

13

The 2006 reforms and the courts

This chapter examines the impact the 2006 reforms have had on the Family Court of Australia (FCoA), the Federal Magistrates Court (FMC) and the Family Court of Western Australia (FCoWA).

The following questions are addressed:

- How do the case management systems in each court operate?
- What, if any, changes in filing patterns have occurred since the implementation of the *SPR Act 2006* from 1 July 2006?
- What are the implications of having two courts operating in parallel (the FCoA and the FMC) for the achievement of policy objective 4 (2007 Evaluation Framework, Appendix B). This policy objective concerns the way in which various components of the family law system work together.

The chapter begins with an overview of the case management system in each of the courts. Post-reform patterns in filings and the number of allegations of family violence and child abuse made in matters across the three courts are then examined. Finally, the implications, from the perspective of family law system professionals, of the parallel operation of the FMC and the FCoA are considered.

The analysis in this section is based on the following sources:

- Qualitative Study of Legal System Professionals (QSLSP) 2008;
- FCoA, FMC and FCoWA court files pre- and post-1 July 2006;
- Family Lawyers Survey (FLS) 2006 and 2008; and
- FCoA, FMC and FCoWA administrative data 2004–09.

13.1 Case management: A brief overview

Each of the three main courts exercising *Family Law Act (FLA) 1975* jurisdiction (the FCoA, the FMC and the FCoWA) operates on the basis of a different procedural and case management system. Western Australia has one main court exercising family law jurisdiction (the FCoWA), while the FMC and the FCoA each provide services across the rest of Australia.¹ The FCoA and FMC have registries in each city and the FMC operates circuits in 38 regional areas. Under a protocol agreed to by the courts, the Family Court of Australia handles cases involving complex issues, including complex questions of law, matters involving sexual abuse, serious physical abuse or serious controlling violence, international child abduction and international relocation, or cases that will take longer than four days to hear.² Matters involving issues such as child and abuse and family violence make up a significant proportion of the FMC's caseload. This is discussed in Section 13.2.7.

¹ For an account of the issues relating to the establishment of the FMC and proposals to restructure the courts (Chapter 1), see Forgarty (2009).

² Protocol for the division of work between the Family Court of Australia and the FMC. The Semple Report noted that the definition of complexity was not clearly understood: (Semple and Associates and AGD ¶ 104–105).

13.1.1 Family Court of Australia

In the FCoA, children's matters (excluding those involving allegations of sexual or serious physical abuse)³ are handled under the Less Adversarial Trials (LAT) model, which incorporates the Child Responsive Program (CRP). The LAT model involves active case management by a judicial officer and the CRP involves a family consultant being involved throughout a matter. When a matter is listed for trial, the following phases of the CRP take place (Huggall, 2007):⁴

- Phase 1: Intake and assessment interviews with the parents, including screening for family violence and child abuse.
- Phase 2: A child and family conference, which may involve an interview with the child or children separately to the parents.
- Phase 3: In some cases, a selective settlement meeting, which may result in consent orders being made by a registrar.
- Phase 4: Oral evidence, given by the family consultant on Day One of the LAT. An issues assessment report is also prepared and provided to the judge on the first day.

Day One of the LAT hearing focuses on identifying the issues in dispute and determining how a matter should proceed. The judge may speak to the parties directly to obtain their perspective, or the parties may elect to speak through their legal representative (Collier, 2008). As mentioned above, the family consultant provides an oral report outlining key aspects of their dealings with the family. No affidavits are filed prior to Day One of the LAT unless they are required in support of a Form 4 notice⁵ or to establish that a party is not required to attend family dispute resolution (FDR) because an exception under s60I(9) applies. On Day One of the LAT, a range of procedural orders may be made by the court to assist with progressing the matter, including orders for the appointment of an independent children's lawyer (ICL), orders for a Family Report to be prepared, and orders relating to the evidence that the court wishes to obtain.

In 2008, the FCoA implemented a docket system, which means each case is allocated to a single judge who is responsible for its progress through the system. In the FCoA, compliance with the requirement of s60I is largely the responsibility of registrars, who exercise delegated judicial responsibility in a range of areas and determine whether a matter may be listed for hearing under one of the s60I(a) exceptions.

Matters involving serious allegations of sexual or physical abuse are handled in the Magellan case management system in the FCoA.⁶ Magellan was initially trialled and implemented in the Melbourne Registry of the FCoA and was in train in most registries by 30 June 2006.⁷ The aim of Magellan is to ensure that matters involving allegations of serious physical or sexual abuse are resolved as expeditiously as possible. Key attributes of the model are uncapped legal aid funding, the involvement of an ICL and collaboration with state and territory child protection authorities that provide child protection reports in Magellan matters. Magellan matters were not covered in this evaluation. The numbers of matters that were started as Magellan cases between 2004–05 and 2008–09 are shown in Table 13.1.

3 These are handled in the Magellan case management system, described further below.

4 The LAT process aligns with Division 12A of Part VII, but is based on a case management system (the Children's Cases Program), trialled by the FCoA prior to the reforms (see Harrison, 2007).

5 Form 4 notices are used to notify courts where there are concerns about family violence and child abuse. Parties are obliged to file such a notice when an allegation of child abuse has been made (s67Z), and a range of professionals, including registrars, family consultants, family counsellors, family dispute resolution (FDR) practitioners and independent children's lawyers (ICLs) are obliged to inform child protection authorities if they suspect a child has been abused or is at risk of abuse (s67ZC). Where such notices are filed and the allegation is relevant to whether an application should be refused or granted, the court is obliged to take prompt action (s60K). Such action may involve making interim or procedural orders (s60K(2)) to obtain evidence or protect the child or party (s60K(2)(a)). The courts are also required to deal with issues raised as expeditiously as possible (s60K(2)(c)). Prior to the reforms, they were only required to be filed when child abuse was alleged.

6 For more detailed information on the Magellan case management system, see Higgins (2007).

7 Implementation was completed in all Family Court registries by 30 June 2006 (FCoA, 2006). The NSW Department of Community Services (DoCS) extended participation to include south-west NSW by February 2007, but it was still only available in NSW on a limited basis as this report was being prepared (FCoA, 2007).

Table 13.1 Number of matters started as Magellan cases, 2004–05 to 2008

	2004–05	2005–06	2006–07	2007–08	2008–09
Number of matters	213	195	227	204	268

Source: FCoA data provided to AIFS

In 2008–09, as a proportion of total filings in children’s matters⁸ in the FCoA and the FMC, 2% of cases were Magellan matters. Magellan matters made up 13% of filings in children and children and property matters in the FCoA in this period.

13.1.2 Federal Magistrates Court

The FMC also operates on the basis of a docket system, so that each matter is handled by the same judicial officer from filing until resolution or determination. The legislative charter of the court is to operate as informally as possible, use streamlined procedures and encourage the use of appropriate dispute resolution procedures⁹.

Unlike the FCoA, the FMC rules require that affidavits be filed with the initiating application or response to an initiating application (FMC Rules 2001 R.4.05). During the period of this evaluation, the FMC process for assessing compliance with s60I changed. Prior to 1 March 2008, federal magistrates evaluated whether there were grounds to accept that a party is not required to attend FDR because an exception under s60I(9) applied on the basis of affidavit evidence. After 1 March 2008, the FMC required certificates to be filed with Part VII applications.¹⁰ At the time this evaluation was conducted, family consultant services were provided to the FMC on a sub-contracted basis, although in 2008 family consultants were engaged by the FMC to provide services in regional areas (Henderson, 2008). The FMC *Annual Report 2008–09* indicated that family consultants conducted 1,099 child dispute conferences. Orders for Family Reports to be prepared were made in 4,444 matters.

When a matter first goes before a federal magistrate for a procedural hearing on the first court date, the federal magistrate assesses the issues in the case. Consideration is given to issues such as compliance with s60I, the need for an ICL and the need for a Family Report. Issues relating to family violence and child abuse are brought to the attention of the court by the parties, or the family consultant or ICL where these professionals are involved. No routine screening takes place by FMC personnel, although parties have the opportunity to bring safety concerns to the attention of registry staff.

As noted in Chapter 1, this evaluation took place in a practice environment that was evolving in many areas. In the last quarter of 2009, the FMC was allocated increased registrar resources (increasing from 20 to 34) and family consultant resources (increasing from 14 to 31).¹¹

13.1.3 Family Court of Western Australia

As noted earlier, the FCoWA primarily exercises jurisdiction under the *FLA* and its state-based mirror, the *Family Court Act 1997* (WA), which applies to disputes applying to ex-nuptial children.¹² Under FCoWA case management practices,¹³ matters are assigned to a family consultant track, magistrate track or judge track (FCoWA, 2008, R5.5), depending on a range of factors, in-

8 This refers to applications for final orders made in matters involving children only and children and property. These categories exclude filings relating to child support and matters filed pursuant to the courts’ welfare jurisdiction (s67ZC).

9 *Federal Magistrates Act 1999* (Cth), s(1)(2)(a),(b)(c).

10 From that date, registrars became available to deal with requests for exceptions from filing an s60I certificate rather than requests for exceptions being considered by a federal magistrate on the first court date (FMC, Practice Division No. 1 of 2008).

11 Advice from the FMC. The decision concerning resource allocation was based on Des Semples & Associates (2009).

12 Family law dispute resolution services in WA are delivered by the FCoWA and family law magistrates, who also hold office as registrars of the FCoWA and operate as if they constitute a single entity. Outside the Perth metropolitan area, the Magistrates Court of WA has comparable summary family law jurisdiction to other state courts.

13 FCoWA, *Case management guidelines*, 1 January 2008.

cluding the length and nature of the matter. Where an application is filed in reliance on the family violence or child abuse exceptions to the requirement to attend family dispute resolution,¹⁴ the FCoWA requires the parties to file a Form 4 notice (FCoWA, 2008, R3.2).

The FCoWA operates on the basis of the Child Related Proceedings Model,¹⁵ which begins with a case assessment conference (CAC). These are conducted by family consultants and involve interviews being conducted with the parties (and their lawyers, for represented parties) to identify what issues are in dispute and to screen for family violence and child abuse, and mental health and substance misuse issues. No affidavits are filed by the parties prior to the CAC unless an affidavit in support of a Form 4 and s60I(9) exception is required. A hearing before a magistrate or judge follows a CAC. At the hearing, a family consultant provides an oral report and the parties may give limited evidence. At this hearing, interim orders may be made as well as procedural orders to determine the further progress of a matter. These orders may concern the appointment of an ICL and deal with the evidence that the court wishes to obtain. They may also require parties to attend community programs such as post-separation parenting courses.

The court event that follows the CAC and its consequent hearing is a Child Dispute Conference, conducted by a family consultant. Where necessary, these conferences allow the family consultant to make an assessment as to whether the matter will resolve following the steps taken after the CAC or whether it will progress further in the court process. Cases that do progress further in the court process are assigned either to a magistrate or a judge. The assessment concerning which track a matter should be allocated to is made by the magistrate who conducts the post-CAC hearing. Family consultants retain involvement as required through the proceedings.

The Family Court of Western Australia trialled a special case management system, known as the Columbus Pilot, for matters involving family violence and child abuse, analogous to the FCoA's Magellan program in some respects, in 2001–02 (Murphy & Pike, 2005). The approach of streaming cases into a special case management track such as Columbus or Magellan was not maintained in the FCoWA, but aspects of the Columbus system have been implemented in the Child Related Proceedings model, in particular the emphasis on an interdisciplinary approach and the application of screening and risk management processes (Murphy & Pike, 2006). The FCoWA has close links with the WA Department of Child Protection (DCP) and has protocols for sharing information with this department, the Magistrates Court of Western Australia and the WA Department of Corrective Services in matters involving family violence. FCoWA personnel are linked to the Magistrates Court computer records, and information on charges, convictions and violence restraining orders can be obtained instantly. From March 2009, a senior officer of the Department of Child Protection was based with the family consultants, allowing the FCoWA instant access to information, records and advice from that department.

13.2 Differences in patterns of filings and representation in the FCoA, FMC and FCoWA

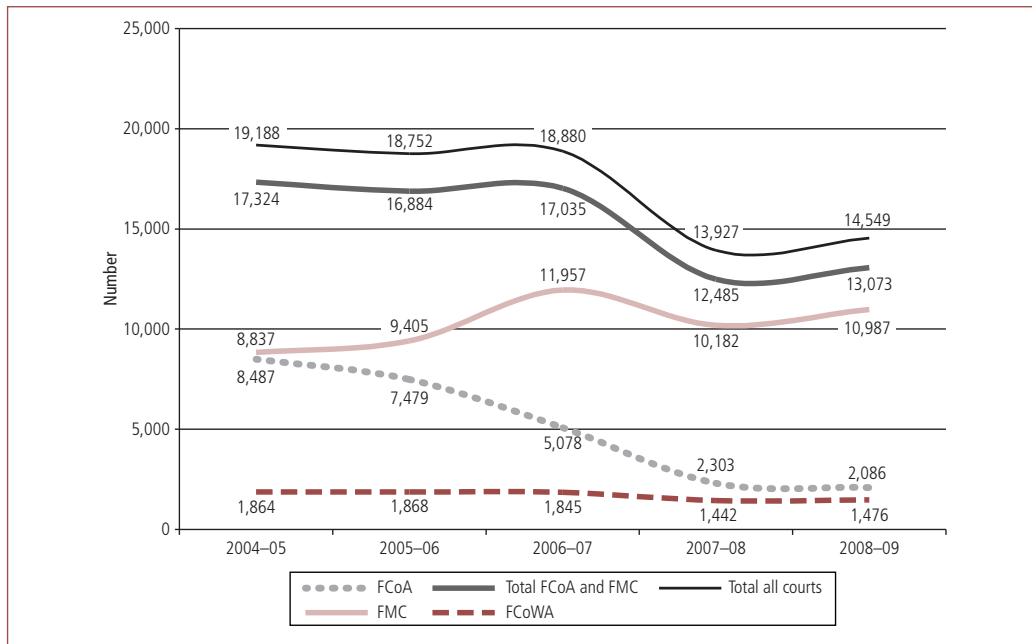
This section examines whether there have been changes in the filing of applications, filing of Form 4 notices and orders for the appointment of ICLs since July 2006 in the FCoA, FMC and FCoWA. Key issues highlighted in this discussion include an increased trend for a greater proportion of matters to be filed in the FMC compared with the FCoA, a reduction in the numbers of applications filed for child-related orders and an increase in the number of applications for property-related orders.

13.2.1 Matters involving children

There has been an overall decline in the number of applications for final orders relating to children's matters since 1 July 2006, from 18,752 in 2005–06 to 14,549 in 2008–09 (Figure 13.1). The number of applications to the FCoA declined from 7,479 to 2,086 over this period, the number to the FMC increased from 9,405 to 10,987, and the number to the FCoWA decreased from 1,868 to 1,476.

¹⁴ *Family Court Act 1997* (WA) s66H(8)(b).

¹⁵ This model is available only in the metropolitan region. Advice from the court at the time this report was being prepared was that some aspects of the WA model were being reconsidered. The information contained in this report was correct as at 30 November 2009.



Note: Includes children only and children plus property matters.
 Source: FCoA, FMC and FCoWA administrative data 2004-09

Figure 13.1 Number of applications for final orders, by court, 2004-05 to 2008-09

There has been a continuation of the pre-reform trend of an increasingly greater proportion of filings being made in the FMC rather than the FCoA (Table 13.2), with the proportion of filings in the FMC increasing from 50% in 2005-06 to 76% in 2008-09. By contrast, there has been no change in the proportion of filings being made in the FCoWA (10% in all years). When the split between just the FMC and FCoA is considered, in 2008-09 the FMC handled 84% of all filings in children’s matters, compared with 55% in 2005-06 (see filing information in Table 13.3).

Table 13.2 Final orders for children and children plus property, by court, 2004-05 to 2008-09

	2004-05	2005-06	2006-07	2007-08	2008-09
			%		
FCoA	44.2	39.9	26.9	16.6	14.3
FMC	46.1	50.2	63.3	73.1	75.5
FCoWA	9.7	10.0	9.8	10.4	10.1
Total	100.0	100.1	100.0	100.1	99.9
Number of applications	19,188	18,752	18,880	13,927	14,549

Note: Percentages may not total exactly 100.0% due to rounding.
 Source: FCoA, FMC and FCoWA administrative data 2004-09

Table 13.3 provides information about the number of filings in children’s matters in each of the courts, broken down by whether they were a children only or a children plus property matter for the period 2004-05 to 2008-09. The increasing proportion of filings that are being made in the FMC is evident in both applications for final parenting orders only and applications for final parenting orders combined with property.

There are likely to be several reasons for the decrease in the total number of filings. The main explanation is the introduction of the requirement for parents to attend FDR before filing a court application except in certain circumstances (operation of s60I), as well as some shifts in these issues being seen primarily as relationship problems rather legal ones and the increasing availability of relationship services.

There are also a number of explanations for the increase in the proportion of filings being made in the FMC. Part of the explanation may be in the parties choosing the FMC over the FCoA

Table 13.3 Number of applications for final orders, by type of final order and court, 2004–05 to 2008–09

	2004–05	2005–06	2006–07	2007–08	2008–09
Family Court of Australia					
Children only	6,361	5,345	3,673	1,760	1,523
Both children and property	2,126	2,134	1,405	543	563
Total (children only + children & property)	8,487	7,479	5,078	2,303	2,086
Federal Magistrates Court					
Children only	7,619	8,128	10,186	8,833	9,615
Both children and property	1,218	1,277	1,771	1,349	1,372
Total (children only + children & property)	8,837	9,405	11,957	10,182	10,987
Family Court of Australia and Federal Magistrates Court					
Children only	13,980	13,473	13,859	10,593	11,138
Both children and property	3,344	3,411	3,176	1,892	1,935
Total (children only + children & property)	17,324	16,884	17,035	12,485	13,073
Family Court of Western Australia					
Children only	1,563	1,542	1,531	1,268	1,323
Both children and property	301	326	314	174	153
Total (children only + children & property)	1,864	1,868	1,845	1,442	1,476

Source: FCoA, FMC and FCoWA administrative data 2004–09

because of greater judicial resourcing in the FMC—which has increased over time—while that in the FCoA has decreased (see footnote 29). Another part of the explanation may be that the FMC has a wider reach beyond capital cities than does the FCoA.

The qualitative data collected as part of the evaluation (examined in the following sections), suggests three further reasons that may, to varying and possibly overlapping extents, be relevant in explaining the shift in filing behaviour. These are:

- different processes applied in the FCoA and FMC for compliance with s60I (see sections 13.1.1 and 13.1.2);
- the concerns among many legal practitioners about a range of aspects of the implementation of the LAT model in the FCoA;¹⁶ and
- a perception among legal practitioners that orders for equal or substantial and significant shared care were more likely to be made in the FMC than the FCoA.¹⁷

13.2.2 Matters involving property only

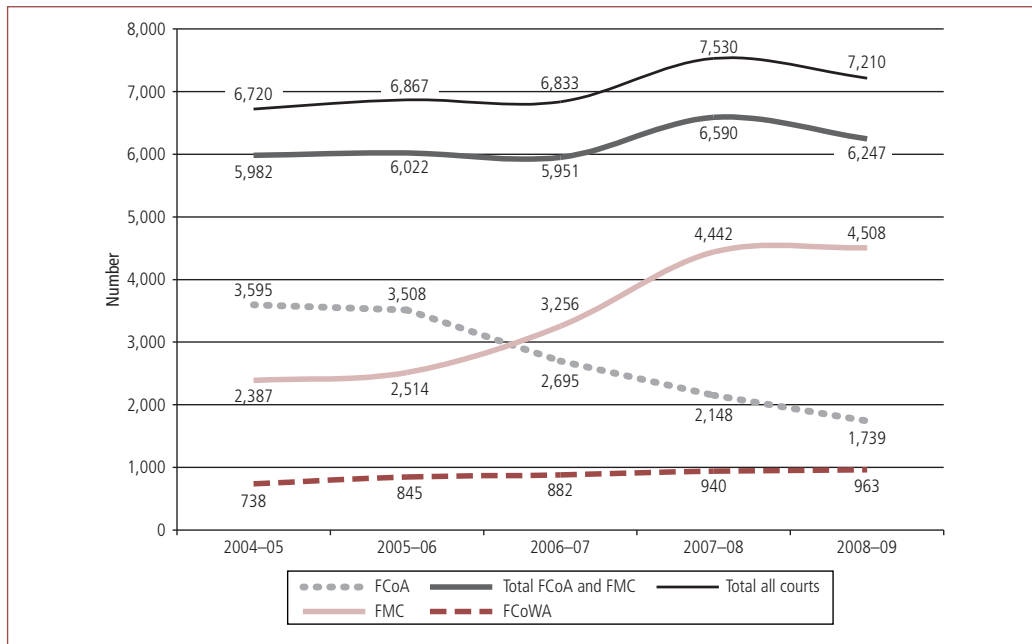
The period after the introduction of the reforms saw an increase in the numbers of applications for final orders in matters involving property only (Figure 13.2). In the two years prior to the reforms (2004–05 and 2005–06), there was little change in the number of such applications to the FCoA and the FMC and a small increase in the FCoWA. From 2006–07 to 2007–08, the numbers of filings in the FCoA and FMC combined increased from 5,951 to 6,590 and then fell slightly to 6,247 in 2008–09. The FCoWA also experienced an increase in the number of property-only matter filings, from 738 in 2004–05 to 963 in 2008–09. (There was no decrease between 2007–08 and 2008–09, as occurred for the FCoA and FMC combined.)

Data reported in Chapter 9¹⁸ suggest that the shared parenting reforms intensified the bargaining dynamics over property arrangements. FLS 2008 data (reported in Chapter 9) suggested

¹⁶ See Section 14.3.2 in Chapter 14.

¹⁷ See Section 13.3.4.

¹⁸ See Section 9.4 in Chapter 9.



Source: FCoA, FMC and FCoWA administrative data 2004–09

Figure 13.2 Number of applications for final orders, property only, by court, 2004–05 to 2008–09

average property distribution ratios, with fathers receiving a greater proportion of property post-reform. The trends suggested in the present data may be consistent with this.

As with the patterns in filings in relation to children’s matters, there has been an increase in the proportion of property-matter-only filings, which increased in the FMC, from 42% in 2005–06 to 72% in 2008–09.

13.2.3 Applications for consent orders

Data from the FCoA, whose registrars handle most applications for consent orders made to formalise arrangements made by agreement,¹⁹ show a small reduction in the total numbers of orders being made to formalise agreements reached by the parties in property and children’s matters. As Figure 13.3 indicates, a slight downward trend is evident, with a drop from 11,774 in 2005–06 to 10,100 in 2008–09. While the number of applications for children only and property only has remained relatively stable, a 33% decrease in consent orders for property and children matters—from 2,198 in 2004–05 to 1,474 in 2008–09—is largely responsible for the overall decrease. It is also noteworthy that the introduction of FDR with exceptions has apparently not led to an increase in the number of parents seeking to formalise agreements in the court.²⁰

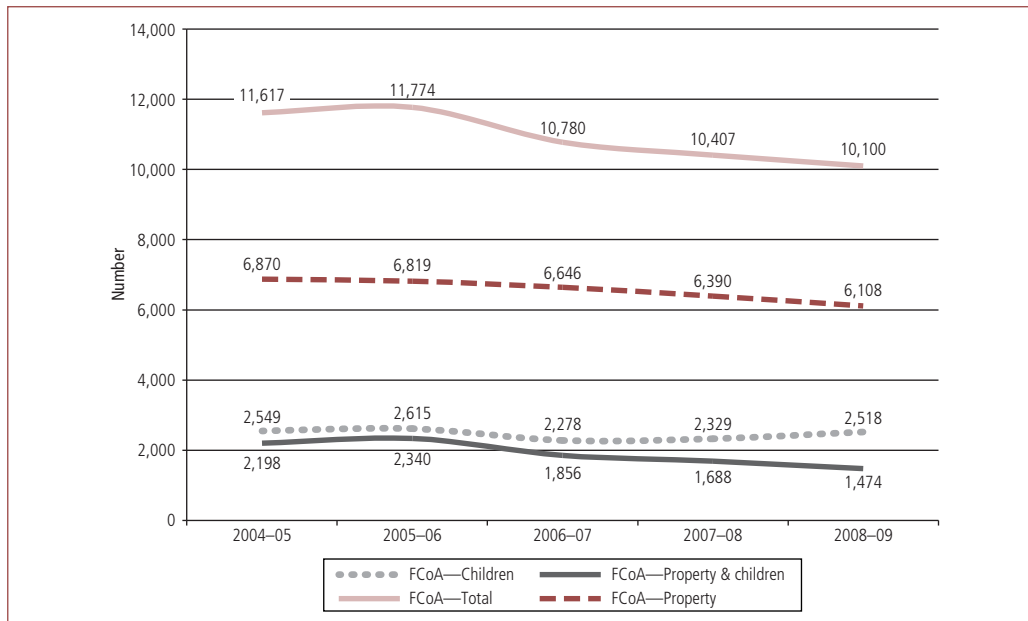
13.2.4 Trends in appeals

Data from FCoA annual reports show an increase in child-related appeals in 2008–09. As indicated in Table 13.4, the number of total appeals in the FCoA has increased steadily in the post-reform period, rising from 299 in 2005–06 to 364 in 2008–09. The 2008–09 financial year saw a sharp increase in child-related appeals, which rose to 47% from 31% in 2007–08. The post-reform period saw a steady increase in the number of appeals by self-represented litigants (from 41% in 2006–07 to 53% in 2008–09), with a particularly notable increase between 2007–08 and 2008–09 in the proportion of appeals involving self-represented litigants, rising from 44% to 53%.

The gender distribution of appellants (which indicates that more males tend to lodge appeals), remained relatively stable over the period 2004–05 to 2008–09.

¹⁹ Family Law Rules 2004 (Cth) Pt 10.4, and Federal Magistrates Court Rules, Reg 10.04, Reg 13.04.

²⁰ It should be noted, however, that these figures do not include FMC figures. The FMC does not have a special consent order form. Applications by consent are made on regular application forms and filed with an affidavit.



Source: FCoA administrative data 2004-09

Figure 13.3 Number of consent orders applications, FCoA, 2004-05 to 2008-09

Table 13.4 Proportions and characteristics of appeals, 2004-05 to 2007-09

	2004-05	2005-06	2006-07	2007-08	2008-09
	%				
Appeals that are child-related	51	42	43	31	47
Gender of appellant ¹					
Male	51	55	53	52	50
Female	39	37	39	39	42
Unknown/other ²	10	9	8	9	8
Appellants who are self-represented ¹	41	41	43	44	53
Court where first instance decision was made					
FCoA	65	65	62	44	44
FMC	35	35	38	56	56
Number of appeals filed¹	308	299	324	349	364

Notes ¹ Numbers based on all appeals, e.g., parenting, financial, costs and other matters. ² "Other" in this category may include corporate or statutory entities. Whole figures supplied.

Source: FCoA 2005, 2006, 2007, 2008, 2009b

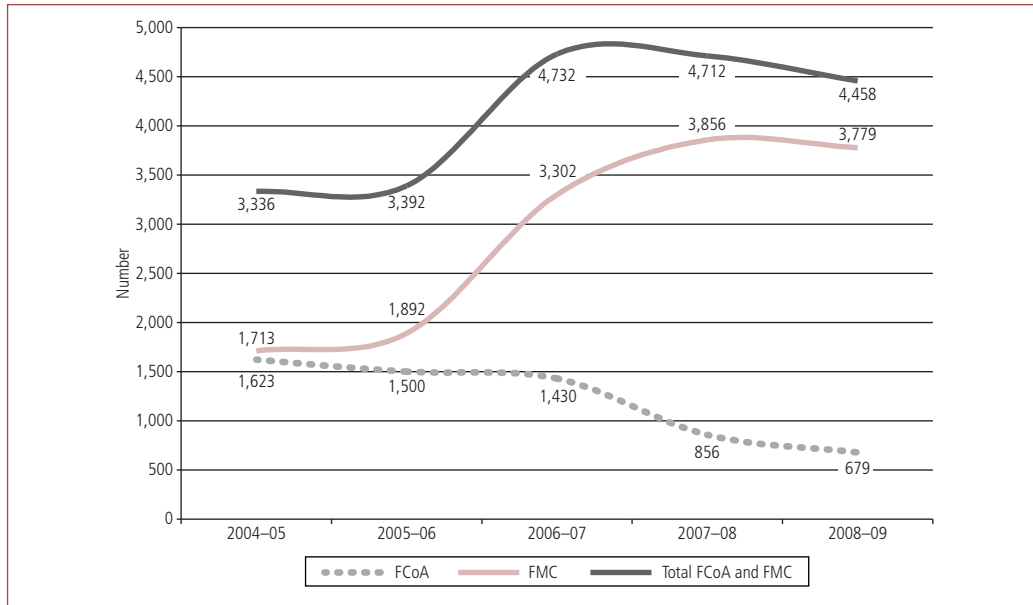
While there seems to have been a drop in child-related appeals in the years prior to 2008-09, it has to be noted that the definition of this category in the FCoA 2004-05 *Annual Report* (FCoA, 2005) encompassed "residence", "interim residence", "contact", "interim contact", and "specific issues". From 2005-06 onwards, this category was identified as "children-related appeals", or as "parenting issues raised as appeals", which includes the previous categories except for "specific issues". Thus, changes may be explained, in part, by definitional variations.

13.2.5 Independent children's lawyers

Court data indicate that increased proportions of cases have orders made for independent children's lawyers to be involved in proceedings.²¹ In 2005-06, there were a total of 3,392 ICL

²¹ Data provided to AIFS by the family law courts. Figures include appointments made in Magellan cases.

orders across both the FCoA and FMC and 4,458 in 2008–09 (Figure 13.4). The number of ICL orders post-reform decreased in the FCoA (from 1,500 in 2005–06 to 679 in 2008–09) and increased in the FMC (from 1,892 in 2005–06 to 3,779 in 2008–09).

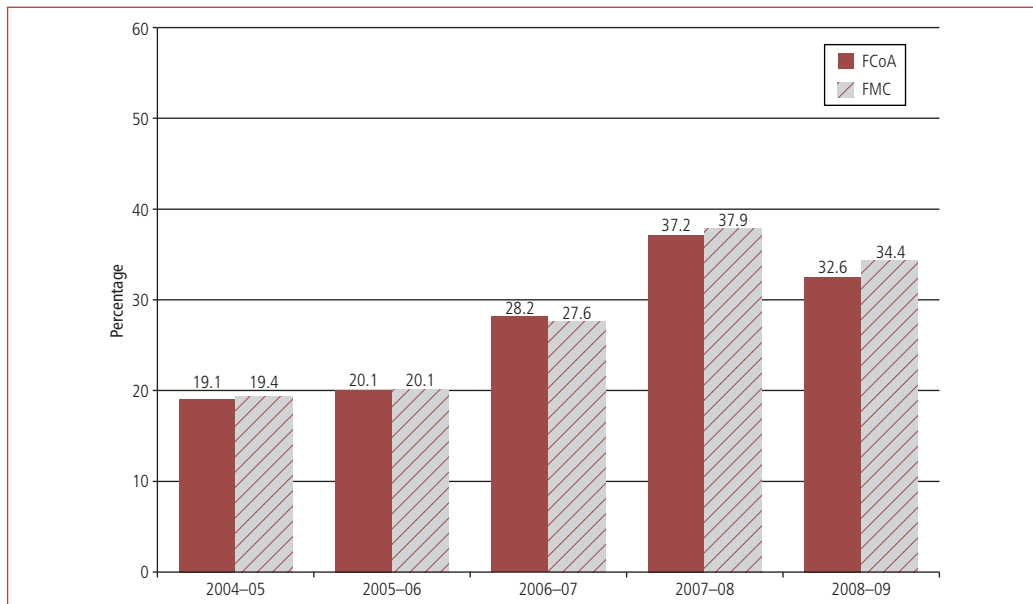


Note: Data on number of ICL orders not available from the FCoWA

Sources: FCoA and FMC administrative data 2004–09

Figure 13.4 Number of ICL orders, FCoA and FMC, 2004–05 to 2008–09

However, as overall numbers of applications have changed, it is important to also analyse the proportion of final order applications which have an ICL order (Figure 13.5). Prior to the reforms (2004–05), just under a fifth of FMC and FCoA matters involved orders for ICLs to be appointed. This proportion increased in the post-reform period to be about a third of matters in each court in 2008–09. It should be noted that, while commissions generally appoint and fund ICLs when requested by the court, under Commonwealth guidelines this is a decision for the commission.



Sources: FCoA and FMC administrative data 2004–09

Figure 13.5 Applications for final orders for which ICL orders were made, child only and children and property, by court, 2004–05 to 2008–09

Analysis of FCoA, FMC and FCoWA court files initiated and concluded post-1 July 2006²² reveals that cases that required a judicial determination had the greatest proportion of ICLs involved (Table 13.5). An ICL was appointed in 30% of judicially determined cases, 25% of cases determined by consent after initiated proceedings and in 2% of consent cases. Across courts, an ICL was appointed in 17% of FCoA cases, and 20% of cases in the FMC. There was a slightly lower rate of appointment of an ICL in the FCoWA (13%) (Table 13.6).

Table 13.5 Cases with an ICL ordered, by file determination, post-reform

	Judicial determination	Consent	Consent after initiated proceedings	Total
ICLs involved (%)	29.6	2.1	24.5	17.3
Number of cases	68	7	94	169

Note: Number of ICLs appointed, based on last application.

Source: FCoA, FMC and FCoWA court files

Table 13.6 Cases with an ICL ordered, by court, post-reform

	FCoA	FMC	FCoWA	Total
ICLs involved (%)	17.0	19.5	13.3	17.3
Number of cases	53	73	43	169

Note: Number of ICLs appointed, based on last application.

Source: FCoA, FMC and FCoWA court files

13.2.6 Legal representation and self-representation

The number of self-represented litigants²³ in the FCoA and FMC decreased from 10,405 in 2005–06 to 7,114 in 2008–09 (Figure 13.6). This fall continues a pre-reform trend.

While there has been a decrease in the number of self-represented litigants, this has been largely driven by the fall in the total number of filings (Table 13.3). There was nevertheless a downward trend in the proportion of matters with self-represented litigants in the FMC, which fell from 52% in 2005–06 to 38% in 2008–09 (Figure 13.6). Over the same time period, there was no clear trend in the proportion of FCoA matters involving self-represented litigants.

Further insight into representation of litigants was obtained by the analysis of post-reform files in parenting matters from the three courts. The results indicate that applicants as well as respondents were significantly more likely to use a private solicitor in “consent” (65% for applicants and 46% for respondents) and “consent after initiated proceedings” cases (61% for applicants and 48% for respondents),²⁴ than in judicially determined cases (44% for applicants and 31% for respondents). Applicants were also more likely than respondents (59% and 44% respectively) to use a private solicitor, across all categories (judicial determination, consent, consent after proceedings).

There was little difference between applicants and respondents in rates of self-representation in judicially determined cases (26% for applicants and 31% for respondents). Respondents were significantly more likely to not have representation in consent (18% for applicants and 38% for respondents) and consent after proceedings were initiated cases (13% for applicants and 26% for respondents). Respondents in judicially determined cases were equally likely to have a private solicitor or no representative (31% each).

13.2.7 Family violence and child abuse

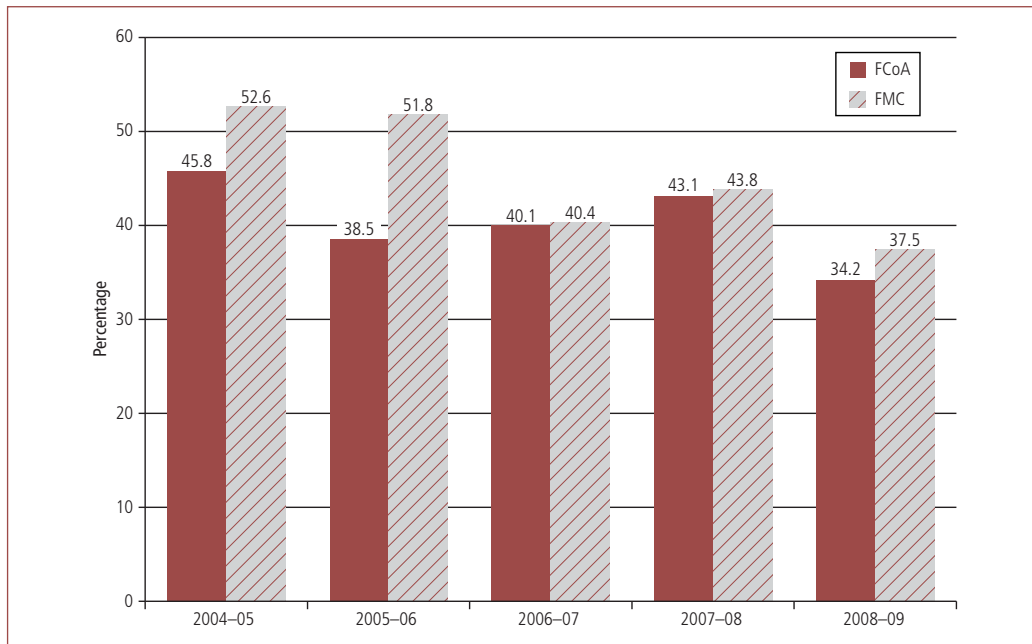
In this section, quantitative data dealing with the issues of family violence²⁵ and child abuse are examined. The discussion begins with an examination of court data on pre- and post-reform

²² This sample was based on matters filed after 1 July 2006 and determined by 14 November 2008.

²³

²⁴ These designations are used on the court form, even though such applications are made by mutual consent.

²⁵ The definition of this term is discussed in Chapter 2.



Note: Proportion was calculated by dividing the number of self-represented litigants (either applicant, respondent, or both) by the number of total applications for final orders (children only, children and property, property only).

Source: FCoA and FMC administrative data 2004–09

Figure 13.6 Self-represented litigants as a proportion of applications for final orders, child only, children and property, and property only, by court, 2004–05 to 2008–09

patterns in the filing of Form 4 notices across the three courts. This is followed by a discussion of the prevalence of allegations of family violence and child abuse in the FCoA, FMC and FCoWA court files pre- and post-reform, with post-reform comparisons being drawn from the *Allegations of Family Violence* report (Moloney et al., 2007).

At the outset, it should be noted that pre- and post-reform data were generated in significantly different procedural environments. The first point to note is that, prior to the reforms, the Form 4 notice was required to be filed in cases where there were allegations of child abuse only, while post-reform it was applicable in cases where allegations of child abuse *or* family violence were being made. Further, as noted in Section 13.1.3, the Family Court of Western Australia requires a Form 4 notice to be filed when a matter is to be dealt with under one of the violence/child abuse exceptions to the requirement to attend FDR (s60I(9)(b)).

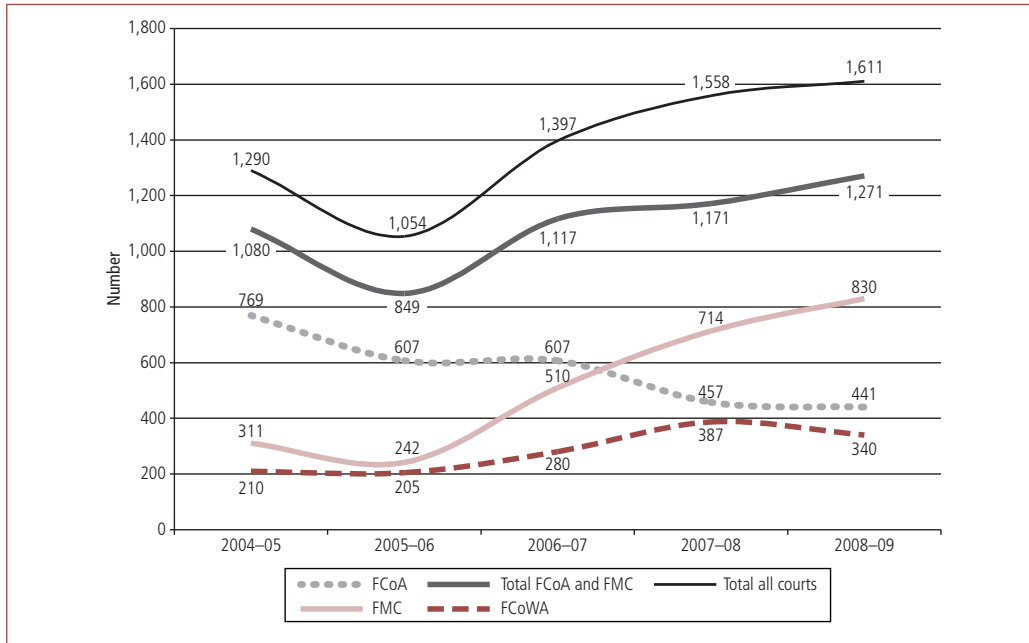
In addition, as outlined briefly in Section 13.1 and discussed in more depth in Chapter 14, each court has taken a different procedural approach to the implementation of Division 12A of Part VII of *FLA 1975*. Most relevantly for the purpose of this discussion, the FCoWA and the FCoA have taken the approach of not requiring affidavit material to be filed prior to the first stage of proceedings (the CAC in the FCoWA and Day One of the trial in FCoA). However, in each court, evidence relevant for the claiming of a s60I(9)(b) exception would be provided on a sworn basis, usually on a form required to be filed by the court. In the FMC, affidavits need to be filed prior to proceedings starting (FMC Rules 2001 R4.05).

Therefore, the nature of written documentation on the court files is different in each court and has changed pre- and post-reform. This means that any change in patterns of allegations may be related to changes and differences in procedures between courts.

For these reasons, these data offer tentative insights into pre- and post-reform shifts, but the reasons for such shifts may be due to a number of factors, including changes to the legislation (see Chapter 15), changes to procedure (discussed below) and changes in the nature of matter reaching the courts due to the operation of FDR with exceptions (see Chapter 5).

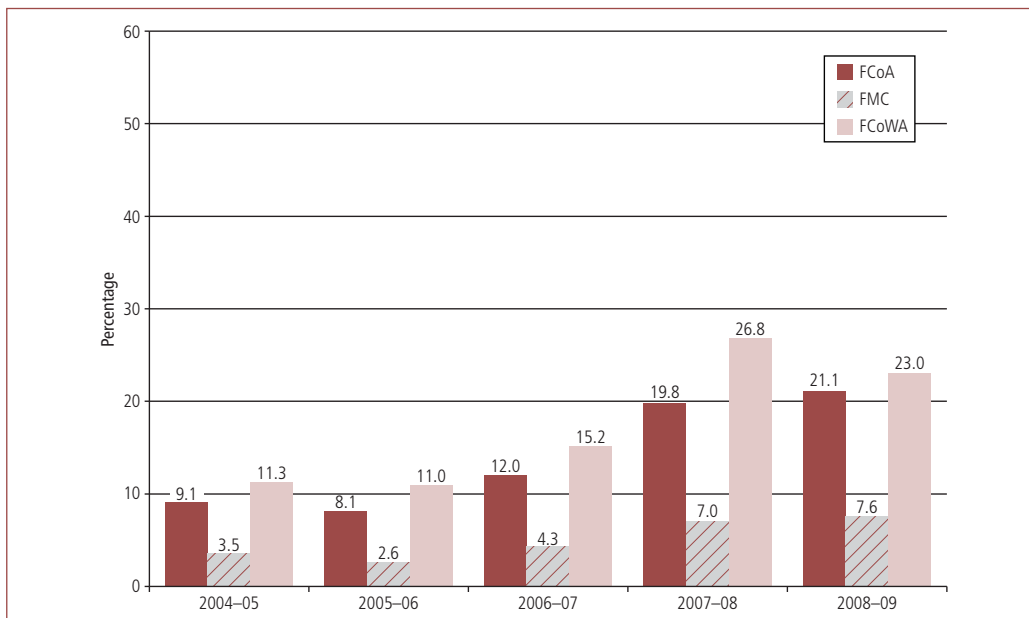
Patterns in the numbers of Form 4 notices being filed

Data provided by the courts on the numbers of Form 4 notices filed indicate that a change in pattern of filings of Form 4s can be observed after the reforms were implemented (see Figure 13.7), with the proportion of cases in which a Form 4 notice was filed in the post-reform period increasing in each court, to differing extents (see Figure 13.8).



Source: FCoA, FMC and FCoWA administrative data 2004–09

Figure 13.7 Number of Form 4s and Form 66s²⁶ filed, by court, 2004–05 to 2008–09



Source: FCoA, FMC and FCoWA administrative data 2004–09

Figure 13.8 Applications for final orders for which a Form 4 notice was filed, children only and children plus property, 2004–05 to 2008–09

²⁶ A Form 66 used to be used where allegations of child abuse were being raised. This was replaced by the Form 4 from 29 March 2004.

As a total across all the courts, the number of Form 4 notices filed increased in the post-reform period, reversing a downward pre-reform trend. There was an increase in Form 4s filed in the FMC and FCoWA post-reform, while the number of Form 4s filed in the FCoA declined. By court, Form 4 filings:

- decreased in the FCoA post-reform (607 filed in 2005–06 to 441 filed in 2008–2009);
- tripled in the FMC (242 filed in 2005–06 to 830 filed in 2008–09); and
- increased in the FCoWA (205 filed in 2005–06 to 340 filed in 2008–09).

As with the other data reported in this section, these figures need to be placed in context by analysing the proportion of matters in which Form 4 notices were filed (see general filing trends set out in Table 13.3).

As Figure 13.8 indicates, this analysis confirms that post-reform, matters in which a Form 4 was filed increased as a proportion of all filings. In summary, the increase by court was:

- FCoA: from 8% in 2005–06 to 21% in 2008–09;
- FMC: from 3% in 2005–06 to 8% in 2008–09; and
- FCoWA: from 11% in 2005–06 to 23% in 2008–09.

Patterns in allegations of family violence and child abuse

Data on the prevalence of allegations of family violence and child abuse pre- and post-reform from the FCoA, FMC and FCoWA court files, when compared with data from the *Allegations of Family Violence* report (Moloney et al., 2007), suggest some differences in the prevalence of allegations raised pre- and post-reform (Tables 13.7 and 13.8). However, observed differences between the *Allegations of Family Violence* report and the file analysis data should be treated cautiously due to differences in sample size and data collection techniques and the different procedural environment in the FCoA.²⁷

Table 13.7 shows that the post-reform FCoA, FMC and FCoWA court files and *Allegations of Family Violence* report data (Moloney et al., 2007) suggest some shifts in the number of allegations of family violence and/or child abuse being made in proceedings, as reflected in the material in the file. It suggests a change in the extent to which the material on the court file reflects allegations of family violence and child abuse in the FCoA in matters that proceeded to judicial determination. Pre-reform, 79% of court files reflected such allegations compared with 50% post-reform. It is likely that this change reflects a shift in the processes applied in the FCoA as a result of the implementation of the LAT model. As noted earlier, affidavits are not filed in LAT matters prior to Day One of the trial. This procedural change is likely to have affected the extent to which affidavit material deals with allegations of family violence and child abuse, rather than representing a decrease in matters in which such allegations are raised in the FCoA. A further relevant issue is the point referred to in footnote 7, regarding the implementation of Magellan and the consequent possibility that a change has occurred in the profile of available sample files between the two studies.

In contrast, a more stable trend is indicated for the FMC, where 67% of judicial determination cases involved such allegations pre-reform, compared with 70% post-reform. The relative stability of the FMC figures pre- and post-reform lends weight to the hypothesis raised in the preceding paragraph regarding the change in the procedural environment being relevant to the change reflected in the FCoA figures. Interestingly, while no pre-reform data are available for the FCoWA, the post-reform figures more closely resemble those in the FMC, with 65% of judicial determination matters involving allegations of family violence or child abuse or both of these types of allegations.

²⁷ The *Allegations of Family Violence* report judicial determination sample was based on 60 cases from the Melbourne, Dandenong and Adelaide registries of the FMC and the FCoA (Moloney et al., 2007). The file analysis judicial determination sample was based on 233 cases from the Melbourne, Sydney and Brisbane registries of the FCoA and FMC and from the FCoWA. The data collection for the *Allegations of Family Violence* report was conducted by two barristers. The data collection for the file analysis was conducted by a team of 11 law students. A further significant issue may be the implementation of Magellan, which was available in the Melbourne Registry when the *Allegations of Family Violence* report sample matters were heard, but not in Adelaide. By the time the matters in the file analysis sample were heard, Magellan had been almost fully implemented (see Section 13.1.1). Differences may therefore also reflect the most serious cases being streamed out of the total available pool of sample files in the post-reform period.

Table 13.7 Judicially determined cases that have an allegations of violence raised by and against applicants and respondents, by court, pre- and post-reform

	FCoA		FMC		FCoWA	
	Pre-reform	Post-reform	Pre-reform	Post-reform	Pre-reform	Post-reform
	%					
Any allegation of family violence and/or child abuse	79	50	67	70	N/A	65
No allegation of family violence or child abuse	21	50	33	30	N/A	35
Number of files	28	61	27	106		66

Source: FCoA, FMC and FCoWA court files

Table 13.8 shows the numbers of allegations of family violence and child abuse raised in matters that settled by consent after proceedings were initiated. The trend in this part of the sample was less marked for the FCoA, where 53% of the sample had allegations of family violence and/or child abuse pre-reform, compared with 50% post-reform. A slightly more marked trend is evident in the FMC, where 62% of cases had such allegations pre-reform, compared with 56% post-reform.

Table 13.8 Cases finalised by consent after proceedings that have an allegations of violence raised by and against applicants and respondents, by court, pre- and post-reform

	FCoA		FMC		FCoWA	
	Pre-reform	Post-reform	Pre-reform	Post-reform	Pre-reform	Post-reform
	%					
Family violence only	30	17	35	32	N/A	13
Child abuse only	5	14	2	10	N/A	23
Child abuse and family violence	18	19	22	14	N/A	9
Any allegation of family violence and/or child abuse	53	50	62	56	N/A	45
No allegation of family violence or child abuse	47	50	38	44	N/A	55
Number of files	109	83	116	204	N/A	137

Source: FCoA, FMC and FCoWA court files

13.3 The FMC and the FCoA: Implications for the administration of the *SPR Act 2006*

The following sections examine further the implications of having two courts (i.e., the FMC and the FCoA) operating in parallel when exercising *FLA* jurisdiction. Data from the QSLSP 2008 and FLS 2006 and 2008 were used to shed light on this issue.

Speaking from their own professional experience, many lawyers and family consultants interviewed and surveyed viewed the lack of consistency in process and approach with concern. These concerns are outlined below and varying approaches in case law are discussed in Chapter 15. In considering the material reported in the following sections, it should be noted that differences in interpretations of the law and personal judicial style are an inevitable part of the legal system. This is recognised to be the case by legal system professionals and judges and contributes to the dynamic nature of the administration of the justice. However, the material reported in the next sections suggests that in the current environment, the extent to which structural, procedural and jurisprudential inconsistency prevail have become significant concerns for many family law professionals, particularly when the implications for families and the integration of the system are considered holistically.

In this context, it should be noted the quantitative data reported in earlier chapters on outcomes in relation to care-time arrangements (Chapter 6) and parental responsibility (Chapter 8) show

some variations in patterns between courts, but these are not large.²⁸ However, lawyers are professionally trained to assess their clients' positions in relation to the range of possible outcomes suggested by previous judgments in similar fact situations. For this reason, their perceptions focus on observed differences in judicial approach. This point informs the following discussion of qualitative insights into professionals' views on the implications of the parallel operation of the two courts. This discussion reflects the environment in which the evaluation data were collected. As noted at Sections 13.1.1 and 13.1.2, there have been recent changes in resource allocations and the question of the structure of courts delivering family law services has been under active re-consideration (as discussed in Chapter 1).

13.3.1 Uneven access to court services

At the level of principle, several participants in the QSLSP 2008 expressed the view that the existence of two courts has fundamental implications for fairness. This concern arises from the differences between the FMC and the FCoA case management systems, described in the first part of this chapter. Within the FCoA's LAT system, litigants were seen to have access to better service in terms of family consultant involvement and judicial management. However, as the majority of matters are filed and dealt with in the FMC (see Section 13.2.1) and the FMC operates most circuits in regional areas, access to LAT is confined to matters dealt with in the FCoA. While a substantial proportion of legal practitioners had concerns about the LAT model (Chapter 14), most judges and family consultants saw it as a more child-focused process.

Differential access to LAT was raised by several family consultants and some legal practitioners as an "access to justice" problem. For example, after reflecting that LAT is often unavailable in regional areas, one family consultant posed the question: "So, do we have two classes of citizens whereby country people cannot file in the Family Court to receive this better system for their children?". Another family consultant observed that, while the majority of filings are in the FMC, that court has very few resources and the LAT process is a luxury for a smaller group of clients in the FCoA.

Concerns were also expressed that there are differences between the FCoA and FMC in the average level of family law experience of their judicial officers. While there was strong appreciation expressed for the access to "quicker, cheaper" justice in the FMC, there was concern about the relative inexperience of some members of the FMC bench. It was recognised clearly that there were some excellent federal magistrates in each registry, but a majority of practitioners who participated in the focus groups also expressed the view that there was less consistency in decision-making in the FMC compared with the FCoA.

Many lawyers expressed the view that some federal magistrates, particularly those without a family law practice background, were more likely to make decisions that were insufficiently cognisant of the developmental needs of children. Concerns were expressed across multiple professional groups, with lawyers and family consultants also noting that federal magistrates from a non-family law background can be unaware of the subtleties of children's developmental stages. A lawyer stated: "I'm not sure if anyone has spoken to them, but there are some federal magistrates that practitioners have tried to avoid".

A consistent theme was the likelihood of a less nuanced interpretation of the new Part VII being applied by some FMC decision-makers, whose starting point for parenting determinations was perceived to be shared care/equal time rather than shared parental responsibility. Reflective of such concerns was the comment of a practitioner about the approach of some FMC decision-makers: "If I was wanting to run a really well-considered and thoughtful case, I'd probably only rate 25% of them [federal magistrates] as really understanding those issues".

A further issue highlighted by several groups in each location were the inconsistencies in approach between federal magistrates. Several barristers noted that some magistrates can have divergent views on the same set of facts: "It really is a bit of a raffle". Other professionals noted

²⁸ Data from the FCoA, FMC and FCoWA court files post-1 July 2006 that were not reported in those chapters show that there were differences between the courts in judicially determined orders for shared care for children in different age groups. In the FMC sample, 18% ($N = 78$) of children were in the 0–4 age group, compared with 12% ($N = 70$) in the FCoA. For children aged 5–11 years, 22% ($N = 177$) were in shared care arrangements in the FMC sample and 25.3% ($N = 164$) in the FCoA sample. For children aged 15–19 years, shared care was ordered for 37% ($N = 52$) in the FCoA sample, compared with 15% in the FMC sample ($N = 52$). These data are not reported in tabular form due to the small sample sizes, and some caution is warranted in considering these data. However, they do provide some support for the qualitative data concerning differences in approach.

they had modified their advice-giving practices, as there was greater uncertainty surrounding the approach that might be taken. An example of the type of comments made is: “I just say there is no guarantee what is going to happen. I cannot tell you what’s going to happen until I know who you are [appearing] before, because anything can happen”.

13.3.2 Court resources

A further issue that provides context for the concerns expressed by participants relates to resources, particularly judicial and family consultant resources.²⁹ This was a theme that arose spontaneously in discussions and was seen to have a range of serious implications. Despite not being specifically canvassed in the interview and focus groups schedules, in the majority of focus groups the issue of adequate resources was raised as a fundamental issue, although it is not a direct consequence of the reforms.

A common view was that the FMC was under-resourced and that federal magistrates had “enormous” workloads and federal magistrates also spoke of having “crammed lists”. A number of barristers questioned the sustainability of the workloads of federal magistrates. For example, one barrister questioned the sustainability of judicial officers conducting “40 matters every day, day in, day out”, while another *barrister* noted that three federal magistrates in one particular registry had 1,600 cases and said, “They sit through lunch. They read through lunch. They sit after ... You wouldn’t wish that on your worst enemy”. Referring to time pressures in the FMC, one lawyer said:

You’re not heard ... Sometimes you don’t even get a chance to make submissions ... It’s just not that really thorough examination that I think you get in the Family Court.

The impact of inadequate resources was not seen to be confined to the FMC. Barristers raised the issue of delays associated with inadequate resources being provided to both courts. For example, one barrister noted: “You just don’t get an urgent interim hearing on your first day. Short notice used to mean two days. It now means two months if you’re really lucky”.

Several lawyers noted that with many cases still going through the process and not reaching a final determination, interim arrangements made in these cases are often based on no or very limited social science evidence. Community Legal Centre (CLC) lawyers suggested that these delays can have even longer term impacts, noting that “all kinds of things have settled” in the months it takes to get an intake date for a LAT in one particular registry.

On a related theme, participants suggested that hearing times were often very compressed in the FMC, given the number of matters scheduled. Further examples of the results of pressured hearings and processes included parties walking in for a mention and walking out with final orders. This had occurred where the other party had not filed an affidavit and resulted in the other party being unable to raise their issues.

13.3.3 Differences in process

At a broader level, differences in processes between the FCoA and the FMC were seen by participants to contribute to a lack of coherence in the administration of family law. For example, the number of times parties appear in each court and the listing of matters for trial can be quite different in each court. A lawyer stated: “I find it quite odd that you have one system of law that runs through two courts that run very differently”.

A point made by some family consultants was that the parallel operation of the FMC and FCoA, with each court having a different approach to the implementation of Division 12A of Part VII of the *FLA 1975*, undermined the system’s ability to provide a cohesive, child-focused service. This was seen to occur because the FMC provided barristers with a forum in which to pursue their preferred traditional advocacy practices: “The majority of barristers are going to go for what they already know. Their skills are honed for the adversarial system”.

²⁹ The question of judicial resources was not within the scope of this evaluation, but in light of the concerns reported in this section, it should be noted that since the reforms, there have been 10 departures from the FCoA bench. Six of these judicial officers were replaced by federal magistrates, three were replaced with FCoA judges and one position was abolished (information provided by the FCoA). At the end of the 2007–08 financial year, there were 53 judicial officers in the FMC (FMC, 2008).

A further issue that was suggested by participants as being a particularly significant difference between the two courts was the impact of the family consultant role. In the FCoA, family consultants provide judicial support with a forensic focus within the LAT and CRP framework. In the FMC, Family Reports were identified as being a very powerful settlement tool.³⁰ One lawyer described this as creating a situation where there was “trial by family consultant” in the FMC.

Disquiet about this phenomenon was expressed by legal practitioners, family consultants and judicial officers. A key concern was that issues of fact, which may be crucial to the outcome but are only dealt with in neutral terms in the report, did not receive sufficient scrutiny in the context of the settlement. One family consultant explained the difficulties in these terms: “There are some cases that should run that do not run, and there are all sorts of things wrong with that”. Expanding on this comment, the speaker noted that issues related to child protection and the parties’ safety would not be tested in such circumstances.

This comment from a judicial officer summarises the concerns that arise because family consultants are not privy to all the evidence and yet their recommendations carry significant weight in bringing about settlements:

Sometimes when I read a Family Report, I think it would be interesting to see what they think if they knew XYZ, if such things are proven ... If they come back with a recommendation for equal time or they come with strong recommendations, I think it’s a pretty weighty matter in negotiations because sometimes the matter will settle on that basis.

13.3.4 Forum choice

The data reported in the preceding section establishes that the FMC increasingly has had a greater share of filings than the FCoA, with the majority of children’s matters being filed in the FMC. However, the data from interviews and focus groups with system professionals indicate that practitioners see advantages in many aspects of FCoA practice.

The FCoA was valued for the depth of experience of its judicial officers, registrars and family consultants. In deciding in which court to file (where such choice is available and viable given the complexity of the matter), it is apparent that, to some extent, legal practitioners make strategic choices based on the issues involved in a particular matter. In addition to pragmatic considerations, such as where a quicker time to hearing may be available, other issues were regularly mentioned.

Participants’ responses raised the possibility that the existence of the FMC and FCoA, and the differences in approach between them, may create opportunities for outcome-based “forum shopping”. A range of practitioners noted that matters involving family violence and child abuse would get a better hearing in the FCoA, even outside of the Magellan case management process. However, as noted earlier, post-reform filings have increased in the FMC rather than the FCoA, which is likely, at least in part, to be a function of increasing judicial resources being allocated to the FMC and decreasing judicial resources being available in the FCoA (footnote 29).

Where matters involved family violence, allegations of risks to children or mental health issues, some lawyers indicated they would be more inclined to file in the FCoA. CLC lawyers spelled out the reasons for this type of advice, indicating they believed there were more procedural safeguards in the FCoA. With more time being devoted to matters in the FCoA, this allowed for a deeper exploration of issues around family violence. A further relevant issue was the involvement of family consultants in all FCoA matters.

It is also apparent that perceptions that an order for shared time may be more achievable in the FMC may drive some decisions about where to file, depending on whether a practitioner is acting for a mother or a father. For example, a barrister stated that if acting for a male client seeking shared time, then this client had a better chance in the FMC. This barrister added: “I think if you’re desperate to prevent shared care, you might well go in the Family Court”. This was not an isolated view, but of course needs to be balanced against the results of the analysis of court files, which reveal relatively small differences between the courts in relation to time outcomes (Chapter 6).

³⁰ In 2008–09, 4,444 Family Reports were ordered in the FMC (FMC, 2009).

13.3.5 Transfers

A number of participants expressed concerns about the operation of the system for transferring cases between the FMC and the FCoA.³¹ The concerns expressed by practitioner and judge participants about transfers related to two main issues: reluctance among federal magistrates to transfer matters involving allegations of family violence and child abuse to the FCoA, and the timing of transfers occurring too late after an application had initially been filed.

Almost without exception, federal magistrates interviewed said that they never or rarely transferred matters involving family violence to the FCoA. Cases that these federal magistrates transferred to the FCoA were the Magellan-type (child abuse) cases or more complex cases that involve significant hearing time and many witnesses. Some practitioner respondents had experienced making unsuccessful applications for the transfer of matters involving child abuse, and questioned whether such matters should have been retained in the FMC.

FCoA registrars identified the timing of transfers as a significant issue. Several participants felt that too many of the cases that begin in the FMC are transferred at the point of final hearing. A Family Court judge also raised this as an issue of concern, stating that magistrates generally don't examine the files early enough. These participants noted that these late transfers are particularly inappropriate for matters involving allegations of abuse or matters transferred to Magellan.

The implications of delays in transfers occurring were seen to be heightened by the existence of two different sets of processes. Registrars commented that a late transfer from the FMC can also have a significant impact, as there is the risk of a family going through a process in one court and then being required to undertake a different process in another court. This risk is particularly acute when there is a difference between the courts in the way in which a trial is run, such as a transfer to LAT in the FCoA.

Several registrars in multiple locations described the transfer of matters as being like what one described as a "ping pong match" and that sometimes cases are transferred backwards and forwards between the FMC and FCoA as there are different views on their complexity. Another registrar talked of cases starting in the FMC and, by the time the hearing date approaches, magistrates realise that they are complex cases that need to be transferred to the FCoA. Their view was that, along with matters being heard in the "wrong" court, this also led to delays and could be unfair to litigants.

In the period 2007–08 (the financial year during which these qualitative data were being collected), the FMC transferred 535 matters to the FCoA (FMC, 2008). In comparison, the FCoA transferred 1,544 matters to the FMC. No breakdown between file type (i.e., whether they involved children or property or child support or a combination) was available.

13.3.6 Time to finalise applications

Data from the FCoA, FMC and FCoWA court files post-reform (Table 13.9) show that the average time taken to finalise matters that proceeded to judicial determination was in fact shorter in the FCoA than the FMC (4.8 months vs 5 months), with FCoWA having the quickest timeframe of all, at 4.4 months. However, further analysis (not shown in Table 13.9) shows that cases explicitly identified as being dealt with using LAT processes in the FCoA ($n = 15$) had a longer median resolution period of 9.4 months. Given the small sample size, these data should be treated with caution, but they do provide some support for the reported concerns about delays in LAT (see Section 14.3.2 in Chapter 14).

13.4 Summary

This chapter has provided an overview of how each of three main family law courts has operated in the post-reform period and the impact the reforms have had on filing patterns, in addition to presenting some data that sheds light on the prevalence of allegations of family violence and child abuse in court matters post-reform. In some areas, such as the handling of matters involv-

³¹ A protocol for transfers was being developed by the Family Law Advisory Group (a body comprised of federal government, FMC and FCoA representatives) as this report was being prepared.

Table 13.9 Number and average length of matters, by file determination and court, post-reform

	FCoA	FMC	FCoWA
Judicial determination			
Number of months	4.8	5.0	4.4
Number of files	56	101	65
Consent			
Number of months	0.7	1.3	0.4
Number of files	166	45	98
Consent after proceedings initiated			
Number of months	5.2	5.7	6.9
Number of files	82	194	125

Source: FCoA, FMC and FCoWA court files

ing family violence and child abuse, shifts may be attributable to a range of different aspects of the reforms, meaning any interpretation should be undertaken cautiously.

There has been a substantial decrease in the number of applications for final orders involving children since 1 July 2006 (from 18,752 in 2005–06 to 14,549 in 2008–09). The number of applications to the FCoA declined, the number to the FMC increased and the number to the FCoWA decreased. There has been a continuation of the pre-reform trend of an increasingly greater proportion of filings being made in the FMC rather than the FCoA, with the proportion of filings in the FMC increasing from 50% in 2005–06 to 76% in 2008–09. By contrast, there has been no change in the proportion of filings being made in the FCoWA (10% in all years).

It should also be noted, however, that applications for final property orders increased post-reform, reversing a pre-reform trend towards stability. No causal connection in relation to property orders can be assumed from the data, particularly given the prevailing economic conditions, without further investigation.

In each court, the number of Form 4 notices filed as a proportion of applications for final orders has increased. Some shifts are suggested in the numbers of allegations of family violence and child abuse—tending towards more of these being evident in the FMC than the FCoA—but the implications of this are unclear due to a range of potentially influential procedural and other changes.

These data point to an increase in the complexity of matters reaching court in the post-reform period, as indicated by increases in orders for ICL appointments and the filing of Form 4 notices in both the FCoA and the FMC. This is likely to apply also to the FCoWA on the basis of the high numbers of Form 4s filed in that court, although data on the number of ICL appointments was not available. This is consistent with insights from the QSLSP 2008, with many professionals observing that court matters had become consistently more complex since the reforms, with the operation of FDR with exceptions meaning that less complex matters were sifted out of the caseload of the court and, to some extent, the legal sectors.

The data indicate that all three courts deal with a high number of matters involving allegations of family violence and/or child abuse, with such allegations being raised in a majority of matters.

Participants in the QSLSP 2008 raised a number of concerns about the parallel operation of the FMC and FCoA. These included the implications for parents and practitioners of there being two courts administering the same legislation on the basis of two very different sets of processes. One issue stemming from this was that the FMC provided practitioners who preferred to operate in a traditional adversarial model with a forum in which to do so, a point that has particular significance when it is considered that some 84% of children's matters were dealt with in the FMC in the post-reform period.

There were also concerns both about the time pressures under which federal magistrates operate and the role that family reports play in bringing about settlements in the FMC. Some federal magistrates were perceived to be more inclined to adopt a literal interpretation of the *SPR Act 2006*, meaning some outcomes may not be sufficiently cognisant of the developmental needs of children, particularly those in younger age groups. Further, transfers between courts were seen to be a difficulty, with federal magistrates seen as being reluctant to transfer matters to the

FCoA, even those involving family violence and child abuse. As a result of the different case management systems operating in the three courts (FMC, FCoA and FCoWA), matters in the FCoA and FCoWA are subject to routine screening for family violence, child abuse and other complex issues, but those filed in the FMC are not.