



## ANALYSIS

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1976, No. 17

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

[31 August 1976]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Domicile Act 1976.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Country” means a territory of a type in which, immediately before the commencement of this Act, a person could have been domiciled:

“Union” means a nation comprising 2 or more countries.

**3. Domicile before commencement**—The domicile that a person had at a time before the commencement of this Act shall be determined as if this Act had not been passed.

**4. Domicile after commencement**—The domicile that a person has at a time after the commencement of this Act shall be determined as if this Act had always been in force.

**5. Wife's dependent domicile abolished**—(1) Every married person is capable of having an independent domicile; and the rule of law whereby upon marriage a woman acquires her husband's domicile and is thereafter during the subsistence of the marriage incapable of having any other domicile is hereby abolished.

(2) This section applies to the parties to every marriage, wherever and pursuant to whatever law solemnised, and whatever the domicile of the parties at the time of the marriage.

**6. Children**—(1) This section shall have effect in place of all rules of law relating to the domicile of children.

(2) In this section "child" means a person under the age of 16 years who has not married.

(3) A child whose parents are living together has the domicile for the time being of its father.

(4) If a child whose parents are not living together has its home with its father it has the domicile for the time being of its father; and after it ceases to have its home with him it continues to have that domicile (or, if he is dead, the domicile he had at his death) until it has its home with its mother.

(5) Subject to subsection (4) of this section, a child whose parents are not living together has the domicile for the time being of its mother (or, if she is dead, the domicile she had at her death).

(6) Until a foundling child has its home with one of its parents, both its parents shall, for the purposes of this section, be deemed to be alive and domiciled in the country in which the foundling child was found.

**7. Attainment of independent domicile**—Subject to any rule of law relating to the domicile of insane persons, every person becomes capable of having an independent domicile upon attaining the age of 16 years or sooner marrying, and thereafter continues so to be capable.

**8. Domicile to continue**—The domicile a person has immediately before becoming capable of having an independent domicile continues until he acquires a new domicile in accordance with section 9 of this Act, and then ceases.

**9. Acquisition of new domicile**—A person acquires a new domicile in a country at a particular time if, immediately before that time,—

- (a) He is not domiciled in that country; and
- (b) He is capable of having an independent domicile; and
- (c) He is in that country; and
- (d) He intends to live indefinitely in that country.

**10. Deemed intention**—A person who ordinarily resides and intends to live indefinitely in a union but has not formed an intention to live indefinitely in any one country forming part of the union shall be deemed to intend to live indefinitely—

- (a) In that country forming part of the union in which he ordinarily resides; or
- (b) If he does not ordinarily reside in any such country, in whichever such country he is in; or
- (c) If he neither ordinarily resides nor is in any such country, in whichever such country he was last in.

**11. Domicile of origin not to revive**—A new domicile acquired in accordance with section 9 of this Act continues until a further new domicile is acquired in accordance with that section; and the rule of law known as the revival of domicile of origin whereby a person's domicile of origin revives upon his abandoning a domicile of choice is hereby abolished.

**12. Standard of proof**—The standard of proof which, immediately before the commencement of this Act, was sufficient to show the abandonment of a domicile of choice and the acquisition of another domicile of choice shall be sufficient to show the acquisition of a new domicile in accordance with section 9 of this Act.

**13. Domicile in unions**—A person domiciled in a country forming part of a union is also domiciled in that union.

**14. Consequential amendments and repeals—**(1) Section 62 of the Administration Act 1969 is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) This section shall not apply to any person who dies after the commencement of the Domicile Act 1976.”

(2) Section 16 (2) of the Adoption Act 1955 is hereby amended by repealing paragraph (g) and the proviso to paragraph (f).

(3) The following enactments are hereby repealed:

- (a) Section 3 of the Matrimonial Proceedings Act 1963:
- (b) Section 6 of the Domestic Proceedings Act 1968:
- (c) Section 22 of the Guardianship Act 1968.

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This Act is administered in the Department of Justice.

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