

Family Law Fact Sheet

International clients – can my matter be determined in Australian Courts?

Jurisdiction

The Family Court of Australia has jurisdiction to determine property settlement, spousal maintenance, divorce, child maintenance and children's matters where at least one party is:

- an Australian citizen;
- domiciled (lives permanently) in Australia; or
- has been present in Australia for the last 12 months.

Competing Jurisdictions

Whilst the Family Court of Australia may have jurisdiction to determine a dispute, sometimes the Family Court equivalent in another country also has jurisdiction. The issue then becomes which country's court should exercise its jurisdiction to determine the dispute.

Different countries treat disputes in different ways, and in some situations it may be an advantage to have a matter dealt with overseas. In this situation the Family Court of Australia can be asked to not exercise its jurisdiction by applying for a stay (or suspension) of the Australian proceedings. Once the foreign court has made a determination, the Australian proceedings can be discontinued or dismissed.

Suspending Australian proceedings / acting for international clients

In determining whether the Family Court of Australia will stay an Application in Australia, the Family Court must decide whether Australia is a "clearly inappropriate forum". This means that continuing the proceedings in Australia would be oppressive (meaning seriously and unfairly burdensome, prejudicial or damaging) or vexatious (meaning producing serious and unjustified trouble and harassment).

The Court will look at a number of factors in determining whether the determination of a dispute in Australia is oppressive or vexatious, including:

- Whether justice can be done in another country at substantially less inconvenience or expense.
- Connection of the parties and their marriage with each of the proposed jurisdictions (this involves consideration of the availability of witnesses in each country and the practicalities for each party of participating in litigation in each country).
- Whether each jurisdiction will recognise Orders and Decrees of the other jurisdiction.

- Whether any Orders can be enforced in alternate forums with relative ease.
- The order in which proceedings were instituted.
- The stage of the proceedings in the other country and the costs that have been incurred.
- The resources of both parties and their understanding of the language and whether the parties are able to participate in their respective proceedings and on equal footing.
- Whether the 'foreign forum' or court of competent jurisdiction in another country can determine the dispute.

We regularly act for international clients where there is property in countries other than Australia. In some cases, proceedings can be started by one party in another country and by the other party in Australia.

Where needed, we can either:

1. Commence proceedings in Australia; or
2. Apply to stay (or suspend) the Australian proceedings commenced by the other party in Australia until the court of another country resolves the issue; or
3. Oppose an application that Australian proceedings be stayed, if it is in our client's interest to have the proceedings determined in Australia.

We can also provide expert evidence as experienced Family Lawyers in Australia, for use in a court in a different country as to the process that the Family Court of Australia would take in determining the matter, and the likely outcome. This kind of evidence is often needed if the decision is made to attempt to stay (or suspend) the foreign proceedings so that matters can ultimately be determined in Australia.

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