



# **Domicile Act 1981**

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Queensland

# Domicile Act 1981

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# Domicile Act 1981

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

### 1 Short title

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

### 2 Commencement

- (1) Section 1 and this section shall commence on the day on which it is assented to for and on behalf of Her Majesty.
- (2) Except as provided in subsection (1), this Act shall commence on a day to be appointed by proclamation.

### 3 Interpretation

In this Act—

***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 1 of 2 or more territories that together form a country; and
- (b) domicile in which can be material for any purpose of the laws of Queensland.

***union*** means any country that is a union or federation or other aggregation of 2 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.

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## 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 a principal home with 1 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 adoption, the child has 2 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 adoption, the child has 1 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) Subsection (5) applies if a child's parentage has been transferred by—
  - (a) a parentage order under the *Surrogacy Act 2010*; or
  - (b) an order of another Australian jurisdiction (also a **parentage order**) that corresponds to a parentage order made under the *Surrogacy Act 2010*.
- (5) From the time the parentage order is made, the child's domicile is—
  - (a) if, on the making of the parentage order, the child has 2 parents—the domicile the child would have if the child were a child born in wedlock to those parents; and

- (b) if, on the making of the parentage order, the child has 1 parent only—the domicile of that parent or, if that parent has died, the domicile that parent had at the time of death.
- (6) A child ceases to have, by virtue of subsection (2), the domicile or last domicile of 1 of the child’s parents if—
  - (a) the child commences to have a principal home with the other parent; or
  - (b) the child’s parents resume or commence living together.
- (7) Where a child has a domicile by virtue of subsection (2), (3) or (5) immediately before ceasing to be a child, he or she retains that domicile until acquiring a domicile of choice.
- (8) 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) Subsection (10) applies if a parentage order for a child is discharged by—
  - (a) a discharge order under the *Surrogacy Act 2010*; or
  - (b) an order of another Australian jurisdiction (also a ***discharge order***) that corresponds to a discharge order made under the *Surrogacy Act 2010*.
- (10) The child’s domicile is—
  - (a) the domicile stated in, or dealt with under, the discharge order; or
  - (b) if there is no provision in the discharge order dealing with the child’s domicile—the domicile the child would have if the transfer of parentage under the parentage order 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 the person's home indefinitely in that country.

**10 Domicile in 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 connection.

**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.