DOMICILE BILL 1981

Date Introduced: 20 October 1981
House: Senate
Presented by: Senator the Hon. P.D. Durack, Q.C., Attorney-General

Short Digest of Bill

Purpose

To replace certain of the common law rules of domicile with statutory provisions agreed upon by the Standing Committee of Attorneys-General for introduction throughout the States and the Commonwealth.

Background

The principles of domicile applicable within Australia, apart from specific provisions in the Marriage Act 1961 and the Family Law Act 1975, have to date been laid down by a complex system of common law rules. Following consideration of these issues by the Standing Committee of Attorneys-General it was agreed that statutory changes should be made to certain of these rules. The changes effected by this Bill are:-

(a) abolition of the rule that the domicile of a married woman is at all times that of her husband;

(b) abolition of the rule that a person's original domicile is re-instated where he abandons a subsequent domicile of choice without evidencing the required intention to acquire a fresh domicile of choice;

(c) reduction of the age at which a child may acquire a domicile independent of its parents from 21 years to 18 years, or age of marriage, whichever is the earlier; and

(d) new provisions are made in respect of the domicile of adopted children and children whose parents are separated.

Similar legislation has been passed in the Northern Territory and all States, other than Western Australia where
the Bill has passed the Upper House and has been adjourned for debate in the House of Assembly.

Main Provisions

Clause 3 declares the object of the legislation to make statutory provisions relating to domicile for the purposes of the laws of the Commonwealth and the laws of each of the Territories to which the Bill applies. By sub-clause (6) the Bill extends to the Australian Capital Territory, the Jervis Bay Territory and to any external Territory that is declared by the regulations to be a Territory to which the Bill extends.

The definition clause of the Bill, clause 4 contains a definition of "adopted" thus filling a gap in existing Commonwealth legislation. The clause also contains a definition of "union" in sufficiently wide terms to include an amalgamation of countries or a federation of States such as Australia. Clause 4(2) provides that a reference to the parents of a child shall be read as including a reference to parents who are not married to each other.

The stage at which the provisions of the legislation will operate in respect of any specific situation is provided for by clause 5. In particular, clause 5(3) provides that the new law will not affect any court proceedings instituted before the commencement of the Act.

Clause 6 abolishes the common law rule that a married woman has at all times the domicile of her husband; in common with unmarried women and all men a married woman now retains her domicile of origin until such time as she acquires a domicile of choice.

The rule under which a person's domicile of origin resumes when he abandons a domicile of choice without having acquired a new domicile of choice is abolished by clause 7. The effect of the clause is that the domicile a person has at any time continues until he acquires a different domicile.

Clause 8 provides that persons who attain the age of 18 years or who are, or have been married, are capable of acquiring an independent domicile. However, an exception is provided by clause 8(2) in respect of persons who by virtue of mental incapacity are incapable of acquiring a domicile (i.e. a domicile of choice).
Clause 9 lays down the method of determining the domicile of children of sole parents, of separated parents and of adopted children.

It is provided by clause 10 that the intention necessary to acquire a domicile of choice is an intention to live indefinitely in the country concerned and clause 12 prescribes the standard of evidence required to establish acquisition of a domicile of choice.

A completely new concept of domicile in a union (as defined in clause 4) is introduced by clause 11. Under this provision where a person has established sufficient nexus to satisfy the requirement for a domicile of choice in the general area of a union, but not for any particular part of the union, then at any given time he will be deemed to be domiciled in that part of the union with which he has for the time being the closest connection.

For further information, if required, contact:

Law & Government Group
28 October 1981