

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 8 July 1976

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. (Dr Finlay) Mr Thomson

DOMICILE

ANALYSIS

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A BILL INTITULED

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

BE IT ENACTED by the General Assembly of New Zealand
5 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 (1975) 1976.
- (2) This Act shall come into force on a date to be appointed
10 by the Governor-General by Order in Council.

Struck Out

2. Interpretation—In this Act, unless the context otherwise requires, “federation” means a nation comprising two or more countries, and includes a nation that is a union.

New

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: 5

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

Struck Out

3. Domicile before commencement—This Act shall not affect the domicile which a person had at a time before the commencement of this Act. 10

New

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. 15

4. Domicile after commencement—The domicile (*which*) 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.

Struck Out

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 the domicile of her husband and is thereafter during the subsistence of the marriage incapable of having a domicile other than that of her husband is hereby abolished. 25

(2) This section shall apply to the parties to every marriage, wherever, whenever, and pursuant to whatever law solemnised, and whatever the domicile of the parties at the time of the marriage. 30

New

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. 35

New

5 (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.

Struck Out

10 **6. Attainment of independent domicile**—(1) Every unmarried person becomes capable of having an independent domicile when he attains the age of 16 years.
(2) Every person who, immediately before the commencement of this Act, was unmarried and had attained the age of 16 years, is capable of having an independent domicile.

Struck Out

15 **7. Children**—(1) This section shall have effect in place of the rules of the common 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.

20 (3) Where a child’s parents are both its guardians and living together it has its father’s domicile.

(4) Where a child’s parents are both its guardians and living apart it has the domicile of the parent with whom it has its home or, if it has its home with neither parent, of the parent with whom it last had its home.

25 (5) Where both a child’s parents are alive and only one is its guardian it has the domicile of the parent who is its guardian.

30 (6) After the death of the parent whose domicile a child has the child continues to have the last domicile of that parent unless it later has its home with a surviving parent, whose domicile it thereafter has.

35 (7) When a parent is a child’s sole guardian and is deprived of the guardianship of that child, the child continues to have the domicile it had immediately before the parent’s guardianship was terminated.

New

40 **7. 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.

New

(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

(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). 10

(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. 15

7A. 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. 20

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. 25

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 30
- (c) He is in that country; and
- (d) He intends to live indefinitely in that country.

Struck Out

10. Deemed intention—A person in a country forming part of a federation who does not intend to live indefinitely in any one country forming part of the federation but does intend to live indefinitely in the federation shall be deemed to intend to live indefinitely in that country if he is not domiciled anywhere else in the federation. 35

New

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

5 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

10 (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 (~~federations~~) unions**—A person domiciled in a country forming part of a (~~federation~~) union is also domiciled in that (~~federation~~) 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 1975.”

(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: 5

(b) Section 6 of the Domestic Proceedings Act 1968:

(c) Section 22 of the Guardianship Act 1968.