Family Law

Plain English Guide

for Australians Living in France

Living in France can add another layer of complexity if your relationship breaks down.

Australians living in France may have connections with both countries - including property, children, citizenship, businesses, investments or family ties. This can raise important questions about which country's laws apply, where proceedings should be commenced and how decisions made in one country may affect matters in the other.

Australian and French family law can differ significantly, particularly when it comes to divorce, property division, marriage contracts and international relocation with children.

Getting advice early can help you understand your options before making decisions that may have significant legal and financial consequences.

If I am an Australian living in France, where should I get divorced?

The answer will depend on your individual circumstances.

You may have connections with both Australia and France that need to be considered before proceedings are commenced. For example, your citizenship, where you live, where your spouse lives and where your assets are located may all be relevant.

This is important because Australian and French family law can operate very differently. Where there is a choice about where proceedings may be commenced, obtaining advice in both countries before taking action can help you understand the potential consequences of each option.

What is required to get divorced in Australia?

In Australia, the only requirement for divorce is that the couple has been separated for at least 12 months.

Australia has a no-fault divorce system. This means there is no need to establish that either spouse was responsible for the breakdown of the marriage.

A divorce application can be made by one spouse or jointly by both spouses. The divorce itself is separate from issues concerning property, financial support and arrangements for children.

How is divorce different in France?

The French approach to divorce is different from Australia.

France has several forms of divorce, including divorce by mutual consent, divorce where both spouses accept that the marriage has broken down but do not agree on all of the consequences, divorce following separation and divorce based on fault.

A divorce by mutual consent can, in certain circumstances, be completed outside court by agreement. Other divorces may involve a judge determining issues arising from the separation.

This is quite different from Australia, where divorce is based on the single requirement of 12 months' separation.

Do I need to wait until I am divorced to sort out property or arrangements for my children in Australia?

No.

In Australia, divorce, property settlement and parenting arrangements are separate legal issues.

You do not need to wait until you are divorced before dealing with property, spousal maintenance or arrangements for your children. These matters can be addressed following separation.

Once a divorce becomes final, however, time limits apply to commencing certain financial proceedings, so it is important to obtain advice about your position.

How are financial matters dealt with during a divorce in France?

The French system can operate quite differently.

During French divorce proceedings, a spouse may seek provisional measures dealing with the family's circumstances while the divorce is being determined. These can include arrangements relating to financial support and children.

At the end of the divorce, there may also be a claim for a compensatory allowance. This is separate from the process of dividing or 'liquidating' the couple's assets.

This distinction can be particularly important for Australians who are accustomed to the way property and spousal maintenance are dealt with under Australian family law.

Will our property be divided the same way in France and Australia?

No. There are significant differences between the two systems.

In Australia, a property settlement involves identifying the parties' assets and liabilities and considering their respective contributions. These are not limited to financial contributions. Contributions as a homemaker and parent can also be significant.

Other circumstances, including the parties' future financial positions and care of children, may also be relevant when determining an appropriate outcome.

France takes a different approach, with the matrimonial property regime applying to the marriage playing an important role in determining ownership and division of property.

What is a matrimonial property regime?

A matrimonial property regime determines how property is owned between spouses under French law.

One important distinction is between community property and separation of property.

Under a community property regime, property acquired during the marriage is generally treated as joint property, while property owned before marriage and property received by gift or inheritance generally remains the property of the individual spouse.

Under a separation of property regime, property acquired by a spouse generally remains that spouse's property. Where spouses purchase an asset together, ownership may be held in agreed proportions.

Understanding which matrimonial property regime applies to your marriage can therefore be extremely important.

Does caring for the children and home count when property is divided?

Australia and France approach this differently.

In Australia, contributions made as a homemaker and parent can be taken into account alongside financial contributions when determining a property settlement.

In France, these considerations do not necessarily change the ownership of property under the applicable matrimonial property regime. Instead, matters such as the length of the marriage, contributions and time spent raising children may be relevant when considering a compensatory allowance.

This difference can potentially produce very different financial outcomes depending upon which country's laws apply.

What if we own property in both Australia and France?

This is common for families who have lived and worked internationally and can make separation more complicated.

You should first identify all of your assets and liabilities, including:

- property in Australia and France;
- bank accounts and investments;
- business interests;
- trusts and companies;
- superannuation and other retirement interests; and
- mortgages and other debts.

Where assets are located in both countries, Australian and French legal advice may be required. Issues can arise not only about how an asset should be treated, but also about whether a decision or order made in one country can be effectively implemented in the other.

It is therefore important to consider the overall asset position before deciding where to commence proceedings.

Is a French marriage contract the same as an Australian pre-nuptial agreement?

No.

A French marriage contract generally determines the matrimonial property regime applying to the marriage. For example, spouses may choose a separation of property regime.

It does not necessarily operate in the same way as an Australian financial agreement, which can set out how financial matters are to be dealt with if a relationship ends.

The recognition of French marriage contracts in Australia and Australian financial agreements in France can also be complex. If you have entered into either type of agreement, it is important to have it reviewed when considering your position following separation.

How are arrangements for children decided?

There are similarities between Australia and France when it comes to children.

In both countries, the best interests of the child are central to parenting decisions.

In France, parental authority will usually be shared. A court can determine matters including parental authority, where children live, arrangements for them to spend time with each parent and financial support for their maintenance and education.

In Australia, the child's best interests are also paramount. Matters such as the child's safety, in

dividual circumstances and, where appropriate, their views may be relevant.

Can I return to Australia with my children after separation?

You should obtain legal advice before relocating a child from France to Australia.

Being an Australian citizen does not necessarily mean that you can simply return to Australia with your children following separation.

International relocation cases can be complex. Consideration may be given to factors such as the child's age, schooling and established life, their relationship with each parent, the reasons for the proposed relocation and how the child would maintain a relationship with the parent remaining in the other country.

French courts can place considerable importance on maintaining a child's established environment, including their school, friends and routines, when considering relocation.

Similarly, an Australian court considering international relocation will focus on the child's best interests and the practical consequences of the proposed move.

What happens if a child is taken between Australia and France without the other parent's agreement?

Australia and France are both parties to the Hague Convention arrangements dealing with the international removal of children.

If a child is wrongfully removed from one country to the other, legal proceedings may be available seeking the child's return.

These matters can be urgent and complex. If you are concerned that your child may be taken overseas without your agreement, or your child has already been removed, specialist family law advice should be obtained immediately.

Will an Australian divorce be recognised in France?

An Australian divorce may be recognised in France, although steps may need to be taken through the French legal system for the Australian decision to be formally recognised or enforced.

Similarly, a French divorce can be recognised in Australia, subject to the relevant requirements and evidence of the divorce.

It is important to distinguish between recognition of the divorce itself and the treatment or enforcement of separate orders dealing with property, finances or children.

Do I have to go to court?

Not necessarily.

Both Australia and France encourage separating couples to consider resolving disputes without contested court proceedings where appropriate.

Options may include direct negotiation between lawyers, mediation and other forms of dispute resolution.

For families with connections to both countries, any proposed agreement should be considered from both an Australian and French perspective to ensure that it achieves the intended outcome.

Why does it matter which country deals with my separation?

The differences between Australian and French family law mean that the country in which proceedings are commenced can be important.

The treatment of property, financial support, marriage contracts and the procedures involved in resolving a separation can differ substantially.

Where you have the option of commencing proceedings in Australia or France, obtaining advice from appropriately qualified lawyers in both countries at an early stage can help you understand:

- whether both countries may have jurisdiction;
- how your assets may be treated in each country;
- what will happen to property located overseas;
- how an existing marriage contract or financial agreement may be treated;
- the position regarding your children; and
- whether orders or agreements can be recognised and enforced in the other country.

For Australians living in France, this advice is best obtained before proceedings are commenced or significant decisions are made.

How can Mills Oakley assist?

Mills Oakley's Family Law team has experience advising clients whose relationships, families and assets extend across international borders.

We can advise Australians living in France about the Australian family law implications of separation, including divorce, property and financial matters, parenting arrangements and international relocation.

Where French legal advice is also required, we can work alongside appropriately qualified family lawyers in France to help you understand how the two legal systems interact and develop an appropriate strategy for your circumstances.

Early advice can be particularly important where there is a choice of jurisdiction, assets are located in both Australia and France, or one parent is considering relocating internationally with children.

Susan Warda
Partner | Sydney
Accredited Specialist Family Law
Fellow, International Academy of Family Lawyers
T: +61 2 8289 5804
E: swarda@millsoakley.com.au

This guide provides general information only and should not be relied upon as legal advice. Family law outcomes depend upon individual circumstances. Where a matter involves both Australia and France, legal advice may be required in both jurisdictions.