16: Number of applications filed seeking interim orders



## The Court's work in family law

### Changing family law environment

The family law environment in which the Court operates has changed significantly in the past year due to the Government's new initiatives and range of legislative changes that have been implemented or are expected to be implemented in the future.

On 29 July 2004, the Prime Minister released a statement responding to the House of Representative Standing Committee on Family and Community Affairs report *Every Picture Tells a Story*. The Government subsequently issued a discussion paper, titled, *A New Approach to the Family Law System* and tabled its response on 23 June 2005.

As part of this package of family law reforms the Government announced:

- ~ the proposed establishment of a network of 65 Family Relationship Centres
- ~ a combined registry for the Family Court and Federal Magistrates Court (see page 6)
- ~ the release of an exposure draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*.

The proposed legislative amendments aim to place a greater emphasis on shared parental responsibility and to recognise that children have a right to spend time on a regular basis with both parents.

Issues surrounding the child support formula were also examined by a Ministerial Taskforce, which made a number of recommendations in its report released in June 2005, *In the Best Interests of Children - Reforming the Child Support Scheme*.

The *Bankruptcy and Family Law Legislation Amendment Act 2005*, which received Royal Assent on 18 March 2005, aims to address difficulties in relation to the interaction of family law and bankruptcy law and responds to recommendations of the *Joint Taskforce Report on the Use of Bankruptcy and Family Law Schemes to Avoid Payment of Tax*. The legislation is aimed at providing certainty as to the competing rights of creditors and a non-bankruptcy spouse. It also seeks to prevent the use of financial agreements under the *Family Law Act 1975* to defeat the claims of creditors.

The *Family Law Amendment Act 2005* introduced a number of miscellaneous amendments to the *Family Law Act 1975*. These amendments included:

- ~ changes to the existing parenting compliance regime
- ~ modernising legal terminology, for example, by replacing the term 'dissolution of marriage' with 'divorce'
- ~ allowing the recovery of child maintenance that has been paid by a person found not to be a parent.

Of significance is the amendment that enables matters to be directly transferred from State courts to the Federal Magistrates Court (rather than go to the Family Court and then be transferred to the Federal Magistrates Court).

In the areas of family law where the Federal Magistrates Court is dealing with most applications (for example, contested divorce proceedings, contravention and enforcement proceedings), the decisions of the Court are of particular influence.

While there is still some uncertainty on the operation of superannuation splitting under the *Family Law Act 1975*, some clarification was provided by the four decisions handed down by the Full Court of the Family Court in *Coghlan & Coghlan* [2005] FamCA 429, *Wilkinson & Wilkinson* [2005] FamCA 430, *Ilett & Ilett* [2005] FamCA 432 and *Casey & Braione-Howard & Defence Forces Retirement and Death Benefits Authority* [2005] FamCA 431 ('Casey'). The decision of Casey came to the Full Court by way of a case stated from a federal magistrate.

Many decisions involving disputes about children highlight the difficulty in determining the best interest of the child(ren) in a particular situation. For example, in *L & B* [2004] FMCAfam 312, Federal Magistrate Baumann had to determine whether a child should undergo a medical procedure to receive a cochlear implant in circumstances where both parents were deaf and the father opposed the operation. Federal Magistrate Ryan in *AA & PG* [2005] FMCAfam 272 considered the child's best interest where there is a conflict between parents' cultural and religious beliefs.

### The Court's work in divorce

Nearly all applications for divorce are now filed in the Federal Magistrates Court. This follows an agreement in 2003 with the Family Court that these types of applications are more appropriate for the lower level Federal Magistrates Court. The majority of applications are dealt with by registrars engaged on a sessional basis by the Court. A small proportion is heard by registrars employed by the Family Court.

The Family Court of Western Australia hears divorce applications in that State.

The Federal Magistrates Court workload data for divorce cannot be read as an indication of overall trends in divorces in Australia unless combined with comparable data from the Family Court and the Family Court of Western Australia. National data on divorces is provided by the Australian Bureau of Statistics.

The *Family Law Amendment Act 2005* includes amendments to terminology such as 'dissolution of marriage' with the more widely used term 'divorce', and 'decree nisi' and 'decree absolute', with the term 'divorce order'. These amendments take effect from 3 August 2005.

On 22 April 2005, the Court hosted a divorce conference for registrars employed by the Court and a number of Family Court registrars. The conference addressed a number of divorce related issues, including proposed changes to the divorce form, best practice principles and registry issues.

To assist applicants fill out a divorce application, the Court has introduced an interactive form which can be found at [www.divorce.gov.au](http://www.divorce.gov.au).



## The Court's work in child support

The Federal Magistrates Court is now the Court most likely to hear child support matters.

Generally, child support matters can only proceed to court once all internal review processes (within the Child Support Agency) have been exhausted. The Court encourages the use of mediation and other methods of resolution to settle disputes.

The applications made to the Court are generally seeking an order for departure from administrative assessment in special circumstances. The Federal Magistrates Court also hears applications where paternity is challenged and if successful, determines the amount of repayments due to the former payer.

The *Report of the Ministerial Taskforce on Child Support* referred to the matter of *DRP v AJL* [2004] FMCAfam 440. In this decision, Federal Magistrate Riethmuller set out relevant factors which he considered would help determine the amount of repayment due to a former payer when it transpires that the payer is not the father of the child. The Taskforce noted that these factors *...should be codified in child support legislation to assist in the clarity of the law.*

The Taskforce made a number of recommendations for legislative amendments including recommendations in relation to the powers of the courts to access information and make discovery, the conduct of enforcement proceedings and paternity disputes.

In Melbourne, where the Court operates discrete child support lists, procedures have been introduced to facilitate the hearing of child support matters on the first return date and to encourage conciliation of appropriate matters (see pages 36-37). The Court has been encouraged by the support it has received from the Child Support Agency, Victoria Legal Aid, registrars and members of the profession in the management of these lists, with a significant number of child support matters being resolved following a single court appearance.

## Primary dispute resolution

Primary dispute resolution (PDR) refers to procedures and services used by federal magistrates to help resolve disputes other than by way of judicial decision. The Court places significant priority on this process which can provide an affordable and timely option for resolving disputes. It also allows clients greater personal control and management of the process and the outcome.

PDR services are sourced from the Federal Court, the Family Court and community based organisations.

It is anticipated that proposed changes to the family law system will have a significant impact on the PDR services delivered by the Court. Most significantly, it is anticipated that the Court's clients will have access to family relationships centres before court proceedings and will be able to access the centres as needed during proceedings.

The Federal Magistrates Court's PDR processes may include counselling, mediation or conciliation, which can involve:

- ~ Counselling — a process where a social worker, psychologist, or other appropriately qualified professional, assists the parties to resolve their issues.
- ~ Mediation — a process where a neutral third party (the mediator) assists clients to identify the disputed issues, develop options, consider alternatives and try to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or its outcome.
- ~ Conciliation — a similar process to mediation but the neutral third party (the conciliator) may give advice on the content of the dispute or its outcome. The conciliator has no determinative role in regard to the content of the dispute or its outcome.

### **PDR in general federal law**

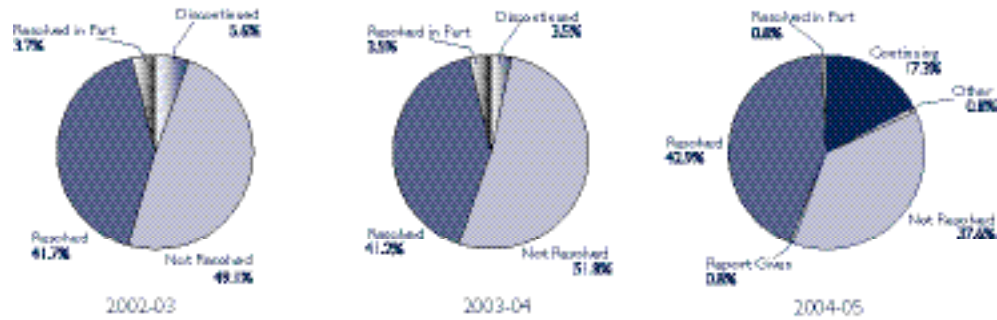
The main PDR process used in general federal law matters is mediation.

A federal magistrate may order parties to attend mediation when they consider that it is a suitable process to help to resolve a dispute. The mediation may be conducted by a registrar of the Federal Court or a private mediator.

One hundred and twenty-two new matters were referred to mediation in 2004-05. One hundred and fifty-seven mediations were held in the year. This included some matters which were carried over from the previous year. The outcomes of these mediations are indicated in figure 17.

Of the new referrals to mediation, 38 were in the area of trade practices, 44 in unlawful discrimination, 28 in bankruptcy, 7 in copyright, 2 related to migration and 3 to other areas of jurisdiction.

Figure 17: Outcomes of mediation sessions (in general federal law)



## PDR in family law matters

PDR services in family law are provided by the Family Court and community based organisations. In deciding whether to send clients to the Family Court or a community based organisation, federal magistrates consider what service will be most relevant and convenient for clients.

Parties can be ordered to undertake PDR at various stages of the court process. They are given an appointment for mediation when they first file material in an attempt to try to resolve the issue before going to court. If their matter has not resolved, on the first court appearance, the parties are ordered to attend a further PDR process. It will be an order to either counselling or mediation in children's matters or conciliation in property matters.

## PDR services provided by community based organisations

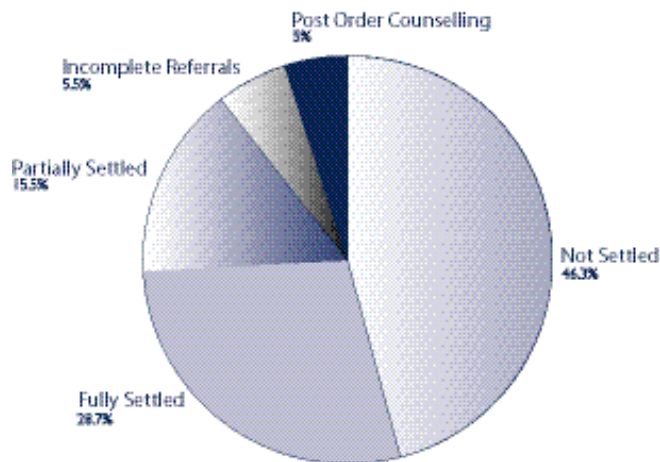
The Federal Magistrates Court has agreements with 35 community based organisations for the delivery of PDR services on a fee-for-service basis. The services provided by the organisations are counselling, mediation and conciliation. One organisation also provides family reports.

When parties are ordered to attend PDR with a community based organisation, the Court chooses and arranges the PDR service provider and meets the provider's expenses in full. This is done through a centralised booking system located in the Court's national administrative office in Melbourne. There is no cost to the parties if they are ordered to attend PDR at a community based organisation.

During 2004-05, the average time taken between the date of a PDR order and the return date to the Court as complete, was 66 days (70 days in 2003-04). The appropriation for community based PDR referrals in 2004-05 was \$625,000. (The appropriation in 2003-04 was \$614,000 and the Attorney-General's department provided an extra \$183,000.)

During 2004-05, 29 per cent of matters sent to community based organisations were fully settled and 16 per cent of matters partially settled.

Figure 18: Settlement rates for all PDR conferences conducted by community based agencies



### The referral process involving community based organisations

During 2004-05, 950 matters were referred to PDR with community organisations compared to 1100 matters in 2003-04. A total of 763 referrals were returned completed to the Federal Magistrates Court.

### Counselling

During 2004-05, 609 matters were referred to community based organisations for counselling compared to 679 in 2003-04.

Figure 19: Settlement rates for all counselling sessions conducted by community based agencies

Counselling only	FULLY SETTLED	PARTIALLY SETTLED	NOT SETTLED	INCOMPLETE REFERRALS	POST ORDER COUNSELLING	REFERRALS RETURNED	REFERRALS ORDERED
<b>2002 - 03</b>							
PDR Referral	123	127	262	67	131	710	717
% of total	17.3%	17.9%	36.9%	9.4%	18.3%		
<b>2003 - 04</b>							
PDR Referral	130	128	271	31	50	610	679
% of total	21.3%	21%	44.4%	5.1%	8.2%		
<b>2004 - 05</b>							
PDR Referral	116	87	232	15	30	480	609
% of total	24.2%	18.1%	48.3%	3.1%	6.3%		

## Mediation

### Mediation services provided by the Family Court

The Family Court's mediation section provides mediation services for the Federal Magistrates Court in children's matters. During 2004-05, 4226 interviews were held by the Family Court's mediation section with Federal Magistrates Court clients compared to 4250 in 2003-04.

The first order for mediation is made by a registrar when clients file their material in the Court. This ensures that clients have at least one opportunity to resolve their matter before attending court. This first session is conducted by the Family Court's mediation section.

### Mediation services provided by community based organisations

The Family Law Act provides that the Court may direct parties to attend a conference with a family and child counsellor or welfare officer to try to resolve their differences that affect the care, welfare and development of the child(ren). This generally results in a counselling order being made. The community based agencies, as arranged with the Court, conduct intake sessions with clients and an assessment is made on what type of service best suits the clients, such as mediation. The client must also agree to attend that type of service.

During 2004-05, 42 matters were referred to community based organisations for mediation compared to 21 matters in the previous year.

## Property conciliation

### Conciliation services provided by the Family Court

Registrars of the Family Court generally conduct conciliation conferences in property matters for the Court. During 2004-05, 1986 conciliation conferences were conducted for the Court compared to 1691 matters in 2003-04. Of those, 35.5 per cent of matters settled at the conference, 8 per cent of the conferences were adjourned, and 54.7 per cent of matters continued to another court event. A small number of matters resolved before the conference.

### Property conciliation services provided by community based organisations

Relationships Australia in Victoria and Queensland conduct conciliation conferences in property matters for the Court. Relationships Australia has recruited a panel of experienced family lawyers to conduct these conferences.

During 2004-05, 299 conciliation conferences in property matters were referred to community based agencies. Two hundred and twenty matters have been returned completed. Of those, 42 per cent fully settled, 10 per cent partially settled and 39 per cent did not settle.

Figure 20: Settlement rates for all conciliation conferences conducted by community based agencies

Conciliation only	FULLY SETTLED	PARTIALLY SETTLED	NOT SETTLED	INCOMPLETE REFERRALS	POST ORDER COUNSELLING	REFERRALS RETURNED	REFERRALS ORDERED
<b>2002 - 03</b>							
PDR Referral	106	15	81	26	16	244	246
% of total	43%	6%	33%	10%	6%		
<b>2003 - 04</b>							
PDR Referral	186	25	103	20	2	336	372
% of total	55%	7%	30%	6%	0%		
<b>2004 - 05</b>							
PDR Referral	92	22	86	20	0	220	299
% of total	41%	10%	39%	9%	0%		

### Conciliation in child support matters

In 2004-05, the Court started a program of referring some child support matters to a conciliation conference. A federal magistrate assesses matters before the day's hearing

commences and sends those matters that appear to be likely to settle to a registrar for a conciliation conference. The program runs in the Court's child support lists in Melbourne only. The conferences have been a valuable tool in managing busy child support lists.

### Settlement at PDR events

The time of settlement of matters cannot always be clearly defined. The Court works on the basis that about two thirds of matters will be resolved either at PDR or shortly thereafter and will proceed to consent orders at the next court date. Some matters will settle between the PDR event and the next court date. However, these are not recorded as settled at PDR. The Court does not keep records that indicate whether subsequent settlements were linked to the PDR event.

### Evaluation of PDR program

In July 2004, the Court conducted an evaluation of the PDR program that is delivered by the community based organisations.

The central outcome of the evaluation was that the Court's PDR program is well regarded and works well. The evaluation report recommended changes that will improve the program in the future and include enhancing information flows and knowledge, refining organisational and inter-organisational flexibility and structure. The suggested changes to the program have led to the Court producing a new brochure on its PDR program and information sheets so that clients are informed about the process they are to attend.

The evaluation also recommended improved data collection from agencies to assist federal magistrates when the matter has been returned to the Court. The referral form was amended to allow for this recommendation. The new referral form has also attempted to refine the inter-organisational flexibility problems identified.

Clients were generally satisfied that the service was appropriate for their needs. Clients whose matters settled were most satisfied with the process. However, even those clients whose matters did not settle reported satisfaction with the process and believed that they were treated with respect in the process.

Agencies suggested a review of the types of services that they are contracted to deliver. Where possible, and when agencies have appropriately qualified staff, agencies should establish a contract to deliver an integrated set of services. This will be addressed in a tender process to be conducted in the next year.

### Post-order counselling

In some matters, it becomes evident to a federal magistrate during proceedings that parties will have difficulty in coming to terms with some orders. Some parties may also have difficulty in making the orders work for them. In these matters, a federal magistrate may order that the parties attend counselling after the orders have been made. Post-order counselling assists parties to overcome any difficulty that they experience in implementing the orders that have been made. During 2004-05, 73 matters were referred to post-order counselling compared to 107 matters in the previous year.

### Family reports

In addition to providing mediation services, the Family Court's mediation section prepares most family reports for the Federal Magistrates Court. These reports are prepared by a family and child counsellor to assist the Court in reaching a decision. The counsellor will interview the parties and the child(ren). Other people significant to the lives of the child(ren) may also be interviewed. The counsellor will also observe the interactions between the child(ren) and all parties and will make an assessment of the issues that are in dispute based on those interviews and observations. The counsellor may then make a recommendation to the Court as to what arrangements will be in the best interests of the child(ren).

During 2004-05, the Family Court prepared 1108 family reports (728 in 2003-04) for the Federal Magistrates Court.

The Federal Magistrates Court has arrangements in place with one community based organisation and 45 private report writers who are qualified to prepare family reports. During 2004-05, 493 family reports were prepared under these arrangements compared to 419 in the previous year.

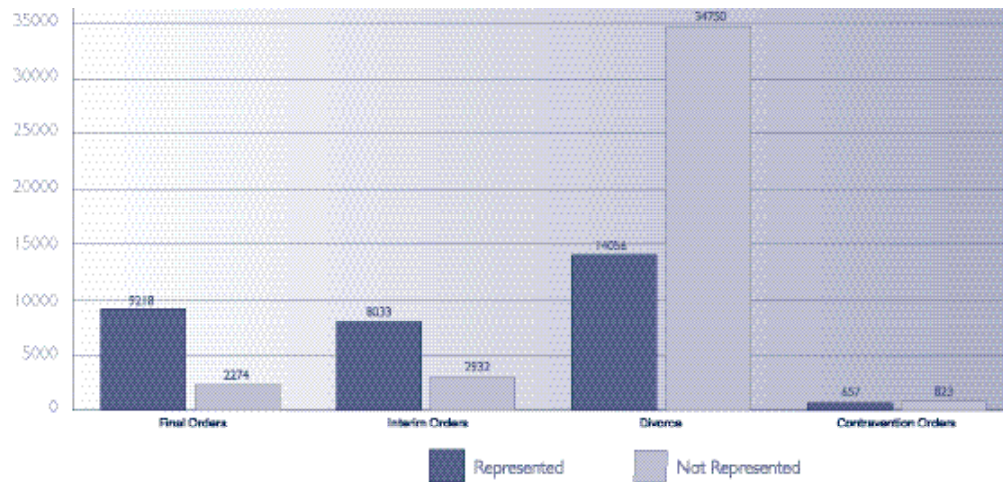
A cross-court working party will consider the supply of family reports for both the Federal Magistrates Court and the Family Court in 2005-06.

### Self-represented litigants

The Court has a reasonably high percentage of self-represented litigants. This extends across all jurisdictions of the Court, but particularly in the areas of family law, child support and migration. The Court recognises that during the life of any case, a party may be represented at particular stages and at other times may represent themselves.



Figure 21: Self-represented litigants involved in family law\*



\* These figures only include the applications that provide data on representation.

The Federal Magistrates Court continued to manage and coordinate assistance to many self-represented litigants involved in general federal law cases through the Court administered pro-bono scheme, external pro-bono schemes, and duty lawyer services.

The operation of the Court administered pro-bono scheme varies in each State due to the Court's objective of ensuring that its program complements existing methods of assistance.

Referrals for pro-bono have generally been confined to general federal law cases, particularly in migration matters. The majority of migration applications were received in Melbourne and Sydney.

During 2004-05, 10 referrals were received under the Court administered pro-bono scheme in Melbourne. All 10 referrals were for migration.

The number of referrals received under the Sydney pro-bono scheme was 12. Of the 12 referrals, nine were for migration and three for human rights.

The Court acknowledges the generosity of members of the legal profession who agree to give their valuable time voluntarily to assist in such matters.

### Achievements of the self-represented litigants' project

In October 2004, the Court released its report about self-represented litigants, titled, *An Evaluation of Services for Self-Represented Litigants in the Federal Magistrates Court*. The report was based on the information and feedback provided by 70 self-represented litigants and three independent consultants. The results provided the Court with an

insight into the needs of self-represented litigants and helped to identify services that are working well, those that require improvement and areas for new development.

Subsequently, this led to the development of 12 recommendations, which the Court is in the process of implementing. Some of the key recommendations include; the development of public information in a number of community languages, the review of processes required for the collection of relevant data, staff and judicial training, review of website material, the development of 'self-help kits', and the review of signage in court buildings and registries.

Over the next year, the Court will maintain its commitment to self-represented litigants by addressing the issues raised from the findings and implementing the remaining recommendations in conjunction with the Family Court, the Federal Court and the managers of court buildings.

## Information, knowledge and records management

During 2004-05, the Court continued to develop information, knowledge, records, and document management programs to facilitate the dissemination of information to maximise the re-use of knowledge, and to ensure that the Court has efficient management of its records.

Extensive training in the area of research was provided to federal magistrates and staff to assist them to develop the skills that would enable them to personally retrieve and manage information and knowledge.

Work was conducted during the year in regard to judgments, accessing and managing corporate information and in developing an intranet for the Court.

A significant achievement during 2004-05 was the development of the Court's forms in interactive Word format which were provided to the public through the Court's website.

## Public information

During 2004-05, the Federal Magistrates Court produced four brochures and three fact sheets covering various areas of the Court's jurisdiction. In addition, the Court developed two brochures in conjunction with the Family Court.

The Federal Magistrates Court relies heavily on its website to provide useful information about the Court. Information available on the site includes contact details, corporate information, information on how the court works, court forms, fees and charges, primary

dispute resolution information, relevant legislation, publications, circuit details and daily court listings. The website is regularly updated and provides a subscription service, which sends email notifications to subscribers when new material has been updated on the site.

The Court received media attention on a number of matters heard throughout the year. The public affairs officer provided relevant and timely assistance to the media on these occasions.

The Court issued three publication orders during 2004-05. These types of orders provide authority to publish details relating to matters heard under the *Family Law Act 1975* and aim to help locate children who have been taken from one of their parents. The Court's public affairs officer works closely with the Australian Federal Police in the management of media engagement and coverage of these matters.

### Information Technology

The Federal Magistrates Court has joined with the Family Court and the Federal Court in its adoption of new case management systems.

The Court has used the new case management system, Casetrack, for family law matters since January 2002.

Casetrack was fully implemented for general federal law matters during 2004-05. The last site to 'go live' was Perth in December 2004. Training and support during the roll out period was provided by one staff member of the Federal Magistrates Court. Ongoing 'helpdesk' support is provided by staff from the Family Court and the Federal Court according to the area of law.

The Federal Magistrates Court now manages all areas of its jurisdiction using two versions of the one case management system.

Information technology infrastructure and support services are provided to the Court by the Family Court.

### Performance measures

The Federal Magistrates Court continues to measure its performance against a number of agreed targets. These were included in the 2004-05 Attorney-General's Portfolio Budget Statements. Outlined over the following two pages are details of performance against these targets, including cross reference to other relevant information on performance against those targets, that appears elsewhere in this annual report.

## Quality

Less than 1 per cent of cases litigated or divorces processed are subject to complaint

The number of complaints in 2004-05 was 140, representing 0.2 per cent of cases. Further details are on page 46.

The time taken from filing to disposition is less than six months in 90 per cent of cases

In 2004-05, 58 per cent of final orders in family law (excluding divorce) were completed within six months and 85 per cent completed within 12 months. Almost 100 per cent of divorces are completed within six months. In general federal law, 61 per cent were completed within six months and 85 per cent completed within 12 months.

Sixty per cent of matters resolved before trial

See pages 33 to 36.

Feedback from clients as to whether they are satisfied that their disputes have been handled quickly and simply

See page 44.

Feedback from clients regarding the simplicity and effectiveness of court Rules

See page 44.

Feedback from clients regarding the availability of information about the Court

See page 43.

## Quantity

Number of cases litigated and divorce cases processed

See pages 26 and 27.

Number of counselling, mediation, conciliation and other primary dispute resolution services delivered

See pages 32 to 37.

Number of presentations to organisations representing clients regarding the Court, and publications issued.

See pages 105 and 40.

## Access and performance

A review of the first two years of operation of the Federal Magistrates Court, conducted by the Attorney-General's Department, the Department of Prime Minister and Cabinet and the Department of Finance and Administration, indicated that the Court had been successful in providing a simple and accessible forum for resolving less complex disputes.

The Court had previously conducted two surveys of legal practitioners with experience in the Federal Magistrates Court to identify whether it was achieving its objectives. The review recommended that the Court continue to conduct surveys of legal practitioners of the kind previously undertaken, but also consider including questions relating to the relative cost of litigating in the Federal Magistrates Court.

During 2004-05, the Court engaged Profmark Consulting to conduct its third survey of legal practitioners. As with previous surveys, this survey was aimed at providing the Court with an understanding of the degree to which legal practitioners and their clients are aware of the Court's services, and whether clients are satisfied that disputes are being handled quickly, efficiently and economically. For the first time the 2004-05 survey included questions regarding relative cost. The consultant interviewed 136 practitioners across various locations covering both family law and general federal law. A summary of results is provided as follows and further details are provided on the Court's website.

### Summary of survey results

Overall, 87 per cent of respondents rated the service by the Court as either good or excellent (compared to 94 per cent in the 2002 survey).

#### Awareness of services provided by the Court

The survey results indicated 90 per cent of practitioners believe the Court has provided sufficient information about its services to them (79 per cent in 2002).

Eighty seven per cent of practitioners consider they have been given adequate notice of hearings, and 75 per cent consider they have been sufficiently informed about the timing of delivery of judgments.

Eighty per cent of practitioners use the Court's website (51 per cent in 2002) and 81 per cent rate the site as either good or excellent (94 per cent in 2002).

#### Quicker and simpler outcomes for clients

Approximately 62 per cent of respondents considered the Federal Magistrates Court was meeting its objectives of providing a simpler and quicker forum for resolving disputes (76 per cent in 2002).

An object of the *Federal Magistrates Act 1999* is to enable the Federal Magistrates Court to operate as informally as possible in the exercise of judicial power. Approximately 68 per cent of the respondents considered that federal magistrates have been less formal than judicial officers in the superior courts (77 per cent in 2002).

#### Costs of litigation

A significant proportion of respondents considered that costs of litigating in the Federal Magistrates Court were lower than in the superior courts. Cost savings ranging up to 30 per cent were reported by over 90 per cent of respondents.

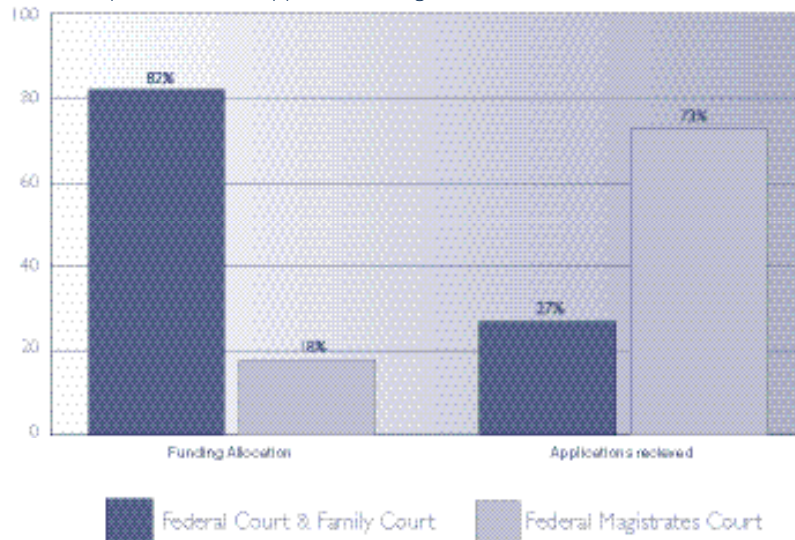
While matters heard in the Federal Magistrates Court may be inherently less complex, respondents rated other factors such as simpler rules and procedures, the general approach of federal magistrates to the case, and fewer case events, as being significant factors in contributing to lower costs for clients.

#### Public Costs

The survey results in relation to costs are consistent with the findings of the Australian Law Reform Commission in its report *Managing Justice* published in 2000 (paragraph 4.7), and the Attorney-General's Department *Federal Civil Justice System Strategy Paper* issued in December 2003 (page 306), that adjudication in lower courts is generally less expensive, both for litigants and for the public purse, than superior court litigation.

In relation to public costs, figure 22 illustrates this development in the federal courts. The Federal Magistrates Court, as the lower level federal court, is now clearly dealing with the majority of applications, while consuming a proportionally lower amount of Commonwealth funds than the superior courts.

Figure 22: 2004-05 public costs vs applications lodged\*



\*Note: Adjusted for resources provided free of charge to the FMC by the Family Court and the Federal Court

## Fees

Fees for filing and other services in the Federal Magistrates Court have historically been set by Regulation at a lower rate than for equivalent fees in the Federal Court and the Family Court. Fees are normally increased biennially by government regulation, based on movements in the consumer price index. The most recent biennial increase was on 1 July 2004. However, a separate regulation has been introduced to increase the fee for filing an application for divorce in the Federal Magistrates Court from 1 July 2005.

Under the regulations, an exemption from payment of fees may be granted to people who are eligible for legal aid or qualify for certain government social security benefits, and fees may be waived if they would cause financial hardship. The value of exemptions and waivers in 2004-05 was \$7.1 million or 37 per cent of the value of total applications to the Court.

Details of fees and eligibility criteria for exemption or waiver are available on the Court's website.

## Complaints

Complaints and compliments provide valuable information about community perceptions of the Court's work, client satisfaction and service delivery. For this reason, one of the performance targets of the Court is that less than one per cent of cases litigated or divorces processed are subject to complaint. The number of complaints received is within the performance benchmarks.

During 2004-05, the Federal Magistrates Court received 140 complaints. The complaints related to overdue judgments (70), issues relating to the legal process (27), the conduct of federal magistrates and chambers staff (12), primary dispute resolution services (9), administrative issues (7), case outcomes and appeals (6), registry issues (5), enforcement of orders of the Court (2), and the conduct of legal representatives (2).

The Court has complaint handling procedures to ensure that complaints are dealt with expeditiously.

Anyone may lodge a complaint with the Court. If the complaint relates to specific proceedings, complainants are asked to provide a file reference number. Complaints should be in writing and should be addressed to:

Chief Executive Officer  
Federal Magistrates Court of Australia  
Lionel Bowen Building  
97-99 Goulburn Street  
Sydney NSW 2000

## Customer service summary

During 2004-05, 1234 emails were received through the Court's customer service email address from members of the legal profession, litigants and the general public. The emails related to a range of topics including administrative matters, child support and child related issues, court circuits, divorce, court forms, fees, judgments and the legal process.

## Judgments

The majority of judgments are delivered *ex tempore* — orally, by the federal magistrate, at the time of the hearing or shortly thereafter afterwards. Some judgments are reserved at the hearing and delivered at a later date, normally in writing. Improving timeliness in the delivery of reserved judgments has been a major focus for the Court throughout the year. Of the 1993 reserved judgments delivered in 2004-05, approximately 93 per cent



were delivered within 6 months of the matter being heard, 4 per cent within 6 to 12 months, and 3 per cent beyond 12 months.

During 2004-05, 1899 written judgments were published on the Court's website and on other legal sites. The total number of judgments posted on the Court's website was 3502.

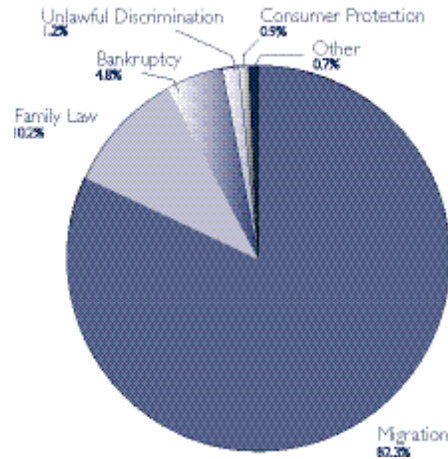
## Appeals

Appeals are possible as of right from final decisions of federal magistrates to the Federal Court or the Family Court (depending on jurisdiction). Leave is required to appeal from interlocutory decisions. All decisions in relation to child support can only proceed to appeal by way of leave to the Family Court.

Although appeals are to the Full Court of the Federal Court or the Family Court (with no intermediate stop of appeal to a single judge) there is provision for the head of jurisdiction in these Courts to assign an appeal from a decision of a federal magistrate to a Court constituted by a single judge. This generally happens with appeals of the Federal Magistrates Court being heard and determined by a single judge exercising the appellate jurisdiction of the Court. This is of some significance and it results in a savings of judicial resources.

A consequential amendment to the *Federal Court of Australia Act 1976* by way of the *Migration Litigation Reform Bill 2005*, inserts a new subsection 25(1AA) to provide that appeals from migration judgments of federal magistrates are to be heard by a single Federal Court judge, unless a judge considers the appeal should be heard by a Full Court of the Federal Court. This amendment is designed to facilitate more efficient handling of the allocation of migration appeals by removing the administrative burden imposed on the Chief Justice to consider the assignment of every migration appeal from the Federal Magistrates Court.

Figure 23: Appeals against Federal Magistrates Court decisions



Federal Law	Total	% of Total
Bankruptcy	50	4.8
Unlawful Discrimination	12	1.2
Migration	855	82.3
Consumer Protection	9	0.9
Other	7	0.7
<b>Federal Law total</b>	<b>933</b>	<b>37.4</b>
<b>Family Law</b>	<b>106</b>	<b>10.2%</b>
<b>Grand total</b>	<b>1039</b>	<b>100%</b>

### Appeals in general federal law

There were 933 appeals from the Federal Magistrates Court to the Federal Court during 2004-05 (423 in 2003-04). Of these appeals, 855 (82.3 per cent) related to migration matters.

Of the 822 appeals that were heard during the reporting year 80 per cent were dismissed, 7 per cent were discontinued or withdrawn, 10 per cent allowed and 3 per cent had other outcomes including those transferred from other courts. Of the 69 appeals that were not migration related, 50.7 per cent were dismissed, 24.6 per cent were allowed and the remainder were discontinued or set aside.

Of those heard, only 46 (approximately 5 per cent) were heard by a Full Court.

### Migration

Of the 753 migration appeals that were heard during the reporting year 84 per cent was dismissed, 6 per cent discontinued or withdrawn, 8 per cent allowed and 2 per cent had other outcomes including those transferred from other courts.

The increase in appeals is largely due to the increase in first instance migration cases being heard in the Federal Magistrates Court. This trend is likely to increase following passage of the *Migration Litigation Reform Bill 2005* which aims at limiting first instance jurisdiction to review migration decisions to the High Court and the Federal Magistrates Court (with the Federal Court retaining appellate jurisdiction).

### Appeals in family law and child support

There were 106 appeals from the Federal Magistrates Court to the Family Court during 2004-05 (79 in 2003-04). Of the 85 appeals heard during the year, 33 were dismissed (64.7 per cent), and 18 were allowed (35.3 per cent).

There were 10 applications for leave to appeal of which three were allowed and one dismissed. Three were withdrawn and the others were either awaiting a decision or a hearing.

The jurisdiction in all but two of the appeals heard during the year was exercised by a single judge.

### Working throughout Australia

The Federal Magistrates Court has continued its commitment to provide access to justice to a wider range of Australian communities. This commitment is maintained by federal magistrates travelling to 'circuit' locations to conduct hearings. Circuit hearings allow parties to have their matters heard locally and to avoid the need to travel to major cities. The Court conducted circuits to 28 locations throughout the year (see figure 24).

In addition to the regular circuits, special hearings (or fixtures) were conducted in a number of locations. Special fixtures are arranged according to the specific needs of a case. For instance, it may be more effective to hear a matter with a large number of witnesses at the place where they reside.

During 2004-05, the Court introduced summary list circuits in southern Queensland, in Southport (Gold Coast region), Maroochydore (Sunshine Coast region) and Toowoomba (south-west Queensland region). Parties from these regions file documents in Brisbane, and if suitable, the first court date will be conducted at the appropriate location. A federal magistrate travels to each location once a month and is able to deal with interim applications and may direct people to mediation, if appropriate. All matters continuing to a defended hearing are listed in Brisbane for determination.

From July 2005, the Court will commence circuits to Ballarat (Victoria).

With additional judicial appointments expected in the coming year, the Court may have the capacity to expand its circuits into more regional centres.

The Court has acquired portable digital recording equipment that allows greater flexibility for circuits and special fixtures in regional and remote areas. This equipment enables sittings to occur in premises that are not purpose built courts. The Court also makes use of other technology to provide greater access to parties in rural and regional Australia. This includes video and audio links to assist in the hearing of matters in remote locations or to conduct call overs prior to circuits. Call overs assist in the preparation of the circuit and allow for greater efficiencies whilst sitting in the location.

### Perth circuit

During 2004-05, the Federal Magistrates Court conducted nine circuits to Perth in general federal law. Each circuit had a duration of one week.

During the year, 239 applications were filed in the Perth registry. The majority were bankruptcy (24), 11 trade practices, 7 migration, 3 unlawful discrimination and 4 administrative law filings.

Twenty-six judgments were delivered in Perth including:

- ~ 11 bankruptcy judgments
- ~ 5 migration judgments
- ~ 8 trade practices judgments
- ~ 1 administrative law judgment
- ~ 1 unlawful discrimination judgment

During the course of the Courts sittings in Perth a number of significant decisions have been delivered. A significant proportion of the decisions have been reported.

A case that came before the Court in Western Australia, under its bankruptcy jurisdiction, was *Totterdell v D'Angelo* (2004) 84 ALD 355; [2004] FMCA 645 and *Totterdell v D'Angelo* (No.2) [2005] 84 ALD 383; [2005] FMCA 700. Federal Magistrate McInnis considered an application by a Trustee to declare void or not void a Part X Composition. The application to declare the composition void was supported by a syndicate of creditors who were former employers of the debtor's law firm. The application was the subject of a special fixture in Perth and demonstrates the ability of the Court to deal with any urgent applications that may arise requiring a special fixture.

As part of the Court's commitment to Western Australia special circuits are arranged as required. Urgent audio or video link hearings are frequently arranged on short notice.

The Federal Magistrates Court continues to rely upon the support from the registrars and staff of the Federal Court registry in Perth together with the Associate of the coordinating Federal Magistrate in Melbourne.

Figure 24: 2004-05 circuit locations and details

STATE/TERRITORY	LOCATIONS
Victoria	Regular circuits were conducted in Bendigo, Castlemaine, Dandenong, Geelong, Hamilton, Shepparton, Traralgon and Warrnambool.
New South Wales	Regular circuits were conducted in Coffs Harbour, Lismore and Wollongong. Special fixtures were held Griffith and Armidale.
Queensland	Regular circuits were conducted in Bundaberg, Cairns, Hervey Bay, Mackay and Rockhampton. Special fixtures were held in Gladstone. Summary Lists were introduced to Toowoomba, Southport and the Gold Coast.
Tasmania	Regular circuits were conducted in Devonport and Hobart.
South Australia	The Federal Magistrates Court circuted to Berri, Port Lincoln and Whyalla.
Northern Territory	Regular circuits were conducted in Alice Springs.
Western Australia	Circuits are conducted only in the Court's general federal law jurisdiction in Perth as the Family Court of Western Australia exercises family law and child support jurisdiction exclusively in that State. Eight circuits of one week's duration were conducted in Perth during 2004-05, involving federal magistrates from Melbourne and Sydney.

