

1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

DOMICILE BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Attorney-General,
Senator the Honourable P.D. Durack, Q.C.)

OUTLINE

The purpose of this Bill is to make four major changes to the common law relating to domicile -

- (a) in determining the domicile of a person for the purposes of Commonwealth law; and
- (b) in determining the domicile of a person in the Territories to which the Bill applies.

The four major changes to the common law relate to -

- (a) the domicile of a married woman;
- (b) the abandonment of a domicile of choice;
- (c) the capacity of a person aged 18 years or more, or of a married person under that age, to acquire an independent domicile; and
- (d) the domicile of a child whose parents are living apart or who has only one parent, or of an adopted child.

The Bill is in accordance with the model Bill adopted by the Standing Committee of Attorneys-General for the purpose of enacting a uniform reform of the law of domicile throughout Australia.

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the citation of the Act.

Clause 2 - Commencement

This clause provides that the Act shall come into operation on a date to be fixed by Proclamation.

Clause 3 - Object and Application

Sub-clause (1) provides that the object of the Act is to abolish the rule of law that a married woman has the same domicile as her husband and to make certain other reforms to the law relating to domicile for the purposes of -

- (a) the laws of the Commonwealth;
- (b) the laws (including the common laws in force in) each of the Territories to which the Bill applies.

Sub-clause (2) provides that for the purposes of the laws of the Commonwealth the Act excludes the application of any laws of any State or Territory or other country relating to any matters dealt with by the Bill.

Sub-clause (3) provides that for the purposes of the laws of a Territory to which the Bill applies the Act excludes the application of any laws of any State or Territory or other country relating to any matters dealt with by the Bill.

Sub-clause (4) provides that the Bill applies for the purposes of a law of the Commonwealth which extends to an external Territory, even though the Bill itself does not extend to that Territory.

Sub-clause (5) provides that where a provision of a law of the Commonwealth refers to domicile in, or domicile outside, Australia, the reference to Australia is to be considered as a single country.

Sub-clause (6) provides that the Bill extends to the Australian Capital Territory and the Jervis Bay Territory and to any external Territory that is declared by the regulations to be a Territory to which the Bill extends.

Clause 4 - Interpretation

Sub-clause (1) sets out the definition of a number of words and expressions for the purposes of the legislation. These are detailed below -

"adopted" - in the absence of Commonwealth legislation dealing generally with status of children, a definition of adoption is required for the purposes of the Bill. In summary, a person is adopted for the purposes of the Bill if he has been adopted under the law of a State or the Northern Territory or of a Territory to which the Bill applies or under the law of another place relating to the adoption of children, if the adoption in that other place is recognised as a valid adoption under the law of a State or the Northern Territory or of a Territory to which the Bill applies.

"child" - is defined to mean a person who has not attained 18 years and is not, and has not been, married.

"country" - the term is so defined as to include a state or province which is part of a union or federation.

"union" - the term means a union or federation of two or more countries.

Sub-clause (2) provides that a reference in the Bill to parents of a child is not restricted to parents who are or were married to each other.

Clause 5 - Operation of the Act

Sub-clause (1): The Bill does not apply where it is necessary to determine the domicile which a person had at a time before the Bill comes into force.

Sub-clause (2): The Bill applies where it is necessary to determine the domicile which a person has at a time after the Bill comes into force.

Sub-clause (3): The jurisdiction of a Court to entertain proceedings may depend, in some cases, on the domicile of a person, such as a party to the proceedings. This sub-clause has the effect that a Court which had jurisdiction in proceedings which commenced before the Bill comes into operation is not deprived of that jurisdiction because the Bill has the effect of changing the domicile of a relevant person.

Clause 6 - Abolition of rule of dependent domicile of a married woman

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

Clause 7 - Abolition of rule of revival of domicile of origin

This clause abolishes the rule of law under which a person's domicile of origin resumes when he abandons a domicile of choice without having acquired a new domicile of choice. It provides that the domicile a person has at any time continues until he acquires a different domicile. That is, having abandoned his domicile of origin and acquired a domicile of choice, he retains that domicile of choice until he acquires a new domicile of choice.

Clause 8 - Capacity to have an independent domicile

Sub-clause (1) provides that a person who is 18 years or older or a person who is or has been married is capable of having an independent domicile.

Sub-clause (2) provides that sub-clause (1) does not apply if a person is incapable of acquiring an independent domicile by reason of mental incapacity.

Clause 9 - Domicile of certain children

Sub-clause (1) sets out provisions for determining the domicile of a child who has his principal home with one of his parents and his parents are living apart or he does not have another living parent. In such a case his domicile is that of the parent with whom he has his principal home.

When that parent dies, he retains the domicile which that parent had at death. This sub-clause must be read subject to sub-clause (3).

Sub-clause (2) contains provisions for determining the domicile of an adopted child. If, upon his adoption, he has two adoptive parents, his domicile is that which he would have had if he had been a child born in wedlock to those parents. If, upon his adoption, he has only one adoptive parent, his domicile is the domicile of that parent or, if that parent dies, the domicile that parent had at the date of death.

Sub-clause (3) provides that a child ceases to have, by virtue of sub-section (1), the domicile or last domicile of one of his parents, if his principal home changes to the other parent or his parents live together again.

Sub-clause (4) provides, in effect, that where a child acquires a domicile by virtue of sub-clauses (1) or (2), he retains that domicile until he acquires a domicile of choice.

Sub-clause (5) provides for the domicile of a child whose adoption is rescinded. If the Court order rescinding the adoption provides for his domicile, he has the domicile so provided. Otherwise, his domicile reverts to that which he would have had if he had not been adopted.

Clause 10 - Intention for domicile of choice

This clause specifies the nature of the intention a person must have to acquire a domicile of choice. He must intend to live indefinitely in the country concerned.

.../6

Clause 11 - Domicile in a union

This clause provides that a person domiciled in a union, but not in any specific country of that union, has the domicile of the country of the union with which he has the closest connection.

Clause 12 - Evidence of acquisition of domicile of choice

This clause deals with the nature of the evidence required to establish a domicile of choice.

Clause 13 - Regulations

This clause contains the usual regulation-making powers.

