

The fact is the government established two courts who have overlapping jurisdiction . The former government established the FMC to do the simpler and less complex work. That assumes the superior court is to do the more complex and not simpler work.

If there were not some delineation of this work then there would be no point in having two courts at all and no point in having the FMC if it not fulfilling its role to do the less complex work . The efficient operation of the two courts would have this happening and the protocol simply seeks to describe the appropriate work of each court to ensure as far as possible each is fulfilling its correct role.

The Courts have always had a protocol about work. eg Divorces and Child support , maintenance and contraventions in the FMC and cases of 2 days or less. This protocol was agreed between the former CFM and CJ in 2000. We didn't have a single document but there was a practice direction in the FCoA and the two day "rule" was inserted into the FMC Rules. The focus in 2000 when there were fewer FMs was what work would be done by the FMC (with the rest coming to the Family Court.

The balance has now shifted and what is identified is the work coming to the Family Court (with the rest coming to the FMC) hence the way the current protocol is worded.

The profession and litigants want some idea about which court in which to file matters. That will continue whilst there are two separate courts. If there is not some co-operation between courts then legislation may be required . The courts were hoping to avoid this.

Whilst clearly understanding individual judicial discretion cannot be fettered in a particular matter , for the smooth operation the courts in ensuring the less complex work goes to the FMC and conversely the more complex work goes to the Family Court, the heads of jurisdiction have continued to provide guidance to the profession and litigants .

S33B(6)(d) of the Family Law Act and S39(3)(d) of the Federal Magistrates Act identifies as a factor for the transfer of cases between courts (or refusal to transfer) *the interests of the administration of justice.*

The heads of jurisdiction have sought to give meaning to this phrase in the belief that it is in the interests of the administration of justice to have each court doing the work intended by government for it.

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