



FAMILY COURT OF
WESTERN AUSTRALIA

Family Court of Western Australia
Annual Review

2022

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FROM THE CHIEF JUDGE

I am pleased to present the review of the work of the Family Court of Western Australia (the Court) for the year ending 31 December 2022.

Appointment of the sixth permanent judge of the FCWA

In the 2021 Annual Review, I recorded that the Commonwealth Government had announced that it would provide additional ongoing funding to enable the appointment of a permanent 6th judge of the Court. I am very pleased to report that Justice Michael Berry SC was appointed as a judge of the Court on 7 June 2022. His Honour also received his dual commission as a judge of the Federal Circuit and Family Court of Australia (Division 1) on 9 June 2022. Justice Berry's appointment represented a very significant milestone in the history of the Court. As the Solicitor General for Western Australia, Mr Joshua Thomson SC, observed at the welcome sitting for Justice Berry: *"for the first time in the Court's 46-year history, [the appointment] extends to six, the number of permanent judges appointed to the court. The appointment of a sixth permanent judge recognizes the increasingly complex workload of the Court over the last decade; and the vital role that judges play in hearing and determining such cases"*.

Other judicial appointments and retirements

Justice Robin Cohen SC was appointed as a judge of the Court on 13 October 2022. Her Honour also received her dual commission as a judge of the Federal Circuit and Family Court of Australia (Division 1) on the same day. Her Honour's appointment was made not only in a very timely manner, but in fact prior to the retirement of the judge she was replacing - Justice Susan Duncanson.

Justice Susan Duncanson retired as a judge of the Court and the Federal Circuit and Family Court of Australia (Division 1) in December 2022. Justice Duncanson was sworn in as a judge of the Court in December 2012, and soon after as a judge of the (then) Family Court of Australia. Prior to her appointment as a judge, her Honour served for nine years as a Family Law Magistrate with the Court. I thank Justice Duncanson for her service to the Court and wish her a long, happy, and fulfilling retirement.

Magistrate Megan Wadsworth was appointed as a Family Law Magistrate, with effect from 3 January 2022, to fill the position left vacant by the resignation in late 2021 of Magistrate Paul Glass. Prior to this appointment, Magistrate Wadsworth had been a Registrar of the Court since 2019. Later in January 2022, Magistrate Colin Kaeser resigned, after earlier being on extended sick leave. I am very grateful to Attorney General Quigley for promptly appointing (now) Justice Robin Cohen SC, as an acting Magistrate for 12 months, to cover this workload. **Magistrate Rebecca Hall** was appointed as a Family Law Magistrate in November 2022, to fill the position left vacant by Justice Cohen's elevation. Prior to this appointment, Magistrate Hall had been appointed as Registrar of the Court since January 2022.

In June 2022 **Registrar Simon French** retired but he was re-appointed in August 2022 on a short-term basis, after Registrar Jocelyn Connick was seriously injured in an

accident. I am again very grateful to Attorney General Quigley for promptly reappointing Registrar French to cover this workload. The Court's judicial officers and staff look forward to Registrar Connick making a full recovery and returning to work in early 2023.

In June 2022, **Registrar Joanne Brinkley** was appointed as a permanent Registrar of the Court. In November 2022, **Registrar Fiona Amaro** was also appointed as a permanent Registrar of the Court. Both Registrar Brinkley and Registrar Amaro had significant family law experience prior to joining the Court.

The workload of the Court

Overall, the Court experienced a decrease in filings in 2022 across all major application types, as compared with the previous year, except for divorce and consent order applications, which saw very modest increases. There was a decrease in the numbers of the most resource intensive application type: a 6.6% decrease in final applications (to 2,552), including a 9.7% decrease in parenting-only final applications (to 1,404) and a 0.3% decrease in financial-only final applications (to 1,044).

Of the 2,404 final applications that were finalised in 2022, 96% did so without needing to proceed to a trial; approximately 50% were finalised within 12 months of lodgement; and approximately 76% were finalised within 2 years of lodgement.

In 2022, the Court conducted less trials than usual for various reasons. Firstly, in the lead up to Justice Duncanson's retirement in December 2022 and Justice Simon Moncrieff's impending retirement in May 2023, both have been required to complete the hearings of their part-heard trials and reserved decisions. In addition, both elected to clear some very well deserved long-leave. Secondly, the Court did experience some impacts from Covid-19, with some trials having to be vacated or adjourned on a part-heard basis due to judicial officers, counsel and/or parties becoming unwell. Thirdly, one of the "side effects" of the Court's very successful Pre-Trial Conference program may be that in resolving the less complex matters (particularly those involving unrepresented litigants) before they reach trial, a greater percentage of complex matters have proceeded to trial.

In 2022, for the relatively small number of cases that proceeded to trial, the median time to trial was 140 weeks. Not only do many of these cases involve markers of complexity, such as family violence and other risk factors, but there can also be delays in the cases proceeding to trial for reasons unrelated to the Court itself. The two case studies featured in this annual review illustrate this.

Vale former Chief Judge Michael Holden AM

The Court was very saddened by the sudden death of the Honourable Michael Holden AM in May 2022. In August 1991, Michael was appointed as a judge of the Court. From November 1996 until his retirement in February 2007, Michael served as the Court's third Chief Judge. He also

served for many years on the Appeal Division of the Family Court of Australia.

Over his career Michael made a very substantial contribution to family law in Australia, as both a judge at first instance and at appellate level. He was also renowned for his leadership of the Court and his excellent administrative skills. Michael is survived by his wife Margaret, his children Jennifer, Matthew and Heather, his step-children David and Robert, and their families.

Justices of the Peace

Thank you to the Justices of the Peace who volunteer to witness documents and assist our clients to ensure their paperwork is in order. Their assistance is invaluable and very much appreciated.

Court governance

The management of the Court continues to be overseen by the Board of Management. The Board is greatly assisted by the various committees, which are listed later in this Annual Review. I acknowledge and thank all the judicial officers, family consultants and members of staff for the work they do in the committees, in addition to their usual tasks. I also acknowledge and thank the Department of Justice, Legal Aid WA (including the Family Advocacy and Support Services staff), the Department of Communities co-located staff, the legal profession, the Family Law Pathways Network and other service providers for their ongoing support and assistance to the Court and parties who use the Court's services.

JURISDICTION

The Court was established in 1976 as a state Court exercising both state and federal jurisdiction. The Court comprises judges, family law magistrates and registrars. It deals primarily with disputes arising out of relationship breakdowns. The work of the Court is supported by a specialist team of family consultants in the Family Court Counselling and Consultancy Service.

The Department of Justice provides administrative and logistical support for the Court.

AREA OF SERVICE

The Court services the whole of our vast State. Apart from having exclusive jurisdiction in family law matters in the Perth metropolitan area, the Court circuits to five major regional centres:

- Albany
- Broome
- Bunbury
- Geraldton
- Kalgoorlie

Family law magistrates provide support and advice to country magistrates and conduct regular circuits to the five regional centres. Judges and Family Law Magistrates circuit to the same centres as required, hearing defended matters. Bunbury continues to be the busiest regional circuit, accounting for over 59% of circuit hearings held in 2022.

OUR BUDGET

Funding for the Court is principally sourced through a grant from the Commonwealth Government, which is provided annually to the Western Australian Government. The WA Government provides limited funding for proceedings brought under State legislation dealing with property disputes between de facto couples.

WORKLOAD SUMMARY

Primary Applications	Received	Finalised
Initiating Applications for Final Orders	2,552	2,404
Divorce Applications	5,846	5,899
Applications for Consent Orders	3,335	3,546
Total	11,733	11,849

OUR JUDICIARY

As at 31 December 2022

Chief Judge

The Honourable Justice Gail Sutherland

Judges

The Honourable Justice Simon Moncrieff

The Honourable Justice Richard O'Brien

The Honourable Justice Ciara Tyson

The Honourable Justice Michael Berry

The Honourable Justice Robin Cohen

Magistrates

Magistrate Annette Andrews

Magistrate Lisa Stewart

Magistrate Francine Walter

Magistrate Mark Calverley

Magistrate Catherine Osborn

Magistrate Eric Martino

Magistrate Neil Anderson

Magistrate Andrew Mackey

Magistrate Megan Wadsworth

Magistrate Rebecca Hall

Principal Registrar

Principal Registrar Leonie Forrest

Registrars

Registrar Andrzej Meysner

Registrar Jocelyn Connick

Registrar Samantha Padfield

Registrar Jo Brinkley

Registrar Fiona Amaro

OUR PEOPLE

The approved FTE (128) for 2022 was allocated as follows:

6	Judges
10	Magistrates
6	Registrars
87	Registry and support staff
19	Family consultant and support staff

NEW WORKLOAD

Initiating Applications for Final Orders and Applications for Interim Orders

Initiating applications for final orders and related applications for interim orders are the Court's most resource intensive application types. Lodgement of final order applications decreased by 6.6% since 2021.

Parenting orders continued to be the most commonly sought order when commencing an application for final orders, accounting for 59% of applications lodged. 1,498 of this application type were lodged in 2022. The high proportion of parenting applications has a profound impact on the Court's workload, as additional time and resources are dedicated to assessing the best interests of the children when making orders.

Legislation requires parties to undertake a Family Dispute Resolution (FDR) process prior to starting parenting proceedings, but there are a number of grounds on which parties may be exempted from attending FDR and there is otherwise no mechanism to ensure both parties attend. In 2022, both parties attended FDR in only 17% of cases where an application was made for parenting orders. In all other cases, a ground for exemption had been established or a certificate from a family dispute resolution practitioner was filed advising only one party attended for FDR or alternatively that FDR was deemed inappropriate.

TABLE 1 - Applications Lodged

	2022	Change from 2021	Change from 2012
Final Order	2,552	-6.6%	-4%
Divorce	5,846	0.8%	18%
Consent Order	3,335	1.2%	30.1%

Other Applications

The Court's other key application types are consent order applications (where parties apply jointly to the Court) and divorce applications.

During 2022 the Court received:

- 5,846 divorce applications, an increase of 0.8% from 2021; and
- 3,335 consent order applications, an increase of 1.2% from 2021. Unlike applications for final orders, which have a high proportion of parenting issues, consent orders are predominantly sought to formalise financial agreements. This year, 89% of consent order applications sought orders in relation to financial issues only.

Self-representation

Many parties engaging with the Court do not have legal representation, either by choice or because they cannot afford it. The Court is aware this can put parties at a disadvantage and cause difficulties in understanding and complying with Court processes and orders. This in turn can delay and complicate the progress of matters through the Court. The Court maintains a range of guides designed to ensure self-represented parties can effectively participate in the process and are aware of their options for seeking legal advice.

The table below details the percentage of applications filed by self-represented litigants:

TABLE 2 - Self-Representation

		2022	2021
Final Order	Parenting	34%	43%
	Financial	19%	24%
	Parenting and Financial	25%	31%
Consent Order	Parenting	33%	43%
	Financial	29%	30%
	Parenting and Financial	32%	34%
Divorce		72%	73%

ACTIVE WORKLOAD

Applications that remain on hand at the end of the year constitute the Court's active workload.

Final order applications on hand increased by 4%. Divorce applications on hand decreased by 6.7%. Consent applications on hand have decreased by 32.7% which can be attributed to an increase of the number of applications listed per hearing list.

TABLE 3 - Primary Applications on Hand

	2022	Change from 2021	Change from 2018
Final Order	4291	4%	0.4%
Divorce	909	-6.7%	-16.8%
Consent Order	454	-32.7	27.5%

COURT PERFORMANCE

Clearance Rate

The Court's clearance rate representing finalisations as a percentage of filings is a measure of whether the Court is keeping up with its workload.

The Court had a clearance rate of 94% for applications for final orders, a slight decrease from the 97% clearance rate achieved in 2021.

Time to Finalisation for Non-Trial Matters

The Court's Key Performance Indicator (KPI) is its median time to non-trial finalisation for final order matters. Such matters constitute the majority of final order applications finalised, with 96% of these applications finalised by the Court before the matter reached trial.

The KPI for 2022 stood at 48 weeks against the target of 27 weeks. This is one additional week comparatively to the previous year. The median for parenting-only matters was 58 weeks, compared to 31 weeks for financial-only matters.

The higher than target result is primarily due to long-term increases in the volume and complexity of parenting applications lodged, and the introduction of case management practices that encourage matters to remain active until a finalising order is made.

TABLE 4 - Median Weeks to First KPI Finalisation

	2022	Change from 2021	Change from 2018	Change from 2013
Parenting	57.5	6.5%	25%	69.1%
Financial	31	-6.1%	-16.2%	6.9%
Parenting and Financial	112	36.6%	45.5%	41.8%
Overall	48	4.3%	9.1%	45.5%

TABLE 5 - Count of KPI Finalisations

	2022	Change from 2021	Change from 2018	Change from 2013
Parenting	1190	-1.2%	-16%	31.1%
Financial	821	-6%	5.5%	18.5%
Parenting and Financial	159	-13.6%	-6.5%	45.9%
Overall	2170	-4.2%	-8.2%	27.2%

Counting Rule Note:

The KPI calculation is based on the time between filing and Court-ordered finalisation for all initiating applications for final orders that did not proceed to trial, excluding matters that were deemed finalised after a year of inactivity. Matters with prolonged inactivity are excluded to provide a more accurate representation of the Court's performance, as parties may agree to suspend their proceeding before a final determination is made.

Time to Trial

The year under review saw the median time to trial increase to 140 weeks. In parenting-only matters, the median time was 119.5 weeks, while the median time for financial-only matters was 153 weeks.

TABLE 6 - Median Weeks to Trial

	2022	Change from 2021	Change from 2018
Parenting	119.5	18.3%	31.3%
Financial	153	26.4%	87.7%
Parenting and Financial	153	2%	37.8%
Overall	140	11.1%	53.8%

- Data not previously recorded

The complexity of a matter is difficult to quantify, as is the impact of complexity on a matter's time to trial. It is, however, possible to get some sense of the potential impact by comparing matters with a specific marker for complexity to those without that marker.

For example, one marker for complexity in parenting matters is the appointment of an Independent Children's Lawyer (ICL). An ICL represents the child's/children's best interests in proceedings about parenting arrangements. An ICL is often appointed in disputes involving:

- allegations of abuse or neglect in relation to the children
- a high level of conflict and dispute between the parents
- allegations of family violence
- allegations of substance abuse
- serious mental health issues in relation to one or both of the parents or children
- difficult and complex issues involved in the dispute.

When comparing parenting only applications based on the involvement of an ICL, those with an ICL had a median time to trial of 153.5 weeks, and those without had a median time of 66 weeks. Parenting only matters with an ICL accounted for 45% of all "time to trial" matters in 2022, compared to 32% with no ICL.

The Court recognises the importance of trial timeliness, and applies its own internal performance targets, being 52 weeks for parenting-only trials and 60 weeks for financial-only trials.

While these figures demonstrate the Court's capacity to expedite the trial in urgent matters, the Court remains committed to exploring how changes in practice and legislation can help reduce the delays for all litigants. It is recognised however, that adequate resourcing, particularly judicial, accommodation and technological resourcing, is central to increasing the Court's capacity to deal with matters effectively and efficiently.

Other Work

In other key areas of Court activity:

- 32 applications and a further 13 ancillary applications were made under the Adoption Act 1994 (WA).
- 5 applications were made under the Surrogacy Act 2008 (WA).
- 3 applications were filed pursuant to the International Child Abduction Convention
- 383 applications for Telecommunication Interception Warrants; including Stored Communication Warrants and Surveillance Device Warrants, were made. All eligible judges have volunteered to deal with these applications, which often need to be heard on an urgent basis after hours.

CASE STUDIES: COMPLEXITY AND TIME TO TRIAL

The following two case studies have been selected to demonstrate the impact of complexity on time to trial and how these delays can occur for reasons unrelated to the processes of the court itself. **Case Study 1** is an example of a matter involving very severe risk issues in which the Court appointed an Independent Children's Lawyer. This case study demonstrates the relevance of the way the parties choose to conduct the proceedings, including the father disengaging and re-engaging with the proceedings a number of times. **Case Study 2** involved a financial case where one party was charged with, and later convicted of, serious criminal offences. Finalisation of the proceedings were initially delayed by the criminal proceedings, and then subsequently by the parties' joint decision to defer the making of final orders until after the sale of an asset had occurred.

CASE STUDY 1

Note: The mother was legally represented during the proceedings. The father was legally represented at times during the proceedings but was self-represented from November 2018. An Independent Children's Lawyer was appointed to represent the child's interests in March 2018.

August 2017

The parties separate when the child is 5 years of age. The child initially remains in the care of the mother but is withheld by the father after the parties meet to discuss future care arrangements.

The mother commences parenting and financial proceedings and seeks that a recovery order be made on an urgent basis. The mother also files Notice of Child Abuse or Family Violence alleging that the father presents an ongoing risk to the child.

*A **recovery order** is an order made by the Court for the return of a child to a particular party. A recovery order may authorise police to find, recover and return a child.*

*Where it is alleged by a party that a child has been abused or is at risk of being abused, the party is required under family law legislation to file a **Notice of Child Abuse or Family Violence (or Risk)** particularising the alleged abuse (or risk).*

The mother's application for a recovery order is heard urgently on an ex-parte basis and the Court makes orders, including issuing a recovery order for the return of the child to the mother, and programming the matter to a further hearing. The mother also obtains an interim Family Violence Restraining Order from the Magistrates Court of Western Australia protecting her and the child from the father.

September 2017

The father files responding documents, including a Notice of Child Abuse or Family Violence, alleging that the maternal family

present a risk to the child. The father acknowledges he has a history of mental health related issues; aggravated by a back injury and subsequent issues with chronic pain. The father denies he has subjected the mother to family violence, and instead, alleges that the mother has subjected him to family violence.

The Court makes orders for the father to spend time with the child each alternate weekend and during school holidays, supervised by paternal family members. Orders are also made for the Western Australian Police and the Department of Communities (DOC) to provide information relating to the parties and for the parties to undertake drug urinalysis testing for the detection of various substances.

October 2017

The parties attend a Case Assessment Conference with a Family Consultant and the Family Consultant prepares a written report.

*Where there are risks alleged by either party, the Court may require the parties to attend a **Case Assessment Conference with a Family Consultant**. Parties can attend with their legal representatives (if they are represented). Discussions during the Conference are not confidential. After the Conference, the Family Consultant will prepare a written report for the Court. The Consultant will seek to identify any risk issues and may provide recommendations in their report regarding the next steps in the matter.*

The report comments on various risk-related issues, including that the Western Australian Police had attended the parties' home six times in relation to family violence incidents, and that the father has pending charges for drug related offences. The father concedes that he continues to use marijuana each week and the parties had heated verbal arguments during the relationship. Each party alleges that the other was the perpetrator of

family violence; and each party alleges that the other suffers from significant mental health issues. The Family Consultant provides a recommendation in the report that an Independent Children's Lawyer be appointed, and the father undertake drug counselling.

The DOC subsequently provides information to the Court, confirming its receipt of police family violence incident reports concerning the family and not substantiating the father's allegation that the maternal family pose a risk to the child.

March 2018

The Court makes orders for the appointment of an Independent Children's Lawyer.

*An **Independent Children's Lawyer** is a legal representative appointed by the Court to represent a child's best interests. There are guidelines that set out circumstances where it may be appropriate for an ICL to be appointed, such as cases involving intractable conflict or allegations of abuse. The ICL will collate information about the child's welfare and may recommend orders to the court.*

April 2018

The proceedings are included in the Defended List and various procedural orders are made in relation to the filing of trial material.

October 2018

Orders are made for the appointment of a Single Expert Witness.

January 2019

The child's therapist makes a notification to the DOC reporting safety concerns for the child while in the father's care, including neglect and exposure to the father's drug use. The DOC contacts the Court seeking that the father's time with the child be suspended pending an assessment, and the mother ceases the father's time with the child at the recommendation of the DOC.

March 2019

The Single Expert Witness report is published. The report records that the father only engaged in one of the three scheduled interviews and did not comply with all the expert's requests, including to complete psychological tests and provide specific information. The report also records that the mother engaged fully with the assessment process; and that the expert assessed that the mother and child had a close relationship with each other and that the mother provided an adequate level of care for the child.

At the next court hearing, orders are made for the father's contact with the child to resume by way of telephone calls twice each week.

April 2019

The parties attend the first Readiness Hearing. Neither the mother nor the father have complied with court orders to file their trial documents; and the Court makes orders providing each with additional time to file their trial documents.

A Readiness Hearing is a procedural hearing listed prior to a trial. The purpose of the hearing is to ensure that the parties have complied with any orders requiring them to file documents and matter is ready to proceed to trial.

The father disengages from the proceedings and fails to attend at the second Readiness Hearing. Orders are made providing the father with further time to file his trial documents. At the next court hearing, the Court makes orders for the matter to proceed to an undefended hearing should the father fail to file his trial documents within a certain time frame.

October 2019

The father does not file his trial documents, but he attends the undefended hearing and persuades the Court that he should be given a further opportunity to participate in the proceedings. The undefended trial is vacated; and the proceedings are included in the list of cases awaiting a trial listing and orders are made providing the father with further time to comply with the orders.

April 2020 - September 2020

The matter is relisted and orders are made by consent for the father to recommence spending time with the child, supervised by a formal supervision agency. The child is

resistant to spending time and the supervision agency provides a report in late 2020 setting out the attempts made to recommence the father's time. The supervision agency suspends its services and refers the matter back to the Family Court.

February 2021

The financial aspects of the proceedings are settled by consent, save and except for one minor issue. Thereafter, the father again largely disengages with the proceedings.

February 2022

The matter proceeds to a defended hearing over 3 days. At the commencement of the trial, the judge refuses the father's application to adjourn the trial.

May 2022

Judgement is delivered. The judge finds that despite his denials, the father subjected the mother to significant, ongoing family violence during their relationship; and exposed the child to his drug use and family violence against the mother. The judge also finds that after separation, the father neglected the child when in his care, and exposed the child to his ongoing drug use and other inappropriate behaviours, including hearing the father make highly derogatory comments about the mother. The judge is satisfied that the child has expressed a clear and consistent wish to live with the mother and have no contact with the father; and that the child's views have been shaped by his "lived experiences" of the father, including seeing the father subject the mother to family violence.

Notwithstanding the father sought an order for equal shared parental responsibility, the judge found that the presumption of equal shared parental responsibility did not apply, as there were reasonable grounds to believe that the father had engaged in family violence towards the mother. Final orders are made for the child to live with the mother and for the mother to have sole parental responsibility. The orders did not provide for the father to have any contact with the child, although he was permitted to send gifts and cards to the child on some special occasions. The Court also made final orders in relation to the outstanding minor financial issue.

CASE STUDY 2

Note: the parties were legally represented for the most part of the

proceedings, and by experienced counsel at the trial.

June 2016 - October 2016

The parties separate after a lengthy marriage and the wife obtains an interim Family Violence Restraining Order (FVRO) protecting her from the husband.

In October 2016, the husband is charged with a number of serious violence related criminal offences. The husband is incarcerated.

June 2017

The husband institutes proceedings in the Family Court of Western Australia seeking interim and final property orders. The wife files her responding documents opposing the orders sought by the husband.

At the first return hearing, the Court makes orders programming the matter to a Conciliation Conference with a Registrar, on the basis that the husband attend by telephone from prison.

Parties in financial proceedings are required by s79(9) of the Family Law Act 1975 / s205ZG(9) of the Family Court Act 1997 to attend a Conciliation Conference. The conference is a facilitated mediation conducted by a Registrar. Parties are generally required to file Conciliation Conference Particulars in preparation for the Conference. A template of the Conference Particulars are available on the Family Court of Western Australia's website. The Particulars are designed to set out a party's position in relation to settlement.

November 2017 - August 2018

The wife and her solicitor attend at the first Conciliation Conference in November 2017, but the husband does not. The Court makes orders for the parties to attend a second Conciliation Conference in March 2018.

At the second Conciliation Conference, only the wife's solicitor attends and advises the Court that an issue has arisen in relation to the husband's competence in the criminal proceedings. Accordingly, the Family Court proceedings are adjourned, to await the determination of those matters.

March 2019 - October 2020

The issue of the husband's competence is resolved. The Court makes orders programming the matter to a third Conciliation Conference in October 2019, on the

basis that the husband attend by telephone from prison.

In the meantime, the husband's criminal proceedings have been dealt with and the husband is convicted. The husband is sentenced to life imprisonment.

The parties seek an interim hearing to resolve various interim issues. The Court makes orders in April 2019 for the filing of documents and lists an interim hearing. The hearing is adjourned a several times at the request of the parties to enable them to file further documents and continue their negotiations. Eventually the parties ask the Court to adjourn their competing interim applications generally.

In October 2019, the wife and her solicitor and the husband's solicitor attend the third Conciliation Conference but are unable to reach agreement to resolve the matter. However, they agree to participate in a further conference to continue the negotiations. The Court lists a fourth Conciliation Conference to take place in April 2020. The Court also makes standard orders at the conclusion of the Conference to include the proceedings in the Defended List and to progress the matter to a Readiness Hearing.

*The **Defended List** is a list of all matters awaiting the allocation of a trial date. The Court will make a raft of procedural orders when adding a matter to the Defended List, including requiring the parties to file various documents for trial.*

In April 2020, the parties jointly request the Court to vacate the Conciliation Conference in April 2020 and the Readiness Hearing in July 2020. Instead, they jointly seek a direction hearing in July 2020. The Court makes orders in the terms requested by the parties. At the directions hearing, at the request of the parties, the Court makes an order for the parties and their lawyers to attend a "shuttle" Pre-Trial Conference in October 2020.

*A **Pre-Trial Conference** is a full-day facilitated mediation conducted by a Registrar. The Registrar cannot provide legal advice to parties, but they can discuss legal principles applied by the Court and explore possible options to resolve any disputes. The Registrar will conduct pre-mediation interviews with each*

*party separately before commencing the Conference. During a **shuttle conference**, the parties remain completely separated from each other and do not encounter each other.*

October 2020 - January 2021

The parties and their respective lawyers attend a "shuttle" Pre-Trial Conference with a Registrar in October 2020 but are unable to reach agreement to finally resolve the proceedings. At the next court hearing, at the request of the parties, the matter is programmed to a further "shuttle" Pre-Trial Conference.

At the further "shuttle" Pre-Trial Conference in January 2021, the parties were able to reach agreement about some issues, but not a final agreement.

April 2021

The Court makes orders by consent appointing a Single Expert Witness to prepare valuation reports in relation to specific assets of the parties.

*The Court may appoint a **Single Expert Witness** to provide expert evidence in relation to an issue in the case. The Court may appoint a Single Expert Witness on its own initiative or on application by a party. In a financial case, property valuers and financial consultants are often appointed as Single Experts.*

July 2021

The parties attend a Readiness Hearing. Neither the husband nor the wife have fully complied with the orders requiring them to file their trial documents. Orders are made granting the parties an extension of time in which to file their outstanding trial documents. The Court also makes orders direct listing the matter to trial.

December 2021

The matter proceeds to a two day trial. At the conclusion of the trial, the parties request the judge notify them when she is about to hand down judgment. In February 2022 the judge notifies the parties in writing that she is ready to hand down judgment. The parties then request the judge to delay the delivery of the judgment until after settlement of the sale of an asset owned by the wife.

May 2022 - July 2022

In May 2022, the Court receives notice from the parties that the

settlement has been completed and they request that the trial judge proceed to deliver judgment. The judge issues the written judgment and relists the matter in June 2022 to make final orders. At the hearing, the parties seek the matter be adjourned to enable the parties to finalise a joint Minute of Final Orders pursuant to judgment. In July 2022 the parties file the joint Minute and the Court then makes final orders.

APPEALS

There are different appeal processes depending on:

- Whether state or federal jurisdiction is being exercised;
- Whether the decision being appealed was final or interlocutory; and
- Whether the said decision was made by a judge, family law magistrate or other magistrate.

The Federal Circuit and Family Court of Australia (Division 1) (FCFCoA) hears appeals from judges and family law magistrates exercising federal family law jurisdiction, that is, pursuant to the *Family Law Act 1975* (Cth). Information in relation to appeals to the FCFCoA is available at: www.fccoa.gov.au.

In relation to the exercise of non-federal family law jurisdiction that is, pursuant to the *Family Court Act 1997* (WA), the Court of Appeal of the Supreme Court of Western Australia hears appeals from judges, and appeals concerning final orders made by family law magistrates. Information in relation to appeals to the Court of Appeal of the Supreme Court of Western Australia is available at: www.supremecourt.wa.gov.au.

All appeals filed in Western Australia against a decision of a magistrate exercising non-federal jurisdiction, or an

interlocutory decision of a family law magistrate exercising non-federal jurisdiction are heard by a judge of the Court.

In 2022, there was one appeal application filed in the Court seeking leave to appeal interlocutory orders of a family law magistrate. There were also two applications filed seeking leave to extend the time in which to file an appeal application. Of the appeal applications (including applications seeking to extend the time in which to file an appeal application) filed in 2022 or previous years, six applications were finalised in the year. Four matters were discontinued or dismissed, after a hearing. In one matter, leave to appeal was granted, however the appeal was subsequently dismissed. In the final matter, the time in which the party had to file their appeal application was extended, leave to appeal was granted, the appeal allowed and the matter remitted for rehearing by a magistrate other than the primary magistrate.



COUNSELLING AND CONSULTANCY SERVICE

The Family Court Counselling and Consultancy Service (FCCCS) is involved in Family Court child-related proceedings. A FCCCS Family Consultant usually attends the Child-Related Proceedings List (CRP List) which is the first hearing for most parenting matters. As part of this process, the Family Consultant may carry out a preliminary assessment and provide the Family Law Magistrate with information about parenting queries and determine which cases may be appropriate for FCCCS involvement.

After the CRP List, a Family Consultant may provide further case management support, including convening and undertaking activities such as Case Assessment Conferences (CAC), Child Dispute Conferences (CDC), Child Inclusive Conferences and Family Reports. The aim is to help parents negotiate sustainable child-focused arrangements and address issues affecting their parenting.

To ensure consistent and timely service delivery, especially when managing and dealing with COVID-19 impacts, FCCCS has provided service by video or telephone.

In addition, given the changeover to ICMS as the Court's client record management system, some of the data is still undergoing some clean-up and correction. This means that the below data is best viewed as indicative, however, will continue to improve as corrections occur and there is less reliance on migrated data.

Family Consultant Events

FCCCS carried out 1,547 events in the 12 months to 31 December 2022. For the previous 12 months, FCCCS carried out 1,667 events. This is a minor variance and likely due to the COVID-19 impacts over 2022.

When a matter has been referred to FCCCS for further assessment, the median weeks for a conference appointment to be made is ten weeks.

Risks Identified at Family Consultant Events

When undertaking assessments, the Family Consultant identifies and assesses a number of risks such as family and domestic violence, child abuse, alcohol and/or substance abuse and mental health. Assessing the nature and type of risks presenting in families is a critical early intervention focus.

The following outlines the risks identified by a Family Consultant during 2022 for each event undertaken:

Family and domestic violence	61%
Alcohol and/or substance abuse	50%
Child abuse	47%
Mental health	47%.

Statistical Note

There is a noticeable difference in the data reported in the 2020 Annual Review compared to the 2021 and 2022 Annual Reviews. This can be attributed to the changes in how these risks are recorded on the ICMS case management system.

OUR SERVICES

Information Sessions and Tours

The Walk in Their Shoes tour offers an opportunity for participants from a wide range of government and not-for-profit agencies, including the WA Police Force, the Department of Communities, Legal Aid WA, and family law support workers to learn more about the Court process and the complexities facing a self-represented litigant. The tour is a joint initiative between the Court, Legal Aid WA and the WA Family Pathways Network, with the administration undertaken by WA Family Pathways. These tours were ceased in view of COVID-19, however, have since resumed.

Website and Publications

The Court's website continues to be an effective means of providing information to customers and Court users, including legal practitioners.

The website offers a range of information, including Court listings, procedural advice, links to legislation, anonymised judgments, access to forms, and links to outside agencies where clients can obtain further assistance.

Regular review and updates of the content occurs to ensure any information is current and up to date.

Registry and Call Centre Services

The Court has a self-service kiosk area where there are Customer Service Officers in attendance to assist with the upload of documents onto the e-Courts Portal. The service provides the opportunity for parties to e-lodge applications and documents, view the Court's website and have access to other information resources online. The computers and printers in the self-service kiosk have been upgraded and increased in number to provide greater access to this service.

Information Technology

During the year Court rooms and conference rooms were upgraded to provide the ability for the attendance of hearings and conferences electronically when permitted by the Court.

Child-Minding Service

A crèche service is offered for clients attending Court or who have an appointment with a Family Consultant.

Legal Aid WA Family Court Services

Legal Aid WA continues to provide duty lawyer services to the Court's clients on site. Services include information; legal advice and representation; assistance with preparation of urgent Court documents; and referral to Family Dispute Resolution and non-legal support services.

Legal Aid WA also provides Family Advocacy and Support Services (FASS) which are specialist legal and social support services for families experiencing family violence. These services are also provided to support clients attending the Court's regular circuits in regional locations. Clients were referred to Legal Aid WA by judicial officers, family consultants and registry staff.

In the 2022 calendar year, the provision of services was again impacted by the COVID-19 pandemic due to reduced numbers of in-person attendances at the Court.

A total of 3,699 occasions of service were provided as follows:

- Duty Lawyer - 1,640
- Social Support - 694
- Information and/or referral to other services (including non-legal) -1,365

The Court is most grateful for the excellent service provided by the dedicated staff of Legal Aid WA.

Justices of the Peace

Justices of the Peace are volunteers who attend the Court to witness affidavits and other Court documents. The Court is also most grateful for the excellent service provided by the small team of dedicated JP's who attend at the Family Court.

FUTURE INITIATIVES

Information Sharing

The Court has continued consultation with the Western Australian Department of Justice, various State government agencies and family law sector organisations, together with the Commonwealth Attorney General's Department, in relation to enhancing information sharing protocols and arrangements. In addition to this, the Court will continue to seek feedback from the legal community and court users in relation to enhancements to the Western Australian e-Courts portal and further improve functionality to automate the sharing of information between the Court and agencies in relation to family court proceedings.

System and Process

The Court continues to work in partnership with the Courts Technology Group to identify further improvements to the State e-courts portal and ICMS case management system.

The Court continues to refine internal processes, including improvements to the Court's website which will assist in making it easier for court users to lodge applications and documents with the Court.

Accommodation

The Court will construct an additional court room next year on Level 4 of the Commonwealth Law Courts Building. This will be a joint project with the Federal Court of Australia who will also be constructing court rooms in the vacant area.

The Court continues to consider options for additional court rooms in the building.

Statistical Note

Variances may be seen in some figures in this review compared with those which have been published in previous annual reviews. This is due primarily to the Court's housekeeping practices to ensure the accuracy of retrospective data, the ongoing refinement of the reports, and the underlying statistical model. Explanations for variances are provided where the revised historical figures differ significantly from those previously reported.

FAMILY COURT OF WESTERN AUSTRALIA COMMITTEES 2022

Board of Management
Case Management / Rules Committee
Continuing Professional Education Committee
Indigenous Committee
Occupational Health and Safety Committee
Security and Violence Committee
Social and Wellness Committee

COMMITTEES INVOLVING EXTERNAL AGENCIES

CHIEF JUDGE'S CONSULTATIVE MEETING

Representatives from:

- FCWA and FCCCS
- Family Law Practitioners' Association

FCWA / DOC / LAWYER PROTOCOLS MEETING

Representatives from:

- FCWA and FCCCS
- Legal Aid WA
- Department of Communities

LEGAL AID WA FAMILY COURT SERVICES USER GROUP

Representatives from:

- Legal Aid WA
- FCWA and FCCCS
- Department of Communities

FCWA REFERENCE GROUP

Representatives from:

- FCWA and FCCCS
- Aboriginal Legal Service
- Aboriginal Family Law Service
- Anglicare
- ARCS Adoption Research and Counselling Service
- Centrecare/WAFLPN
- Centre for Women's Safety and Wellbeing
- Child and Adolescent Health Service
- Children's Court of Western Australia
- Citizen's Advice Bureau
- Communicare
- Community Legal Centres Association
- Department of Communities
- Department of Education
- Family Law Practitioners' Association
- Legal Aid WA
- Relationships Australia
- WA Police
- WA Family Law Pathways Network



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