

# Domicile Act 1979 No 118

[1979-118]



New South Wales

## Status Information

### Currency of version

Current version for 3 March 1997 to date (accessed 25 May 2024 at 16:29)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Domicile Act 1979 No 118



New South Wales

An Act to abolish the dependent domicile of married women and otherwise to reform the law relating to domicile.

## 1 Name of Act

This Act may be cited as the *Domicile Act 1979*.

## 2 Commencement

- (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.

## 3 Definitions

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.

## 4 Operation of Act

- (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.
- (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 Abolition of rule of dependent domicile of married woman**

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

## **6 Abolition of rule of revival of domicile of origin**

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 the person acquires a different domicile.

## **7 Capacity to have independent domicile**

(1) A person is capable of having an independent domicile if:

- (a) the person has attained the age of 18 years, or
  - (b) the person is, or has at any time been, married,
- and not otherwise.

(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.

## **8 Domicile of certain children**

(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 or her principal home with one of the child's parents but the 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, the child's domicile:

- (a) if, upon the child's adoption, the child has two parents—is, at the time of the

adoption and thereafter, the domicile the child would have if the child were a child born in wedlock to those parents, and

(b) if, upon the child's adoption, the child 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 the parents if:

(a) the child commences to have his or her principal home with the other parent, or

(b) the parents resume or commence living together.

(5) Where a child has a domicile by virtue of subsection (2) or (3) immediately before the child ceases to be a child, the child retains that domicile until the child 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 Intention for domicile of choice**

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

## **10 Domicile in a union**

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 the person has for the time being the closest connexion.

## **11 Evidence of acquisition of domicile of choice**

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.