

French Expats in Australia: Understanding Legal Implications on Family and Inheritance



Navigating legal systems across different countries can be challenging, especially for French expatriates in Australia. FACCI member Chauveau Mulon & Associés (CM&A), a French law firm focusing on international family law, provides 5 essential insights into key legal considerations for French expats regarding family and inheritance matters. A must-read for current and future French expats in Australia to help you protect your rights and assets!

1. Adapting to new matrimonial regimes: what French expats need to know

As a French national living abroad, you might unknowingly be subject to a foreign matrimonial regime or could experience multiple successive matrimonial regimes. It is essential to be aware of two specific scenarios:

Marriage in Australia or post-marriage expatriation

If you move to Australia after getting married, or if you were married in Australia, the Australian legal system will govern your matrimonial regime. In Australia, there is no specific matrimonial regime. Instead, the approach is based on the principles of equitable distribution, which means that property and assets are divided in a way that's considered fair, but not necessarily equally as in a community property regime. When a couple divorces or one spouse dies, various factors will be considered to determine how to divide the property: the financial and non-financial contributions of each spouse, their future needs, and any other relevant circumstances. This ensures that the division of assets is tailored to the specifics of each case, aiming for fairness rather than strict equality.

Unintentional automatic mutability

If your marriage occurred between September 1, 1992, and January 29, 2019, expatriation to Australia after your marriage might have triggered an « *unintentional automatic mutability* » of your

matrimonial regime. This could mean your regime has changed, possibly multiple times, without your knowledge, especially if :

- Both partners have Australian nationality, even if it was obtained during expatriation.
- You have lived in Australia for over 10 years.
- You lived in two different countries and moved to Australia together for the first time.

If you are concerned about these issues, it is advisable to review your matrimonial regime with the help of a lawyer specialised in international family law. You can choose to adjust the applicable law retroactively and apply, for instance, the law of your French nationality along with the specific regime determined by that law, in order to ensure that your matrimonial regime aligns with your intentions.

2. French marriage contracts: will they hold up in Australia?

If you entered into a marriage contract in France, your expatriation to Australia may alter its provisions and your expectations, as it may not be recognised there. Like other *Common Law* countries, Australia requires a few conditions to enforce a marriage contract:

Independent legal advice

Unlike in France, each spouse must have independently consulted a lawyer and received advice on the advantages and disadvantages of the agreement and its effects on their rights and claims. At the time of signing, there must not be an imbalance of power between the parties or pressure to sign the contract. Without this requirement, in case of divorce, the contract risks annulment.

Content of the marriage contract

The contract must also provide full disclosure of the assets and resources of the spouses, including future expectations. Its content must also be fair and not result in manifestly excessive consequences for the economically weaker party.

A foreign contract may also pose difficulties of interpretation and certain clauses in a French marriage contract, such as specific « *avantages matrimoniaux* », might not be applicable due to their non-existence or prohibition under local law.

If your current marriage contract does not meet the requirements for international recognition, you may consider entering into a postnuptial agreement to address these issues. Additionally, consulting legal experts can help determine if a French judge has jurisdiction in the event of a divorce, allowing you to secure this jurisdiction and ensure your marriage contract is applied effectively.

Australian prenuptial agreements in France

Similarly, if you have entered into an Australian prenuptial agreement, its recognition in France may be uncertain, particularly if it contains provisions that conflict with international public policy, such as waivers of financial compensation during a separation or child support obligations. As you are residing outside Europe and hold French nationality, a French judge might have jurisdiction in the event of a separation, which could lead to the non-application of the Australian prenuptial agreement you have concluded.

If you have a marriage contract or prenuptial agreement, it is essential to ensure that it is recognised and enforceable in all relevant countries where you have interests or where legal jurisdiction might be

invoked. This involves verifying that the terms of your agreement comply with the legal requirements of each jurisdiction and seeking legal advice to facilitate its international recognition and application.

3. Unmarried partners in Australia: understanding your legal rights

In France, the status of a cohabitant does not grant any maintenance rights in the event of separation: cohabitants cannot claim alimony, compensatory payments, or rights over property.

***De facto* status in Australia**

In Australia, cohabitants may be recognised as *de facto* partners or common-law spouses based on several criteria: the duration of cohabitation, shared children, public acknowledgement of the relationship, and the nature and extent of shared residence, among others.

When such a status is established, *de facto* partners can claim rights equivalent to those of a married couple in the event of separation, such as property division or alimony. If you reside in Australia without being married, Australian law may govern maintenance matters in the event of separation, even if both partners are French nationals.

It is crucial to understand the rights you and your partner may be entitled to in the event of a separation. To have these rights recognised, you may need to seek the assistance of a judge in Australia. However, depending on the circumstances, you might also be able to seize a French judge.

4. Inheritance laws across borders: navigating multiple legal systems

Living in Australia changes the civil law applicable to your inheritance, determining who your heirs are and in what proportion they will inherit. The application of Australian law can lead to multiple laws affecting your inheritance and complicate your succession, especially if you have assets located in different countries.

Multiple applicable laws

According to Australian law, movable property (bank accounts, financial investments, shares, artworks) is subject to the law of your last residence, which, in your case, is Australian law. However, immovable property (real estate) is subject to the law of its location. For example, if you own an apartment and shares in France, a bank account and house in Australia, and a secondary residence in Spain, your inheritance will be subject to Australian, Spanish, and French laws.

Each applicable law will determine the heirs and their rights, and the rules can differ significantly from one country to another.

Absence of forced heirship in Australia

Unlike France, Australian law does not provide children with a protected share of the inheritance, known as forced heirship. The distribution of assets under Australian law is completely discretionary – in our example, all bank accounts, shares in France, and the house in Australia are subject to Australian law and can be allocated to anyone according to your will.

In the absence of a will, all your assets will go to the surviving partner, except in the case of children from a previous marriage. Note that *de facto* partners in Australia can also claim legal inheritance rights, unlike in France.

As a French citizen, you have the option to choose, for instance in a will, the law of one of your nationalities to govern your entire estate. If you hold multiple nationalities, you can select the law of any of those nationalities - such as French, Australian, or any other nationality you possess. Choosing the law based on nationality can often provide more predictability than residency-based criteria, helping to ensure consistency in the administration of your estate by applying a single legal framework. Seek advice from a law firm specialised in international family law to draft your will in accordance with your international situation.

5. Inheritance tax: what French expats must consider

Inheritance taxation rules vary by country: Australia exempts inheritances from taxation entirely, while France offers exemptions only for married or PACS (civil union) partners and taxes other inheritances based on the degree of kinship.

In international situations, it is essential to determine which country has the right to tax the inheritance. This allocation is often outlined in a tax treaty between France and the foreign country. However, unlike income tax, there is no inheritance tax treaty between France and Australia.

Therefore, to determine if France has the right to tax, French criteria will apply. Your inheritance will be taxed in France in the following situations:

- **If you are a French resident at the time of your death:** All your transmitted assets will be taxed in France. Note that residing in Australia does not necessarily end your tax residence status in France. You may still be considered a French resident if you have your main income or a secondary residence in France.
- **If you have assets located in France:** These specific assets will be taxed in France.
- **If your heirs are located in France and have been residing there for a certain period:** The portion of the inheritance they receive will be taxed in France.

To manage the fiscal consequences of your expatriation on your inheritance and optimise the transfer of your estate, consider proactive measures with the advice of a specialised law firm. You might explore options such as gifting assets during your lifetime, creating trusts, or other estate planning strategies.

For more information, visit [EXPATS by CM&A](#). This initiative by Chauveau Mulon & Associés (CM&A) offers tailored legal guidance to French expatriates on family and patrimonial matters worldwide.