

DOMICILE ACT, 1979, No. 118

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 118, 1979.

An Act to abolish the dependent domicile of married women and otherwise to reform the law relating to domicile. [Assented to, 19th October, 1979.]

See also Adoption of Children (Domicile) Amendment Act, 1979.

Domicile.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Domicile Act, 1979".

Commence-
ment.

2. (1) Section 1 and this section shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpre-
tation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commonwealth of Australia" means the territory comprising the States and the Australian Capital Territory, the Jervis Bay Territory and the Northern Territory of Australia;

"country" includes any state, province or other territory—

(a) that is one of two or more territories that together form a country; and

(b) domicile in which can be material for any purpose of the laws of New South Wales;

"union" means any country that is a union or federation or other aggregation of two or more countries and includes the Commonwealth of Australia.

Domicile.

4. (1) The domicile of a person at a time before the commencement of this section shall be determined as if this Act had not been enacted. Operation of Act.

(2) The domicile of a person at a time after the commencement of this section shall be determined as if this Act had always been in force.

(3) Nothing in this Act affects the jurisdiction of any court in any proceedings commenced before the commencement of this section.

(4) This Act has effect to the exclusion of the application of the laws of any other country relating to any matter dealt with by this Act.

5. The rule of law whereby a married woman has at all times the domicile of her husband is abolished. Abolition of rule of dependent domicile of married woman.

6. The rule of law whereby the domicile of origin revives upon the abandonment of a domicile of choice without the acquisition of a new domicile of choice is abolished and the domicile a person has at any time continues until he acquires a different domicile. Abolition of rule of revival of domicile of origin.

7. (1) A person is capable of having an independent domicile if—

(a) he has attained the age of 18 years; or

(b) he is, or has at any time been, married,

and not otherwise. Capacity to have independent domicile.

Domicile.

(2) Subsection (1) does not apply to a person who, under the rules of law relating to domicile, is incapable of acquiring a domicile by reason of mental incapacity.

**Domicile
of certain
children.**

8. (1) In this section—

- (a) “child” means a person under the age of 18 years who is not, and has not at any time been, married; and
- (b) references to the parents of a child include references to parents who are not married to each other.

(2) Where, at any time, a child has his principal home with one of his parents but his parents are living separately and apart or the child does not have another living parent, the domicile of the child at that time is the domicile that that parent has at that time and thereafter the child has the domicile that that parent has from time to time or, if that parent has died, the domicile that that parent had at the time of death.

(3) Where a child is adopted, his domicile—

- (a) if, upon his adoption, he has two parents—is, at the time of the adoption and thereafter, the domicile he would have if he were a child born in wedlock to those parents; and
- (b) if, upon his adoption, he has one parent only—is, at the time of the adoption, the domicile of that parent and thereafter is the domicile that that parent has from time to time or, if that parent has died, the domicile that that parent had at the time of death.

(4) A child ceases to have, by virtue of subsection (2), the domicile or last domicile of one of his parents if—

- (a) he commences to have his principal home with his other parent; or
- (b) his parents resume or commence living together.

Domicile.

(5) Where a child has a domicile by virtue of subsection (2) or (3) immediately before he ceases to be a child, he retains that domicile until he acquires a domicile of choice.

(6) Where the adoption of a child is rescinded, the domicile of the child shall thereafter be determined in accordance with any provisions with respect to that domicile that are included in the order rescinding the adoption and, so far as no such provision is applicable, as if the adoption had not taken place.

9. The intention that a person must have in order to acquire a domicile of choice in a country is the intention to make his home indefinitely in that country. Intention for domicile of choice.

10. A person who is, in accordance with the rules of the common law as modified by this Act, domiciled in a union but is not, apart from this section, domiciled in any particular one of the countries that together form the union is domiciled in that one of those countries with which he has for the time being the closest connexion. Domicile in a union.

11. The acquisition of a domicile of choice in place of a domicile of origin may be established by evidence that would be sufficient to establish the domicile of choice if the previous domicile had also been a domicile of choice. Evidence of acquisition of domicile of choice.