

## VICTORIA.



ANNO VICESIMO SEPTIMO

## ELIZABETHÆ SECUNDÆ REGINÆ

No. 9231

An Act to abolish the Dependent Domicile of Married Women and otherwise to reform the Law relating to Domicile.

[19th December, 1978.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. This Act may be cited as the *Domicile Act 1978*.

Short title.

2. This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Commencement.

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

Interpretation.

“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”

“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 Victoria ;

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

Operation of Act.

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.

(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.

Abolition of rule of dependent domicile of married woman.

5. 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.

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.

Capacity to have independent domicile.

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.

(2) Sub-section (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 ;

(b) references to the parents of a child include references to parents who are not married to each other ; and

(c) references

(c) references to adoption shall be read as references to adoption effected under the law of Victoria, or adoption recognized under that law as having an effect similar to adoption so effected.

(2) Where, at any time, a child has his principal home with one of his parents but his other parent is either dead or living separately and apart from the first-mentioned parent, the domicile of the child at that time is the domicile that the first-mentioned parent has at that time.

(3) The domicile that a child has at any time in accordance with sub-section (2) continues until any of the following occurs :

- (a) his parents resume or commence living together ;
- (b) he acquires a new domicile under that sub-section ;
- (c) he acquires a new domicile by reason of adoption ; or
- (d) after ceasing to be a child, he acquires a new domicile.

(4) Notwithstanding any other Act, the domicile that a child has immediately after being adopted—

- (a) in the case of adoption by a husband and wife—shall be determined as if the child had been born to the husband and wife at the time of the adoption ; and
- (b) in the case of adoption by one adoptive parent—shall be the domicile of that adoptive parent at the time of the adoption.

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 of 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.

12. The *Adoption of Children Act 1964* is hereby amended as follows :— Amendment of No. 7147. Ss. 16 and 35.

- (a) In section 16 (4) (d) the expression “(including the domicile of origin)” shall be repealed ; and
- (b) In section 35, sub-section (2) shall be repealed.