

Protocol for the division of work between the Family Court of Australia and the Federal Magistrates Court

The Chief Justice and the Chief Federal Magistrate have published this Protocol 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. The Protocol may on occasions give way to the imperatives of where a case can best be heard and is not intended to constrain the discretion of a judicial officer having regard to the applicable legislation and the facts and circumstances of the case before him or her.

If any one of the following criteria applies, then the application for final orders ordinarily should be filed and/or heard in the Family Court of Australia ("FCoA"), if judicial resources permit, otherwise the matter should be filed and/or heard in the Federal Magistrate Court ("FMC").

1. International child abduction.
2. International relocation
3. Disputes as to whether a case should be heard in Australia.
4. Special medical procedures (of the type such as gender reassignment and sterilisation).
5. Contravention and related applications in parenting cases relating to orders which have been made in FCoA proceedings; which have reached a final stage of hearing or a judicial determination and which have been made within 12 months prior to filing.
6. 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.
7. Complex questions of jurisdiction or law.
8. If the matter proceeds to a final hearing, it is likely it would take in excess of four days of hearing time.

Note: The FCoA has exclusive jurisdiction in relation to adoption and the validity of marriages and divorces.

Transfers and uplift power

1. Either Court on its own motion can transfer a matter to the other Court.
2. Parties can apply to the FCoA to have a matter heard in the FCoA or removed from the FCoA.
3. There is no right of appeal from a decision as to transfer.
4. There is an ad hoc committee of one Judge and one Federal Magistrate in each Registry to provide guidance and assistance towards ensuring consistent application of the new guidelines for division of work between the two courts.
5. The Chief Justice and the Chief Federal Magistrate may consult from time to time with a view to uplifting matters appropriate for hearing in the Family Court.