



FAMILY COURT OF
WESTERN AUSTRALIA

Family Court of Western Australia
Annual Review

2023

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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 2023.

Judicial appointments and retirements

Justice Steven Jones SC was appointed as a judge of the Court on 11 April 2023. His Honour received his dual commission as a judge of the Federal Circuit and Family Court of Australia (Division 1) on 12 April 2023. His Honour's appointment was made not only in a very timely manner, but in fact prior to the retirement of the judge he was replacing - Justice Simon Moncrieff.

Justice Simon Moncrieff retired as a judge of the Court and of the Federal Circuit and Family Court of Australia (Division 1) in May 2023. Justice Moncrieff was appointed as a judge of the Court in August 2009, and at the same time as a judge of the (then) Family Court of Australia. I thank Justice Moncrieff for his service to the Court and wish him a long, happy, and fulfilling retirement.

Magistrate Jocelyn Connick was appointed as a Family Law Magistrate, with effect from 30 October 2023. Magistrate Connick's appointment increased to 11, the number of full-time permanent family law magistrates. I am very grateful to Attorney General Quigley for the additional appointment, which has enabled the Court to allocate a magistrate to hear and determine trials on a full-time basis, whilst still leaving 10 magistrates to manage the heavy docket workload. Prior to her appointment, Magistrate Connick was a Registrar of the Court.

In September 2023, **Registrar Genevieve Smit and Registrar Samantha Craig** were appointed as permanent Registrars of the Court. Their appointments were facilitated by the Commonwealth Government providing the Court with additional funding to enable the Court to commence the PPP500 (Priority Property Pool) program in Western Australia. Both Registrar Smit and Registrar Craig had significant family law experience prior to joining the Court.

The workload of the Court

Overall, the Court experienced little changes in filings in 2023 across all major application types, as compared with the previous year. There were modest decreases in divorce and consent order applications. On the other hand, there was a modest increase in the numbers of final order applications, with 2,606 new final applications being filed during the year.

Of the 2,602 final applications that were finalised in 2023, 95% did so without needing to proceed to a trial. Approximately 55% were finalised within 12 months of lodgement; and approximately 77% were finalised within 2 years of lodgement.

In 2023, the Court conducted the same number of trials as in 2022. However there was a significant increase in the number of longer trials in 2023. For example, the number of trials that took 6 days or more increased from 10 in 2022 to 24 in 2023. Overall, the average trial days also increased, from 2.9 days in 2022 to 4.4 days in 2023.

In 2023, for the relatively small number of cases that proceeded to trial, the median time to trial was 174 weeks. Many of these cases involve markers of complexity, such as complex family dynamics, high conflict, and other risk factors, including family violence. The case study featured in this annual review illustrates this.

Vale Graham Furey JP

The Court was very saddened by the sudden death of Mr Graham Furey in June 2023. Graham was appointed as a Justice of the Peace in February 2005. He spent much of the following years working in the Court, initially filling a roster position, and then later co-ordinating the JP roster. Graham provided an essential service to our clients who attended at the Registry to swear their documents. He was also a valued member of the Court's "family" and is greatly missed.

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 59% of circuit hearings held in 2023.

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	2,606	2,602
Divorce Applications	5,715	5,649
Applications for Consent Orders	3,281	3,337
Total	11,602	11,588

OUR JUDICIARY

As at 31 December 2023

Chief Judge

The Honourable Justice Gail Sutherland

Judges

The Honourable Justice Richard O'Brien

The Honourable Justice Ciara Tyson

The Honourable Justice Michael Berry

The Honourable Justice Robin Cohen

The Honourable Justice Steven Jones

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

Magistrate Jocelyn Connick

Principal Registrar

Principal Registrar Leonie Forrest

Registrars

Registrar Andrzej Meysner

Registrar Samantha Padfield

Registrar Simon French

Registrar Jo Brinkley

Registrar Fiona Amaro

Registrar Genevieve Smit

Registrar Samantha Craig

OUR PEOPLE

The approved FTE (131) for 2023 was allocated as follows:

6	Judges
11	Magistrates
7	Registrars
88	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 increased by 2.1% since 2022.

Parenting orders continued to be the most commonly sought order when commencing an application for final orders, accounting for 55.5% of applications lodged. 1,448 of this application type were lodged in 2023. 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 2023, both parties attended FDR in only 14% 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

	2023	Change from 2022	Change from 2013
Final Order	2,606	2.1%	-7.8%
Divorce	5,715	-2.2%	8.7%
Consent Order	3,281	-1.6%	31.8%

Other Applications

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

During 2023 the Court received:

- 5,715 divorce applications, a decrease of 2.2% from 2022; and
- 3,281 consent order applications, a decrease of 1.6% from 2022. Unlike applications for final orders, which have a high proportion of parenting issues, consent orders are predominantly sought to formalise financial agreements. This year, 89.6% 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

		2023	2022
Final Order	Parenting	39%	34%
	Financial	18%	19%
	Parenting and Financial	32%	25%
Consent Order	Parenting	39%	33%
	Financial	26%	29%
	Parenting and Financial	25%	32%
Divorce		72%	72%

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 0.5%. Divorce applications on hand increased by 6.2%. Consent applications on hand have decreased by 27.8% which can be attributed to an increase of the number of applications listed per hearing list.

TABLE 3 - Primary Applications on Hand

	2023	Change from 2022	Change from 2019
Final Order	4,311	0.5%	-0.9%
Divorce	954	5%	-26.2%
Consent Order	327	-28%	0.6%

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 99.8% for applications for final orders, an increase from the 94% clearance rate achieved in 2022.

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 95% of these applications finalised by the Court before the matter reached trial.

The KPI for 2023 stood at 43 weeks against the target of 27 weeks. The median for parenting-only matters was 54 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

	2023	Change from 2022	Change from 2019	Change from 2013
Parenting	54	-6.1%	3.8%	54.3%
Financial	31	0%	-22.5%	-3.1%
Parenting and Financial	131	17%	71.2%	129.8%
Overall	43	-11.6%	-8.5%	22.9%

TABLE 5 - Count of KPI Finalisations

	2023	Change from 2022	Change from 2019	Change from 2013
Parenting	1,265	6.3%	-15.9%	14.2%
Financial	968	17.9%	11.9%	35.6%
Parenting and Financial	168	5.7%	3.7%	44.8%
Overall	2406	10.9%	-7.0%	23.9%

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 174 weeks. In parenting-only matters, the median time was 176.5 weeks, while the median time for financial-only matters was 158 weeks.

TABLE 6 - Median Weeks to Trial

	2023	Change from 2022	Change from 2019
Parenting	176.5	47.7%	73.0%
Financial	158	3.3%	68.1%
Parenting and Financial	187	22.2%	66.2%
Overall	174	24.3%	81.3%

- 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 applications based on the involvement of an ICL, those with an ICL had a median time to trial of 182.5 weeks, and those without had a median time of 169 weeks. Parenting matters with an ICL accounted for 46% of all "time to trial" matters in 2023, compared to 54% 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:

- 25 applications and a further 20 ancillary applications were made under the Adoption Act 1994 (WA).
- 4 applications were made under the Surrogacy Act 2008 (WA).
- 5 applications were filed pursuant to the International Child Abduction Convention.
- 240 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 or after hours.

CASE STUDY: COMPLEXITY AND TIME TO TRIAL

The following case study has been selected to demonstrate the impact of complexity on time to trial and how delays can occur for reasons unrelated to the processes of the court itself. It is an example of a matter that involved very complex family dynamics, including the parties having a highly acrimonious and litigious relationship with each other. The case study documents two separate proceedings that have occurred since the child's birth: the first which commenced in 2011 (when the child was approximately 6 months old) and concluded in 2015; and the second which commenced in 2016 and concluded in 2023 (by which time the child was nearly 12 ½ years old).

CASE STUDY

July 2011 to November 2011

The parties separated shortly after the child's birth, after being in a brief relationship with each other.

The parties attended Family Dispute Resolution where they made a genuine effort to resolve issues but did not resolve any matters.

Family Dispute Resolution (FDR) involves parties discussing their issues and attempting to reach an agreement. Completing FDR is usually required for parties before they commence parenting proceedings at court. Even if parties can't reach agreement at FDR, it assists them in narrowing the issues they wish to bring to court.

December 2011

The father commenced parenting proceedings by filing his initiating application. At this time, the child was 6 months old.

An initiating application (Form 1) is a form completed by the party who wishes to commence proceedings at the Court. If the application is accepted for filing, the application and its accompanying documents are then sealed and added to the file, and the applicant is to serve the sealed copies to the responding party.

February 2012

At the first return date, the magistrate made consent interim orders for the father to spend time with the child for 2 hours per week, initially supervised by a family member until the parties were able to use the services of a professional supervision agency (agency). The parties were also ordered to attend a Case Assessment Conference (CAC).

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.

Both parties attended the CAC with their lawyers. At the CAC both parties alleged that the other perpetrated family violence within the relationship.

March 2012

The mother filed responding documents, including a Notice of Child Abuse or Family Violence (or Risk) (Form 4 Notice).

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.

At a subsequent hearing the magistrate made further interim consent orders, including for the child to spend unsupervised time with the father for 4 hours per week, subject to: (a) a satisfactory report from the agency; (b) the father's compliance in completing a domestic violence counselling course and a parenting program; and (c) the Department of Child Protection (now known as the Department of Communities) (DOC) and WA Police not identifying any substantive concerns arising from the Form 4 Notice. The father is also ordered to undergo random urinalysis.

June 2012

Supervised visits between the father and the child commenced at an agency.

July 2012

Between July 2012 and November 2013, the parties filed 8 separate interim applications (and associated responses). Details of some of these interim proceedings are set out below.

An interim application (Form 2) deals with temporary orders sought by a party whilst the Court makes its decision on the substantive matter. They are usually made when there is an urgent issue that needs action whilst court proceedings are underway.

In July 2012, the father filed an interim application, including seeking that he spend unsupervised time with the child, effectively for a whole week whilst he was rostered off work, and that the child's passport be handed up to the Court Registry.

Later in the month, DOC provided information responding to the mother's Form 4 Notice and made a preliminary assessment that the concerns expressed by the mother did not require any further action on its part.

September 2012

The magistrate dealt with the interim proceedings, and immediately ordered that the child be placed on the Airport Watch List maintained by the Australian Federal Police (AFP) for two years, and otherwise reserved his decision.

Now known as the Family Law Watchlist, if a child is placed on the list, then the AFP will be alerted if a party attempts to take the child overseas. The AFP may then have to recover the child or issue a warrant to the offending party.

January 2013

The magistrate made interim orders for the child to spend unsupervised time with the father each third week (subject to him being rostered off work) on Monday, Tuesday, and Thursday, for 4 hours each day.

February 2013

The mother withheld the child, alleging that the child was exhibiting severe distress and concerning behaviours when away from the mother for periods of time. The father then spent time with the child on a supported basis with the agency.

March 2013

The mother filed an interim application, including seeking that the father's time be reduced and supported / supervised by another agency. She also sought that a Single Expert Witness (SEW) be appointed.

*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 Experts. In a parenting case, such as this one, clinical psychologists and therapists are often appointed as Experts.*

May 2013

The agency wrote to the court expressing its concerns about the father's alleged violent behaviour and its impact on his ability to care for the child.

July 2013

The magistrate dealt with the interim proceedings and made interim orders, reducing the father's time with the child, and requiring the time to be supported by an agency. The magistrate also made an order for the appointment of an Independent Children's Lawyer (ICL).

*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.*

In his decision, the magistrate found that both parties had engaged in family violence, and that whilst the father cared for the child deeply, the continuation of unsupervised time was not in the child's best interests, including because it appeared the child was not developmentally ready to spend unsupervised time away from its mother.

September 2013

The mother filed an interim application seeking sole parental responsibility of the child, pending final determination of the proceedings. This arose from the father refusing to consent to the child undergoing specialist surgery for ongoing health issues, despite the recommendation of the child's treating medical practitioner.

The father filed his responding documents, seeking leave to subpoena the mother's and the child's medical records, and to increase his time with the child.

*A **subpoena** is a legal document issued by the Court, which can require a person to produce documents, give evidence, or both. A party must ask the Court to issue a subpoena first. If the Court approves the request, the requesting 'issuing' party must serve the subpoena to the named person and they must provide the documents to the Court and/or attend to give evidence.*

Later in the month, the magistrate made a consent order for the child to undergo the proposed medical treatment. Other procedural orders were made, including for the ICL to have leave to issue subpoenas.

October 2013

The ICL filed an interim application, seeking that a SEW be appointed in the matter. The court subsequently made a consent order for the appointment of the SEW.

November 2013

The magistrate dealt with the interim proceedings and ordered that the mother have interim sole parental responsibility, and that the father spend time with the child each alternating Saturday or Sunday on a supervised or supported basis by an agency. The magistrate also ordered that all outstanding interim applications be otherwise dismissed.

The father then filed another interim application, including seeking an increase in his time with the child and that the mother pay for the supervised visits.

December 2013

In relation to the father's newest interim application, the magistrate made interim orders for him to spend supervised time with the child for up to 2 times per week for 2 hours, supervised by an agency.

May 2014

By this stage in the proceedings, the agency used by the parties for the purposes of supervised visits has changed twice.

The current agency provided a report to the parties and the court, including recommending that the child continue to live with the mother, but that unsupervised visits should occur with the father for 3 to 4 times a week when he is rostered off work, for a duration of 3 to 4 hours each time. The agency reported that at supervised visits, the child did not exhibit the concerning behaviours that the mother continued to maintain was occurring.

July 2014

The SEW published his first report and recorded that he spent nearly a hundred hours evaluating the matter and conducting the assessment.

The SEW assessed that the child, who was then 3 years old, was confident and consistent in its behaviour whilst with either parent. The SEW opined that the parties were abusive to each other and that family violence had occurred within the parties' relationship. However, he did not consider that the father was a severe risk to the child or the mother.

The SEW recommended that the child have unsupervised time with the father for periods of 4 hours on 3 separate days during his rostered week off, and that the time gradually increase.

September 2014

The court ordered the matter to be included in the Judges' Defended List with an estimated trial time of 7 days. Further orders were also made for the parties to file trial material.

*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.*

January 2015

The matter was included in the February 2015 Callover.

*The **Callover List** is a procedural hearing where the Court allocates trial dates for matters awaiting trial.*

February 2015 to March 2015

The matter was listed for a 7-day trial commencing in late April 2015 before a judge.

April 2015

On the first day of trial, the judge made final orders by consent, including that the mother have sole parental responsibility of the child, the child live with her, and the child have unsupervised time with the father for 4 hours once a weekend, with this time to gradually increase to 6 hours.

December 2016

The father filed a Contravention Application, alleging that the mother had unilaterally ceased his time with the child, and that he had not seen the child since October 2016.

January 2017

The previous trial judge conducted a directions hearing and made orders for the parties to file new initiating applications.

February 2017

The mother filed a new initiating application, seeking that the previous orders be varied to reduce the father's time with the child and for the time to be supervised by an agency. The mother deposed that the child was experiencing behavioural difficulties at home and at school. The mother also filed a new Form 4 Notice, alleging that the child was at risk of sexual assault, family violence, serious psychological harm, and serious neglect when with the father.

April 2017

The father filed his responding documents, including seeking that he have sole parental responsibility of the child and the child live with him.

May 2017

The parties attended a CAC with a Family Consultant, who observed that the parties continued to be embroiled in significant conflict with each other and subjected one another to allegations of ongoing family violence. The Consultant recommended that an ICL be reappointed, and for more information to be obtained, including from the child's school, the child's psychologist, DOC, and the WA Police.

July 2017

The WA Police and DOC provided information to the court about their ongoing investigations into the mother's allegations that the father had perpetrated sexual and physical abuse against the child. The WA Police reported that it would not be laying charges against the father in relation to the allegations.

The Court made an order for the reappointment of an ICL.

August 2017

The Court made orders for the SEW to be reappointed and for an updated report to be completed.

October 2017

The father filed an interim application, including seeking that supervised spend time with arrangements recommence with the child immediately, and for the mother to attend a substance misuse support program.

November 2017 to April 2018

Several directions hearings are held including in relation to procedural issues, the subpoenaed material, and the filing of documents.

June 2018

The SEW released an updated report. The report detailed that: (a) the child was nearly 7 years old at the time of the assessment; (b) the child had not spent time with its father since October 2016; and (c) the child was not reaching its developmental milestones and continued to experience behavioural difficulties. The SEW opined that the parties' relationship was conflictual, combatant and highly distrustful, with the child caught in the middle of this turmoil. The SEW opined that all family members, including the child, should engage in family therapy.

August 2018

The judge dealt with the interim proceedings. The mother opposed the father's proposed orders and instead sought a gradual recommencement the father's time with the child.

The judge gave an *ex tempore* decision, explaining that upon the current evidence she could not make any findings whether the child was at risk in the care of either parent. In these circumstances, the judge adopted a conservative approach, and ordered that the father's time with the child be limited to no less than 2 hours per week supervised by an agency.

October 2018

The Court made orders for the parties to file documents in preparation for trial; and expediting the trial.

November 2018

The mother failed to file her trial material by the specified deadline and was given an extension to do so.

December 2018

The parties attended a Readiness Hearing. The mother was given a further extension to file her trial material.

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.

January 2019

The father filed another interim application, including seeking that he spent unsupervised time with the child for 6 hours every Saturday, and for this time to gradually increase to overnight time every second weekend.

February 2019

At the Callover, the matter is listed with priority for a 5-day trial in June 2019 before a judge.

March 2019

The Court dealt with the interim proceedings and ordered that the father spend supervised time with the child up to 4 hours per week. The interim proceedings were otherwise dismissed.

May 2019

The parties attend a Status Hearing before the trial judge and further orders are made for the parties to file Papers for the Judge.

A Status Hearing is a hearing listed by the allocated trial judge at their discretion to monitor the matter prior to trial. Unlike a Readiness Hearing, a Status Hearing is listed after the matter has been given trial dates.

Papers for the Judge act as a case summary and are designed to highlight the issues that the judicial officer will need to consider at trial. A template is found on the Court's website for both parenting and property matters.

June 2019

The mother filed an interim application in relation to procedural issues and seeking that the current spend time with arrangements between the father and the child be suspended until further order. She deposed in her affidavit that she struggled to get the child to the visits, as the child refused to see its father and became very distressed when asked to see the father.

June 2019

The matter proceeded to trial for 6 days. At this trial, the father was self-represented, whilst the mother and child were separately legally represented. The trial was unable to be completed in the 6 days and was adjourned part-heard and direct listed for a further 3 days in November 2019.

November 2019

The judge resumed hearing the part-heard trial. On the first day of the part-heard trial, the mother raised concerns that the ICL had a conflict of interest because she had attended a social event where the SEW was present. After the ICL voluntarily offered to withdraw, the trial judge made orders for the ICL to withdraw on a without admission basis and made further orders for Legal Aid to urgently consider appointing another ICL to the matter.

The mother then filed an interim application, including seeking that: (a) the child be interviewed by a Family Consultant with respect to its wishes; (b) the SEW be discharged; and (c) a new SEW be appointed, subject to Legal Aid funding the appointment. The father opposed the application.

The trial judge dealt with the interim proceedings on what was supposed to be the third day of the part-heard trial. The trial judge dismissed the mother's interim application and provided *ex tempore* reasons for her decision.

In short, the trial judge did not consider the fact that the current SEW and the old ICL had attended a social function together meant the SEW's ability to continue his role as the expert in the matter was compromised. In addition, the trial judge could not make a finding on the inappropriateness of the discussions between the old ICL and the SEW, based on hearsay evidence. The trial judge also refused to order that the child be interviewed by a Family Consultant. The trial was again adjourned, part-heard, and listed to resume in the new year.

January 2020

The trial resumed and continued for a further 4 days. Seven witnesses (including the parties) were cross-examined. At the conclusion of the trial, the parties were ordered to provide written closing submissions to the Court and the judge reserved her decision. By the conclusion of the trial the child was 8 ½ years old and had not spent time with the father since June 2019.

February 2020

The parties filed their closing submissions.

April 2020

The trial judge delivered judgment.

The trial judge found that despite the mother's allegations against the father, there was no finding that the child had been physically or sexually abused by the father. However, the judge did find that the father did subject the mother to physical and verbal abuse, including being coercive and controlling to the mother.

The trial judge also found that the child had been psychologically and emotionally harmed by the mother, and that the child was at risk of continuing neglect and harm from the mother.

The trial judge considered it was not in the child's best interests to make final orders at that time, particularly because of the severed relationship between the child and the father, as a result of the mother suspending their contact for a significant period of time. On an interim basis, the Court ordered that the child continue to live with the mother, and to spend unsupervised time with the father each alternate weekend from Friday to Monday and for one week each school holiday. The judge also ordered that the parties attend upon clinical psychologists for therapy and for the ICL to continue to be involved in the proceedings.

July 2020

The parties, including the ICL, provided affidavits to update the Court about the matter since the interim judgment.

November 2020

The parties attended a monitoring hearing. The Court made further procedural orders, including that if the parties do not request a relisting of the substantive proceedings by a certain time, then final orders are to be made in Chambers without further notice to the parties in terms of a Minute filed by the ICL. The Minute includes orders that the child live with the mother and spend time with the father on an unsupervised basis.

The child's Psychologist filed an update on the child's therapy sessions. She reported that the child maintained negative attitudes towards the father and about seeing him and did not enjoy doing activities with the father. The child's Psychologist opined that the child had made minimal progress in therapy, given the child's own rigid mindset and escalating negative views about the father.

April 2021

The father filed an affidavit deposing that he had not attended upon a clinical psychologist, pursuant to the orders made in April 2020, but was scheduled to attend his first appointment the next month.

The father requested that the substantive proceedings be relisted.

May 2021

The Court made directions in chambers for the parties to provide their reports from their respective psychologists by the end of June 2021, as well as an updated report from the child's Psychologist.

June 2021

The father provided information from his psychologist that it was not productive or necessary for the father to continue with therapy, because the father was unwilling to explore options for improving his communication or relationship with the mother.

July 2021

The parties attended a directions hearing before the judge. The Court made orders for the matter to be reinstated in the Defended List. Orders are also made for the filing of trial material.

The mother continued to fail to make the child available to spend time with the father. The matter was relisted for hearing, and the judge made orders for the mother to deliver the child to the father on the following day, and if she failed to do so, for a recovery order to be issued.

*A **recovery order** requires a child to be returned in a person's care. They are returned to the person who applied for the order. A party can make an application for recovery when the child/ren is taken from their care without their agreement. Recovery orders can authorise police to find, recover, and return a child.*

October 2021

The parties attended a further Readiness Hearing before the judge.

The mother failed to comply with the orders made in July 2021 for the filing of her trial documents. The judge extended the time for the mother to file her trial documents, failing which the father was given leave to proceed on an undefended basis.

November 2021

The proceedings were listed for a 5 day trial commencing in May 2022.

April 2022

The child's Psychologist provided an updated report. At this time, the child was nearly 11 years old. Both parents reported to the child's Psychologist that the child was experiencing increased anxiety and distress about spending time with the father. The child's Psychologist observed that despite multiple therapeutic strategies, the child remained rigid in its negative views of the father.

The child's Psychologist concluded that it did not appear that the child was making any significant progress and instead, the child's relationship with the father seemed to have deteriorated.

May 2022

The ICL filed an urgent interim application seeking the trial be adjourned and relisted in 2 months' time. In addition, the ICL sought that the mother be restricted from taking the child to a certain medical professional, for the mother to undergo hair strand alcohol testing, and for the mother to provide a list of health professionals that she and the child had attended upon.

The ICL alleged that the mother was not disclosing all the information relevant to her mental health, that this information was required for trial, and the ICL proposed to issue further subpoenas to any relevant health professionals to obtain the information.

At the urgently listed interim hearing, orders were made as sought by the ICL. The May 2022 trial was vacated.

Later in the month, the father filed a Form 4 Notice, alleging that mother was suffering from severe mental health issues which placed the child in danger.

June 2022

The father filed another Contravention Application alleging that the mother had not complied with the April 2020 orders relating to his spend time with arrangements with the child. At this stage, the father had not seen the child for over 2 months.

The parties have an altercation, after the father attended at the child's school when he was not scheduled to do so. The child's Psychologist reported that the child was presenting as extremely distressed (with high levels of anxiety) due to the altercation between the parties. The child's Psychologist recommended that all contact between the child and the father cease temporarily, until the matter returned to court and the interim issues can be addressed.

The ICL filed an urgent interim application seeking the suspension of the father's time pursuant to the April 2020 orders.

At the next hearing, the judge made a consent order for a cross-examination ban to apply in the case.

*A **cross-examination ban** is a ban where parties are prohibited from personally cross-examining each other in certain circumstances where allegations of family violence have been raised. Personal cross-examination is where a party asks questions of another party or witness directly, rather than having questions asked by a lawyer. The ban exists because personal cross-examination by an alleged perpetrator can expose victims of family violence to re-traumatisation and affect their ability to give clear evidence.*

The judge made procedural orders for the mother to respond to the father's Form 4 Notice, and for the mother and father to respond to the ICL's interim application.

The judge also made orders for the child's time with the father to be suspended in the terms sought by the ICL, and the parties were ordered to ensure that the child continued therapy with the child's Psychologist.

July 2022

DOC responded to the father's Form 4 Notice, advising that the concerns expressed by the father required no further action by it.

The mother responded to the father's Form 4 Notice, denying his allegations that she misused alcohol and that her mental health put the child in danger.

August 2022

The parties attended a further monitoring hearing.

October 2022

The matter is listed for a 5-day trial to commence in late March 2023.

February 2023

The parties attended a further directions hearing. The Court made orders, including for the parties to file updated trial material.

March 2023

The SEW filed an updated report for the trial. In summary, the SEW opined that the main risk for the child remained being subjected to the ongoing, long term, and highly conflictual nature of the family law proceedings. The child's physical health also remained an ongoing concern, with ill health stopping the child from attending school for long periods of time. However, the SEW considered that the child was developmentally on par with its peers. Overall, he observed that the child continued to view the mother very positively and the father very negatively.

The child's Psychologist also provided an updated report. She observed that despite her encouragements, the child remained unwilling to engage in any therapeutic strategies to work towards having a better relationship with the father and was unwilling to attend any joint sessions with the father. The Psychologist opined that the child was unlikely to change its views on the father while remaining in the mother's care.

[March 2023 to April 2023](#)

By consent, the trial judge dismissed the father's Contravention Application.

The trial commenced and proceeded for 4 days. Due to several issues, including large amounts of new material disclosed by the mother, the matter was unable to be completed and was adjourned part-heard.

The Court made a consent order for the mother to undergo supervised hair strand testing in relation to alcohol usage, for the parties to give disclosure about the child's ongoing health issues, and for the parties to file further trial material.

[October 2023](#)

The trial recommenced for a further 4 days. Overall, 6 witnesses (including the parties) were cross-examined at trial. At the conclusion of trial, the judge reserved her decision.

[November 2023](#)

Judgment was delivered and the Court made final orders, including for

the mother to have sole parental responsibility of the child, the child to live with the mother, and for the father to spend time with the child in accordance with the child's wishes. Final orders are also made giving the father liberty to send the child cards, letters, and gifts. The mother was also ordered to ensure that the child continues to attend upon its Psychologist for therapy.

In her reasons for decision, the judge accepted that both parties loved and cared for the child, with the father in particular, wanting to be a part of the child's life. However, the child had been exposed to the parties' highly acrimonious relationship and their family court proceedings since its birth. The child had a history of not meeting its developmental milestones and suffering behavioural difficulties, and continued to experience poor physical and mental health, including suffering from anxiety. The judge accepted the

evidence of the SEW and the child's Psychologist that despite the child's ongoing therapy, no significant progress had been made in the child's very negative views towards the father. Whilst the judge was satisfied that the child was not at risk of harm in either the care of the mother or the father, she did have concerns about the father's parenting capacity and insight into the child's needs.

Ultimately the trial judge did not consider that orders for specific spend time with arrangements were in the child's best interests, given that: (a) the child's relationship with the father had effectively broken down; (b) the child continued to be resistant and refused to repair their relationship despite the ongoing therapy sessions; and (3) forcing the child to spend time with the father would further distress and traumatise the child.

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.fcfoa.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 2023, there were 6 appeal applications filed in the Court seeking leave to appeal interlocutory orders of a family law magistrate. There were also 2 applications filed seeking leave to extend the time in which to file an appeal application. Of the 8 appeal applications (including applications seeking to extend the time in which to file an appeal application) filed in 2023, 7 applications were finalised in the year. Six matters were discontinued, or ultimately dismissed after a hearing. In one matter, the appeal was allowed by consent. The final matter is listed for determination in February 2024. In this matter, an application in an appeal seeking to adduce further evidence was also filed and remains to be determined.



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 to assist the court in assessing and managing risk issues or concerns to members of families.

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 identify potential risk to children and parents, and help parents negotiate safe and sustainable child-focused arrangements addressing issues that are affecting their parenting.

To ensure consistent and timely service delivery, including in regional and more isolated areas of the state, the FCCCS is able to provide service by video (MS Teams) and/or telephone.

Family Consultant Events

FCCCS carried out 1,455 events in the 12 months to 31 December 2023. For the previous 12 months, FCCCS carried out 1,547 events. This is a minor variance due primarily to staff shortages and recruitment difficulties.

This impacted on the capacity of the service to provide a timely response to non urgent matters resulting in referrals to FCCCS for CAC's, the median weeks for a conference appointment increased to 13 weeks. That said due to an increase in staffing at the end of 2023, it is expected this timeframe will be reduced in 2024.

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.

In September 2021, the changeover to ICMS as the Court's client record management system resulted in unclear risk reporting data requiring review and correction. The 2022 data was therefore indicative, and although reporting is improving as corrections occur, the data for 2023 appears to be an underreporting of risk issues being assessed by the family consultants.

The following outlines the risks identified by a Family Consultant during 2023 for each event undertaken:

Family and domestic violence	63%
Alcohol and/or substance abuse	50%
Child abuse	50%
Mental health	54%

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.

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.

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.

A total of 6,749 occasions of service were provided as follows:

- Duty Lawyer - 2,014
- Social Support - 810
- Information and/or referral to other services (including non-legal) - 3,925

The increase in FASS services from 2022 is due to additional staffing, funded by the Commonwealth Attorney General's Department, to meet increased demand for services.

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 construction of an additional courtroom commenced in October 2023 and it is expected to be operational by June 2024.

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 2023

Board of Management
Case Management / Rules Committee
Continuing Professional Education Committee
Indigenous & Torres Strait Islander Network Engagement 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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