Thank you for the opportunity to speak to you today about the experience of your antipodean cousins in the development of our family law and Family Courts structure.

Australia operates according to a system of co-operative federalism, whereby governmental powers are allocated between Commonwealth and State Governments. The Commonwealth has specific powers under the Australian Constitution and the states and territories exercise residual powers. Constitutional responsibility for marriage, divorce and matrimonial causes, parental rights and the custody and guardianship of children is vested in the Commonwealth. Responsibility for public family law, intervention by the state in care and protection issues, lies with the states and territories. As a consequence of this Constitutional divide, state intervention in children’s lives is dealt with by specialist divisions of state courts. Private family law disputes are dealt with by the Family Court and the Federal Circuit Court.

The Family Court of Australia was established in 1975. It was established as a specialist superior court exercising a broad federal jurisdiction in divorce, children’s issues, property and maintenance. It operates in all states and territories other than Western Australia. Western Australia elected to maintain a state based court structure, upon which federal jurisdiction is conferred. Judges of the Family Court of Western Australia hold dual commissions with the Family Court of Australia, with appeals from that court determined by the Full Court of the Family Court. Reference must also be made to
arrangements made by the Commonwealth with the States and Territories which enable magistrates of relevant courts to exercise family law jurisdiction. Because Australia is such a vast country, it is necessary for courts to work in aid of each other and to extend the reach of finite judicial resources as far as possible. The effect of this is that state magistrates exercise limited original jurisdiction in family law subject to an appeal de novo. Although they perform an important role in the Australian family law system, further discussion of these state based arrangements would unnecessarily complicate this address. My focus will remain on the federal courts.

Initially, it was envisaged that the Family Court’s jurisdiction would be exercised by a “Family Law Division” of a proposed superior court, which ultimately became the Federal Court. A bill to that effect was narrowly defeated in 1974. In the meantime, the Australian Senate Standing Committee on Legal and Constitutional Affairs commenced an inquiry into the provisions of a proposed Family Law Act. As well as commenting on the format of the soon to be Family Law Act 1975, that Committee recommended the establishment of a specialised court as part of a “new start in matrimonial law and administration”.

The Committee’s reasoning was that such a court could bring more to the work involved in the adjudication and resolution of family breakdown than a federal reconstruction of the State and Territory Supreme Courts who, until then, dealt with family law cases. It opined that a degree of specialisation and professional support not previously available for those cases would enhance the exercise of judicial power in family law.

The Committee recommended that the Court be comprised of two divisions. The first tier would comprise judges with equivalent status to judges of superior (Federal) and State Supreme Courts. The status of the second tier was to be equivalent to a District Court level. As to the allocation of jurisdiction, the Committee said “It is not contemplated that the jurisdiction of each tier be rigidly defined … but certain matters (particularly complex custody and property issues) would no doubt be reserved for the first tier judges”.

In the event, the Family Court that was established in 1975 differed from the model proposed by the Senate Committee. The court was not established as a court comprised by two separate divisions. The Act provided for the office of Chief Justice, senior judges and judges. In its original formulation, there was no appellate division, with appeals dealt with by three senior judges.

A separate appellate division was established in 1983 to which five judges were assigned on a permanent basis and six for a two year period. As had been the case from inception, an appeal lay in relation to an error of law. By 1989, appointments to the Appeal Division had changed to permanent assignments and senior judges all but disappeared. No further senior judges were appointed and to the extent that they had an administrative role, this was subsequently taken up by the role of an administrative judge (which was a statutory appointment).

The work assumed by the Family Court on commencement illustrated its relative standing in the hierarchy of courts. When the Family Court was established, it took over the matrimonial causes jurisdiction exercised by State and Territory Supreme Courts, but only in relation to divorce and ancillary relief. In the following years, state and territory parliaments referred to the Commonwealth powers which were invested in the states and territories, including in relation to de jure and de facto couples. Jurisdiction continued to grow and we now have jurisdiction in relation to all private family law disputes. Necessary additional jurisdiction, for example, Corporations and Bankruptcy, has been conferred, which, provided it has the necessary connection to a matrimonial cause, may be called in aid of the more complex financial cases. Allied to this is the power to accrue additional jurisdiction required to determine, in one court, a single justiciable issue.

However, the question of whether family law should be the province of a superior court did not end with the establishment of the Family Court. In its final report to the Constitutional Convention in 1987, the Advisory Committee on the Australian Judicial System said:

*The work of the Family Court falls into two broad categories. Into the first category fall the large number of applications which are*
essentially of a routine kind, many of them being uncontested. Generally speaking, this category does not warrant the attention of a superior court. The second category involves a smaller, but significant, number of major contested cases concerning, in particular, questions relating to the custody of children and to property. This category does warrant the attention of a superior court … Because the Committee is of the view that a substantial part of the work of the Family Court is appropriate for a superior court, it does not favour the view that jurisdiction in such matters should be given to a court at District Court level …

The Advisory Committee went on to recommend a “program of renovation” for the Family Court. This included equipping the court with staff and conditions appropriate to a superior court and simultaneously taking steps to limit its workload to that part of its jurisdiction that warranted the attention of a superior court.

This segued into a series of inquiries by the Federal Parliament, the Australian Law Reform Commission and consideration by the Family Law Council about the design and structure of the family law system. Contrary to the recommendation of the 1987 Advisory Committee, momentum developed for the establishment of a lower level court that would deal with an array of federal matters, including family law.

Fast forward to 2000 when the Federal Magistrates Court of Australia was established. By establishing the Federal Magistrates Court, the Australian Parliament rejected the idea that a lower tier be added to the Family Court and Federal Court. The idea being that a new court established with the precise purpose of undertaking the less complex work of the Family and Federal Courts would be able to establish its own processes and culture targeting this type of litigation, thereby leaving the more complex work to be done by the superior courts: the Family and Federal Courts. The Attorney General put the matter of complexity front and centre when moving the second reading of the Federal Magistrates Bill 1999. He said:

… The changes that have occurred in Australian society over recent years have led to an increased range of matters coming before the Commonwealth courts. Many of these matters are not complex and do not need to be dealt with by superior court judges. Federal and Family Court judges are increasingly tied up dealing with matters that
could be dealt with more efficiently at a lower level. The need for a
court which can handle less complex federal matters more efficiently
and effectively is now pressing. It is appropriate that, on the cusp of
the new millennium, this parliament takes the next step of
establishing a new, lower level, Commonwealth court.

The title given to the court and its judiciary revealed that the Australian
Parliament in 2000 embraced the notion, rejected in 1975, that the importance
of family law in society meant that it should be undertaken at superior court
level. However, the legislation itself signalled that this new court was a hybrid
in the court’s hierarchy. Like the justices of the Family and Federal Courts,
the federal magistrates were appointed justices pursuant to Chapter 111 of
the Constitution. Appeals from their decisions are by way of rehearing but
subject to the establishment of an error of law. The court was established as
a court of law and equity. Thus, although the nomenclature suggested that
this was a Magistrates Court, the indicia of the court had many of the features
of a court at District Court level.

This new court’s jurisdiction was initially quite limited. For example, it could
make interim but not final custody orders and its jurisdiction in relation to
property settlement was limited to $750,000. With its judiciary being 12 in
number and needing to cover an area 90 times larger than Ireland, a
pragmatic decision was taken to limit to two days the length of hearing which
the court would undertake. Cases likely to last longer were transferred to the
Family Court.

It was quickly appreciated that the restricted jurisdiction in family law would be
self-defeating and, within a year of its establishment, in parenting matters, the
Federal Magistrates Court was invested with almost concurrent jurisdiction to
that of the Family Court. As time passed, the monetary ceiling on property
matters increased and is now unlimited. The two day rule extended to three
and now four. The end result of this is that in relation to family law, the
property and parenting jurisdiction of the Federal Magistrates Court and the
Family Court are concurrent. From a court of nine in 2000, there are now 62.
Earlier this year, the court was renamed and it is now called the Federal
Circuit Court. The Federal Circuit Court assumed responsibility for regional
work, with its work in regional and remote Australia now constituting a significant component of its workload.

As the Federal Circuit Court grew, the rate of appointments to the superior federal courts slowed. From almost 50 Family Court judges, there are now 33. The Family Court rarely conducts sittings away from capital cities, albeit there is an occasional sitting in remote Australian communities.

For the year ended 30 June 2012, 84% of applications for final orders (excluding divorces) were filed in the Federal Circuit Court compared to 16% in the Family Court. Although this does not equate to the proportion of work that each court does, it illustrates the point that there is consensus in Australia that the preponderance of family law work can be successfully undertaken at District Court level.

The two tables which follow provide a summary of the workload of the two courts for the 2011/2012 financial year:
Figure 3.2 Applications filed, 2011–12*

<table>
<thead>
<tr>
<th>Application</th>
<th>Filed</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Final orders applications</td>
<td>3271</td>
<td>18%</td>
</tr>
<tr>
<td>Application in a case (Interim)</td>
<td>3609</td>
<td>20%</td>
</tr>
<tr>
<td>Consent orders applications</td>
<td>19518</td>
<td>59%</td>
</tr>
<tr>
<td>Other applications</td>
<td>335</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>17,713</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Issues sought on Applications for Final Orders

<table>
<thead>
<tr>
<th>Issue</th>
<th>Filed</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting only</td>
<td>1151</td>
<td>35%</td>
</tr>
<tr>
<td>Financial only</td>
<td>1659</td>
<td>51%</td>
</tr>
<tr>
<td>Parenting and financial</td>
<td>427</td>
<td>13%</td>
</tr>
<tr>
<td>Other</td>
<td>34</td>
<td>1%</td>
</tr>
</tbody>
</table>

* Does not add to 100% due to rounding.
**Federal Circuit Court**

**Why have two courts?**

First, complex family law is very complex. One need conduct only a brief analysis of the judgments delivered by the Family Court to appreciate the legal and factual complexity of the work undertaken and recognise that this is properly the work of a superior court.

Secondly, in a discretionary jurisdiction, jurisprudential leadership is essential.
Thirdly, it reinforces the commitment from governments to its citizens that private family disputes are important.

Fourthly, it ensures a clear structure for appellate review.

Finally, and no less importantly, it enables innovation in the design of case management systems so that the two courts are able to maintain a focus on processes which deliver the best outcomes for a range of litigants and the community.

It should not pass without comment that the Federal Circuit Court is a general federal court. Although at inception, the Court designed its case management system and allocation of judicial work on the basis that the judiciary would undertake all of the work of the court, as time passed, informal divisions developed. Essentially, with family law comprising the overwhelming majority of the work of the court and its judiciary selected accordingly, the Court settled into a General Federal Division and Family Law Division. Although a number choose to sit across the court’s jurisdictions, the majority sit in the field of specialisation they chose in practice. It is to the Federal Circuit Court that the majority of solicitor appointments are made with the overwhelming majority of appointments to the superior courts drawn from the Bar. Although the preponderance are drawn from the upper echelons of the family law bar and the most senior members of the solicitors branch of the profession, the judiciary of both courts includes judges appointed from the general bar, specialist commercial counsel and academia.

It follows that in both courts family law work is overwhelmingly undertaken by specialist judges. It is no coincidence that it was from a specialist family court (the Family Court) that the notion that a court could include a separate counselling arm to provide mediation and dispute resolution services to the court’s clients was established. When this happened in 1975, it was a world first. For the court to have amongst its staff, personnel counsellors who could work with families and guide them to a child focused agreement was innovative. I question whether that initiative and many of the subsequent
developments might have been achieved from a generalist court. Two examples establish the point.

The first is the less adversarial trial. This is a case management system designed for parenting cases. It comes into play when the case moves into that category of case where a trial is required. Having completed conciliation and/or a child responsive program, the case is allocated to a judge. At that point, the case enters the trial judge’s docket and the judge takes the case through to completion. For a parenting case, a family consultant is also allocated and for both parenting and property cases, there is a docket registrar.

The degree of control that the judge exercises over the proceedings is critical in the less adversarial trial. Conducted in this manner, the judge should ultimately preside over a hearing which is contained, blessed with necessary and only relevant evidence. From the litigants’ perspective, they are engaged in a process presided over by the judge who will make the ultimate decision. Self-evidently, this means that as issues arise they are dealt with by a judge who is familiar with the case. There has been much international interest in the less adversarial trial process, with similar systems now operating in New Zealand and planning well underway in Singapore.

Secondly, different evidentiary rules are applied in parenting compared to property cases. For parenting cases, the legislation provides that the strict rules of evidence, such as the prohibition against hearsay evidence does not apply. Provision is made in the Act for strict application of the evidentiary rules in “exceptional” cases. This tends to be adopted in the most serious cases of child abuse and violence. Although it might be heretical to say this, it could well be argued that the application of these different evidentiary schemes is best undertaken by specialist judges.

**Challenges**

The division of case work between the Family Court and the Federal Circuit Court is underpinned by a protocol which the Chief Justice and
the Chief Judge published for the guidance of the legal profession and litigants, so as to enable matters to be directed properly to the court appropriate to hear them. Under the protocol, the Federal Circuit Court judges undertake the bulk of the family law work, whilst the more complex cases and appeal matters are dealt with by the Family Court.

The effect of the protocol is that matters of the type listed below should be filed in the Family Court:

- International child abduction;
- International relocation;
- Disputes as to whether a case should be heard in Australia;
- Special medical procedures (such as gender reassignment and sterilisation);
- Contravention and related applications in parenting cases relating to orders which have been made in Family Court proceedings; which have reached a final stage of hearing or a judicial determination and which have been made within 12 months prior to filing;
- Serious allegations of sexual abuse of a child warranting transfer to the Magellan list or similar list where applicable, and serious allegations of physical abuse of a child or serious controlling family violence warranting the attention of a superior court;
- Complex questions of jurisdiction or law; and
- If the matter proceeds to a final hearing, it is likely it would take in excess of four days of hearing time.

All other cases should be filed in the Federal Circuit Court. Although the filing fees for the two courts differ, the lower filing fee payable in the Federal Circuit Court has not entirely avoided cases being filed in the Family Court which should be filed in the Federal Circuit Court.

It follows that a reasonable number of cases are transferred between the two courts. This would have been avoided had one of two measures been adopted. Firstly, appropriate legislative differentiation which distinguished the jurisdiction of the two courts. Such an approach would have made it easier for the courts and community to adapt to the establishment of a new court and provided clarity in the family law system from the outset. The argument that could be made against this approach is that, as we saw in the first year
following establishment of the Federal Magistrates Court, inappropriate
delineation may stand in the way of innovation and result in lost opportunities
in the development of the court structure. However, with our experience as a
guide, the case for legislative differentiation is strong. It would not be difficult,
for example, to include in legislation the points made in the protocol.

The second strategy would be to make provision in the enabling legislation for
specific matter types to be filed in the lower tier with an uplift power reposed in
the superior court. Irrespective, an uplift power (which is not part of the
Australian federal framework) would assist to ensure that the most complex
work in the jurisdiction is undertaken at superior court level.

Of course, there must be provision to transfer cases between courts. In the
federal system, either court on its own motion or on an application of a party
can transfer a matter to the other court. There is no right of appeal from a
decision as to transfer. Importantly, there is a statutory prohibition against the
commencement of proceedings in one court where proceedings in respect of
an associated matter are pending in the other court.

Because it may assist your deliberations, the provisions are set out below:

33A Proceedings not to be instituted in the Family Court if an
associated matter is before the Federal Circuit Court

(1) Proceedings must not be instituted in the Family Court in
respect of a matter if:

(a) the Federal Circuit Court of Australia has jurisdiction
in that matter; and

(b) proceedings in respect of an associated matter are
pending in the Federal Circuit Court of Australia.

(2) Subsection (1) does not apply to:

(a) proceedings for a divorce order; or

(b) proceedings instituted in the Family Court under
Division 13A of Part VII or under Part XIII or XIII A.

(3) If:
(a) proceedings are instituted in the Family Court in contravention of subsection (1); and

(b) the proceedings are subsequently transferred to the Federal Circuit Court of Australia;

the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

33B Discretionary transfer of proceedings to the Federal Circuit Court

(1) If a proceeding is pending in the Family Court, the Family Court may, by order, transfer the proceeding from the Family Court to the Federal Circuit Court of Australia.

(2) The Family Court may transfer a proceeding under subsection (1):

(a) on the application of a party to the proceeding; or

(b) on its own initiative.

(3) The standard Rules of Court may make provision in relation to the transfer of proceedings to the Federal Circuit Court of Australia under subsection (1).

(4) In particular, the standard Rules of Court may set out factors that are to be taken into account by the Family Court in deciding whether to transfer a proceeding to the Federal Circuit Court of Australia under subsection (1).

(5) Before standard Rules of Court are made for the purposes of subsection (3) or (4), the Family Court must consult the Federal Circuit Court of Australia.

(6) In deciding whether to transfer a proceeding to the Federal Circuit Court of Australia under subsection (1), the Family Court must have regard to:

(a) any standard Rules of Court made for the purposes of subsection (4); and

(b) whether proceedings in respect of an associated matter are pending in the Federal Circuit Court of Australia; and

(c) whether the resources of the Federal Circuit Court of Australia are sufficient to hear and determine the proceeding; and
(d) the interests of the administration of justice.

(7) If an order is made under subsection (1), the Family Court may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Circuit Court of Australia.

(8) An appeal does not lie from a decision of the Family Court in relation to the transfer of a proceeding under subsection (1).

(8A) The Federal Circuit Court of Australia has jurisdiction in a matter that:

(a) is the subject of a proceeding transferred to the court under this section; and

(b) is a matter in which the court does not have jurisdiction apart from this subsection.

To avoid doubt, the court’s jurisdiction under this subsection is not subject to limits set by another provision.

(9) The reference in subsection (1) to a proceeding pending in the Family Court includes a reference to a proceeding that was instituted in contravention of section 33A.

(10) This section does not apply to proceedings of a kind specified in the regulations.

33C Mandatory transfer of proceedings to the Federal Circuit Court

(1) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Family Court, the Family Court must, before going on to hear and determine the proceeding, transfer the proceeding to the Federal Circuit Court of Australia.

(2) If a proceeding is transferred under subsection (1), the Family Court may make such orders as it considers necessary pending the disposal of the proceedings by the Federal Circuit Court of Australia.

(3) An appeal does not lie from a decision of the Family Court in relation to the transfer of a proceeding under subsection (1).

(3A) The Federal Circuit Court of Australia has jurisdiction in a matter that:
(a) is the subject of a proceeding transferred to the court under this section; and

(b) is a matter in which the court does not have jurisdiction apart from this subsection.

To avoid doubt, the court’s jurisdiction under this subsection is not subject to limits set by another provision.

(4) The reference in subsection (1) to a proceeding pending in the Family Court includes a reference to a proceeding that was instituted in contravention of section 33A.

(5) The Minister must cause a copy of regulations (transfer regulations) made for the purposes of subsection (1) to be tabled in each House of the Parliament.

(6) Either House may, following a motion upon notice, pass a resolution disallowing the transfer regulations. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the transfer regulations was tabled in the House.

(7) If neither House passes such a resolution, the transfer regulations take effect on the day immediately after the last day upon which such a resolution could have been passed.

(8) Subsections (5), (6) and (7) have effect despite anything in:

(a) the Acts Interpretation Act 1901; or

(b) the Legislative Instruments Act 2003.

Common forms and harmonised rules of court have been challenging. Although the judges of the Family Court may make rules of court which provide for the practice and procedure to be followed in the Family Court and other courts exercising jurisdiction under the Act, that power does not extend to the Federal Circuit Court. With independent rule making powers, the courts have needed to work co-operatively so as to achieve different but not incompatible systems of case management, practice and procedure and forms. The argument in favour of differentiation is obvious. Namely, the type of cases undertaken between the two courts is different. Case management systems for a court concerned with complex cases will need to have different
features to a court concerned with less complex cases. No less importantly, the establishment of a new court necessarily called for innovation and had the Federal Circuit Court done nothing more than replicate the forms and processes of the Family Court, the exercise would have been one of futility. It was the freedom to innovate and design forms and systems geared to simplicity which was instrumental in that court’s early success. Nonetheless, there is now a clear case for the courts to harmonise rules. Indeed, the argument against harmonised federal rules is difficult to resist.

Common court forms from the outset should be encouraged. For our courts, achieving common forms has not always been easy. Had it been a requirement or clear expectation at creation, this could have been achieved and the issue been less of a distraction than it has been. There is no doubt the profession would have applauded common rules and common forms.

**Two courts with a single administration**

The decision to transfer some of the corporate operating systems of the Federal Circuit Court to the Family Court was made as a result of concerns regarding the sustainability of the Federal Circuit Court’s human resources, payroll, property services and finance systems. That court’s corporate systems infrastructure, which was established in 2000 to support 16 judges with minimal support staff, was stretched to capacity, and there was a high level of risk in regard to those systems. The Commonwealth Attorney-General and the two courts agreed that the concerns raised would be addressed if the courts were to merge their administrative and corporate support. Acting on this advice, in October 2008, a single corporate services team, servicing both courts, was successfully implemented and provides the following administrative functions:

- human resources;
- payroll;
- property management;
- Property management;
- Contracts and procurement;
- Information management;
- Statistical services;
• Financial management;
• Payroll management;
• Human resources; and
• Communication.

The single administration is managed by the Chief Executive Officer and is governed by the Family Law Courts Advisory Group whose membership comprises of the Chief Justice, the Chief Judge, the CEO of the joint administration, a justice nominated by the Chief Justice, a judge nominated by the Chief Judge and the Deputy Secretary of the Attorney-General’s Department. These arrangements have now been formalised by statutory amendment. Considerable costs savings have been achieved and it is fair to say that the system operates harmoniously.

**Appeals**

The High Court of Australia is the ultimate court of appeal. The High Court’s appellate jurisdiction is found in section 73 of the Constitution. Essentially, it embraces:

1) appeals from within the High Court itself – typically from a single justice to a larger bench in matters arising within the court’s original jurisdiction;

2) appeals from any “federal court or court exercising federal jurisdiction”;

3) regardless of any federal element, appeals from the State Supreme Courts or any other State court from which it was formerly possible to appeal to the Privy Council;

4) appeals on questions of law from the Inter-State Commission envisaged by sections 101 – 103 of the Constitution.

Although there is no reference to it in section 73 of the Constitution, it is well established that the High Court’s appellate jurisdiction also extends to the courts of the Territories.
All appellate jurisdiction conferred by section 73 is subject to such “exceptions” and “regulations” as the Parliament may prescribe. In relation to federal jurisdiction, this has enabled Parliament to pass legislation which limits the possibility of appeal to the High Court, or permits it only on specified conditions. In relation to family law, section 95 of the *Family Law Act 1975* (Cth) provides:

> Despite anything contained in any other Act, an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under this Act, whether original or appellate, except by special leave of the High Court.

As might be anticipated, a grant of special leave from a specialist court in relation to the exercise of judicial discretion is difficult to secure and is generally only granted when the case raises a matter of public importance, such as a question of disputed general principle. In the preceding 12 months of ten applications for a grant of special leave, one was given. Interestingly, a grant of special leave would seem to be given more readily in cases concerning the Hague Convention on the Civil Aspects of International Child Abduction.

It follows that it is the Appeals Division of the Family Court which is, for most cases, the final court of appeal. After much debate, in 1990, the High Court put beyond doubt that an intermediate court of appeal, such as the Full Court of the Family Court, is able to depart from its earlier decisions. The extent to which the intermediate courts of appeal would regard themselves as free to depart from their own previous decisions was a matter of practice for each of those courts to determine for themselves. As with the other state and federal intermediate courts of appeal, the Full Court of the Family Court has departed from earlier decisions. Consistent with the approach required by the High Court, this is done “… cautiously and only when compelled to the conclusion that the earlier decision is wrong. The occasions upon which the departure from previous authority is warranted are infrequent and exceptional and pose no real threat to the doctrine of precedent and predictability of the law …” (*Nguyen v Nguyen* (1990) 169 CLR 245).
It can be seen that this approach promotes certainty in the application of the law and discipline in its development. It facilitates the doctrine of precedent and brings with it the consequence that decisions of an intermediate court of appeal will be binding on single judges within the same court hierarchy and lower tier courts.

Appeals to the Full Court of the Family Court are by way of rehearing. This is to be distinguished from a hearing de novo on the one hand and from appeals on a question of law in the strict sense. This means that the Full Court is required to consider applications to adduce further evidence in the appeal that would not otherwise be the case. So that it is clear, to engage appellate intervention, appellate error must be established. It is not enough that the Full Court may itself have reached a different conclusion.

An appeal from a judge of the Family Court must be determined by a Full Court of at least (usually) three judges, the majority of which must be permanent judges of appeal. The business of the Full Court is managed by the senior appeals judge under the aegis of the Chief Justice.

An appeal from a judge of the Federal Circuit Court (exercising family law jurisdiction) is to be exercised by the Full Court unless the Chief Justice considers that it is appropriate for the jurisdiction of the Family Court in relation to the appeal to be exercised by a single judge. Although the Act does not require that a nominated single judge is a judge of appeal, this delegation is almost invariably directed to a permanent member of the Appeals Division. Approximately 10% of the appeals from the Federal Circuit Court constitute judge alone appeals. Self-evidently, these are less complex appeals. The rationale for the provision for single judge appeals lies in efficiency and cost.

Whether by way of appeal from the judge of the Family Court or the Federal Circuit Court, leave to appeal must be sought before a party can appeal an interlocutory decree, other than a decree in relation to a child welfare matter. This controls the flow of appeals with leave given only where
there is good reason to do so and usually because failure to do so would involve a substantial injustice.

The following table reports on the work of the Full Court during the last five years:

Table 4.1 Notice of appeals filed, finalised and pending by jurisdiction, 2007–08 to 2011–12

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Filed</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>153</td>
<td>160</td>
<td>113</td>
<td>135</td>
<td>153</td>
<td>19%</td>
</tr>
<tr>
<td>Federal Magistrates Court</td>
<td>196</td>
<td>204</td>
<td>202</td>
<td>193</td>
<td>220</td>
<td>14%</td>
</tr>
<tr>
<td>Appeals filed</td>
<td>349</td>
<td>364</td>
<td>315</td>
<td>328</td>
<td>373</td>
<td>14%</td>
</tr>
<tr>
<td>Percent from Family Court of Australia</td>
<td>44%</td>
<td>44%</td>
<td>36%</td>
<td>41%</td>
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<tr>
<td>Percent from Federal Magistrates Court</td>
<td>56%</td>
<td>56%</td>
<td>64%</td>
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<td>196</td>
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</tr>
<tr>
<td>Appeals finalised</td>
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<td>345</td>
<td>325</td>
<td>332</td>
<td>2%</td>
</tr>
<tr>
<td>Percent from Family Court of Australia</td>
<td>54%</td>
<td>47%</td>
<td>42%</td>
<td>40%</td>
<td>42%</td>
<td>2%</td>
</tr>
<tr>
<td>Percent from Federal Magistrates Court</td>
<td>46%</td>
<td>53%</td>
<td>58%</td>
<td>60%</td>
<td>58%</td>
<td>-2%</td>
</tr>
<tr>
<td><strong>Pending</strong></td>
<td></td>
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<tr>
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<td>124</td>
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<td>97</td>
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<tr>
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<td>95</td>
<td>106</td>
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<tr>
<td>Appeals pending</td>
<td>216</td>
<td>230</td>
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<td>203</td>
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<tr>
<td>Percent from Family Court of Australia</td>
<td>56%</td>
<td>54%</td>
<td>46%</td>
<td>48%</td>
<td>48%</td>
<td>1%*</td>
</tr>
<tr>
<td>Percent from Federal Magistrates Court</td>
<td>44%</td>
<td>46%</td>
<td>54%</td>
<td>52%</td>
<td>52%</td>
<td>-1%*</td>
</tr>
</tbody>
</table>

* Rounded to whole number.

**Conclusion**

I wonder if some of you in today’s audience feel a little as Alice did when she chanced upon the Cheshire Cat.

Alice: Would you tell me, please, which way I ought to go from here?
The Cheshire Cat: That depends a good deal on where you want to get to.
Alice: I don't much care where.
The Cheshire Cat: Then it doesn't much matter which way you go.
Alice: ...So long as I get somewhere.
The Cheshire Cat: Oh, you're sure to do that, if only you walk long enough."
My hope for you is that if you take the road we followed in Australia, at journeys end you will be able to say it was a road worth taking.