



FAMILY COURT OF  
WESTERN AUSTRALIA

Family Court of Western Australia  
**Annual Review**

2020



# CONTENTS PAGE

From the Chief Judge .....	1
Jurisdiction .....	4
Area of Service .....	4
Our Budget .....	4
Our Judiciary .....	4
Our People .....	4
Workload Summary .....	4
New Workload .....	5
Active Workload .....	5
Court Performance .....	6
Time to Trial Case Study .....	8
Appeals .....	12
Counselling and Consultancy Service .....	13
Our Services .....	14
Key Events and Future Directions .....	15

---

# 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 2020.

## The Court's response to the COVID-19 pandemic and impact on the Court's workload

In March 2020, the Court implemented its COVID-19 pandemic response plan, to ensure the continuity of its services to the Western Australian community. The plan was informed by expert advice provided to all WA courts and tribunals, including by the WA Health Department and the WA Department of Justice. The various heads of jurisdiction also liaised on a regular basis throughout 2020, to ensure a consistent and measured response.

The Court's plan recognises that:

- It is vital that the Court is able to implement sustainable measures to mitigate the risks of COVID-19 to its judicial officers, staff and court users.
- The Court provides essential services to the Western Australian community, which must continue even though the risks cannot be entirely eliminated.
- The Court currently has a very limited capacity for its judicial officers and staff to work remotely, particularly given that it is still primarily reliant upon paper court files, rather than electronic court files.

In March 2020, the Court took a number of steps in accordance with its plan to mitigate the risks to its business operations, judicial officers, staff, and court users. This included:

- Reducing contact between staff and members of the public, including by: facilitating attendances by telephone and other electronic means, encouraging physical distancing in the court precincts, suspending personal front counter services and instead, increasing the Court's capacity to provide these services by other means, such as via the Court's e-filing and telephone helpline functions.
- Regularly communicating with court users about the Court's response to COVID-19, by publishing Public Notices and providing regular updates, including via the Court's website.

In March 2020, the Court experienced a significant increase in enquiries to its telephone helpline in relation to COVID-19 related issues, including whether parties were still required to comply with parenting orders in the light of the pandemic. The Court took a number of steps in response, such as providing additional resources to the helpline staff to assist them to respond to enquiries, providing updates to the legal profession and regularly updating the Court's website with relevant information and additional resources.

In March and April 2020, the Court experienced a dip in filings of final order applications, divorce applications and consent order applications. However, across the entire 2020 calendar year, the Court experienced a continuation of the same trends that were already evident in 2019:

- Final order applications, applications in a case, contravention applications and appeals all trended down.
- Divorce applications and consent order applications trended up.

The pandemic resulted in a reduction in the number of defended trials heard in 2020, particularly those cases in which one or more of the parties involved were unable to return to Western Australia for the trial (and the case was not suitable to be conducted electronically). However, overall in 2020 the Court largely continued to deliver its usual services, albeit with some necessary adjustments in accordance with its pandemic response plan.

## Accommodation

In the 2019 Annual Review, I reported that the Court made some progress with its accommodation issues. In 2020, the Court completed the construction of a mediation suite comprising two conference rooms and separate "break-out" rooms, by re-purposing some of its existing space on Level 4. In addition, three additional meeting rooms were constructed within the Family Court Counselling and Consultancy Service's existing space on Level 3.

The Court continues to explore options to increase the number of courtrooms and other facilities available to it within the Peter Durack Commonwealth Courts Building, and to seek the necessary resources to reduce delays in the allocation of hearing dates.

## Mediation Pilot Program

In the 2019 Annual Review, I reported that the Court had commenced a Mediation Pilot program. The Pilot offered existing litigants in the Court the opportunity to participate in a one day confidential mediation (called a Pre-Trial Conference) with an experienced Registrar to see whether their dispute could be settled or narrowed prior to trial. The Pilot, which ran from 15 July 2019 to 30 June 2020, was a great success. By the end of the Pilot, 278 mediations had been completed. Of these, 52% settled all outstanding issues and a further 23% partially settled, saving an estimated 334 days of judicial sitting time and significant legal costs to the parties. Copies of the Mediation Pilot Interim Report and Final Report are available on the Court's website.

## Judicial appointments, retirements and milestones

The success of the Mediation Pilot led to the very welcome appointments of three additional Registrars on a permanent basis: Registrars Simon French, Megan Wadsworth and Samantha Padfield. Prior to joining the Court, Registrar French had extensive family law experience, including as an accredited arbitrator and mediator. Registrars Wadsworth and Padfield also had significant family law experience prior to joining the Court, including as Independent Children’s Lawyers. These permanent appointments will enable the Court to offer increased in-court mediation services, particularly to self-represented litigants. Looking forward, in 2021, in addition to the Court’s usual listings of approximately 500 conciliation conferences, the Court will have the capacity to offer approximately 800 full-day and half-day mediation conferences.

In 2020, Registrars Jocelyn Connick, Andrzej Meysner and Megan Wadsworth all successfully completed their training to become accredited mediators, further enhancing their ability to assist litigants to resolve their matters prior to trial. I congratulate Registrars Connick, Meysner and Wadsworth on their efforts to increase their already significant skill sets, to the benefit of litigants.

In October 2020, Registrar Thomas Kuurstra retired as a Registrar of the Court. Registrar Kuurstra made a valuable contribution to the Court’s operations, including serving a period as Appeals Registrar. I thank Registrar Kuurstra for his years of service and wish him a long and happy retirement.

## Increasing complexity of parenting cases in the last 10 years

2020 provides an opportune time to reflect on some significant changes in the Court’s workload over the past 10 years. Final order applications (and their related applications in a case) have always been the most resource intensive application types from the Court’s point of view. The filing of final order applications has only increased marginally over the past 10 years: by 2%. The number of final order applications involving financial only issues decreased by 18% (from 1,034 in 2011 to 850 in 2020). On the other hand, the number of final order applications involving parenting only issues increased by 21% (from 1,360 in 2011 to 1,646 in 2020).

Participation by litigants in family dispute resolution (FDR) prior to commencing parenting proceedings has historically always been very low. Over the past 10 years, the percentage of parenting cases in which both parties attended FDR before starting court proceedings has ranged between 13% and 17%. A significant proportion of litigants in the Court also continue to be self-represented. Over the past 10 years, the percentage of applicants who have been self-represented at their last court event in parenting-only cases has ranged between 42% and 54%. The percentage of respondents who have similarly been self-represented ranged between 50% and 66%. Unsurprisingly, self-represented litigants often find it very challenging to understand the legal framework and deal with court processes.

In recent years, the Court has devoted considerable time and resources to assisting self-represented litigants, including significantly improving the Court’s website, creating additional resource materials, and giving priority to self-represented litigants in the allocation of in-court mediation services.

Not only has the number of parenting-only cases significantly increased over the past 10 years, there are also a number of markers which indicate that the complexity of these cases has also increased, for example, as a result of family violence and other risk factors.

- Firstly, there has been an increase of nearly 134% in the lodgement of Notices of Family Violence / Child Abuse (or Risk) over the past 10 years: from 380 in 2011 to 889 in 2020. These notices are only filed in circumstances where one or both parties allege that family violence or child abuse has occurred or is at risk of occurring.
- Secondly, there has been a significant increase in the risks identified by Family Consultants in Case Assessment Conferences over the past 10 years, as the following table illustrates:

Risk identified	2011 (914 CACs)	2020 (1,146 CACs)
Child abuse	37%	65%
Family violence	60%	82%
Substance abuse	46%	68%
Mental health	40%	63%

- Finally, there has been a significant increase over the past 10 years in the proportion of parenting cases in which an Independent Children’s Lawyer (ICL) has been appointed, without the criteria for such appointments having expanded, as the following table illustrates. The appointment of an ICL is a marker of complexity in parenting cases, as such appointments are commonly made in disputes involving difficult and complex issues, or a high level of conflict and dispute between the parents, or where there are allegations of (1) family violence, (2) substance abuse, (3) serious mental health issues, or (4) allegations of abuse or neglect in relation to children.

Year	Number of cases where ICL appointed	Percentage
2011	608 out of a total of 2,296 parenting cases on hand	26%
2020	1,422 out of a total of 3,125 parenting cases on hand	46%

The issue of complexity is an important one, as is its inter-relationship with delays in time to trial. For example, as was identified in the 2019 Annual Report, when comparing parenting-only applications based on the involvement of an ICL, those with an ICL had a much greater median time to trial, than did those without one. This continues to be the case in 2020.

The Court continues to explore innovations to further improve its clearance rate and reduce the delays and costs experienced by litigants. The appointment of three additional registrars in 2020 has greatly assisted the Court by enabling the expansion of in-court mediation services. However, registrars cannot hear and determine the increasing numbers of complex parenting cases that come before the Court - instead, experienced family law magistrates and judges are needed to undertake this vital and difficult work. Ultimately, in the absence of additional

appointments of such judicial officers, further delays and costs to litigants are inevitable.

### Vale former Chief Judge Stephen Thackray

The Court was very saddened by the sudden death of the Honourable Stephen Thackray in March 2020, at the age of 65. In his 22 years of service as a judicial officer, including as the fourth Chief Judge of the Court and the Head of the Appeals Division of the Family Court of Australia, Stephen made an outstanding contribution in the area of family law. He was recognised as a leading jurist, both as a judge at first instance and as an appellate judge and was renowned as a skilled judicial administrator and leader of the Court.

After his retirement in January 2019, Stephen maintained an active involvement in the family law arena, including as a mediator and mentor. He is survived by his wife Janet, their children Amanda and James, and daughter-in-law Leandri.

### Vale former Chief Judge Ian McCall

The Court was also very saddened by the death of the Honourable Ian McCall in November 2020, just shy of his 94<sup>th</sup> birthday. Ian was an inaugural judge of the Court and later its second Chief Judge. He also served on the Appeals Division of the Family Court of Australia.

Before joining the Court, Ian had distinguished careers, firstly in private legal practice and then in academia: particularly in the fields of family law and private international law. Ian made a very substantial contribution to the development and reform of family law in Australia and was widely recognised as one of the leading judges in Australia in the family law field. He is survived by his wife Yvonne, their children Catherine, Christine and Louisa, and their families.

### Justice 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. In 2020, and notwithstanding significant disruption to their services caused by the pandemic, the Justices of the Peace continued to witness documents for clients. 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 litigants who use the Court's services.

**Justice Gail Sutherland**  
**Chief Judge**  
**Family Court of Western Australia**

## JURISDICTION

The Court was established in 1976 as a state court exercising both state and federal jurisdiction. The Court comprises judges, 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 circuit to the same centres as required, hearing defended matters. Bunbury continues to be the busiest regional circuit, accounting for over 58% of circuit hearings held.

## 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	2,649	2,769
Applications for Interim Orders	4,786	5,255
Divorce Applications	5,926	6,008
Applications for Consent Orders	2,547	2,616
<b>Total</b>	<b>15,908</b>	<b>16,648</b>

## OUR JUDICIARY

As at 31 December 2020

### Chief Judge

The Honourable Justice Gail Sutherland

### Judges

The Honourable Justice Simon Moncrieff  
The Honourable Justice Susan Duncanson  
The Honourable Justice Richard O'Brien  
The Honourable Justice Ciara Tyson

### Magistrates

Magistrate Annette Andrews  
Magistrate Lisa Stewart  
Magistrate Francine Walter  
Magistrate Mark Calverley  
Magistrate Colin Kaeser  
Magistrate Catherine Osborn  
Magistrate Eric Martino  
Magistrate Paul Glass  
Magistrate Neil Anderson  
Magistrate Andrew Mackey

### Principal Registrar

Principal Registrar Leonie Forrest

### Registrars

Registrar Andrzej Meysner  
Registrar Jocelyn Connick  
Registrar Simon French  
Registrar Megan Wadsworth  
Registrar Samantha Padfield

## OUR PEOPLE

The approved FTE (128.1) for 2020 was allocated as follows:

5	Judges
10	Magistrates
5.40	Registrars
88.10	Registry and support staff
19.60	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 8% for 2020 compared to 2019.

Parenting-only orders continued to be the most commonly sought order when commencing an application for final orders, accounting for 62% of applications lodged. 1,646 of this application type were lodged in 2020, a decrease of 6% on 2019. 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 2020, both parties attended FDR in only 16% 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

	2020	Change from 2019	Change from 2016
Final Order	2,649	-8%	-14%
Interim Order	4,786	-5%	-9%
Divorce	5,926	9%	8%
Consent Order	2,547	11%	7%

## ACTIVE WORKLOAD

Applications that remain on hand at the end of the year constitute the Court's active workload. Changes in final and interim applications on hand are of particular interest, as these are the most resource intensive of the Court's primary application types. Final order applications on hand reduced by 3%, driven primarily by a 14% reduction in financial-only applications on hand.

### Other Applications

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

During 2020 the Court received:

- 5,926 divorce applications, an increase of 9% from 2019; and
- 2,547 consent order applications, an increase of 11% from 2019. Unlike applications for final orders, which have a high proportion of parenting issues, consent orders are predominantly sought to formalise financial agreements. This year, 86% 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 are able to 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

		2020	2019
Final Order	Parenting	39%	47%
	Financial	21%	24%
	Parenting and Financial	28%	32%
Consent Order	Parenting	51%	47%
	Financial	31%	37%
	Parenting and Financial	35%	42%
Divorce		78%	79%

TABLE 3 - Primary Applications on Hand

	2020	Change from 2019	Change from 2016
Final Order	4,230	-3%	-5%
Interim Order	4,787	-9%	-2%
Divorce	1,221	-6%	-29%
Consent Order	254	-22%	-39%

# 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 105% for applications for final orders, a slight increase from the 104% clearance rate achieved in 2019.

## 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 92% of these applications finalised by the Court before the matter reached trial.

The KPI for 2020 stood at 47 weeks against the target of 27 weeks. This is consistent with the 2019 result. The median for parenting-only matters was 51 weeks, compared to 39 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 KPI Finalisation

	2020	Change from 2019	Change from 2016	Change from 2011
Parenting	51	-2%	16%	122%
Financial	39	-3%	18%	39%
Overall	47	0%	21%	74%

TABLE 5 - Count of KPI Finalisations

	2020	Change from 2019	Change from 2016	Change from 2011
Parenting	1,268	-16%	9%	100%
Financial	818	-6%	15%	35%
Overall	2,338	-10%	12%	63%

### 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 130.5 weeks. In parenting-only matters, the median time was 127.5 weeks, while the median time for financial-only matters was 119 weeks.

TABLE 6 - Median Weeks to Trial

	2020	Change from 2019	Change from 2016
Parenting	127.5	25%	40%
Financial	119	27%	55%
Overall	130.5	29%	49%

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.

While anyone taking part in the proceedings can ask the Court to appoint an ICL, the Court decides if an ICL will be appointed.

When comparing parenting only applications based on the involvement of an ICL, those with an ICL had a median time to trial of 153 weeks, 49 weeks higher than those without one. ICL matters accounted for 34% of all "time to trial" matters in 2020, compared to 24% in 2019.

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.

Based on these internal targets:

- 10% of parenting-only matters reached trial within target, compared to 8% in 2019; and
- 2% of financial-only matters reached trial within target, compared to 6% in 2019.

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:

- 44 applications were made for adoption and a further 19 made for ancillary applications under the *Adoption Act 1994* (WA). In total, 40 adoption-related orders were made;
- 433 applications for Telecommunication Interception Warrants; including Stored Communication Warrants and Surveillance Device Warrants, were made. All judges have volunteered to deal with these applications, which often need to be heard on an urgent basis after hours; and
- Due to the COVID-19 pandemic no watch list orders were made following after-hours referrals from Crisis Care.

# TIME TO TRIAL CASE STUDY

The following two case studies have been selected to demonstrate the impact of complexity on time to trial in parenting proceedings. **Case Study 1** is an example of a less complex parenting matter, concerning interstate relocation that proceeded to trial in 51 weeks. In this case, the Court did not appoint an Independent Children's Lawyer. **Case Study 2** involved allegations of sexual abuse which were ultimately found to be false. The proceedings commenced in 2011 and proceeded to the first trial in 2016, after which only interim orders were made. The family then participated in an intensive reunification program. The second trial then took place in 2020, following which final orders were made. Case Study 2 is an example of a more complex parenting matter in which the Court appointed an Independent Children's Lawyer.

## Case Study 1

**Note:** both parties were legally represented throughout the proceedings.

### August 2019

The parties separated. The father initially withheld the child (who was less than six months old at the time) for two days. The mother was able to arrange for the child to come back into her care with the assistance of the WA Police after obtaining an interim, *ex parte* Family Violence Restraining Order against the father.

In Western Australia, **Family Violence Restraining Orders** are made under the *Restraining Orders Act 1997* (WA). Pursuant to s 68Q of the *Family Law Act 1975* (Cth) or s 175 of the *Family Court Act 1997* (WA), an order made by the Family Court for a child to spend time with a person overrides an earlier Family Violence Restraining Order to the extent of any inconsistency.

The father then commenced parenting proceedings in the Court on 19 August 2019, seeking final orders for the child to live with the parties on a week-about basis.

In his application, the father asserted that the mother would unilaterally relocate with the child to the Eastern States. Accordingly, the Court listed the first hearing urgently on 22 August 2019.

At the first hearing the parties reached agreement about interim parenting arrangements for the child. The child recommenced spending time with the father shortly thereafter.

### October 2019 - December 2019

The mother filed an interim application to relocate with the child to the Eastern States. The mother's application was listed for hearing in early December 2019. By the time of the interim hearing the father had failed to file his responding documents. The Magistrate ordered the father to file his

responding documents, and otherwise placed the matter in the complex track with a request that the Judge Manager consider the further listing of the mother's interim relocation application.

The Court's Case Management Guidelines provide that certain matters will be allocated to the **complex track** and be managed by a Judge where it appears: (a) the case involves international or interstate relocation of a child; (b) the case involves international issues such as jurisdiction; (c) the case involves familicide or homicide; (d) a Magistrate does not have jurisdiction to hear the case; (e) the estimated hearing time for the case is 6 days or more; or; (f) the case involves complicated issues of fact, law or evidentiary material which would benefit from individual case management by a Judge.

### January 2020

The Judge Manager directed that the matter be expedited to trial, rather than listing the mother's relocation application to an interim hearing.

### April 2020

The matter was identified by the Court for inclusion in the Pre-Trial Conference program, and listed to a Conference in June 2020.

Since July 2019, the Family Court has offered **Pre-Trial Conferences**, which are a full-day facilitated mediation with a Registrar..

### May 2020

The matter was included in the May 2020 callover, and was allocated a three day trial in August 2020.

The **callover** is a procedural hearing at which the court allocates trial dates.

### June 2020

The parties participated in a Pre-Trial Conference with a Registrar. Although the parties were unable to reach agreement

about the interstate relocation, they were able to reach agreement about a number of other issues, including: (1) that the parties have equal shared parental responsibility for the child; (2) the child will live with the mother; (3) an extension to the child's time with the father on an interim basis; and (4) that the parties be able to speak with each other directly about the child, rather than needing to communicate only in writing.

### August 2020

The matter proceeded to trial over four days.

### September 2020

Judgment was delivered, and final orders were made permitting the mother to relocate with the child to the Eastern States.

**Note:** Judgment in this matter has been anonymised and published via the eCourts Portal as: *Kiley and Tapping* [2020] FCWA 175.

## Case Study 2

**Note:** over these long-running proceedings, the parties were represented by solicitors / counsel at times, and were also self-represented litigants for extended periods. The children were represented by an Independent Children's Lawyer (ICL).

### November 2011

The parties separated. At the time, the children were aged nearly three and nearly one. The mother did not facilitate the children spending time with the father following separation.

### December 2011 - February 2012

The father commenced parenting proceedings in the Court. The first hearing took place in January 2012. The mother did not participate. The mother also failed to participate in the Case Assessment Conference.

At the first court event, if risk issues are identified, the parties will be

directed to attend a **Case Assessment Conference**. The conference is conducted outside the courtroom; however, the details of the conference are provided in a written report to the judicial officer. The purpose of the conference is to identify the issues in dispute, allow the parties to negotiate, and formulate a case management plan.

The mother participated in the second hearing in February 2012. The Court made orders by consent for the children to spend time with the father on weekends.

#### **April 2012 - June 2012**

The mother alleged the father sexually abused the eldest child. The mother stopped facilitating the children spending time with the father.

The eldest child was interviewed by CAIT three times: twice in May 2012 and once in June 2012.

**ChildFIRST Assessment & Interview Team (CAIT)** is a co located unit between the Department of Communities (the "Department") and the WA Police Child Abuse Squad. The Unit is responsible for assessing sexual and physical abuse referrals, and conducting forensic interviews with children and vulnerable adults.

In early June 2012: (1) the father filed a Form 18 Contravention Application about the mother's refusal to facilitate the children spending time with him; (2) the mother wrote to the court raising allegations of sexual abuse.

On 13 June 2012, the Court made orders suspending the children's time with the father. Orders were also made for the children to be represented by an ICL, and for the WA Police and the Department to provide information in relation to the family.

An **Independent Children's Lawyer (ICL)** is appointed by the court to represent the best interests of the child. There are guidelines that set out the circumstances in which an ICL might be appointed, such as cases involving high conflict or risk. The ICL might interview the child, but they do not have to follow the child's instructions and will form a view based on all the information available. Parties can speak to the ICL, but their conversations will not be confidential and may be reported back to the court.

The Court has the power to make an order requesting the WA Police and the Department to provide certain information in relation to parties, the children, and other persons of interest.

On 22 June 2012, the mother then filed a Form 4 Notice of Child Abuse or Family Violence (or Risk) making various allegations against the father, including sexual abuse.

Under family law legislation, a party who alleges that a child has been abused or is at risk of being abused, must file a **Notice of Child Abuse or Family Violence (or Risk)**, setting out particulars of the alleged abuse (or risk). The Court in turn provides a copy of that Notice to the relevant child protection authority, who conduct an assessment of the allegations and determine whether it is necessary to intervene in the proceedings.

#### **July 2012**

The father attended a Child Dispute Conference with the Family Consultant. The mother did not attend.

A **Child Dispute Conference** is a reportable conference conducted with a family consultant. Such conferences may be ordered by the court in circumstances where, for example, an interim agreement has been reached between the parties and the consultant wishes to assess how the arrangements are going. In this case, a Child Dispute Conference was ordered because the mother failed to participate in the Case Assessment Conference.

On 16 July 2012, orders were made for the children to spend time with a paternal family member who was terminally ill. Orders were also made granting the ICL leave to issue subpoenas to various third parties, including (among others) the children's school, WA Police, the Department and various medical providers. The parties were ordered to attend a further Child Dispute Conference.

In late July 2012, the Department responded to the mother's Form 4, concluding there was no evidence to suggest the children had been harmed by the father (whether sexually or otherwise), and that the Child Abuse Squad (WA Police) were of the opinion that there was no case to answer. The Department advised that it did

not intend to intervene in the Family Court proceedings.

#### **August 2012**

Both the mother and father attended a Child Dispute Conference with the Family Consultant. The Consultant noted that both parties were fixed in their positions, and a judicial decision may be required in order to resolve the matter.

In late August 2012, the mother filed her Form 1A Response and supporting documents. The mother sought orders that she have sole parental responsibility, that the children live with the mother and spend no time with the father.

#### **December 2012**

Orders were made by consent for the appointment of a Single Expert to prepare a report in response to agreed terms of reference. The proceedings were adjourned until after the publication of the Expert's report.

The Court may appoint a **Single Expert**. The Single Expert is a person with specialised knowledge who is qualified by training, study or experience to provide an expert opinion and help the judicial officer decide the issues in dispute. The Court will generally allow evidence from only one expert in relation to a specific issue. In a parenting case, social workers, psychologists and psychiatrists are often appointed as Single Experts.

#### **March 2013**

The Single Expert filed their report.

#### **April 2013 - August 2013**

Orders were made for the parties to file documents for an interim hearing as to the whether the children should spend time with the father pending trial.

The interim hearing was listed to take place in late June 2013, but was delayed to early July 2013 to afford the parties additional time to file affidavit material. The Magistrate reserved judgment following the hearing.

A judicial officer has the discretion to **reserve their judgment** following a hearing, and deliver reasons at a later date. This provides the judicial officer with the opportunity to further consider the evidence and the parties' submissions, before delivering judgment.

In August 2013, the Magistrate delivered judgment, and made orders for the children to spend time with the father, supervised by a professional agency.

#### **April 2014 - June 2014**

Supervised time with the father did not proceed as ordered. The mother alleged that the children would not hand over, and were distressed. The father alleged that the mother was sabotaging the process. Further orders were made in May 2014 and June 2014 in an attempt to facilitate supervised time, but to no avail.

#### **August 2014**

Orders were made by consent for the children to spend time with the paternal grandmother and the maternal grandmother. The mother was also ordered to obtain a mental health treatment plan for the eldest child, to enable him to attend upon a psychologist for counselling.

#### **March 2015**

Trial directions were made and a Readiness Hearing was listed for August 2015.

**Trial directions** (also referred to as programming orders) are a series of procedural orders made by the Court that require the parties to file various documents in preparation for Trial. Generally speaking, the Court requires the parties to have filed their trial documents prior to the Readiness Hearing. If the parties fail to file their Trial documents in time, the judicial officer presiding over the Readiness Hearing may refuse to place the matter in the callover for allocation of a trial date.

#### **August 2015**

By the time of the Readiness Hearing, the mother had still not filed her trial documents.

#### **February 2016**

The Single Expert filed an updated report.

#### **July 2016 - November 2016**

At the callover in July 2016, the matter was listed to a three day trial before a Magistrate, commencing on 30 August 2016. The trial did not proceed on that date, because both the ICL and Single Expert were unexpectedly unavailable.

The matter was re-listed to a trial commencing on 22 November 2016 instead. At the conclusion of the trial, the Magistrate reserved her judgment. However, orders were

made by consent for the eldest child to undergo an assessment for Autism Spectrum Disorder.

#### **March 2017 - May 2017**

The Magistrate published her reasons on 20 March 2017. The Magistrate found that the father had not sexually abused the eldest child, and did not pose a risk of harm to the children. By contrast, the Magistrate was satisfied that the mother had psychologically abused the children, including by fostering a false belief of sexual abuse. The Magistrate made only interim orders following trial, including for the parties to participate in an intensive family therapy process. The parties were given time to investigate the most appropriate form of therapy.

#### **June 2017 - April 2018**

The parties obtained a report from a psychologist who recommended the family participate in a particular intensive therapy program. The parties and the ICL agreed on that program, and orders were made accordingly. The program required the children to live with the father, and not spend time with the mother for a 90 day period. The father was also granted sole parental responsibility for the children on an interim basis.

The children commenced spending supervised time with the mother in February 2018. The Court held hearings in February and April 2018 to monitor progress. The intensive therapy service provider and supervision service both prepared reports that were provided to the Court during this period.

#### **May 2018 - July 2018**

The mother filed a Form 2 Application, seeking orders for her time with the children to progress to unsupervised. An interim hearing was listed in July 2018. Following the interim hearing, the presiding Judge delivered *ex tempore* reasons for decision, and made orders on that day for the children's time with the mother to progress to unsupervised.

A judicial officer has the discretion to deliver oral reasons for decision immediately following a hearing. Where a judicial officer does so, this is called delivering *ex tempore* reasons.

Orders were also made for the Family Consultant to prepare a Family Report in relation to a

number of matters, including the children's wishes.

#### **October 2018**

The Family Consultant published the Family Report, having met with the parties and the children.

A **Family Report** is a document written by a Family Consultant, containing the Consultant's independent assessment of the issues in the case after meeting with the parents and the child(ren). The report may assist the judicial officer to determine the issues in dispute. It may also assist the parties to reach agreement.

#### **November 2018**

Orders were made by consent for the children to spend time with the mother over Christmas and during January school holidays. Orders were also made programming the matter to Trial.

#### **December 2018 - February 2019**

The mother filed a further Form 2 Application, seeking increased time with the children. The mother's application for more time was listed for an interim hearing in February 2019.

In January 2019, orders were made for the ICL to request a report from the therapist that worked with the family following the first trial.

At the interim hearing, orders were made increasing the children's time with the mother. The Readiness Hearing that was listed in April 2019 was vacated and re-listed to August 2019. The parties were given additional time to file their trial material.

#### **August 2019**

At the Readiness Hearing, the Court was advised that a new ICL had very recently been appointed. As a result, the ICL was not able to attend the Readiness Hearing. In the circumstances, the file was referred to the Chief Judge in Chambers for directions as to direct listing the trial, or inclusion of the matter in a callover.

#### **September 2019**

The proceedings were directlisted to a trial before the Chief Judge, commencing in February 2020.

#### **February 2020**

The parties filed their Papers for the Judge.

A template for the **Papers for the Judge** is available on the court's

website for both parenting and property matters. The Papers act as a case summary and are designed to highlight the issues that the judicial officer will need to consider.

The trial proceeded over three days in late February 2020. The mother was represented by counsel. The father was self-represented. The ICL appeared for the children.

### March 2020

The Chief Judge published reasons for decision on 11 March 2020. Final parenting orders were made pursuant to judgment on 24 March 2020, for (among other things) the parties to have equal shared parental responsibility for the children, for the children to live with the father, and spend time with the

mother each alternate weekend from after school on Friday to before school on Monday.

**Note:** judgment in respect of the 2020 Trial in this matter has been anonymised and published via the eCourts Portal as: *Willow and Maluca* [2020] FCWA 38.

# APPEALS

---

There are different appeal processes depending on:

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

The Full Court of the Family Court of Australia 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 Family Court of Australia is available at: [www.familycourt.gov.au](http://www.familycourt.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](http://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 2020, there were 15 appeal applications filed in the Court, 12 seeking leave to appeal interlocutory orders of family law magistrates, 1 application seeking leave to extend the time in which to appeal, 1 application seeking the costs related to an appeal application and 1 other application in an appeal. Of the appeal applications filed in 2020 or previous years, 14 applications were finalised in the year. Thirteen of those finalised in 2020 were discontinued or dismissed, with one allowed and remitted for rehearing.



# 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 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.

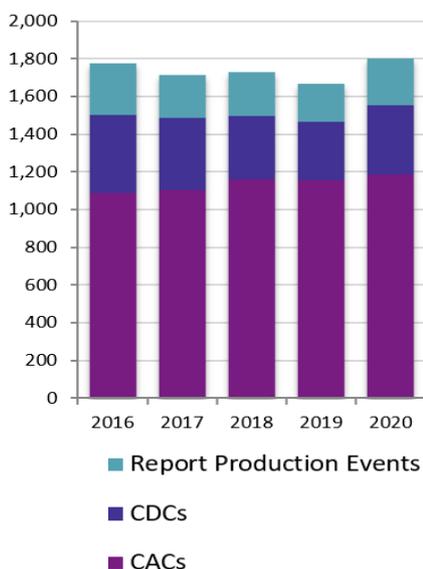
In the 2020 calendar year, the provision of FCCCS services were impacted by the COVID-19 pandemic. Fortunately, services were generally able to continue to be provided by video or telephone.

## Family Consultant Events

In 2020, FCCCS attended 1,828 CRP List hearings. For the previous year, there were 2,020 CRP List hearings.

In addition, FCCCS carried out 1,185 CACs (1,154 the previous year); 369 Child Dispute Conferences (310 the previous year) and 223 Family Reports (171 the previous year). It is noted the total number of these activities remains consistent from previous years.

GRAPH 1 - FCCCS out of Court events



As CACs represent the greatest proportion of FCCCS events, it is useful to note workload by way of the median weeks to CAC. At the end of 2020, it was six weeks; at the end of 2019, it was seven weeks.

## Risks Identified at CAC

In 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.

In 2020, the following list specifies the percentage of CACs in which a particular risk issue was identified by the Family Consultant:

- Family and domestic violence 82% (previous year was 81%)
- Alcohol and/or substance abuse 68% (previous year was 68%)
- Child abuse 65% (previous year was 65%)
- Mental health 63% (previous year was 62%)

## Stakeholder Relationships

The involvement and engagement of other stakeholders involved in parenting cases before the Court continues to be integral to ensuring good outcomes for children and their families.

The Department of Communities (Communities) is a key stakeholder within the Court and they have two staff co located. Previously, there was one staff member co-located, however the increase is the result of a new model that has been implemented by way of the Commonwealth's Department of the Attorney General. This model is being trialled across Australia for a period of three years.

The two Communities staff members co-located at the Court are available to work on matters in which a Notice of Child Abuse or Family Violence (or Risk) has been filed. Co-location better enables sharing of information and collaboration in the management of highly complex cases.

In 2020, the number of parenting applications where there was a Notice of Child Abuse or Family Violence (or Risk) lodged was 742. It was 688 in the previous year. In some instances, there is more than one form lodged per parenting application; therefore the total number of forms lodged in 2020 was 889 (up from 838 in the previous year).

# 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. A number of these tours did not proceed in 2020 due to the COVID-19 pandemic.

## 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

During the year the Court modified its face-to-face services in response to the COVID-19 pandemic. Procedural advice is now provided to customers by the Court's Call Centre service.

The Court has a self-service kiosk area where there is a Customer Service Officer in attendance to assist with the upload of documents onto the Commonwealth Courts Portal. The service provides the opportunity for parties to eLodge applications and documents, view the Court's website and have access to other information resources online.

## 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 2020 calendar year, the provision of services was impacted by the COVID-19 pandemic due to reduced numbers of in-person attendances at the Court.

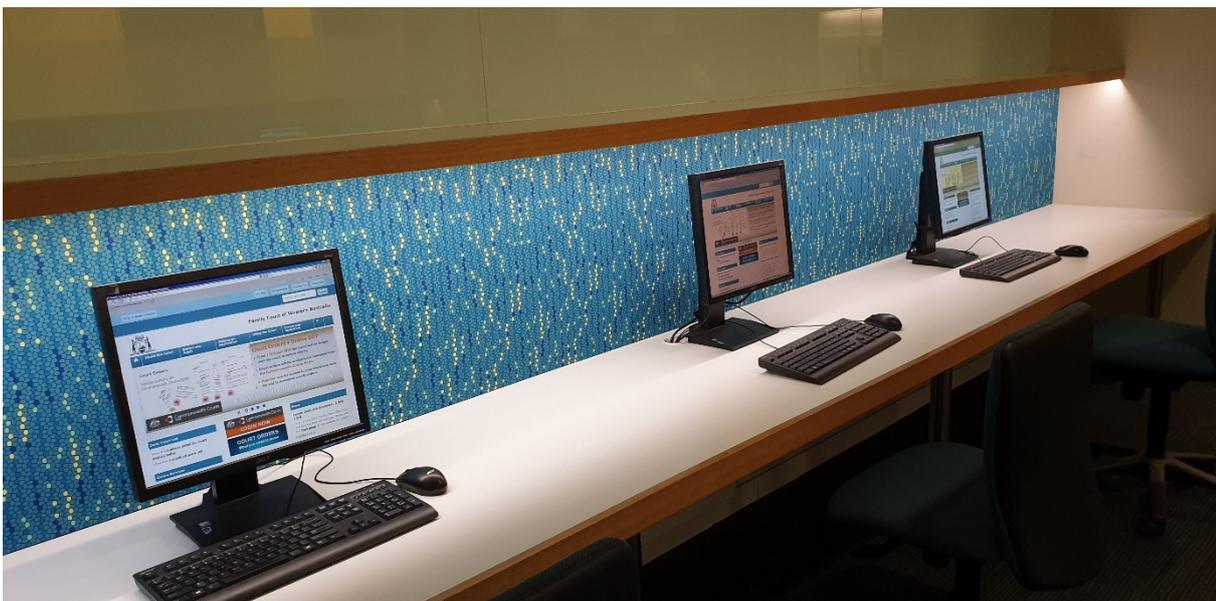
A total of 5,013 occasions of service were provided as follows:

- Duty Lawyer - 2,954
- Social Support - 512
- Information/referral to other services (including non-legal) - 1,547

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 carry out a range of important duties in the community. These include witnessing affidavits and other legal documents.



# KEY EVENTS AND FUTURE DIRECTIONS

---

## Digital Court Program

Most applications and documents can now be filed online with approximately 61% of final and interim order applications electronically filed, along with 81% of consent applications and 84% of divorce applications.

Parties who are registered for the portal have electronic access to their Court file, which includes any relevant court orders, details about parties, documents filed and court events.

Development of the WA State based Integrated Courts Management System and the WA Courts Portal to include the Court's requirements is well underway. It is hoped that the Court will move to the new system around August 2021. From the date of implementation the Court's paper court file will be replaced by an electronic court file.

Communication and information will be available prior to implementation of the new system.

### 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 2020

Board of Management  
Case Management / Rules Committee  
Continuing Professional Education Committee  
Indigenous Committee  
Library Committee  
Occupational Health and Safety Committee  
Post-Callover Committee  
Research 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

#### FAMILY LAW NETWORK

Representatives from:

- FCWA and FCCCS
- Numerous external agencies

#### FCWA / DCPFS / LAWA PROTOCOLS MEETING

Representatives from:

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

#### LEGAL AID WA FAMILY COURT SERVICES USER GROUP

Representatives from:

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

#### FCWA REFERENCE GROUP

Representatives from:

- FCWA and FCCCS
- Aboriginal Legal Service
- Aboriginal Family Law Service
- Anglicare
- Adoption Research and Counselling Service
- Centrecare
- 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 Force
- Women's Council Domestic and Family Violence
- Women and Newborn Health



FAMILY COURT OF WESTERN AUSTRALIA

150 Terrace Road, Perth WA 6000

Telephone: (08) 9224 8222

Facsimile: (08) 9224 8360

[www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au)