

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— Capacity to have independent domicile.

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

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

and not otherwise.

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.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 19th October, 1979.*







DOMICILE BILL, 1979

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Adoption of Children (Domicile) Amendment Bill, 1979, is cognate with this Bill.

The object of this Bill is to codify part of the law of domicile.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Interpretation.

Clause 4 contains provisions with respect to the manner in which the provisions of the proposed Act operate.

Clause 5 abolishes the rule of law that a married woman has the same domicile as her husband.

Clause 6 abolishes the rule of law under which a person's domicile of origin revives when he abandons a domicile of choice without having acquired a new domicile of choice and provides that his previous domicile continues until he acquires a different domicile.

Clause 7 provides that a person of or above the age of 18 years or a person who is or has been married is capable of having an independent domicile except where he is incapable of acquiring a domicile by reason of mental incapacity.

Clause 8 contains provisions for determining the domicile—

- (a) of a child who has his principal home with one of his parents and whose parents are living apart or who has only one parent; and
- (b) of an adopted child.

Clause 9 specifies the nature of the intention a person must have to acquire a domicile of choice.

Clause 10 provides that a person domiciled in a union, but not in any specific country forming part of the union, has the domicile of the country with which he has the closest connexion.

Clause 11 specifies the nature of the evidence required to establish a domicile of choice.

DOMICILE BILL, 1979

No. , 1979.

A BILL FOR

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

[MR F. J. WALKER—13 *September*, 1979.]

See also Adoption of Children (Domicile) Amendment Bill, 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 :—

- 5 1. This Act may be cited as the "Domicile Act, 1979". Short title.
2. (1) Section 1 and this section shall commence on the date Commence-
of assent to this Act. ment.
- (2) Except as provided in subsection (1), this Act shall
10 respect thereof and as may be notified by proclamation published
in the Gazette.
3. In this Act, except in so far as the context or subject-matter Interpre-
otherwise indicates or requires— tation.
- 15 "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—
- 20 (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;
- 25 "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.
- 5 (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.
- 10 (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.
- 15 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.
- 20 7. (1) A person is capable of having an independent domicile if— Capacity to have independent domicile.
- (a) he has attained the age of 18 years; or
- (b) he is, or has at any time been, married,
- and not otherwise.

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.

8. (1) In this section—

Domicile
of certain
children.

- 5 (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—

- 20 (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—

- 30 (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.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES, 1979

17. Where a child has a domicile of origin (as defined in section 1 of the Domicile Act, 1958) and is not domiciled in any other country, he shall be deemed to be domiciled in that country.

18. (a) Where the domicile of a child is ascertained by the court in proceedings for the appointment of a guardian of the property of the child, the court may, if it is satisfied that it is in the interests of the child, order that the child shall be deemed to be domiciled in any country other than that in which he is domiciled at the date of the proceedings.

19. The intention that a person shall be domiciled in a country is to be ascertained from the facts of each case, and it is not necessary that the person should be domiciled in that country at the date of the proceedings.

20. A person who is in a country in which he is domiciled shall be deemed to be domiciled in that country if he has a permanent abode in that country, and if he has no other permanent abode elsewhere.

21. The domicile of a person shall be deemed to be that of the country in which he has a permanent abode, and if he has no permanent abode elsewhere, it shall be deemed to be that of the country in which he is domiciled at the date of the proceedings.