

South Australia

Domicile Act 1980

An Act to reform the law relating to domicile.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Domicile Act 1980*.

3—Interpretation

In this Act, unless the contrary intention appears—

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 one of two or more territories that together form a country; and
- (b) domicile in which can be material for any purpose of the laws of this State;

union means any country that is a union or federation or other aggregation of two 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 the 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 a 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 on 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 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 eighteen 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.

8—Domicile of certain children

- (1) In this section—
 - (a) *child* means a person under the age of eighteen 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 his principal home with one of his parents but his 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, his domicile—
 - (a) if, on his adoption, he has two parents—is, at the time of the adoption and thereafter, the domicile he would have if he were a child born to those parents; and
 - (b) if, on his adoption, he has one 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) A child ceases to have, by virtue of subsection (2), the domicile or last domicile of one of his parents if—
- (a) he commences to have his principal home with his other parent; or
 - (b) his parents resume or commence living together.
- (5) Where a child has a domicile by virtue of subsection (2) or (3) immediately before he ceases to be a child, he retains that domicile until he acquires a domicile of choice.
- (6) Where the adoption of a child is rescinded, the domicile of the child shall after that rescission 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—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 home indefinitely in that country.

10—Domicile in a 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 he 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.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1980	81	<i>Domicile Act 1980</i>	27.11.1980	1.7.1982 (<i>Gazette 1.7.1982 p4</i>)
2016	35	<i>Statutes Amendment (Gender Identity and Equity) Act 2016</i>	4.8.2016	Pt 5 (ss 11—13)—8.9.2016 (<i>Gazette 8.9.2016 p3676</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 35/2016 s 11	8.9.2016
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 7		
s 7(1)	amended by 35/2016 s 12	8.9.2016
s 8		
s 8(3)	amended by 35/2016 s 13	8.9.2016