

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1°, 20 October 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

No 220

A BILL

FOR

An Act relating to domicile

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Domicile Act* 1981.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Object and application

3. (1) The object of this Act is to abolish the rule of law whereby a married woman has at all times the domicile of her husband, and to make certain other reforms to the law relating to domicile, for the purposes of—

- (a) the laws of the Commonwealth; and
- (b) the laws of (including the common law in force in) each of the Territories to which this Act applies,

and this Act has effect, and shall be construed, accordingly.

(2) For the purposes of the application of this Act in relation to the laws of the Commonwealth, this Act has effect to the exclusion of the laws of any State, any Territory or any other country relating to any matters dealt with by this Act.

(3) For the purposes of the application of this Act in relation to the laws of a Territory to which this Act applies, this Act has effect to the exclusion of the laws of any State, any other Territory or any other country relating to any matters dealt with by this Act.

(4) For the purposes of the application of this Act in relation to a law of the Commonwealth that extends to an external Territory, this Act shall be deemed to extend to that Territory.

(5) Where a provision of a law of the Commonwealth refers to domicile in, or to domicile outside, Australia, the provision shall, for the purposes of the application of this Act, be taken to refer to domicile in, or to domicile outside, as the case may be, the area that constitutes Australia, within the meaning of that provision, considered as a single country.

(6) The Territories to which this Act applies are the Australian Capital Territory, the Jervis Bay Territory and the external Territories (if any) that are declared by the regulations to be Territories to which this Act extends.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“adopted” means—

- (a) adopted under the law of a State, the Northern Territory or a Territory to which this Act applies relating to the adoption of children; or
- (b) adopted under the law of any other country relating to the adoption of children, if the validity of the adoption is recognized under the law of a State, the Northern Territory or a Territory to which this Act applies;

“child” means a person who—

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

“country” includes any state, province or other territory that is one of 2 or more territories that together form a country;

“union” means any country that is a union or federation or other aggregation of 2 or more countries, and includes Australia.

(2) A reference in this Act to the parents of a child shall be read as including a reference to parents who are not married to each other.

Operation of Act

5. (1) The domicile of a person at a time before the commencement of this Act 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 Act 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 Act.

Abolition of rule of dependent domicile of married woman

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

Abolition of rule of revival of domicile of origin

7. 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.

Capacity to have independent domicile

8. (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.

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

Domicile of certain children

9. (1) Where, at any time—
(a) a child has his principal home with one of his parents; and
(b) 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 the parent with whom the child has his principal home has as at that time and thereafter the child has the domicile that that parent has from time to time or, if that parent dies, the domicile that that parent has at the time of death.

(2) Where a child is adopted, his domicile—
(a) if, upon his adoption, he has 2 adoptive 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 adoptive 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 dies, the domicile that that parent has at the time of death.

(3) A child ceases to have, by virtue of sub-section (1), 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.

(4) Where a child has a domicile by virtue of sub-section (1) or (2) immediately before he ceases to be a child, he retains that domicile until he acquires a domicile of choice.

(5) 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 provision is applicable, as if the adoption had not taken place.

Intention for domicile of choice

10. 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.

Domicile in a union

11. A person who is, in accordance with the rules of the common law relating to domicile 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 connection.

Evidence of acquisition of domicile of choice

12. 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.

Regulations

13. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to this Act.