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# 2005 Annual Review of Western Australian Courts



by  
The Hon David K. Malcolm AC  
Chief Justice of Western Australia



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## INTRODUCTION

The Review contains detailed information and statistics concerning the work of the Magistrates Court, the Children's Court, the District Court, the Family Court and the Supreme Court. It also provides information concerning the work of different committees chaired by Judges, who are endeavouring to contribute to the process of reform with a view to the reduction of delay, the increase in efficiency and general improvement in the standard of the administration of justice and the services, which are associated with it. It also includes information on the work of the Law Reform Commission of Western Australia and Legal Aid Western Australia.

Each year since 1988 I have highlighted aspects of the Annual Review in my address at the Closing of the Legal Year. I am most grateful for the cooperation of the various heads of jurisdiction and members of the judiciary and others in providing the necessary information for the purposes of this Review.



*The Hon David K Malcolm AC  
Chief Justice of Western Australia*



## SUPREME COURT

### Jurisdiction and Work of the Court

The Supreme Court of Western Australia is the highest court of the State. The Court deals with civil and criminal matters, both at trial and on appeal, in exercise of both state and federal jurisdiction. The Court deals with criminal charges of a most serious nature, such as wilful murder, murder, manslaughter, armed robbery and serious Commonwealth drug offences.

The Court usually deals with civil matters of a complex nature or where the amount involved in a dispute is more than \$500,000, as well as applications for injunctions, damages and other forms of relief. Appeals are heard by the Court of Appeal and the Industrial Appeal Court. A single Judge can hear appeals from certain decisions of Magistrates.

### Judges of the Supreme Court

As at 31 December 2005, the Supreme Court was composed of the Chief Justice, 18 Judges, and two Masters. The Judges at this time were:-

#### Chief Justice

The Hon Chief Justice David Kingsley Malcolm AC

#### Judges of the Court

The Hon Justice Michael John Murray

The Hon Justice Neville John Owen

The Hon Justice Christopher David Steytler

The Hon Justice Anthony John Templeman

The Hon Justice Christine Ann Wheeler

The Hon Justice Geoffrey Miller

The Hon Justice John Roderick McKechnie

The Hon Justice Nicholas Paul Hasluck AM

The Hon Justice Leonard William Roberts-Smith RFD

The Hon Justice Carmel Joy McLure

The Hon Justice Christopher James Lonsdale Pullin

The Hon Justice Eric Michael Heenan

The Hon Justice Michael Laurence Barker (who sits as President of the State Administrative Tribunal)

The Hon Justice Narelle Johnson

The Hon Justice Rene Lucien Le Miere

The Hon Justice Carolyn Frances (Lindy) Jenkins

The Hon Justice Ralph Lloyd Simmonds

The Hon Justice Peter Donald Blaxell

The Hon Justice Peter Donald Blaxell was appointed on 2 February 2005.

#### Masters

The Masters deal with interlocutory or preliminary matters prior to trial and hear company matters and any short matters assigned to them from the Judges' list.



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Master Craig William Sanderson  
Master David Wallace Newnes

### **Acting Principal Registrar**

Mr Simon Christopher Stedman Dixon

Principal Registrar Keith Chapman has been appointed Deputy Chief Magistrate in the Solomon Islands for 12 months from the end of April 2005.

### **Registrars**

As well as the Principal Registrar, who often acts as a Master, there are eight Registrars of the Court who are also engaged in case management (pre-trial) work. Some designated Registrars are qualified as mediators and mediate matters when so ordered by the Court. The Principal Registrar now has the delegated control and superintendence of the Central office, previously the responsibility of the Masters. As at 31 December 2005, the following Registrars held office:

Mr Paul Lyon Johnston  
Mr David Lewis Powell  
Ms Pamela Porter Eldred  
Ms Sandra Mary Boyle  
Mr Gilbert Paul Rimmer  
Mr Christopher John Boyle

Acting Registrar Corryn Rayney continues in her role at the Court, and Acting Registrar John Christo has joined the Court whilst Principal Registrar Chapman is overseas.

## **OVERVIEW**

The restoration and refurbishment program in the 1903 Supreme Court building has continued with significant works being completed in time for the criminal sitting in February 2005, together with the temporary custody facilities. Work then commenced on the demolition and reconstruction of the permanent custody centre and the long overdue replacement of the Sallyport. These works were completed in September and the temporary facilities removed.

In August, work commenced on the restoration of the 1837 court house, the location of the Francis Burt Law Education Centre, and was completed in October.

Significant progress has been made with the development and implementation of the electronic Integrated Case Management System. The Supreme Court has considerably expanded its video conferencing facilities, significantly increasing the capacity of the Court to manage civil and criminal cases via videolink. Portable digital recording equipment has been acquired to record proceedings on circuit as well as the construction of a “virtual” dock for a recent long-running criminal trial. The Supreme Court website has been greatly enhanced in 2005.

This year has also seen the completion of portraits of the twelve Chief Justices of Western Australia, from the inception of the Supreme Court in 1861 until the present day. Those portraits are hanging in Court 1.



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The portraits project was approved by the Attorney General in late 1999, and in the six years since that time, two portraits have been completed each year. It gives me great pleasure and a sense of satisfaction to see this project completed as my term as Chief Justice draws to a close. The portraits will serve to remind future generations of the contribution made to the law in this State by each of the 12 Chief Justices who have served it to date.

I particularly wish to thank the Hon Justice Murray for his work as Acting Chief Justice during my long service leave in the period June to September this year. His Honour also chairs the Court's Accommodation Committee. This is a major aspect of the work of the Court. With the approval of the Attorney General, planning to enable the accommodation of all elements of the Court on the existing site has continued in 2005.

Data Analysis Australia has produced up dated forecasts for the Supreme Court accommodation requirements until the year 2031. The Court is currently in the process of completing the business case to put to the Attorney General and the Government. We shall be urging the Government to approve and put in train the necessary work at the earliest opportunity. There is a compelling case for early implementation of this project in addition to the CBD Courts project. It is now clear that the demands of the District Court will be such that Supreme Court criminal trials will not be able to be accommodated in the CBD Courts Complex. This makes the construction of the expanded accommodation of the Supreme Court a matter of grave urgency.

### Farewell Thoughts

As this is my final Annual Review prior to my retirement on 7 February, 2006, I wish to place on record my deep gratitude for the support I have received from the Judges and Masters of the Supreme Court with whom I have been privileged to serve. When I was first appointed, I was the most junior member of the bench. The then members of the Court, including in particular Justice Robert Wallace, then the Senior Puisne Judge, all gave me an extremely warm welcome and extended to me great friendship and cooperation. This spirit has happily continued throughout my term as Chief Justice.

I also wish to thank the heads of jurisdiction in the Family Court of Western Australia, the District Court, Children's Court, and the Magistrates Court for their friendship and cooperation during my term in office.

I have greatly benefited from the assistance of my personal staff during my time at the Supreme Court, as well as that of the Registrars and administrative staff of the Court. I thank them all. It has been invaluable to me to have had the benefit of not only of their support, but also their friendship.

Finally, I look forward to the progress in the planning and long-awaited construction of the extensions to the Supreme Court buildings in the Supreme Court Gardens so as to enable the Judges, Masters, Registrars and staff of the Court to be housed in the historic home of the Supreme Court.

## COURT OF APPEAL

The Court of Appeal Division was established on 1 February 2005. This was one of the most significant events in the history of the Supreme Court and the culmination of work over the past 10 years. In May, the Court of Appeal introduced new appeal rules and procedures. They constitute significant reforms. The



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Court proposes to review its operations and procedures in the early part of 2006, by which time they will have been in operation for 12 months.

The number of civil appeals entered and waiting for a hearing date has been reduced from 81 in December 2004 to 37 at the end of 2005. In the same period, the backlog of criminal appeals has been reduced from 32 to 10. Some 267 criminal appeals were commenced by the end of 2005, an increase of almost 30 per cent over previous years. In addition, 176 civil appeals commenced, a figure which is generally consistent with the last two years. The combined total results in a very significant workload indeed in 2005.

One initiative which has already proved to be successful is that of conducting mediations of civil appeals. The Court of Appeal Registrar has conducted 30 mediations on 24 matters between February 2005 and the end of 2005. This resulted in 17 matters settling and two are ongoing, producing a settlement rate of 77 per cent.

The Court has adopted a time standard whereby each judgment is required to be delivered within three months of the date of the appeal hearing. In the vast majority of cases, the Court has been successful in delivering its judgments within that time limit.

Currently, there is a waiting period of around six months between readiness for hearing and the hearing of an appeal. It is hoped that, with the appointment of an additional judge, the waiting period might be reduced. The additional appointment is essential. I am very concerned about the workload level which the appellate work has generated. It is not possible to sustain for any length of time a workload which requires working at night and on weekends.

The Court of Appeal Judges have managed to keep up with and even make minor inroads into, the backlog which existed at the time it commenced its operation. This has only been achieved through an enormous effort on the part of each member of that Court.

### Court of Appeal - Civil

The following tables shows the number of civil appeals to the Court of Appeal from each jurisdiction:

<b>Court of Appeal - Civil</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>
From Supreme Court									
Allowed	16	17	17	16	18	20	15	6	12
Dismissed	23	21	20	28	36	44	31	12	28
Allowed In Part	3	4	3	5	4	4	1	0	0
<b>Sub Total</b>	<b>42</b>	<b>42</b>	<b>40</b>	<b>49</b>	<b>58</b>	<b>68</b>	<b>47</b>	<b>18</b>	<b>40</b>
From District Court									
Allowed	12	8	14	23	22	16	17	9	27
Dismissed	20	16	20	18	22	24	21	16	32
Allowed In Part	3	2	2	1	2	3	2	0	6
<b>Sub Total</b>	<b>35</b>	<b>26</b>	<b>36</b>	<b>42</b>	<b>46</b>	<b>43</b>	<b>40</b>	<b>25</b>	<b>65</b>
From Workers Compensation Board									
Allowed	3	2	3	2	3	4	2	2	0
Dismissed	5	5	5	4	0	1	0	0	1
Allowed In Part	0	0	0	1	0	0	0	0	0

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<b>Sub Total</b>	<b>8</b>	<b>7</b>	<b>8</b>	<b>7</b>	<b>3</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>1</b>
From Liquor Licensing Court									
Allowed	0	0	1	0	0	3	0	0	0
Dismissed	0	0	1	1	1	1	3	0	0
Allowed In Part	0	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>0</b>
From Children's Court									
Allowed	0	0	0	0	0	0	0	0	0
Dismissed	1	0	0	1	0	0	0	0	0
Allowed In Part	0	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
From Other Courts									
Allowed	0	4	1	9	1	4	4	5	0
Dismissed	2	3	4	3	2	2	4	5	1
Allowed In Part	0	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>2</b>	<b>7</b>	<b>5</b>	<b>12</b>	<b>3</b>	<b>6</b>	<b>8</b>	<b>10</b>	<b>1</b>
Cases Stated	2	1	1	1	0	0	1	0	0
<b>Sub Total</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
Prerogative writs									
Granted	3	6	9	1	3	3	7	3	0
Refused	6	1	4	0	6	0	2	1	9
<b>Sub Total</b>	<b>9</b>	<b>7</b>	<b>13</b>	<b>1</b>	<b>9</b>	<b>3</b>	<b>9</b>	<b>4</b>	<b>9</b>
<b>TOTAL</b>	<b>99</b>	<b>90</b>	<b>105</b>	<b>114</b>	<b>120</b>	<b>129</b>	<b>110</b>	<b>59</b>	<b>116</b>

### Court of Appeal - Criminal

The following tables provides a breakdown of matters finalised by hearing before the Court of Appeal (Criminal) - appeal and applications for leave to appeal:

<b>Court of Appeal – Criminal</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>
Supreme Court – Against Sentence									
Allowed	9	11	5	10	10	8	4	2	6
Dismissed	13	17	16	14	18	26	21	21	22
Varied	0	0	0	0	0	0	0	0	2
<b>Sub Total</b>	<b>22</b>	<b>28</b>	<b>21</b>	<b>24</b>	<b>28</b>	<b>34</b>	<b>25</b>	<b>23</b>	<b>30</b>
Supreme Court – Against Conviction									
Allowed	6	4	2	5	3	1	2	2	4
Dismissed	9	8	10	3	16	12	13	5	26
Varied	0	0	0	0	0	0	0	0	2
<b>Sub Total</b>	<b>15</b>	<b>12</b>	<b>12</b>	<b>8</b>	<b>19</b>	<b>13</b>	<b>15</b>	<b>7</b>	<b>32</b>





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District Court – Against Sentence									
Allowed	37	26	19	20	35	43	38	22	20
Dismissed	31	40	56	51	27	57	53	38	68
Varied	0	0	0	0	0	0	1	5	2
<b>Sub Total</b>	<b>68</b>	<b>66</b>	<b>75</b>	<b>71</b>	<b>62</b>	<b>100</b>	<b>92</b>	<b>65</b>	<b>90</b>
District Court – Against Conviction									
Allowed	16	18	9	13	14	18	13	17	11
Dismissed	29	30	29	22	21	30	27	26	46
Varied	0	0	0	0	0	0	1	0	2
<b>Sub Total</b>	<b>48</b>	<b>48</b>	<b>38</b>	<b>35</b>	<b>35</b>	<b>48</b>	<b>41</b>	<b>43</b>	<b>59</b>
Children's Court – Against Sentence									
Allowed	2	3	3	2	0	0	4	0	3
Dismissed	1	1	3	0	0	0	0	2	0
Varied	0	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>2</b>	<b>3</b>
Children's Court – Against Conviction									
Allowed	2	0	0	1	0	0	0	0	1
Dismissed	1	0	0	1	0	0	0	0	0
Varied	0	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
References	0	0	2	1	4	0	1	1	0
<b>Sub Total</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>156</b>	<b>158</b>	<b>154</b>	<b>143</b>	<b>148</b>	<b>195</b>	<b>177</b>	<b>140</b>	<b>215</b>

## GENERAL DIVISION

### Criminal List

The criminal list has been managed this year by the Hon Justice Miller, with the Hon Justice McKechnie as his deputy. They have worked closely together to reduce the backlog of criminal cases and to utilise what had previously been regarded as circuit sittings at Fremantle and Rockingham to enable some of the criminal case backlog to be dealt with.

Their efforts have been successful, with the operational backlog reduced by about 30 per cent, and the period between listing and hearing reduced to just over three months. The average length of trials has also reduced by comparison with last year.

There have been a number of very lengthy trials which required a long lead time prior to listing. In one case, a 10-week trial fell through when the accused pleaded guilty at the last moment. It was, however, possible to relist the Judge to whom the trial had been allocated, and this helped dramatically in reducing the backlog of cases.



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Three Judges have been sitting in the criminal jurisdiction throughout the year. Three Judges will continue to be required to sit in crime for the foreseeable future. A fourth Judge could be used for the Fremantle and Rockingham circuits, and Perth cases transferred to those two courts if there is no circuit work elsewhere.

Justices Miller and McKechnie have made it clear to the profession that there is a limit to which the Court can go in accommodating counsel of choice for an accused person. Generally speaking, if chosen counsel is unavailable for any more than two dates offered, it will be necessary for the accused to brief alternative counsel. It has also been stressed to the profession that if counsel is briefed in a serious trial in the Supreme Court, that should take preference over less serious matters in respect of which counsel might already be engaged. The results have been favourable, with many accused persons briefing alternative counsel and/or counsel cancelling other commitments to ensure that they are available on the dates fixed for trial.

In 2005, 95 jury trials were listed, and 63 trials were heard, with an average length of 4.75 days. The total number of criminal cases completed was 151.

There have been difficulties during the year with last-minute adjournments and the presentation of *nolle prosequis*. A number of court days have been lost as a consequence and strong representations have been made to the office of the Director of Public Prosecutions and to the profession generally that in the coming year, last-minute applications for adjournments will not be countenanced unless for extremely good cause.

### Civil List

In total, 93 matters were listed for trial in 2005 – 53 were tried for a total of 195 sitting days, some 29 matters were settled and 11 were vacated.

By year's end, 23 cases were awaiting trial, requiring 142 hearing days. Although the average length of trial is 6.2 days, five cases awaiting trial each require between 10 and 20 days.

### Expedited List

As at 1 January 2005, there were 17 cases in the Expedited List and of these, 12 were dust disease-related cases.

By year's end, 41 cases were in the list, of which 17 were dust disease-related cases, and 24 involved other kinds of claims. As a proportion of the total number of cases in the list, non dust disease-related cases have increased from around 30 per cent in January to about 58 per cent. Throughout this time, the number of dust disease-related cases in the list has remained more or less stable.

A total of 89 cases were entered into the list in 2005. Of these, 60 were dust disease-related cases, while 29 related to other kinds of claims. A total of 65 cases were removed from the list throughout 2005. Of these, 53 were dust disease-related matters, while 12 related to other kinds of claims.

The average time between entry into the Expedited List and final determination or exit from the list in 2005 was 105 days. There were, however, two cases which were removed from the list in 2005 that had been in the list for an inordinately long period. Discounting these two cases, the average duration between entry and final determination or exit from list was 79 days.



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### Masters

There have been some changes to the management of the interlocutory work of the Court in 2005, continuing changes that were implemented late in 2004. The Masters have assumed conduct of what was formerly the Judges' chambers list and the two lists have been amalgamated. In addition, Master Sanderson has sat as a Commissioner since 31 October 2005 to assist the Judges in the General Division Civil List reduce the backlog.

A total of 3046 matters were heard by Masters in 2005 and there has been a significant decrease in the number of chambers matters heard by Judges. This has enabled them to focus their attention on the cases in the civil and criminal trial lists.

The Masters' contribution has been very substantial and has contributed greatly to enabling the Court to dispose of more civil cases than would otherwise have been the case.

### Registrars

The year 2005 was a busy and rewarding one for the Registrars. Over the year, the Registrars played an active role in the development of initiatives designed to increase the efficiency of the Court and to benefit litigants and practitioners. These include:

- A new case evaluation conference procedure, set out in Practice Direction 6 of 2005, which is designed to ensure that, as far as is possible, matters are ready for trial when entered.
- A pilot program for teleconferencing in relation in case management and taxations of costs involving country practitioners. It is hoped that this will in due course be extended to city practitioners.
- The preparation of practice direction 5 of 2005 dealing with interlocutory costs.
- The preparation of new conferral forms in relation to O.59 r.9 of the Rules and explanatory notes.
- Improvements to the Court's file management procedures.
- A procedure for the provisional assessment of bills of costs, as set out in a second Circular to Practitioners dated 15 November 2005.
- The investigation of the history of actions between entry and trial or other disposition. The aim is to provide the data necessary to determine how to improve the management of the Civil Trial List.

### Supreme Court: Appeals to a Single Judge

In 2005, there were 57 appeals to a single Judge, compared with 54 appeals in 2004. Of the appeals in 2005, 29 were allowed, 25 dismissed and three were allowed in part.



## FAMILY COURT

### Jurisdiction and Work of the Court

The Family Court of Western Australia exercises both federal and state jurisdiction. In its federal jurisdiction, it can determine matters relating to dissolution or nullity of marriage, parenting orders in relation to children of a marriage, maintenance and child support, and settlement of property. In its non-federal jurisdiction, it can determine matters relating to ex-nuptial children, adoption matters and property settlements in de facto relationships.

### Judges of the Family Court of WA

As at 31 December 2005, the Family Court of Western Australia was composed of the Chief Judge and four other Judges as follows:-

#### Chief Judge

The Hon Justice Michael Henry Holden

#### Judges of the Court

The Hon Justice Nicholas Tolcon

The Hon Justice Carolyn Elvina Martin

The Hon Justice Julienne Penny

The Hon Justice Stephen Ernest Thackray

*(All Judges hold dual commissions with the Family Court of Australia.)*

Justice John Barlow simultaneously resigned three commissions when he retired from the Court on 9 February 2005. They were his District Court, Family Court of Western Australia and federal Family Court of Australia commissions. His Honour joined the Court in 1998, having served 10 years on the Bench of the District Court and his service within each of his commissions was well noted at his farewell sitting.

#### Principal Registrar

Mr Peter David Monaghan

#### Registrars

Mr Christopher John Judges

Mr Ronald Graham Fleming

Ms Roberta Annette Andrews

Mr Alan Moroni

Ms Lisa Stewart

Mrs Jill Vander Wal

Mrs Susan Duncanson

*(All Registrars are also appointed as Magistrates.)*



### OVERVIEW

In my last report, the Chief Judge had noted a considerable improvement in the provision of services to the people of Western Australia in that between 30 June 2003 and 30 June 2004 the number of cases awaiting a hearing date had reduced from 651 cases to 444.

The improvement continued in the year under review. Some 247 cases were awaiting a trial date in Perth and 27 in circuit towns, a total of 274 cases. There will be considerable pressure to maintain this improvement as, consequent upon the retirement of the Honourable John Barlow, the number of Judges was reduced from six to five. However, the Court still has additional funds to provide additional judicial and/or registrar/magistrate resources.

The Chief Judge hopes that further assistance in maintaining improvement will flow from the fact that both the State and Federal Governments each approved an extension of jurisdiction for the Western Australian Family Law Magistrates. This is a significant development as it will give them essentially the same powers as Federal Magistrates, enabling them to determine applications in financial matters up to a certain value, and most child-related applications. It is hoped that this will assist in containing the defended list and will free the Judges to hear the longer and more complex matters. It is anticipated that the required legislation will be in place by mid-2006.

Last year, the Chief Judge reported that the Court was able to meet most of its performance indicators. Unfortunately this year, the Registrar/Magistrates were unable to meet many of the indicators, which reflects the introduction of Case Assessment Conferences and their increasing workload. Trial dates were one month outside the performance indicator.

The Court's website has steadily grown in popularity so that by April 2005, there were 12,507 visits to the site. Some 91.8 per cent of the hits were to the kits/forms/brochures page, with 25,710 pages downloaded. Many litigants are now downloading the forms and kits, which should result in considerable savings to the Court.

### Court Workload

Over the past two years, the Court's workload has remained relatively steady. This year, however, there have been significant increases in various aspects of the Court's work.

There was a slight increase in the number of applications for final orders filed during the year. Some 2777 applications were filed, compared with 2731 in the previous year. The number of applications for interim and procedural orders increased from 3823 to 4596, an increase of 17 per cent.

There was a decrease in the number of order contravention applications. Applications filed alleging a contravention of court orders totalled 419, compared with 529 the previous year. The number of contempt applications filed increased significantly from 16 in the previous year to 42 in the year under review.

The number of applications filed seeking that orders be made by consent was 2985, compared with 2202 in the previous year, an increase of 35 per cent. Some 213 initiating applications for spousal maintenance or alteration of property interests by de facto spouses were made, representing 7.7 per cent of the total initiating applications lodged. In addition, there were 93 applications in a case, 347 applications for



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consent orders, nine contravention applications and 13 contempt applications resulting from de facto relationships.

The work of the Magistrates relating to de facto applications has increased significantly. There were 446 applications for consent orders and 1123 applications for interlocutory orders, representing 27 per cent of such applications.

Last year, the Chief Judge indicated that it was too early to assess the impact of the new pre-hearing procedures. Given that there has been a 39 per cent increase in the number of de facto applications and the number of applications filed overall is fairly similar to last year, it appears that the new procedures are having an impact on the early resolution of disputes.

There is an automatic right of appeal from decisions of Magistrates to a Judge in all matters, other than child support proceedings. The number of appeals filed in the year under review decreased. There were 65 such appeals, compared with 71 in the previous year, a decline of nine per cent. It is a remarkably low number of appeals, given the many thousands of decisions made by the Magistrates in the course of a year. It is a continuing credit to them that there are so few appeals, given the large number of decisions made in highly contentious matters.

In the year under review, the Registrars conducted 1267 conciliation conferences, 513 pre-trial conferences and 807 directions conferences. These figures represent 313 less pre-trial conferences, 382 fewer conciliation conferences, and 31 fewer directions conferences than the previous year, a decrease of 726 conferences conducted.

The Registrars also conducted 1141 case assessment conferences in the year under review, which made a total of 3728 conferences conducted.

## JUDICIAL PERFORMANCE

### Defended List

In the year under review, 199 cases, which were expected to last in excess of one day, were allocated hearing dates. Of those 199 cases, 115 cases proceeded to judgment.

Of cases expected to last one day or less, 87 were given a hearing date. On the day allocated for hearing, 79 remained to be decided, of which three settled at the trial's commencement or during the running of the case. Some 47 judgments were required to be given. The remainder were adjourned or stood over.

The average length of time for the long defended matters was 2.23 days. Two cases ran for 10 days and one for nine days. The hearing time for the remainder of the cases ranged between one and eight days. Once again, the Chief Judge makes the observation that these figures do not accurately reflect the work of the Judges. Some 74 other significant judgments were handed down which do not fit into either of the above categories. These typically involve a determination of often complex matters argued in the Duty Judge list or at special appointments.

The Judges also conducted nine judicial conferences during the period under review. These conferences require a great deal of preparation and often run for a full day.



## 2005 Annual Review of Western Australian Courts

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During the year under review, the Chief Judge participated in 10 sittings of the Full Court, which resulted in the publication of 33 reserved judgments. In addition, the Chief Judge, or in his absence another Judge, is required to conduct procedural hearings relating to appeals and hear procedural applications such as leave to appeal out of time, reinstatement of appeals, security for costs, leave to amend the grounds of appeal and the like.

The Judges of this Court continue to determine applications made under the *Telecommunications (Interception) Act 1979*. In the year under review, there were 153 such applications. A number of these applications have been determined after hours or on the weekend. They continue to be time consuming and add considerably to the workload of the Judges.

### Appeals

The Full Court of the Family Court of Australia sat in Perth on two occasions during the year to hear appeals under the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989*. During the year, 20 appeals were filed.

The Appeal Court handed down seven judgments - five appeals were dismissed and two were allowed. Some five appeals were withdrawn and nine were abandoned. As at 30 June 2005, seven appeals remained to be determined.

Appeals from the Family Court of Western Australia exercising non-federal jurisdiction are heard by the Supreme Court of Western Australia. Six appeals were heard during the year under review.

### Court Circuits

A Judge sits on circuit to hear defended cases only. The present system is that a Registrar/Magistrate visits the circuit town about two weeks before the Judge and hears undefended dissolution applications, directions hearings, interim applications and some summary maintenance and child support applications. The Registrar/Magistrate then conducts conciliation and pre-hearing conferences. If there are defended cases to be heard, the Judge will then visit the circuit town to hear these matters. Details of the Judge's circuits were as follows:

Circuits	Gazetted	Required
Bunbury	6	6
Albany	3	2
Geraldton	3	3
Kalgoorlie	3	3
Port Hedland/Karratha/Broome	3	2



### GENERAL

#### Mediation and Counselling Service

The Counselling Service continues to operate as an integral part of the Family Court of Western Australia with the Director of Court Counselling, Manager, nine full-time counsellors, five part-time counsellors and three permanent and one part-time administrative staff.

In January 2004, Dr Paul Murphy took up a post-doctoral position at the Court pursuant to a Memorandum of Understanding between Edith Cowan University, the Department of Justice and the Chief Judge. Dr Murphy is longitudinally watching 155 high conflict families identified in the Columbus project. The cost/outcome analysis of these cases will provide the Court with the first empirical data on durability of outcomes.

Considerable attention has been given to the integration of research, policy and practice in Family Law culminating in Dr Murphy, Paul Kerin, the Manager of Court Counselling, and the Chief Judge, presenting an integrated series of papers in Seattle at a conference of the Association of Family and Conciliation Courts.

#### Family Court of Fiji Islands

On 31 October 2005, the Chief Judge attended a ceremony to commemorate the opening of the Family Court of the Fiji Islands.

In the year under review, this Court entered into a "twinning" arrangement with the developing Court. In October 2004, the Court was visited by Justice Mere Pulea of Fiji and Ms Emele Duituturaga, who is the Chief Executive Officer of the Department of Social Welfare. Subsequently, Justice Thackray conducted a workshop in Fiji for judicial officers; the Principal Registrar David Monaghan travelled to Fiji to assist Justice Pulea by reviewing and reworking the rules and forms and Paul Kerin, the Manager of Court Counselling, participated in training of counsellors in Fiji.

Their expenses were met by the Australia/Fiji Law and Justice Sector Program. Their efforts were generously praised by Justice Pulea and the Chief Justice of Fiji, Mr Justice Daniel Fatiaki.





## DISTRICT COURT

### Jurisdiction and Work of the Court

The District Court of Western Australia is the intermediate court in this State. The District Court deals with serious criminal offences for which the maximum is 20 years' imprisonment, such as serious assaults, breaking and entering, and stealing and receiving.

The civil jurisdiction deals with claims to recover sums of not more than \$500,000, except in personal injury actions where it has unlimited jurisdiction to hear claims for damages.

The Judges of the Court hear appeals from civil judgments of Magistrates and also appeals from various tribunals. The Judges also sit in civil public chambers to deal with matters that need to be attended to before a case goes to trial. The Registrars complete the bulk of this pre-trial work.

### Judges of the District Court

As at 31 December 2005, the District Court was composed of the Chief Judge, and 24 Judges as follows:-

#### Chief Judge

Her Honour Judge Antoinette Kennedy

#### Judges

His Honour Judge Paul James Healy  
His Honour Judge Henry Hall Jackson  
His Honour Judge Peter John Williams  
His Honour Judge Michael Gerald Muller  
Her Honour Judge Mary Ann Yeats  
His Honour Judge Michael Denis Finbar O'Sullivan QC  
His Honour Judge Roger Anthony Macknay QC  
Her Honour Judge Valerie Jean French  
His Honour Judge Allan David Fenbury  
His Honour Judge Henry John Wisbey  
Her Honour Judge Shauna Marie Deane QC  
His Honour Judge Peter Maurice Nisbet QC  
His Honour Judge William George Groves  
Her Honour Judge Catherine Joan O'Brien  
His Honour Judge Peter Dominic Martino  
His Honour Judge Denis John Reynolds  
His Honour Judge Philip Richard Eaton  
Her Honour Judge Jane Crisford SC  
His Honour Judge Robert Anthony Mazza  
His Honour Judge John Anthony Chaney SC  
Her Honour Judge Judith Elsa Eckert  
His Honour Judge Kevin Frederick Sleight  
His Honour Judge Philip Pierre McCann  
Her Honour Judge Julie Anne Wager



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### Other appointments held by District Court judges

The following District Court judges are not available to the Court as they are engaged on a full-time basis for the appointment indicated:

His Honour Judge PM Nisbet QC, Commissioner, Dispute Resolution Directorate  
His Honour Judge DJ Reynolds, President, Children's Court of WA  
His Honour Judge JA Chaney SC, Deputy President, State Administrative Tribunal  
Her Honour Judge JE Eckert, Deputy President, State Administrative Tribunal

### Judicial appointments

The following Judges were appointed during 2005:

Her Honour Judge Judith Elsa Eckert (1 January 2005)  
His Honour Judge Kevin Frederick Sleight (10 January 2005)  
His Honour Judge Philip Pierre McCann (28 January 2005)  
Her Honour Judge Julie Anne Wager (28 January 2005)

### Judicial retirements

His Honour Judge Peter Donald Blaxell (appointed to Supreme Court in February)

### Registrars

As at 31 December 2005 the Registrars were:

Principal Registrar	Michael Gething
Registrars	George Augustus Kingsley Lyn Dorothy Wallace
Deputy Registrars	Simon Peter Harman Richard John Hewitt

## CIVIL JURISDICTION

### Caseload

The Court's new civil business grew marginally this year, continuing the generally flat trend of recent years as shown in the graph below. The dip in 2002/03 is due to reforms in the area of personal injury claims that comprise a large part of the Court's civil work.

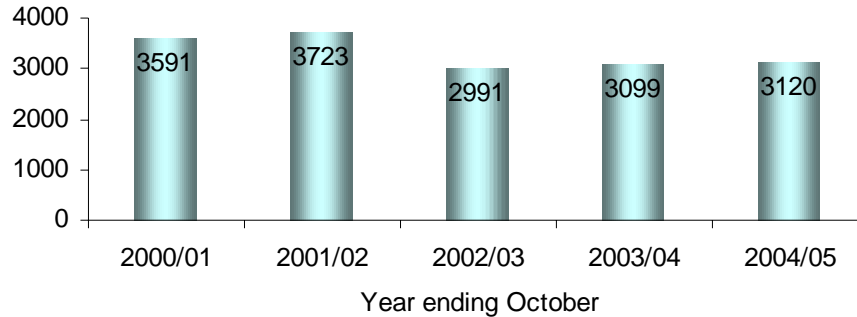
In contrast, as forecast last year, the number of civil appeal matters lodged this year declined as did originating summonses. The reduction in appeals is due to the establishment of State Administrative Tribunal which assumed responsibility for some of this work.



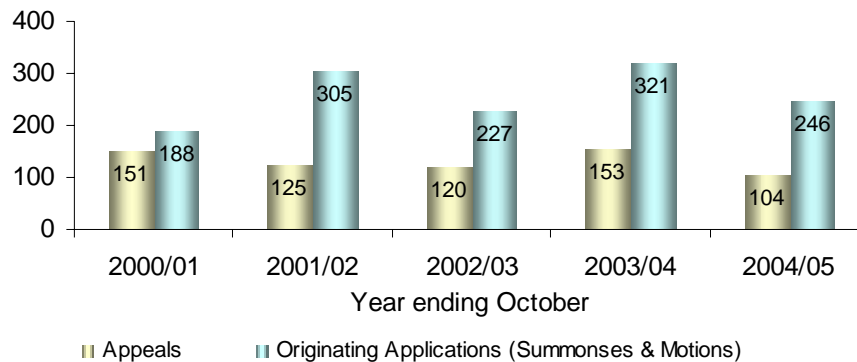
## 2005 Annual Review of Western Australian Courts

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**DISTRICT COURT CIVIL - Lodgments (Writs)**



**DISTRICT COURT CIVIL - Lodgments (Other)**



### Case Finalisation

The finalisation of civil cases is distinctly different to that of criminal cases. Civil matters can settle without the Court's involvement and the nature of civil claims means settlements are approached by the parties on a more commercial basis.

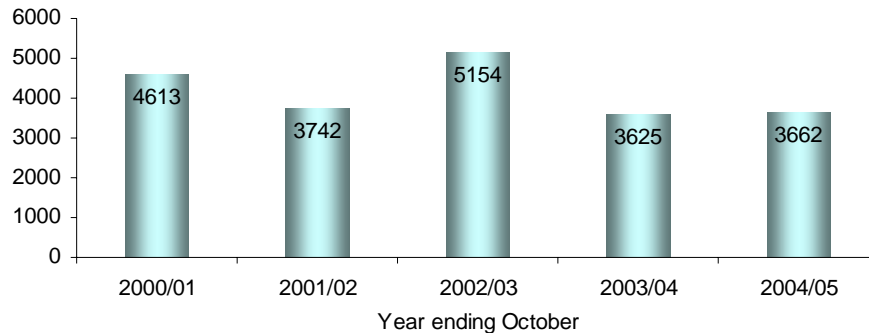
Consequently, the Court manages civil litigation by facilitating settlement opportunities while ensuring that cases do not stagnate. The Court relies to a significant degree on its Registrars to perform this function and it is noteworthy that only four per cent of civil matters are finalised by trial.

The following graph shows that the Court managed a small increase in the number of civil disputes finalised this year. As happens in other jurisdictions, the Court adopts a policy of regarding a matter as finalised where it has been inactive (ie no filings or hearings) for 12 months. The increase shown for 2002/03 reflects the introduction of an automated process within ICMS to mark such files as inactive.



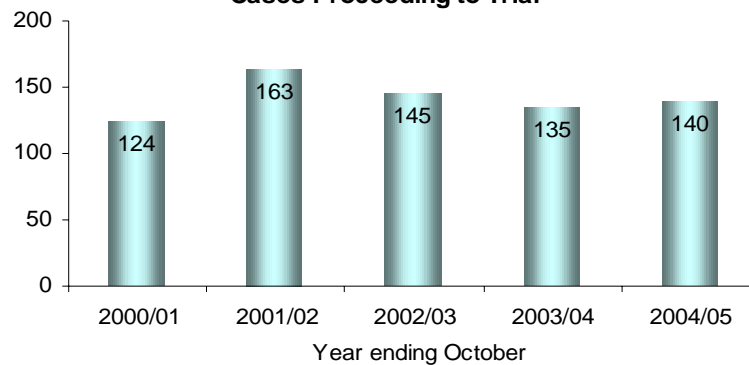
## 2005 Annual Review of Western Australian Courts

### DISTRICT COURT CIVIL - Finalisations



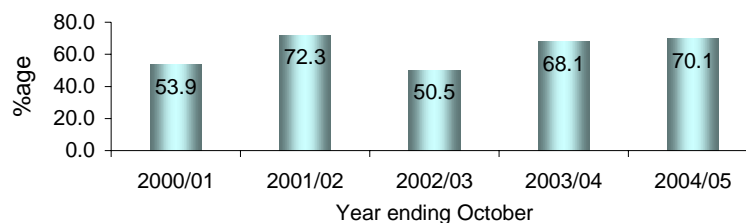
The demand on the Court for civil trials continued this year in terms of both number of trials and length of trials. This year, the Court conducted five more civil trials than last year and there were 17 trials longer than five days compared to 15 the year before.

### DISTRICT COURT CIVIL - Listings Cases Proceeding to Trial



The Court aims to finalise 90 per cent of its civil cases within 70 weeks (the length of the standard case timetable). This year the Court achieved a slight improvement in this key indicator as shown below. Further improvement is expected over the course of the next 12 months as more cases come within the Court's new case-flow management system.

### DISTRICT COURT CIVIL %age Finalised within 70 weeks



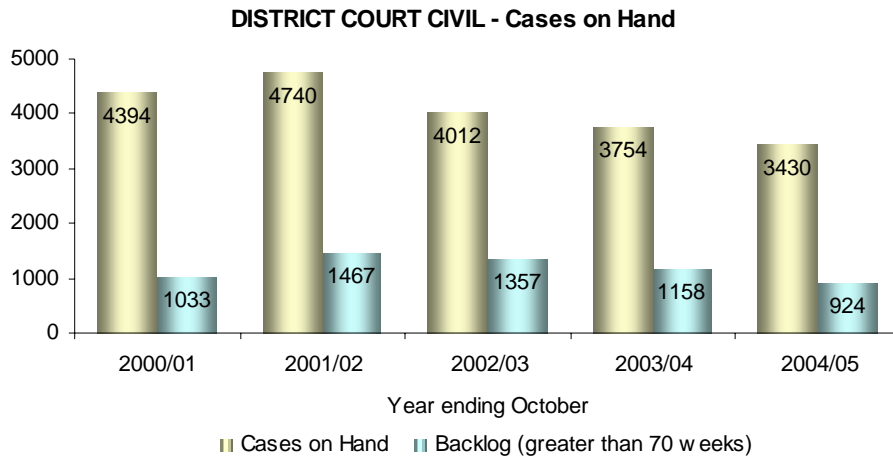


## 2005 Annual Review of Western Australian Courts

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### Cases On Hand

This year the number of cases on hand was reduced by more than 300 matters to 3430. Of more significance, the Court made substantial inroads into its civil backlog (cases older than 70 weeks) which was reduced by some 230 matters or 20 per cent, as shown in the below graph.



### Issues and Initiatives

The District Court adopts a continuous improvement approach to its services and the following initiatives were completed or commenced during the year.

#### New Civil Rules

The Court introduced new Rules of Court on 30 May 2005. The new rules, which are a complete revision of the previous rules and therefore a significant undertaking, govern practice and procedure in the civil jurisdiction and include provisions to:

- Support the Court's new civil case-flow management process (see below);
- Enhance case management for appeal matters;
- Authorise lodgment and service of documents electronically; and
- Support proceedings pursuant to the *Civil Judgments Enforcement Act 2004*.

#### New Civil Case-flow Management

A new system of case-flow management for civil matters was introduced in May 2005, after an extensive development and consultation process. The new approach to case-flow management is a significant reform and is designed to:

- Finalise matters faster – the standard case track is reduced from 470 days to 365 days;
- Provide tailored case management oversight rather than a “one size fits all” approach; and
- Reduce the cost of litigation through the introduction of the inactive procedure.

In conjunction with the new system of case-flow management, the Court adopted listing and other policies to ensure civil cases are monitored earlier and that litigation is actively progressed.

The success of this increased case management oversight is becoming apparent in the profile of cases in the Court. For example, the number of cases on hand in the pre-trial conference stage has decreased from 652 at the end of June to 504 at the end of October, a reduction of around 23 per cent.



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However, this proactive “clean-out” of old cases by the Court has resulted, in addition to more disposals, in a higher than usual number of matters requiring trial dates. In turn, this has caused the trial listing interval to increase from an average of 13 weeks to 35 weeks at the end of October. This trial delay is at an unacceptable level and temporary additional resources are required to dispose of this “hump”. Failure to provide these resources will undermine the effectiveness and efficacy of the reforms.

### **Commercial List**

This year the Court introduced a ‘Commercial List’ in response to an expected increase in the number of commercial claims being commenced. The list is a set of procedures that allows the Court flexibility to manage litigation in accord with the Court’s objectives while at the same time responding to the particular needs of commercial litigants.

To date, the vast majority of the Court’s civil litigation has involved personal injury claims. However, the increase from \$250,000 to \$500,000 in the Court’s civil jurisdiction for general or commercial claims in May 2005 is likely to see a greater number of commercial claims, and more complex claims.

Commercial litigation involves very different imperatives than personal injury matters and therefore requires a different case-management approach. The Commercial List operates as follows:

- It is voluntary and parties have discretion to opt-in, including at commencement;
- These matters are subject to active case-management oversight from an early stage by a Registrar on a docket basis, with scope for management by a Judge;
- There is the opportunity for early mediation; and
- Commercial List matters do not receive priority over other matters.

The case-management oversight is designed to get commercial disputes to mediation or trial much faster than in the past, at a radically lower cost to the parties. A key outcome is to ensure that the costs of the parties bear some proportion to the amounts in dispute.

### **Early Mediation**

This year the Court introduced an early mediation scheme, giving judicial officers the ability to offer early mediation in specific cases, as an option complementary to its case-flow management system. The scheme aims to finalise cases quicker and at less cost to the parties involved and the Court.

Civil litigants generally don’t have access to court-assisted mediation until the matter has been entered for trial due to the cost of providing judicial resources, the high number of cases involved, and because preparatory steps (such as discovery and exchange of expert evidence) have not completed until then.

However, occasionally cases warrant the earlier investment of mediation, such as those involving complex cases, or cases with many parties. In these cases, judicial officers now have the ability to offer early mediation, of their own motion or upon application by the parties.

### **eLodgment and ICMS**

The eLodgment pilot system was successfully launched in February 2005 when the first writ was lodged by legal firm Trewin Norman & Co. Since then, legal office staff have used the system to lodge more than 100 writs, pay online and receive sealed service copies without leaving their desks.

A new version of the system was due to be released in December 2005, including these new features:

- A more user-friendly interface;



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- The ability to lodge the Memorandum of Appearance document; and
- The capacity for registered users to search civil file information including parties and legal representatives, documents filed, and hearing dates.

Further development work is to be completed in February 2006, enabling all civil litigation documents to be lodged electronically. Further details on how to join is available from the District Court's website.

### Orders

The Court has improved its efficiency in dealing with orders by accepting orders for extraction by email. The electronic lodgment of orders enables the Court to make corrections directly, eliminating double-handling and the time-consuming process of returning forms to practitioners for correction.

The Court now also deals directly with some type of orders on the papers (in particular, ex parte applications for subpoenas), taking responsibility for extracting the order. This eliminates the need for parties to attend hearings and draft the order, thus saving costs.

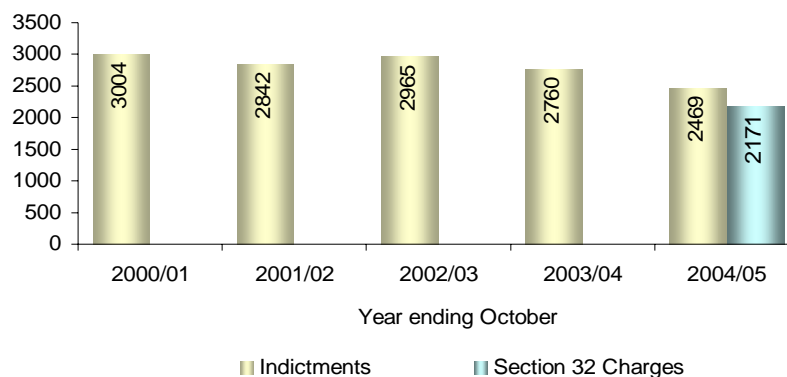
## CRIMINAL JURISDICTION

### Caseload

This year, the Court's new criminal caseload declined. The following graph shows the number of criminal indictments lodged decreased by 291, or 11 percent on the previous year.

The Court now tracks the number of charges disposed pursuant to section 32 of the *Sentencing Act 1995* due to the significant resources required to deal with these matters. Section 32 allows those accused, about to be sentenced, to call in all outstanding (summary) charges in order to "wipe the slate clean". However, the number of matters called in is significant and invariably involves cases not related to the matter at hand.

**DISTRICT COURT CRIMINAL - Indictments**



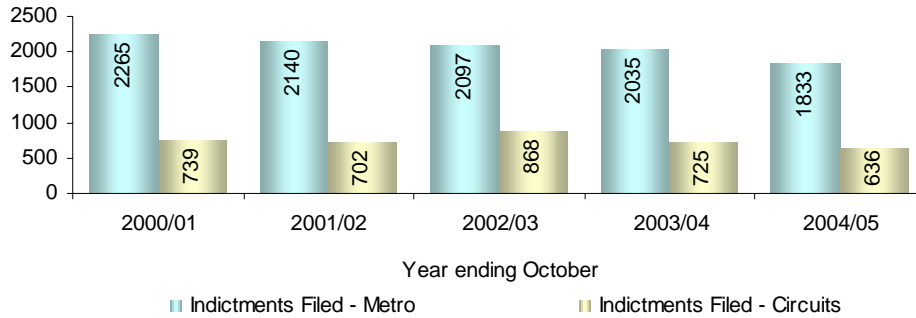
The fall in indictments is due to amendments to the *Criminal Code*, implemented in June 2004, which transfer less serious offences to the Magistrates Court. The change enables such offences to be more appropriately dealt with in the summary jurisdiction, while releasing judicial resources to address the



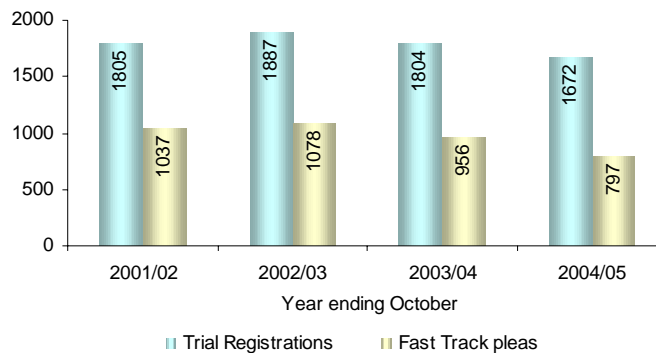
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District Court criminal backlog. The following graphs indicate where the *Criminal Code* amendments have been most felt, in terms of geographical location and type of matter.

### DISTRICT COURT CRIMINAL - Indictments

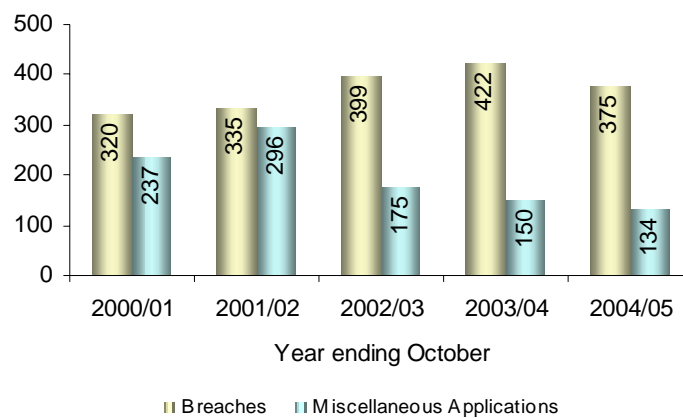


### DISTRICT COURT CRIMINAL Indictments



Most of the reduction in new business (70 per cent) has manifested in the metropolitan area and, as foreshadowed, the majority of the matters lost to the Magistrates Court were sentencing cases (55 per cent) rather than potential trials. In addition to indictments and section 32 matters, the Court determines a range of miscellaneous criminal applications such as spent conviction matters and applications to have driver's licences restored. The Court is also required to re-sentence in the event community-based orders are breached. This business declined slightly this year compared to last.

### DISTRICT COURT CRIMINAL





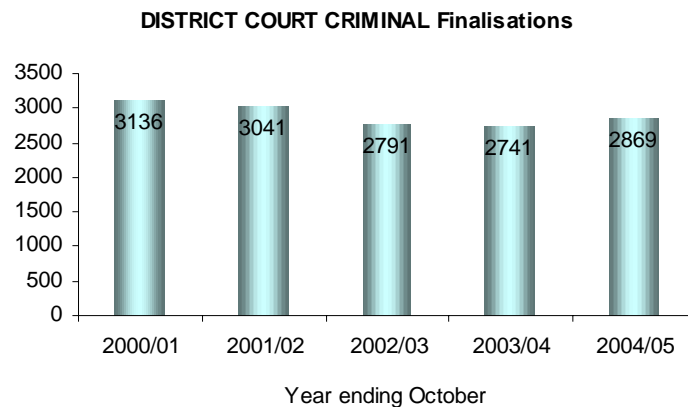


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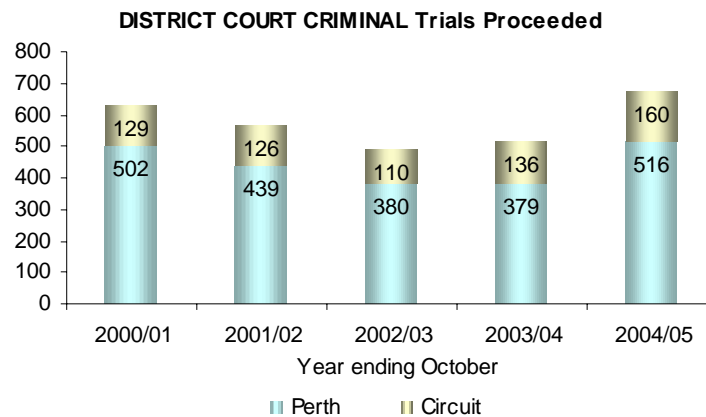
*Note: There may be some differences between the criminal caseload data published in this Annual Review and that provided in previous reviews. This is due to enhanced data extraction methods implemented during this year.*

### Case Finalisation

This year the Court completed 128 more cases than last year, as shown in the graph below. This is a significant result and reverses the trend of recent years.



In addition, there has been a significant increase this year in the number of criminal trials conducted in both the metropolitan area and circuit centres, as shown in the graph below. This has resulted in the court completing 161, or 31 per cent, more trials in 2005 than during the previous 12 months.



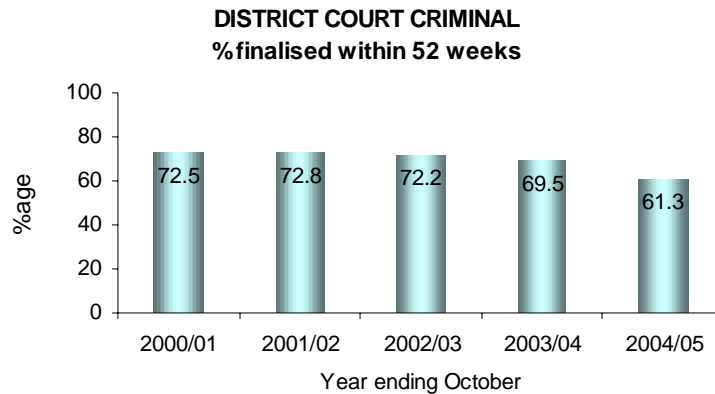
Not only did the Court conduct more trials this year, but also a greater number of long trials were completed. In 2005, there were 40 trials longer than five days compared to 27 the year before. Long trials included Ferris et al (ten weeks), Cabrera et al (9), Colbung (3), Hoang (5), and Holtum (4).

The increase in finalisations is significant, as a higher proportion of matters were completed by trial – up to 23 per cent from 20 per cent last year. With the decline in the number of matters committed for sentence, the Court now has a change in profile of cases as a higher proportion of incoming matters are potential trials. More judicial resources are needed to finalise the same number of cases.



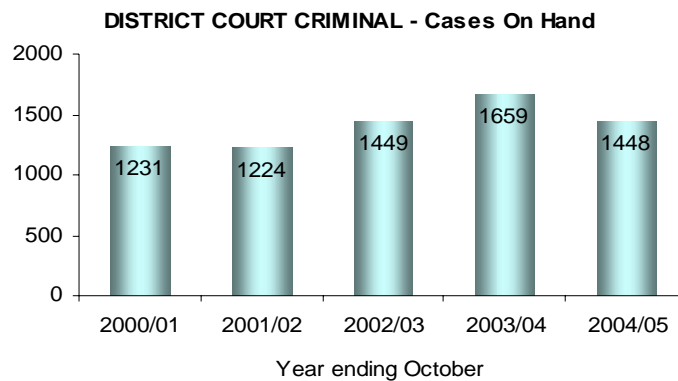
## 2005 Annual Review of Western Australian Courts

The Court aims to finalise 90 per cent of its criminal matters within 12 months. The graph below shows the performance of Court against this measure deteriorated this year. However, the Court's focus on progressing older cases is a contributing factor to this result but the fact remains that improvement in the order of 50 per cent is required if the Court is to reach its performance target. Improvement in this area is mostly reliant on the availability of trial judicial resources.

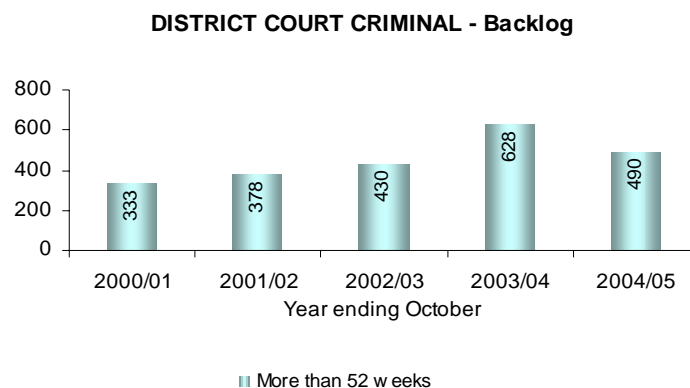


### Cases on hand

The number of cases on hand has reduced this year by 211, or 12 per cent, to 1448. This reverses the trend in recent years, and is due to a combination of increased finalisations and reduced lodgments.



A significant component of the cases on hand is the Court's trial backlog (the number of cases older than 12 months). This year, the Court achieved a meaningful improvement, reduced by 138, or 22 per cent, to 490.

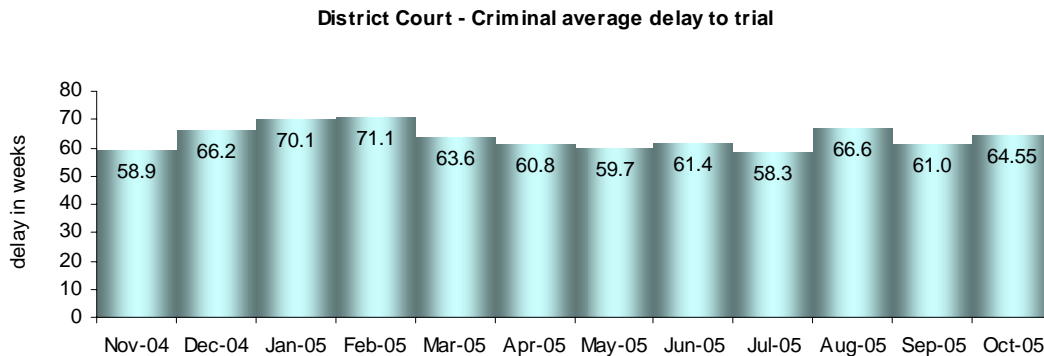




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Without doubt, the most pressing issue facing the Court has been its criminal backlog and associated criminal trial delay. Regrettably, this issue has existed for a number of years. This is a matter of enormous significance to victims, witnesses, the accused, and the general good of the community. A new indicator has been developed to measure the Court's criminal trial delay. The graph below plots the average delay from committal to trial for new cases. The delay has reduced from an average of 71 weeks in February 2005 to about 65 weeks in October. However, even with this improvement, the wait for a criminal trial remains some 15 months.



## Issues and Initiatives

### Appointment of Commissioners

This year, in response to the Court's criminal backlog, the Government appointed five Commissioners (equivalent of two full-time) for varying periods during February to June inclusive.

Throughout this time, the Court also had the benefit of an additional judge because His Honour Judge McCann was appointed in January to offset the loss of His Honour Judge Nisbet to a new appointment as Commissioner Dispute Resolution in the workers' compensation system. However, Judge Nisbet did not take up his new role until mid 2005. The Court made the most of these additional judicial resources, conducting 386 trials between February and June 2005, compared to 315 in the corresponding period last year – an increase of 71 trials or 22 per cent.

### Circuit flexi-lists

The use of circuit flexi-lists in major regional centres has seen excellent results this year, reducing the incidence of lost sitting days by a third. The initiative, at Kalgoorlie, Albany, Bunbury and Geraldton, uses a range of trial commencement dates rather than a fixed trial date in order to reduce the number of lost sitting days due to trials discontinuing at the last minute.

The incidence of lost sitting days at these centres has reduced to 20 per cent, from the 30 per cent of days lost in the benchmark year 2003. In line with its success, the Court has extended the flexi-list procedure to the remainder of its circuit sittings so that it now operates on a state-wide basis.

### Trial Listings Unit

A Trial Listings Unit has been created within the Registry in May 2005, to provide enhanced services such as:

- The preparation of case summaries and case history notes for trial matters, to help the Chief Judge allocate priorities more effectively;



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- Proactive communication with legal practitioners as to the status of trial matters resulting in earlier stabilisation of trial lists;
- Monitoring pending cases and preparation of “action lists” of the oldest cases. This information, for example, helps the judiciary to deal with adjournment applications more effectively; and
- Better monitoring of daily sittings.

These tasks have contributed both to the earlier disposal of matters and to better use of court resources.

### **Circuit video-link status conferences**

The use of video-link status conferences was expanded this year to include the Pilbara and Kimberley circuits, following the scheme’s success at Albany, Bunbury, Geraldton and Kalgoorlie. The video-link status conferences are held just prior to a circuit with a view to firming-up trial lists and backfilling any slots that become available, thereby disposing of more matters within the allotted circuit.

### **Duty Judge**

In November 2005, the Court established a Duty Judge scheme in order to ensure the Court can respond to emergencies outside business hours. The Duty Judge can be contacted after hours on 9425 2444 seven days per week.

## **GENERAL**

### **New District Court Building**

In December 2004, the Government entered into a contract with the Western Liberty consortia to design and construct a new dedicated building for the District Court. Upon completion of the building, Western Liberty will also provide a range of services to the Court including court reporting, security, building maintenance and other services. Construction has commenced and is on track for completion in early 2008.

### **Internet site**

The District Court website, launched in December 2003, continues to be popular among court users as a reliable source of useful and up-to-date information with the number of visitors to site increasing this year. Website hits increased from 307,929 from December 2003 – October 2004, to 491,486 from November 2004 – October 2005.

The website was further developed throughout the year to include:

- District Court civil judgments (made publicly available for the first time);
- Revamped and updated Practice Directions and Circulars to Practitioners;
- Employment information;
- A news facility; and
- New court forms and court fee information.

### **Stakeholder Liaison**

For some years the Court has enjoyed the benefit of a Customer Council which provided valuable feedback about the court’s operations and acted as a sounding board for planned initiatives.

This year, the Court restructured its stakeholder liaison arrangements. The Customer Council has been superseded by two bodies – the Stakeholder Liaison Council (SLC) and the Civil Practice Group (CPG). The SLC is chaired by the Chief Judge and includes representatives of the major stakeholder groups



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impacted by the work of the Court. The CPG, which comprises about 10 legal practitioners invited to participate for a set term, provides feedback on operational matters and the practical implications of planned improvement initiatives.

The new arrangements apply for the civil jurisdiction; a scheme for the criminal jurisdiction is yet to be finalised.

### **Integrated Court Management System**

In conjunction with the Court Services Technology Group, the Court commenced development of an ICMS financial module. The new module, which is scheduled for implementation in December 2005, will replace current manual systems used for registry financial transactions and facilitate electronic support for the management of fines.

*Note: The full text of the District Court of Western Australia's Annual Review is available on [www.districtcourt.wa.gov.au](http://www.districtcourt.wa.gov.au)*



## MAGISTRATES COURT

### Jurisdiction and Work of the Court

The new Magistrates Court of Western Australia commenced operation on 1 May 2005 - amalgamating the former Courts of Petty Sessions, Local Courts and Small Claims Tribunal into a single court. This significant change addressed 200 recommendations of the Law Reform Commission dating back to 1990 and marked the most extensive legislative reform of Western Australia's lower court system in more than 100 years.

The Magistrates Court of Western Australia deals with adults, aged 18 or over, required to appear in court after being charged with a criminal offence. The Magistrates Court deals with civil matters involving claims up to \$50,000. For minor cases, the jurisdictional limit of the Magistrates Court is \$7,500. The Magistrates Court also deals with consumer/trader claims of \$50,000 or less, and minor case consumer/trader claims of \$7,500 or less.

Magistrates in all country locations are also appointed as Coroners and may sit as a Court of Summary Jurisdiction to hear matters relating to family law. A number of Magistrates in country locations undertake the duties of Mining Wardens. Two specialist courts have been introduced which allow expanded case management opportunities in their respective fields. The Domestic Violence Court in Joondalup was launched in December 1999 and the Drug Court began operation on 4 December 2000.

### Magistrates

As at 31 December 2005, the following held office as Magistrates:

#### **Chief Magistrate**

Mr Steven Alex Heath

#### **Deputy Chief Magistrate**

Ms Elizabeth Adele Woods

#### **Magistrates in Perth**

Mr Graeme Neil Calder

Mr Richard Hamilton Bromfield

Mr Terence John McIntyre

Mr Paul Michael Heaney

Mr Ivan Gregory Brown

Mr Wayne Gordon Tarr

Mr Giuseppe Cicchini

Mr Robert Keith Black

Mr Phillip Gregory Cockram

Ms Barbara Anne Lane

Mr Peter Graeme Malone

Mr Kieran Boothman (currently serving as a Magistrate in the Solomon Islands)

Mr Jeremy Raymond Packington

Mr Douglas Noel Jones



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Mr Paul Allen Nicholls  
Dr Michael Sanford King  
Ms Pamela Margaret Hogan  
Ms Vicki Laura Stewart  
Ms Michelle Ethne Pontifex  
Mr Leighton Howard Jones  
Mr Richard George Wykeham Bayly

### **Magistrates based at Metropolitan Courts**

Armadale: Mr Steven Ross Malley  
Fremantle: Mr Peter Spiro Michelides  
Ms Jacqueline Gay Musk  
Joondalup: Mr Michael David Wheeler  
Mr Geoffrey Dudley Lawrence  
Midland: Mr Colin Douglas Roberts  
Rockingham/Mandurah: Mr Robert Brian Lawrence

### **Magistrates based at Country Courts**

Albany: Ms Elizabeth Amanda Hamilton  
Broome: Mr Antoine Bloemen  
Bunbury: Mr Kelvin Trease Fisher/  
Mr Stephen McKenzie Wilson  
Carnarvon: Ms Susan Richardson  
Geraldton: Mr Stephen Paul Sharratt  
Kalgoorlie: Dr Kathryn Helen Auty  
Mr Denis Ronald Vincent Temby  
Northam: Ms Vivien Christine Edwards  
South Hedland: Ms Elaine Duncan Campione

### **Magistrates based at Coroner's Court**

Ms Evelyn Felicia Vicker SM - Deputy State Coroner

### **Magistrates based at Children's Court**

Mr Timothy Graham Schwass  
Mr Stephen Noel Vose

### **Magistrates holding concurrent appointments in the Family Court of WA**

Mr Peter David Monaghan  
Mr Christopher John Judges  
Mr Ronald Graham Fleming  
Ms Roberta Annette Andrews  
Mr Alan Moroni  
Ms Lisa Stewart  
Mrs Jill Vander Wal  
Mrs Susan Duncanson

Ms Julie Ann Wager, who was appointed a Magistrate in October 2000 and was the Magistrate responsible for the Perth Drug Court, was appointed a Judge of the District Court of Western Australia on



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28 January 2005. Mr Robert Maurice McMahon Glynn, who was appointed a Magistrate in August 1992, retired on 25 August 2005; Robert Huck Burton, who was appointed in December 1972, retired on 16 September 2005, and Frank Cullen, who was appointed in August 1992, retired on 25 November 2005, each having reached the mandatory retirement age. Mr Ivan Gregory Brown, who was appointed in August 1987, tendered his resignation effective from 17 January 2006.

Mr Kieran Boothman has taken a 12 month leave in order to serve as a Magistrate in the Solomon Islands. Magistrate Paul Nicholls has been forced to take an extended period of leave due to illness.

Ms Elaine Duncan Campione was appointed a Magistrate on 30 May 2005. After a short period in Perth, Ms Campione took up residence in Port Hedland as the resident Magistrate for that area. Ms Michelle Ethne Pontifex, Leighton Howard Jones and Elizabeth Amanda Hamilton were appointed Magistrates on 1 August 2005. Magistrate Hamilton has since taken up residence in Albany as the resident Magistrate for that area. Magistrate Jones currently sits at Central Law Courts but will sit at Armadale from January 2006. Magistrate Pontifex currently sits at Central Law Courts. Richard George Wykeham Bayly was appointed a Magistrate on 28 November 2005 and will sit initially at the Central Law Courts.

## CRIMINAL JURISDICTION

The following figures represent the number of cases dealt in the Magistrates Court (criminal jurisdiction) throughout the State in the year to 30 June 2005.

CRIMINAL		2003/04	2004/05	Variance
Case finalisation ratio:				
	Finalised before trial	81%	80%	-1%
	Finalised by trial	19%	20%	1%
Average length of trials (days)		0.18	0.17	-5.5%
Percentage of cases finalised within standard of 26 weeks		93%	92%	-1%
Annual Backlog		5378	5725	6.5%
<b>Additional case analysis information</b>				
Cases received during year		89,373	95,868	7.3%
Cases finalised during year		89,758	95,504	6.4%
Cases still to be dealt with (at end of year)		46,802	53,270	13.8%

The number of criminal matters continues to increase. Although the number of cases finalised during the year also increased, the rate of finalisations was not as great as the increase in matters received.

### Listing delays at the Perth Central Law Courts

Notwithstanding further increases in the number of criminal lodgments, the Court has been able to reduce the listing delays highlighted in last year's report. The current delay, in the order of 21 weeks for half day trials and 26 weeks for full day trials, is a substantial improvement on the delay of 30 weeks and 52 weeks respectively reported last year. Unfortunately, while improvements have been achieved at Central Law Courts there are a number of country and suburban locations that are experiencing greater delays as a result of increasing population and jurisdictional shifts.





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### CIVIL JURISDICTION

The following table indicates the workload for the civil jurisdiction to 30 June 2005.

CIVIL	2003/04	2004/05	Variance
Case finalisation ratio:			
Finalised before trial	96%	97%	1%
Finalised by trial	4%	3%	-1%
Average length of trials (days)	0.32	0.42	31.25%
Percentage of cases finalised within time standard of 52 weeks	90%	84.9%	-5.1%
Annual Backlog	8374	6925	-17.3%
<b>Additional case analysis information</b>			
Cases received during year	42,578	39,489	-7.2%
Cases finalised during year	21,212	18,173	-14.3%
Cases still to be dealt with (at end of year)	42,568	27,519	-35.4%

There was a significant reduction in the civil backlog as a result of the introduction of ICMS, which enabled inactive matters that could be finalised to be identified. There was a significant drop in civil lodgments following the introduction of the new legislation in May. It is anticipated that the number of lodgments will return to normal by next year's report. The increase in the length of civil trials reflects the increasing complexity of matters before the Magistrates Court.

### GENERAL

#### Form of Address

With the support of the Chief Justice and the Attorney General, Magistrates in Western Australia joined those in the majority of States in being referred to as "Your Honour" in Court. This achieves uniformity of address across all jurisdictions in Western Australia.

#### Phoenix Conference

This year funding was provided which enabled the National Judicial College of Australia to conduct its Phoenix Program for Magistrates in Perth. This enabled nearly every Magistrate in the State to participate. The program is designed for both new and experienced Magistrates to improve their judicial skills and techniques. Magistrates from most other States and Papua New Guinea also participated.

#### ICMS

After many years of development, and following introduction into the Supreme and District Courts, the Integrated Court Management System was successfully introduced into the Magistrates Court civil jurisdiction in May 2005. It has been progressively introduced into all Department of Justice run registries of the Court. It will not be extended to the criminal jurisdiction of the Court until after it has been developed and introduced into the superior Courts.



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### **Forms Online**

An interactive system has been developed on the Magistrates Court Website which enables the forms required to initiate civil proceedings to be prepared by the answering of relevant questions. At present, the form must be printed to enable it to be lodged but ultimately it will be possible to lodge it electronically.

### **Restraining Order Applications**

The number of applications for Violence Restraining Orders in the 12 months to 30 June 2005 increased by 12.7 percent to 10,759, up from the 9544 in the previous year. These applications create particular problems for the Court because of the need to deal with both interim applications and final order hearings in a timely manner.



## CHILDREN'S COURT

### Jurisdiction and Work of the Court

The Children's Court deals with young people between the ages of 10 and 17 years (inclusive) who have been charged with criminal offences. If a young person has turned 18 years after the date of the alleged offence, then the person still appears before the Children's Court.

The criminal jurisdiction of the Children's Court takes up most judicial time. The Court also has an important jurisdiction under the *Child Welfare Act 1947*. This is to hear and determine applications that a child be declared in need of care and protection. The Children's Court also hears applications for violence and misconduct restraining orders.

The President of the Children's Court is a Judge of the District Court of Western Australia. A Judge of the Children's Court has the same sentencing powers as a Judge of the Supreme Court. There is no restriction on the length of a custodial sentence that a Judge can impose. The President sentences and presides over the trials of young persons charged with the most serious offending.

A Magistrate of the Children's Court can only sentence a child or a young person to imprisonment for a maximum of three months or to a maximum period in detention of six months. The Children's Court President may extend the powers of Magistrates so that they can deal with a particular matter. Magistrates then have the same sentencing powers as the Judge. Each extension of power is limited to a particular Magistrate and for a particular offender for a particular charge or charges.

### Judicial Officers

The current judicial officers in the Children's Court are:

**President:**

His Honour Judge Denis Reynolds

**Full Time Magistrates:**

Mrs Susan Gordon, AM

Mr Timothy Schwass

Mr Stephen Vose

**Part Time Magistrates:**

Mr Patrick Hogan

Ms Andrée Horrigan

Magistrates resident in country areas, and those who relieve them from time to time, also sit in the Children's Court within their circuit area.



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### CRIMINAL JURISDICTION

The total number of cases (defendants/offenders) finalised by the Children's Court for the State for the year ending 30 November 2005 was up 4.62 per cent compared to the year ending 30 November 2004 (9935 compared to 9496 for the previous year). These figures do not represent 9935 different young people. Where a defendant/offender has appeared on a different charge(s) on a different day then that will be counted as two cases in the statistics. The total number of charges finalised by the Court for the year ending 30 November 2005 was up 12.5 per cent compared to 2004 (25,920 compared to 23,040).

Trials can be listed within an acceptable time frame and most are completed within three months of first appearance. Status conferences are listed before the President on each Monday to ensure issues in dispute are identified and the matter is ready for listing. Currently, the President can list a matter for trial 12 weeks from the status conference. This is a longer than a year ago. The increase has been largely due to a number of trials for charges of aggravated robberies involving four or more defendants. Those matters have been dealt, so it is expected that time between status conference and trial will decrease.

Summary of Cases Dec 2004 – Nov 2005	Children's Ct			Total
	Judge	Magistrate	Magistrate	
Bench Warrant issued	30	704	579	1313
Bench Warrant to Lie	2	2	33	37
Care and Protection Order		201	60	261
Child Good Behaviour Bond	5	309	201	515
Community Based Order Cancelled		1		1
Community Based Order under S62 Sent Act	5	50	78	133
Community Work in Lieu of Unpaid Fine s 65B YOA	1	23	18	42
Conditional Release Order	212	157	182	551
Conditional Release Order s 47 Sent. Act		91	34	125
Default imprisonment of compensation payment			2	2
Defendant Deceased			1	1
Detention	174	106	67	347
Discharged (Indictable Matter)		4	2	6
Dismissed s 33(2) YOA		38	30	68
Dismissed YCBO s 85 YOA			1	1
Dismissed, No Further Order s 65A YOA		1	1	2
Dismissed--No Further Orders	30	117	166	313
Imprisonment	15	22	9	46
Intensive Supervision Order s 69 Sent Act	26	23	10	59
Intensive Youth Supervision Order	38	235	308	581
Matter Withdrawn	20	79	50	149
Misconduct Restraining Order		15	12	27
Monetary penalty	18	751	635	1404
No Punishment imposed--s 66 YOA		6	14	20
No punishment imposed--s 67 YOA	53	452	217	722
No Punishment s 46 Sentencing Act			6	6
Parental Good Behaviour Bond		9	1	10
Referred to a Juvenile Justice Team		707	545	1252



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Restraining Order Application Dismissed		73	47	120
Suspended Imprisonment Order s 76 Sent Act	18	3	7	28
Violence Restraining Order		207	179	386
Warrant of Commitment unpaid fines s 65C YOA		1		1
Work and Development Order			7	7
Youth Community Based Order	17	523	859	1399
<b>Grand Total</b>	<b>664</b>	<b>4910</b>	<b>4361</b>	<b>9935</b>

Summary of Charges Dec 2004 – Nov 2005	Judge	Children's Ct Magistrate	Magistrate	Total
Bench Warrant issued	70	2290	1455	3815
Bench Warrant to Lie	10	5	81	96
Care and Protection Order		202	61	263
Child Good Behaviour Bond	5	608	329	942
Community Based Order under S62 Sent Act	17	151	176	344
Community Work in Lieu of Unpaid Fine s 65B YOA	3	59	63	125
Conditional Release Order	607	416	788	1811
Conditional Release Order s 47 Sent. Act	1	203	116	320
Detention	675	345	335	1355
Discharged (Indictable Matter)		17	9	26
Dismissed s 33(2) YOA		56	58	114
Dismissed YCBO s 85 YOA			6	6
Dismissed, No Further Order s 65A YOA		1	1	2
Dismissed--No Further Orders	157	289	380	826
Extraordinary Driver's Licence granted		3		3
Imprisonment	38	45	23	106
Intensive Supervision Order s 69 Sent Act	101	52	65	218
Intensive Youth Supervision Order	68	924	1139	2131
Matter Withdrawn	111	132	80	323
Misconduct Restraining Order		16	12	28
Monetary penalty	83	1337	1068	2488
No Further Orders Made	54	419	194	667
No order made	10	108	50	168
No Punishment imposed--s 66 YOA		10	34	44
No punishment imposed--s 67 YOA	392	1301	583	2276
No Punishment s 46 Sentencing Act		2	8	10
Parental Good Behaviour Bond		9	41	50
Referred to a Juvenile Justice Team		1781	1028	2809
Restraining Order Application Dismissed		96	49	145
Restraining Order Cancelled		24	53	77
Suspended Imprisonment Order s 76 Sent Act	32	4	13	49
Violence Restraining Order		241	223	464
Warrant of Commitment unpaid fines s 65C YOA	6			6
Work and Development Order			14	14
Youth Community Based Order	33	1501	2265	3799
<b>Grand Total</b>	<b>2473</b>	<b>12647</b>	<b>10800</b>	<b>25920</b>

**THE HON DAVID K MALCOLM AC**



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### Number of Trials Listed in Children's Court 2003-04 and 2004-05

Year	Judicial Officer	Care & Protection	Criminal	Restraining Orders	Total
2003-04	Judge		84		84
	Children's Court Magistrate	113	406	276	795
	Magistrate	9	232	180	421
<b>Total</b>		<b>122</b>	<b>722</b>	<b>456</b>	<b>1300</b>
2004-05	Judge		92		92
	Children's Court Magistrate	80	362	265	707
	Magistrate		222	216	438
<b>Total</b>		<b>80</b>	<b>676</b>	<b>481</b>	<b>1237</b>
<b>Grand Total</b>		<b>202</b>	<b>1398</b>	<b>937</b>	<b>2537</b>

In relation to the number of cases (defendants/offenders and total number of charges) dealt with by the President this year, there has been an increase of about 3.1 per cent (644 to 664) in the number of cases and an increase of about 5.5 per cent (2344 to 2473) in the number of charges finalised. There has also been an increase in the number of trial days listed before the President of 15.8 per cent for the year to 30 June 2005 compared to the to 30 June 2004 (152 to 176). As a result, it is necessary for the President to often list a sentencing at about 9.15 am before the 10am start of trials. That is in addition to sentencing on days set aside for sentencing only.

## DRUG COURT

Young offenders who have committed offences that would normally result in a sentence of detention, and who have substantial drug problems, can be referred to the Children's Court Drug Court. It is preferred that this option be normally available only to the President of the Court, as experience has shown that young offenders need the motivation of avoiding a long detention sentence in order to succeed in the program. Nevertheless, a Magistrate can refer an offender to the Drug Court if an appropriate case presents itself.

An offender is referred to the Magistrate who manages the Drug Court, and remains in the program for up to 12 months. The exact length of time an offender is in the program depends on the particular circumstances of each young person. During this time, the young person is strictly supervised with a mentor, often in a residential program for at least part of the time. If necessary, the young person is first required to live in the detoxification program. The offender appears at court every two weeks and submits to urinalysis several times per week. When the young person comes to the Court, he or she appears not in the court room, but in the conference room and the proceedings are carried out in an informal manner. If the young person is about to be removed from the program, or there are serious problems that need addressing and the informality of the conference room would be inappropriate, the proceedings move to the court room.

The program addresses not just drug problems but all the associated problems such as family issues, education, training or employment, and any other matters that impact adversely on the offender's life.

As in 2004, the number of offenders in the program varies. A total of 17 young people have taken part in the Drug Court program between 1 December 2004 and 30 November 2005. Not all of those have



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completed the program. At present, there are six young people subject to the Drug Court regime, and of those, four have been engaged for a substantial period of time, and are doing very well. The Drug Court program is not an easy alternative to detention. A great deal of commitment is demanded of the young person, and some of them struggle with this requirement. Nevertheless, the Drug Court has had a significantly positive impact in the lives of most of the young people who have been involved in the program, and even those who have not completed the program have demonstrated some achievement.

Without doubt, the Drug Court has the ability to be a life changing experience for some young people, who would otherwise have been sentenced to a long period of detention, and would be entrenched in drug usage and criminal offending.

## GENERAL

### Court Conferencing

Court conferencing commenced on 15 October 2001. Referral to the Juvenile Justice Teams for Court Conferencing has continued to be an option for metropolitan Children's Courts when dealing with some young offenders guilty of offences set out in the Schedules of the *Young Offenders Act 1994* ("the Act"), or deemed to be more persistent offenders, particularly in situations where the involvement of victims was an option.

When an offender is referred to Court Conferencing an action plan is prepared within 12 weeks with the participation of the offender. Such plans may include a face-to-face apology or some other form of apology to the victim, reparation, attendance at counselling and/or treatment e.g. anger, drug abuse, psychological, and community work.

<b>Court Conferencing Total Referrals 2004 - 2005</b>	<b>91</b>
<b>Open Cases as at 30 June 2005</b>	<b>18</b>
<b>Completed Successfully</b>	<b>62</b>
- Section 67 (no further punishment)	60
- Good Behaviour Bonds	2
<b>Returned Unsuccessful:</b>	<b>11</b>
- Fail to accept responsibility	4
- Fail to complete Action Plan	5
- Return reoffended	1
- Fail to engage	1

<b>Types of Offences Referred</b>	
Assault Public Officer	19
Assault Occasioning Bodily Harm	29
Criminal Damage	10
Lit Fire	13
Common Assault	4
Robbery	4
Reckless Driving	4
Unlawful Wounding	2



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Sell/Supply Drugs	2
Disorderly Conduct	2
Grievous Bodily Harm	1
Threat to Kill	1

Type of Offender Referred	
Serious Offenders	81
Persistent Offenders	10

Ethnicity	
Aboriginal	21 (23%)
Non Aboriginal	68
Unknown	2

Age Distribution		
11 years	2	2 x Aboriginal
12 years	5	1 x Aboriginal
13 years	5	1 x Aboriginal
14 years	12	3 x Aboriginal
15 years	26	6 x Aboriginal
16 years	15	5 x Aboriginal
17 years	26	3 x Aboriginal

### Victim Participation Rate

The victim participation rate for conferences held in 2004-05 is 77 per cent. There were 91 referrals. Some 18 referrals were victimless, returned prior to the holding a conference or are still open and no conference has been held. Some 73 conferences that have been held for offences that had a victim. In three conferences, where the victim did not attend, a victim impact statement was submitted.

- 73 conferences held for matters involving a victim;
- 56 conferences held with a victim in attendance;
- 17 conferences held without the victim attending.

### Success Rate

Eight young people were referred and completed the court conferencing process in the first half of the financial year. In the time since attending a conference, six have not appeared in court again and two have done so. It is too early to predict a success rate for those young people referred in 2005.

However indications from those referred between July and December 2004 are that the current success rate is about 75 per cent. That rate may reduce given further time; however, success rates that have been calculated previously (*on larger samples and a 12-18 month period after attending a court conference*) have rested around 74 per cent.





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### Indigenous Issues

The over representation of Aboriginal young people in the criminal justice system continues to be cause for concern. At present Rangeview Remand Centre has a population of 47. Of this total, 36 are Aboriginal and 11 are non-Aboriginal. Of the 36 Aboriginal detainees, 32 are male and 4 are female, with 26 of the 36 from the country.

At present, the population at Banksia Hill Detention Centre is 72 - 51 are Aboriginal and 21 are non-Aboriginal. For management reasons, at present only male detainees are detained at Banksia Hill Detention Centre. Females are detained at Rangeview Remand Centre. The number of current sentenced detainees is about the same as this time last year.

These statistics highlight the great need for increased resources for prevention and diversion programs and also protection and development programs for Aboriginal children in both metropolitan and country Western Australia.

### Care and Protection Applications

There was a decrease in the number of applications to have a child declared in need of care and protection in 2004/05.

Perth Children's Court		
Care and protection applications filed	01/07/2003-30/06/2004	01/07/2004-30/06/2005
		320

The Children's Court expects its workload in the area of child protection will substantially increase once the *Children's & Community Services Act 2004* is proclaimed. Proclamation is expected in 2006. The Act shifts the decision-making in relation to the apprehension of children in need of protection from the executive to the judiciary. It requires an application to be made to the Children's Court for a warrant to apprehend a child in non-urgent cases.

Under the current legislation, the CEO of the Department for Community Development can do so without having to go to the Court. The Act will also require the CEO to make an application and the Children's Court to list an application for a protection order within three working days of the child being apprehended. At such listings, interim placement will be considered and decided. All of this will be additional work for the Children's Court.



## COMMITTEES

### Supreme Court Accommodation Committee

The Accommodation Committee, chaired by Justice Murray, is the body which has the responsibility to advise the Chief Justice and liaise with government and responsible departmental officers in respect of all matters of court accommodation affecting the Supreme Court and the role of the Chief Justice as head of jurisdiction. Major matters attended to during the year were:

1. The interior demolition and renovation of the custody centre, involving much improved accommodation and security procedures.
2. The Sallyport was similarly demolished and rebuilt in modern, secure form.
3. While the custody centre was out of action, a temporary facility was constructed and operated, requiring careful attention to the procedures involved.
4. Court 6 was gutted and rotated through 180 degrees to put its public spaces back to back with Court 7 thus improving security, place the jury box on the internal wall, and improve prisoner and judicial access. Associated work included the construction of a jury room to serve this court.
5. The opportunity was taken for a major review of the Court's perimeter security. The Court has completed its recommendations and the necessary work will soon be undertaken by the Department. A feature will be improved physical barriers and access controls, as well as regular video monitoring of the Court's external precincts.
6. Court 9 was moved to the ground floor on the northern side of the building. It has been completely renovated in a manner sensitive to its heritage, but with a full complement of modern electronic equipment. It functions as a practice court with full video-conferencing facilities.
7. Work is proceeding to enhance the electronic capacities of the courtrooms generally, both in the 1903 building and at 111 St Georges Terrace.
8. Court 3 has been completely refurbished. It is a stunning example of what is possible, with full restoration of its heritage features and its equipment as a modern courtroom, with all necessary electronic facilities. The bench has been altered to accommodate a Court of Appeal, the dock expanded, the jury box increased in size to accommodate 18 jurors (as it has in Court 2) and original windows have been reopened so as to improve immeasurably the natural light available in the room.
9. Re-organisation and renovation of office accommodation has continued, particularly to accommodate the Registry of the Court of Appeal, and the staff of the Judges of Appeal.
10. A considerable number of minor works have been undertaken, including improved security of access to criminal courtrooms. A lift to improve public access to the top floor of the 1903 courthouse will soon be undertaken.
11. The old Reveley courthouse, the home of the Francis Burt Law Education Centre, has undergone external restoration and repainting consistent with historical evidence.
12. Planning has continued to enable the Court to relocate all its elements on this site.
13. In the meantime, renovation work is being undertaken at 111 St Georges Terrace to accommodate elements of the Court until the final additional building work on this site is complete. The work will commence in the New Year. It includes improvements in security, new judicial chambers, some modifications to courtrooms and offices, better library accommodation, and a new mediation suite. These improvements will assist the Court in its work performed at that location. But regrettably, nothing can be done to alleviate the inherent unsuitability of that accommodation for the Court's work, and nothing can reduce the inefficiency and extra cost involved in splitting the Court between the two locations. Further, it is now recognised in this Court that the needs of the District Court will be such by the time its new courthouse on the corner of Hay and Irwin Streets is commissioned, that Court will require all the



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available accommodation at that site. The plan to accommodate this Court's criminal jury trial work there will not be able to be implemented except where, for particular cases, the security level demanded is such that it cannot be provided on this site. It is imperative, for those reasons, that we do not lose sight of the urgent and ever more pressing need to advance the project to provide adequate accommodation for this Court on this site.

### Self-Represented Persons Committee (Civil)

Justice Simmonds is currently Chair of the Self-Represented Persons Committee (Civil), previously known as the Unrepresented Civil Litigants Committee.

The Committee meets as needed to discuss matters to do with unrepresented people in the civil jurisdiction. ICMS data on the incidence of unrepresented litigants (outside of single judge appeals) has revealed a low percentage – significantly less than 10 per cent of the hearings. However, hearings involving unrepresented litigants can take up significantly more hearing time.

The Committee is currently developing a Management Plan for self-represented persons, looking at resources for those parties and for the Court.

### Education Committee

Two members of the Court's Education Committee, Justice Hasluck and Justice Jenkins, attended the Phoenix Judges Program conducted by the National Judicial College of Australia held at University House, Canberra in May.

The Phoenix Program has two objects being, first, to provide a refresher program for experienced Judges, exposing them to new ideas and new approaches from more recently appointed judicial officers and challenging them to think afresh about their judicial work. The second object is to provide recently appointed Judges with an opportunity to work with experienced Judges, and to learn from their experience. Matters under discussion at the Phoenix Program included judicial conduct and ethics, preparation for trial, case management, the media and the courts, Judges and technology, cultural awareness and diversity, alternative dispute resolution, expert evidence and various sentencing issues.

Upon returning from the Phoenix Program, the Chair of the Education Committee, Justice Hasluck, assisted by other members of the Committee, convened a Supreme Court Seminar Day to address some of the issues under discussion at Canberra and various current matters arising out of recent legislative reforms in Western Australia. It also included reference to practice and procedure in the newly constituted Court of Appeal, practice and procedure in the newly constituted State Administrative Tribunal, procedural issues arising under the *Criminal Practice and Procedure Act* and current sentencing issues.

### Law Library Committee

Justice Hasluck is the Chair of the Law Library Committee, which is made up of representatives from the Supreme Court, the Department of Justice, the Legal Practice Board, the DPP's office and the Law Society. The Library Committee supervises the provision of library services at library sites in the Supreme Court building and at the Central Law Courts. Users of the Law Library are primarily the judiciary and their staff, legal practitioners, officers of government departments and self-represented persons.



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The Committee met on a regular basis throughout the year. The project to develop a concept plan for the Law Library at the Supreme Court and its branch library at the Central Law Courts commenced in February 2005. It recommended the continued participation of the Department of Justice with the Law Library based on analysis of the most appropriate way to meet the needs current users. The final report dated 23 August 2005 was referred to the Department of Justice for consideration of the recommendations. Further action arising out of the final report is now awaited.



## GENERAL

### LAW REFORM COMMISSION

#### **Aboriginal Customary Law**

The Law Reform Commission's preliminary recommendations on Aboriginal Customary Laws will appear in a discussion paper which was to be completed at the end of 2005. The Aboriginal Customary Laws project aims to canvass issues relating to the recognition of traditional Aboriginal laws and customs within the Western Australian legal system.

During 2004 and 2005, the Commission published 14 background papers on topics as diverse as Indigenous Interpreters, Family Law & Customary Law, International Law, and Indigenous Intellectual Property. These background papers, which are now available from the Commission's web-site, provide additional information on issues relevant to the project and highlight areas that the Commission has given further consideration to in the preparation of the discussion paper.

The completion and distribution of the discussion paper will be followed by a three-month submissions period in which interested parties can consider the content and comment on the Commission's proposed recommendations.

The Commission also proposes to conduct return visits to various regional and remote Aboriginal communities previously consulted, to facilitate feedback and encourage submissions. All comments and submissions received will be considered and addressed by the Commission in its final report, to be published in early 2006.

#### **Problem-oriented Court and Judicial Case Management**

On 28 August 2004, the Law Reform Commission received a reference to inquire into and report upon the principles, practices and procedures pertaining to problem-oriented courts and judicial case management. The Commission, in carrying out the reference, is reviewing the development of problem-oriented courts and judicial case management, as well as the jurisprudential, ethical and practical issues arising from their operation.

The Commission has conducted a detailed research and consultation phase and anticipates the release of a draft discussion paper by the end of 2005. The final report will be completed in early 2006.

#### **Review of Law of Homicide**

On 26 April 2005, the Commission received a reference to review the law of homicide, with particular consideration to be given to the distinction between wilful murder and murder; the defences available and the current penalty provisions.

The Commission will conduct an in-depth examination of the issues raised by the terms of reference, including the effect the removal of the distinction between wilful murder and murder may have on the criminal justice system.



# LEGAL AID WESTERN AUSTRALIA

### **New Regional Legal Aid Offices in Albany and Geraldton**

In 2004/05, Legal Aid opened new offices in Albany and Geraldton. This initiative has improved access to legal advice for people living in country areas and addressed the shortage of lawyers available in these regions to do legal aid work. The Geraldton office is equipped with state-of-the-art alternative dispute resolution and video conference facilities. The Albany office will have these by June 2006 when it moves to bigger premises.

### **Criminal Appeals**

Improved legal aid arrangements have been introduced for criminal appeal cases. Where a practitioner certifies to Legal Aid that an application for leave to appeal has reasonable prospects of succeeding, aid will be granted without further assessment (other than means). Likewise, if the application for leave is successful, an automatic grant of aid will be made for the appeal hearing.

### **Family Court**

During the year, the Legal Aid Commission established a duty counsel scheme to assist self-represented litigants appearing before the Family Court of WA. The scheme also provides a referral service for the full range of Legal Aid services, including legal aid advice and self-help services.