



Domicile Act 1982

No. 1, 1982

Compilation No. 4

Compilation date:	25 January 2019
Includes amendments up to:	Act No. 130, 2018
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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Domicile Act 1982* that shows the text of the law as amended and in force on 25 January 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to domicile

1 Short title

This Act may be cited as the *Domicile Act 1982*.

2 Commencement

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

3 Object and application

- (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

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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) This Act applies to the following Territories:
- (a) the Australian Capital Territory;
 - (b) Norfolk Island;
 - (c) the Jervis Bay Territory;
 - (d) the Territory of Christmas Island;
 - (e) the Territory of Cocos (Keeling) Islands;
 - (f) any external Territory declared by the regulations to be a Territory to which this Act extends.

4 Interpretation

- (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.

5 Operation of Act

- (1) The domicile of a person at a time before the commencement of this Act shall be determined as if this Act and the *Domicile (Consequential Amendments) Act 1982* 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.

6 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.

7 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 he or she acquires a different domicile.

8 Capacity to have independent domicile

- (1) A person is capable of having an independent domicile if:
 - (a) he or she has attained the age of 18 years; or
 - (b) he or she 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 the common law relating to domicile, is incapable of acquiring a domicile by reason of mental incapacity.

9 Domicile of certain children

- (1) Where, at any time:

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- (a) a child has his or her principal home with one of his or her parents; and
 - (b) his or her 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 or her 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 or her domicile:
 - (a) if, upon his or her adoption, he or she has 2 adoptive parents—is, at the time of the adoption and thereafter, the domicile he or she would have if he or she were a child born in wedlock to those parents; and
 - (b) if, upon his or her adoption, he or she 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 subsection (1), the domicile or last domicile of one of his or her parents if:
 - (a) he or she commences to have his or her principal home with his or her other parent; or
 - (b) his or her parents resume or commence living together.
 - (4) Where a child has a domicile by virtue of subsection (1) or (2) immediately before he or she ceases to be a child, he or she retains that domicile until he or she 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.

10 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 his or her home indefinitely in that country.

11 Domicile in a union

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 or she has for the time being the closest connection.

12 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.

13 Regulations

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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Domicile Act 1982	1, 1982	4 Mar 1982	1 July 1982 (s 2 and gaz 1982, No G26, p 2)	
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	s 7(1): 18 July 1983 (s 2(1)) Sch 1: 1 July 1982 (s 2(8))	s 7(1)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (items 259–274): 4 July 2008 (s 2(1) item 64)	—
Civil Law and Justice Legislation Amendment Act 2018	130, 2018	25 Oct 2018	Sch 4: 25 Jan 2019 (s 2(1) item 6)	—

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Endnotes

Endnote 4—Amendment history

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Provision affected	How affected
s 3	am No 130, 2018
s 5	am No 39, 1983
s 7	am No 73, 2008
s 8	am No 73, 2008
s 9	am No 73, 2008
s 10	am No 73, 2008
s 11	am No 73, 2008
