

MINORS' CIVIL LAW CAPACITY

DRAFT REPORT No WP 45

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Written comments and submissions should be sent to:-

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Closing date: 31 August 1995

It would be helpful if comments addressed specific issues or paragraphs in the Paper.

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CHAPTER 1: INTRODUCTION

1.1 Terms of Reference

This reference is given to the Commission by the Attorney-General in its Fourth Program of work.¹ The full terms of the reference are set out in Items 1 and 7 of the Program—

1. **Examine the law relating to infancy and, in particular, the civil law capacity of infants.**
7. **Examine the laws relating to the employment of children.**

At the outset, the use of expressions denoting persons not of full capacity by reason of age needs to be clarified. Legislation, cases, scholarly writing and everyday usage vary considerably. The terms "infant", "juvenile", "child", "young person", "youth" and "minor" are used widely and often interchangeably. In the Commission's terms of reference set out above the words "infancy", "infants" and "children" are used.

"**Infant**", when used in a legal sense, is archaic and, because of the popular connotation of tender years, apt to mislead. "**Juvenile**" has a pejorative connotation, particularly now that it is used in relation to children in the criminal justice process. "**Child**" is more consistent with popular usage, but for that very reason is also apt to mislead. The term is not used popularly to denote with precision someone who has not attained the age of 18 years. "**Young person**" and "**youth**" are subject to the same criticism.

In the view of the Commission, "**minor**", although it has a suggestion of hierarchy, is well understood in the community as connoting a person not of full legal capacity. For example, it is well known and understood that a person must not sell liquor to a minor. "Minor" is also the expression most commonly used in the relevant legislation. This Draft Report therefore uses "minor" except where the terms of original materials preclude it.²

¹ September 1990.

² However, in the Commission's forthcoming Discussion Paper on *Consent to Medical Treatment of Young People* the term "young person" is used, reflecting the graduation of the ability to consent in that context, rather than a cut-off age as in the context of civil law capacity.

1.2 The Commission's approach

The terms of reference are very broad. Apart from matters of age discussed above, "civil law capacity" could extend to mean the capacity in law to do any thing other than in relation to criminal liability. The Commission has, however, construed the terms of reference in light of the preliminary consultations it has held,³ and of work undertaken by other agencies in relation to the employment of children. In particular, the Commission considers that recent and pending reviews by certain Government Departments of juvenile justice, child protection and children's employment legislation render further detailed examination of those laws unnecessary. Further, much of the traditional common law of "infancy" has been overtaken by the scheme of the *Family Law Act 1975* (Cth), which now covers not only children of a marriage but also (pursuant to the *Commonwealth Powers (Family Law—Children) Act 1990* (Qld)) other children.

In the result, the Commission has approached these references by concentrating on minors' capacity to enter into and do things under contracts and to participate in certain property matters, and (so far as relevant to contracts) in relation to employment. Accordingly, the Commission has not reviewed minors' civil capacity in relation to the matters mentioned above, or trusts, wills, personal property, associations⁴ or torts.⁵ The Commission has also not considered the applicable international law in detail, although it has had regard to the United Nations Convention on the Rights of the Child, which provides that, in legal and administrative matters, "the best interests of the child shall be a primary consideration",⁶ and that a child who is capable of forming views has the right to express them and have them taken into account.⁷

The purpose of this Draft Report is to outline the present law of minors' civil capacity, to identify some potential areas of difficulty and to make provisional recommendations for reform. It does so first by examining the significance of age in the law. It then considers the existing law relating to minors' capacity in the three major areas of contracts, employment and real property. Finally, the Draft Report considers the need for reform in each of those areas, and lists the Commission's provisional recommendations.

³ See section 1.3 below.

⁴ The *Associations Incorporation Amendment Bill 1994* (Qld) cl 7 would insert s 32A into the *Associations Incorporation Act 1981* (Qld) with a requirement that members of the Management Committee of an incorporated association be adult.

⁵ The Commission's forthcoming Discussion Paper on *Consent to Medical Treatment of Young People* deals with one aspect of minors' capacity in relation to torts.

⁶ Article 3(1).

⁷ Article 12.

1.3 Consultation

Preliminary informal consultations have been held with representatives of a number of organisations in the preparation of this Draft Report.⁸ This resulted in the Commission forming a provisional view that, despite the complexity and antiquity of the law of minors' civil capacity, the detrimental impact of that law on citizens' everyday life does not (on the whole) warrant a full-scale review.⁹

The Commission now seeks further comments and submissions from persons and organisations with a particular interest in the law relating to children as well as from the general community. Comments and submissions should reach the Commission by 16 June 1995. A final report will be submitted to the Attorney-General once those submissions have been considered and taken into account.

⁸ Organisations informally contacted were: Arts Law Centre, Australian Bureau of Statistics, Australian Finance Conference, Brisbane Junior Chamber of Commerce, Department of Education, Financial Counselling Service, Logan Youth Legal Service, Liquor, Hospitality and Miscellaneous Union, Office of Consumer Affairs, Queensland Association of State Secondary School Principals, Queensland Chamber of Commerce and Industry, Queensland Council of Parents and Citizens' Associations, Queensland Retail Traders and Shopkeepers' Association, Queensland University of Technology Counselling Services, Queensland University of Technology Student Guild, Retailers Association of Queensland, Tenants' Union of Queensland, Trades and Labour Council/Australian Council of Trade Unions, University of Queensland Counselling Services, University of Queensland Union: Students Legal Service, Youth Advocacy Centre, and Youth Affairs Network of Queensland.

⁹ See note 13 below.

CHAPTER 2: AGE AND ITS SIGNIFICANCE

2.1 General

The law has always attributed different legal effects to the acts of young people and adults. This discrimination is usually attributed to the inexperience and lack of judgment of young persons. It is thought to be unfair to attach the legal effect of acts of an adult to acts of young people.

Difficulties of application of these principles on a case by case basis depending on the individual's actual capacity and understanding have meant that arbitrary ages have been fixed below which a person is presumed, to a greater or lesser extent, to be incapable of doing legally effective acts.

In England the age of majority was 14 until the Middle Ages. Under feudal systems of governance, a regular incident of adulthood was service under arms. With the introduction of heavy armour at about that time, young adults became physically incapable of bearing armour, so the age of majority was increased to 21.¹⁰ As so often in English law, an accident of history had an effect which long outlived its rationale.

The New South Wales Law Reform Commission's *Report on Infancy in Relation to Contracts and Property* surveyed the evidence about fluctuating ages of physical maturity in recent centuries, and observed—¹¹

Since about the middle of the nineteenth century there has been a secular trend towards earlier maturity. The trend, which still continues, is that boys and girls mature about one year younger than did similar boys and girls born 30 years earlier.

Of course, this says nothing about emotional, intellectual or personal maturity which might be thought more properly to provide an index of the civil law capacity to be accorded to young people.

In the late 1960s and early 1970s, there was a general tendency in the common

¹⁰ J W Carter & D J Harland *Contract Law in Australia* (Butterworths 2nd ed 1991) (hereafter called "Carter & Harland") pp 249-250.

¹¹ New South Wales Law Reform Commission *Report on Infancy in Relation to Contracts and Property* (LRC 6 1969) at p 9.

law jurisdictions to lower the age of majority from 21, in most cases to 18 years.¹² In Queensland the change was effected by the *Age of Majority Act 1974 (Qld)*. Section 5(1)(a) of that Act provides that "a person who ... attains the age of eighteen years attains full age and full capacity on attaining that age".¹³

Reflecting this position, the *Acts Interpretation Act 1954 (Qld)* defines "adult" as a person who has attained the age of 18 years, and both "minor" and (where age rather than dependency is relevant) "child" as a person who has not attained 18 years.¹⁴ However, the *Children's Services Act 1965 (Qld)* defines "child" for the purposes of that Act as "a person under or apparently under the age of seventeen years ..."¹⁵

The significance of age (and the significant age itself) varies across a wide variety of aspects of life (for example school, crime, sex, cars, marriage, alcohol, politics and tax). Some of these are noted below.¹⁶

2.2 Education

The *Education (General Provisions) Act 1989 (Qld)* section 3 defines "age of compulsory attendance" for the purposes of that Act to mean "not less than six nor more than 15 years of age". Sections 57 and 60 compel a parent of a child who is of the age of compulsory attendance to enrol and ensure the attendance of the child at a State or non-State school or at the School of Distance Education. The Minister may dispense with that requirement under section 58. A parent who does not comply commits an offence under section 61, punishable by a fine (presently \$300 for a first offence, and \$600 for a subsequent offence). A parent who causes or permits a child of compulsory attendance age to be employed during school hours commits an offence against section 62 (punishable by a fine of \$300).

¹² The law reform proposals and implementing legislation in the various jurisdictions are conveniently collected in the Law Reform Commission of Western Australia *Report on Minors' Contracts* (Project No 25 Part 2 1988) pp 10-14, D W Greig & J L R Davis *The Law of Contract* (Law Book Co 1987, read with 5th cumulative supplement 1993) (hereafter called "Greig & Davis") pp 757-758, and Carter & Harland pp 250-251.

¹³ The lowering of the age of majority has diminished the practical impact of the confused state of the law of minors' civil capacity. See section 6.2 below.

¹⁴ Section 36.

¹⁵ Section 8. See section 4.3(a) below.

¹⁶ This survey is far from exhaustive. Many laws under which age is significant (e.g. *Public Trustee Act 1978 (Qld)* s 59; *Life Insurance Act 1945 (Cth)* s 85) have not been included.

2.3 Criminal responsibility and procedure

At common law,¹⁷ according to *Osborn's Concise Law Dictionary*—¹⁸

There is a conclusive presumption that no child under the age of 10 years can be guilty of any offence. A minor between the ages of 10 and 14 is presumed to be *doli incapax*,¹⁹ but this presumption may be rebutted by evidence of "mischievous discretion," or guilty knowledge that he was doing wrong ... The principle of law is *malitia supplet aetatem*.²⁰

In jurisdictions where the common law governs principles of criminal law, the future of the doctrine appears to be doubtful following the decision of an English Divisional Court in *C v Director of Public Prosecutions*.²¹ In Queensland, however, the position is settled by section 29 of the *Criminal Code* which codifies the *doli incapax* rule in these terms—

(1) A person under the age of 10 years is not criminally responsible for any act or omission.

(2) A person under the age of 15 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.²²

Apart from responsibility for criminal acts, the law makes special provision for criminal procedure to be used in respect of offences committed by young persons. The *Juvenile Justice Act 1992* (Qld) defines "child" as a person who has not attained 17 years.²³ Where an offender is a child so defined, the special rules in the Act relating to cautions, arrest, attendance notices, summonses, bail, custody, procedure, appeals, sentence and corrective services apply to proceedings against the child.

¹⁷ That is, according to case law or judge-made law (as distinct from statute law made by Parliament).

¹⁸ *Osborn's Concise Law Dictionary* (Sweet & Maxwell 8th ed 1993) p 122.

¹⁹ "Incapable of crime."

²⁰ "Malice supplements age."

²¹ [1994] 3 WLR 888; [1994] 3 All ER 190 (QBD: Div Ct); see also N Konic "Say Goodbye Doli? Age and Criminal Responsibility" (1994) 19 *Alternative Law Journal* 140.

²² In December 1994 the Attorney-General released for public discussion a draft *Criminal Code Bill 1994* (Qld). Clause 25 of the draft Bill is in substantially the same terms as s 29 of the present Code.

²³ The age may be raised to 18 years: see s 6.

2.4 Sexual relations

Chapter 22 of the *Criminal Code* (Offences against morality) does not specifically entitle a minor to engage in sexual activity, or proscribe sexual activity on the part of a minor. However it includes several offences where the age of another person involved in the act is relevant.

For example, under section 208, anal intercourse with a person who is not an adult (that is, under 18) is a crime, punishable by 7 years' imprisonment (14 years' imprisonment if the person is under 16 years of age, or life imprisonment if the person is under 12 years of age). By section 209, attempts to commit that offence are punishable by 3, 7 or 14 years' imprisonment respectively. Under section 210, indecent treatment of children under 16 is punishable by 5 or 10 years' imprisonment in various circumstances. Carnal knowledge of a girl under 16 attracts 5 years' imprisonment or, where the girl is under 12, life imprisonment (section 215). Section 217 makes the procurement of a person who is not an adult (that is, under 18) a crime punishable by 7 years' imprisonment. Under section 229B, a person who maintains an unlawful sexual relationship with a child under the age of 16 is guilty of a crime and liable to 7 years' imprisonment.

2.5 Motor vehicles

The *Traffic Regulation 1962* (Qld) section 106(2) provides that a driver's licence shall not be issued to a person who is under the age of 17 years.

2.6 Marriage

The *Marriage Act 1961* (Cth) prohibits the solemnisation of a marriage of a minor without the consent of the minor's relevant parents or guardians.²⁴

The Act goes on to provide that a marriage where either party is not of marriageable age is prohibited²⁵ and declared void.²⁶ By section 11, a person is of marriageable age if the person has attained 18 years of age. Section 12 allows a Judge or magistrate to deem a person who is 16 or over to be of marriageable age if there are "exceptional and unusual" circumstances, but only in

²⁴ Sections 13 and 95(2). By s 5(1) "minor" means a person who has not attained the age of 18 years".

²⁵ Sections 95(1) and 100.

²⁶ Section 23B(1)(e).

relation to the proposed spouse named in the order.

The two prohibitions (minors and persons not of marriageable age) are cumulative, so that a person between 16 and 18 requires both the consent of a parent or guardian and an order that the person is of marriageable age in relation to the proposed spouse. This apparent overlap appears to stem from a time when marriageable age was lower than the age of majority.²⁷

2.7 Liquor

Certain provisions in Part 6 of the *Liquor Act 1992* (Qld) affect minors. Under section 155, a licensee, permittee or person in control of licensed premises commits an offence if a minor is on the premises. Under section 156, a person must not supply liquor or allow liquor to be supplied to a minor on or adjacent to licensed premises. Section 157 makes it an offence for a minor to be on licensed premises, or to consume or be in possession of liquor on licensed premises or in a public place. The Act also includes detailed provisions as to the enforcement of age requirements.²⁸

2.8 Elections

Section 64(1) of the *Electoral Act 1992* (Qld) provides that a person is entitled to vote (in Queensland) if the person is entitled to vote under the *Commonwealth Electoral Act 1918* (Cth). Section 93(1)(a) of the Commonwealth Act provides that persons who have attained the age of 18 years are entitled to enrol to vote. By section 93(2) a person whose name is on the electoral roll for a Division is entitled to vote in an election of Senators for that State, and of members of the House of Representatives for that Division.

2.9 Taxation

Under the *Income Tax Assessment Act 1936* (Cth) Part 3 Division 6AA, certain income of children is subject to additional tax. The special provisions do not apply to certain children, including those who are married, in full-time employment or in receipt of certain social security benefits, nor to business, employment and related kinds of income.

²⁷ Until 1991 the marriageable age for females was 14 and for males 16. The *Sex Discrimination Amendment Act 1991* (Cth) raised the age for all persons to 18.

²⁸ Sections 158-160 & 167.

CHAPTER 3: CONTRACTS

3.1 General: policy issues

The generally recognised objectives of the special rules developed by the common law in relation to minors' contracts²⁹ are, on the one hand, to protect minors from the consequences of their own immaturity and inexperience whilst, on the other, ensuring that the law does not unnecessarily prejudice adults who deal with minors so that the needs of minors for goods and services may be met.³⁰ Other objectives which have also been identified include preventing unjust enrichment by persons under age and protecting parents and other relatives and family property.³¹

Attempts by the common law to reconcile the two fundamentally conflicting policies outlined above have resulted in criticisms that the rules are complex and unclear. For example, the general rule that a minor's contract is not enforceable against the minor but is enforceable by the minor is subject to numerous qualifications. Most commentators explain these qualifications by dividing minors' contracts into two categories: those which are binding on the minor, and those which are not.³²

²⁹ In this Chapter, 'minors' contracts' is used, admittedly imprecisely but conveniently, to include contracts which are void or unenforceable against a minor.

³⁰ G H Treitel *Law of Contract* (Sweet & Maxwell 8th ed 1991) (hereafter called "Treitel") p 481; Law Reform Commission of Tasmania *Report on Contracts and the Disposition of Property by Minors* (Report No 48 1987) p 7.

³¹ Ontario Law Reform Commission *Report on Amendment of the Law of Contract* (1987) p 177. For a comprehensive review of the different objectives of the law of minors' contracts, see Law Reform Commission of Western Australia *Report on Minors' Contracts* (Project No 25 Part 2 1988) Chapter 4.

³² The following survey is far from original. Just a few of the many authorities which have dealt with this area of the law are Greig & Davis; Carter & Harland; Treitel; Law Reform Commission of Western Australia *Legal Capacity of Minors* (Project No 25 Working Paper No 2 1978); United Kingdom Law Commission *Minors' Contracts* (Working Paper No 81 1982); Law Reform Commission of Tasmania *Report on Contracts and the Disposition of Property by Minors* (Report No 48, 1987).

3.2 Contracts which are binding

The general rule is that a contract entered into by a minor is not enforceable against the minor.³³ However, the contract is not entirely without any legal effect. A minor may enforce against an adult any rights resulting from a contract entered into between the minor and the adult, without being liable in any action brought on the contract.³⁴ This rather one-sided rule is subject to two exceptions: contracts for the supply of necessities; and beneficial contracts of service and analogous contracts are binding on a minor.

(a) Contracts for necessities

The first exception to the general rule that minors' contracts are not binding is that a contract to which a minor is a party for the supply of necessities to the minor is binding, not only on the adult party, but also on the minor.³⁵ The rationale of the exception is that the minor should not be compromised by the understandable reluctance of a supplier to deal with the minor over doubts about the enforceability of any ensuing contract.

Necessaries are not confined to the bare essentials of life.³⁶ They include both goods and services. Whether goods or services are necessities must be determined in the context of factors such as the minor's age, means and social position.³⁷ Regard must be had to the type of goods or services which someone in the minor's situation might reasonably be expected to acquire.³⁸

In order to enforce a contract against a minor, an adult party to the contract must further show that the subject matter constituted "necessaries" in the sense that the minor was not already adequately supplied with goods or

³³ *Dillon v Wood* (1881) 2 NSW 298, *Rubinovich v Emmett* (1901) 27 VLR 265.

³⁴ Greig & Davis p 774, and Carter & Harland p 254. *Bruce v Warwick* (1815) 6 Taunt 118; 128 ER 978, *Zouch d'Abbott & Hallet v Parsons* (1765) 3 Burr 1794; 97 ER 1103.

³⁵ Some have argued that the true basis of the minor's liability is not contractual, but quasi-contractual. This is consistent with a general theory of non-capacity for minors, the liability arising from notions of quasi-contract and unjust enrichment. See Carter & Harland pp 259-260; Greig & Davis pp 763-764; Treitel pp 484-485; P A Landon (1935) 51 *Law Quarterly Review* 270; D C Pearce "Fraudulent Infant Contractors" (1968) 42 *Australian Law Journal* 294; P H Winfield "Necessaries under the Sale of Goods Act 1893" (1942) 58 *Law Quarterly Review* 82.

³⁶ Carter & Harland p 255; Treitel p 483; *Nash v Inman* [1908] 2 KB 1 (CA).

³⁷ In *Mercantile Credit Ltd v Spinks* [1968] QWN 32 Wanstall J held that a motor vehicle was a "necessary" for a minor who was a salesman.

³⁸ *Sultman v Bond* [1956] StRQd 180 per Stanley J at 189.

services of the kind.³⁹ Even if a plaintiff can prove these matters to a court, the contract will not be enforced unless it is beneficial to the minor. However benefit alone will not suffice to make the contract enforceable.⁴⁰

In relation to necessary goods, the *Sale of Goods Act 1896* (Qld) provides that the minor need pay only a reasonable price for them, not necessarily the price which the minor agreed to pay.⁴¹

The *Sale of Goods Act* provision applies only to goods "sold and delivered" to a minor. It is not clear whether, at common law, an executory contract⁴² can be enforced against a minor if, for example, the minor repudiates the contract before the goods have been delivered. The answer depends on the true basis for the minor's liability.⁴³ If the basis of liability is a benefit actually received, then the minor would not be liable. On the other hand, if the basis of the minor's liability is contractual, the minor would still be liable, even though the contract were terminated while still executory.

(b) Employment, apprenticeship and training contracts

The second exception to the general rule of non-enforceability⁴⁴ is that a minor is bound by a contract into which he or she has entered which provides employment, permits a livelihood to be earned or provides training for a trade or profession if the contract, taken as a whole, is for the minor's benefit.

Unlike contracts for necessities, the employer need not show that the contract was necessary for the minor (employment is presumed to be necessary); but, like contracts for necessities, such contracts must be for

³⁹ *Sultman v Bond* [1956] StRQd 180 per Stanley J at 189.

⁴⁰ In *Bojczuk v Gregorcowicz* [1961] SASR 128 Ross J held that a promise by the defendant minor to repay a fare which the plaintiff had paid to enable the defendant to emigrate from Poland was not a contract for necessities. He also rejected an argument that the promise was nevertheless enforceable because it was for the defendant's benefit. Greig & Davis at p 762 regard this result as anomalous in light of the stated policy goals of minors' contract law.

⁴¹ Section 5. This provision fortifies the arguments of those who say that the basis of a minor's liability for necessities is not contractual, but based on the benefit actually received: see note 35 above. For a commentary on the finer points arising under the equivalent English legislation, see P H Winfield 'Necessaries under the *Sale of Goods Act 1893*' (1942) 58 *Law Quarterly Review* 82.

⁴² That is, where obligations under the contract remain to be performed in the future.

⁴³ See note 35 above.

⁴⁴ There is a question whether contracts of this kind form a separate category of enforceable minors' contracts or are a subcategory of contracts for necessities. The New South Wales Supreme Court appeared to favour the latter view in *Blennerhassett's Institute of Accountancy Pty Ltd v Gairns* (1938) 55 WN (NSW) 89 (FC).

the minor's benefit to be enforceable.⁴⁵ Another feature is that, unlike contracts for necessities, an employment contract may be repudiated⁴⁶ by the minor on (but not before) attaining majority.⁴⁷

However, in modern times, the practical importance of these rules has been considerably attenuated by extensive legislative prescription.⁴⁸

3.3 Contracts which are not binding

The general rule, as already seen, is that a minor is not bound by contracts entered into during minority.⁴⁹ This category is usually further divided into subcategories of contracts which are "binding unless repudiated",⁵⁰ and contracts which are not binding at all (unless ratified by the minor after attaining majority). However, both subcategories are binding on other parties to the contract who are not minors. The other contracting party may not seek to avoid his or her obligations simply on the basis that the minor lacks capacity.

(a) Contracts binding unless repudiated

There are certain contracts which have been held to be binding unless (if ever) the minor repudiates them. Although the exact scope of the category of contracts binding unless repudiated is unclear, it includes—⁵¹

- contracts under which the minor agrees to buy or sell land or

⁴⁵ Treitel p 486. Once the employment or apprenticeship contract has been established, the courts readily find the contract to be for the minor's benefit: *Doyle v White City Stadium Ltd* [1935] 1 KB 110 (CA); *Chaplin v Leslie Frewin (Publishers) Ltd* [1966] Ch 71 (CA). For a rare exception see *Toronto Marlboro Major Junior 'A' Hockey Club v Tonelli* (1979) 96 DLR (3d) 135 (Ont CA). In New Zealand, benefit need not be established: *Minors' Contracts Act 1969* s 5(1)(c).

⁴⁶ According to *Osborn's Concise Law Dictionary* (Sweet & Maxwell 8th ed 1993 p 288) "Repudiation" is "words or conduct indicating that a person does not regard himself as being bound by an obligation, eg a party may repudiate a contract by refusing to perform according to its terms".

⁴⁷ Greig & Davis p 764; see also *Hamilton v Lethbridge* (1912) 14 CLR 236 (HCA) at 261-2.

⁴⁸ See Chapter 4 below.

⁴⁹ The general law of contract, for example relating to undue influence, misrepresentation and unconscionable conduct, applies to the contract notwithstanding the minority of a party.

⁵⁰ It is arguably a nonsense to talk of a contract being "binding" on a minor who can repudiate it at any time.

⁵¹ Greig & Davis pp 767-771; Treitel pp 488-489.

to take or grant a lease of land;⁵²

- marriage settlements made by a minor;
- contracts under which the minor incurs liability for calls on shares in a company;
- partnerships.

The common feature which has been identified in these contracts is the acquisition of an interest in property of a permanent nature or with continuing obligations attached to it.

Contracts in this category are binding on the minor unless repudiated during minority⁵³ or within a reasonable time of attaining majority. What is a reasonable time depends on the circumstances of each case.⁵⁴ Unless repudiated within a reasonable time of attaining majority, the contract is binding whether beneficial or not. There is some suggestion that repudiation during minority is not in itself binding and may later be withdrawn.⁵⁵ The effect of repudiation is prospective. The minor is freed from any further obligation under the contract.⁵⁶

It has been observed that there is no satisfactory reason for the existence of this separate category.⁵⁷ It has, however, been suggested that all contracts involving continuing rights and duties should be included in this category,⁵⁸ although this proposition is by no means universally accepted.⁵⁹

⁵² Subject to the indefeasibility provisions in a Torrens system: see Chapter 5.

⁵³ Employment contracts can only be repudiated after attaining majority: see section 3.2(b) above.

⁵⁴ Treitel p 490. In *Hamilton v Lethbridge* (1912) 14 CLR 236 (HCA) the High Court was assisted in reaching its conclusion that a clerk had not repudiated his articles of clerkship by the fact that he had acquiesced in the articles for two years after attaining majority. On the other hand, in *Norman Baker Pty Ltd (in liq) v Baker* (1978) 3 ACLR 856 (WASC, FC) a minor was held to be entitled to repudiate a contract to buy shares two years after their acquisition.

⁵⁵ *North Western Railway Co v M'Michael* (1850) 5 Exch 114 at 127; 155 ER 49 at 55; *Hamilton v Lethbridge* (1912) 14 CLR 236 (HCA) per Isaacs J at 261-262.

⁵⁶ Treitel p 490; *Norman Baker Pty Ltd (in liq) v Baker* (1978) 3 ACLR 856 (WA SC, FC).

⁵⁷ Carter & Harland p 261.

⁵⁸ *Hamilton v Lethbridge* (1912) 14 CLR 236 (HCA) per Barton J at 256 cited by Carter & Harland at p 261.

⁵⁹ The Australian courts have more readily taken the broader view than have the English courts: Greig & Davis p 769. For example, in *Hamilton v Lethbridge* (1912) 14 CLR 236 (HCA) the High Court was concerned with a covenant in restraint of trade in articles of clerkship between a Toowoomba solicitor and his clerk. The court considered that the articles were a "continuing obligations" contract, and thus could have been repudiated (although on the facts

(b) **Contracts not binding unless ratified**

If a contract is not for the supply of necessities,⁶⁰ or one which is binding unless repudiated,⁶¹ it falls into the general residual category of contracts not binding unless ratified.⁶² Such contracts are not binding on the minor unless ratified within a reasonable time of attaining majority. In Victoria, certain minors' contracts are declared "absolutely void".⁶³

A contract which is not binding unless ratified does not require repudiation. The minor is not bound by any obligations arising under the contract, whether or not those obligations have accrued.

Ratification requires a positive act to recognise a previous contract with the intention of rendering it binding.⁶⁴ The contract, if not ratified, is still effective to some extent against the adult party. However money paid by a minor under such a contract is not recoverable unless there has been a total failure of consideration.⁶⁵

In some jurisdictions the ratification must be in writing.⁶⁶ In Victoria, any

they were not). The alternative view, that the articles were an employment contract, would have meant that the clerk could not have repudiated until attaining majority.

⁶⁰ Section 3.2 above.

⁶¹ Section 3.3(a) above.

⁶² Under the *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) s 6, the Supreme Court or a local court can approve the terms of such a contract; once approved, the contract has effect as if the minor were an adult. Under section 8, the court can appoint a person to act as a minor's agent. Liabilities incurred by the agent are enforceable against the minor. The provisions of the Act are reproduced in Appendix 3. In New Zealand, contracts by married minors, contracts of service and certain life insurance contracts are valid; otherwise, minors' contracts are unenforceable against a minor: *Minors' Contracts Act 1969* (NZ) ss 4-9 (particularly s 6(1)).

⁶³ *Supreme Court Act 1986* (Vic) s 49. That provision, and the *Infants' Relief Act 1875* (Tas) s 1 were reproduced from the *Infants Relief Act 1874* (UK) s 1. The Tasmanian and UK provisions have been repealed by the *Minors Contracts Act 1988* (Tas) and the *Minors' Contracts Act 1987* (UK) (the UK legislation is reproduced in Appendix 4). The repeals were recommended by the Law Reform Commission of Tasmania *Report on Contracts and the Disposition of Property by Minors* (Report No 48 1987) p 14 and the United Kingdom Law Commission *Law of Contract: Minors' Contracts* (Law Com No 134 1984) p 23 respectively. See also note 68 below.

⁶⁴ Treitel p 492.

⁶⁵ *Cumruth v Moro* (1966) 60 QJPR 106 (Carter DCJ). See note 70 and section 3.3(c) below.

⁶⁶ *Statute of Frauds Amendment Act 1828* (UK) s 5 (which still applies in Western Australia and the Northern Territory, although repealed in the United Kingdom by the *Statute Law Revision Act 1875*); *Mercantile Law Act 1962* (ACT) s 15; and *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) s 4 (the provisions of the Act are reproduced in Appendix 3). In Queensland, a similar provision in the *Statute of Frauds and Limitations Act 1867* (Qld) s 12 was recommended for repeal by the Queensland Law Reform Commission *Review of the Statute of Frauds and Limitations Act 1867* (Report No 6 1970) p 5; this was implemented by the *Statute of Frauds 1972* (Qld).

purported ratification, whether written or not, is ineffective.⁶⁷ There are also provisions making void any agreement made after majority to repay a loan advanced during minority, or any ratification after majority of a promise made during minority.⁶⁸

(c) Remedies

In Australia it is generally accepted that, at least in the case of contracts binding unless repudiated, obligations accrued prior to but remaining unperformed at the time of repudiation are enforceable against the minor, although there is some doubt as to contracts not binding unless ratified which have purportedly been repudiated by the minor.⁶⁹

As to obligations (such as payment or delivery) which have been fulfilled, the minor can recover money paid under the contract prior to repudiation only if there has been a total failure of consideration.⁷⁰ Similarly, a minor who has transferred goods under a contract may recover them on repudiation only if

⁶⁷ *Supreme Court Act 1986* (Vic) s 50. That provision, and the *Infants' Relief Act 1875* (Tas) s 2 were reproduced from the *Infants Relief Act 1874* (UK) s 2. The Tasmanian and UK provisions have been repealed by the *Minors Contracts Act 1988* (Tas) and the *Minors' Contracts Act 1987* (UK) (the UK legislation is reproduced in Appendix 4). The repeals were recommended by the Law Reform Commission of Tasmania *Report on Contracts and the Disposition of Property by Minors* (Report No 48 1987) p 14 and the United Kingdom Law Commission *Law of Contract: Minors' Contracts* (Law Com No 134 1984) p 23 respectively. See also note 68 below.

⁶⁸ *Supreme Court Act 1986* (Vic) s 51. That provision, and the *Money Lenders Act 1916* (Qld) s 10 were modelled on the *Betting and Loans (Infants) Act 1892* (UK) s 5. The Queensland and UK provisions were repealed by the *Credit Act 1987* (Qld) and the *Minors' Contracts Act 1987* (UK) respectively. The UK legislation is reproduced in Appendix 4. For a sample of the extensive (but now, outside Victoria, redundant) literature on these unfortunate provisions and those cited in notes 63 and 67 above, see Greig & Davis pp 777-780; J L R Davis "Continuation in Victoria of Anachronistic English Statutory Provisions" (1987) 61 *Australian Law Journal* 265; G H Treitel "The *Infants Relief Act 1874*" (1957) 73 *Law Quarterly Review* 194; P S Atiyah "The *Infants' Relief Act 1874*: A Reply" (1958) 74 *Law Quarterly Review* 97; G H Treitel "The *Infants' Relief Act 1874*: A Short Rebutter" (1958) 74 *Law Quarterly Review* 104; and R W Clark "Contracts for the Sale of Non-Necessary Goods; Vendor's Remedies against an Infant Purchaser" (1981) 7 *University of Tasmania Law Review* 85.

⁶⁹ Greig & Davis p 772, Stephen Graw *An Introduction to the Law of Contract* (Law Book Company 2nd ed 1993) pp 100-101, both citing *Norman Baker Pty Ltd (in liq) v Baker* (1978) 3 ACLR 856 in support of the proposition that obligations already accrued prior to repudiation under a contract binding unless repudiated remain binding after repudiation. Carter & Harland at p 264 are somewhat more equivocal, recognising that a minor may be bound by those obligations which have already become due prior to repudiation under a contract binding unless repudiated, such as arrears of rent already due at the time of the repudiation of a lease of a flat, but not by obligations accrued due under a contract not binding unless ratified, the latter contract not requiring repudiation. In England the matter is attended by doubt in both the cases and the texts: Cheshire Fifoot & Furmston's *Law of Contract* (Butterworths 12th ed 1991) pp 435-6, *Ketsey's Case* (1631) Cro Jac 320; 79 ER 274; *Cork & Bandon Railway Co v Cazenove* (1847) 10 QB 935; 116 ER 355; *Leeds & Thirsk Railway v Fearnley* (1849) 4 Exch 26; 154 ER 1110; *Blake v Concannon* (1870) IR 4 CL 323 agree with the result in *Baker*; cases which hold that the antecedent liabilities are not binding include *Lowe v Griffith* (1835) 1 Scott 458; 4 LJCP 94; *Newry & Enniskillen Railway Co v Coombe* (1849) 3 Exch 565; 154 ER 970; *North Western Railway Co v M'Michael* (1850) 5 Exch 114; 155 ER 49. See A H Hudson "Contracts Relating to Property of a Permanent Nature; Accrued Liability of Infants" (1957) 35 *Canadian Bar Review* 1213 and *Re Central Bank and Hogg* (1890) 19 OR 7.

⁷⁰ Treitel p 490; *Steinberg v Scala (Leeds) Ltd* [1923] 2 Ch 452 (CA) which was followed in the Brisbane District Court in *Curruth v Moro* (1966) 60 QJPR 106 (Carter DCJ).

no part of the promised consideration has been received.⁷¹ Because a contract of this kind is binding on adult parties irrespective of the minor's position, property which has passed under the contract cannot be recovered from the minor, irrespective of whether the minor has provided full, partial or no consideration.⁷²

These rules clearly offend elementary considerations of justice and fairness. The effect is that a minor who inadvisably parts with property and receives only a small portion of the promised consideration cannot recover the property;⁷³ on the other hand, a rogue who takes advantage of his or her minority to defraud an adult may go scot-free.⁷⁴

There are, however, aspects of the law other than contract law which address these difficulties in some circumstances. For example, equity may order the return to the rightful owner of identifiable property in the defendant's possession.⁷⁵ It may also be possible in some circumstances for an adult to sue a minor in tort for the recovery of property,⁷⁶ provided

⁷¹ Both aspects of this rule have been abrogated in South Australia: *Minors Contracts (Miscellaneous Provisions) Act 1979* s 7; the provisions of the Act are reproduced in Appendix 3.

⁷² *Cowern v Nield* [1912] 2 KB 419 (Div Ct), where it was held that an adult party who had properly rejected defective goods under a contract with a minor could not recover the moneys paid by him under that contract. The Court endorsed the proposition that minors are not liable *ex contractu* [arising out of a contract], but that an action for money had and received could be maintained against a minor if the substance of the action were that the minor has obtained the money *ex delicto* [arising out of a wrong]. On that basis, the Court ordered a new trial on the issue of whether the plaintiff's money had been obtained by fraud. The decision has been criticised for suggesting that if fraud were proved the plaintiff would succeed. See D C Pearce "Fraudulent Infant Contractors" (1968) 42 *Australian Law Journal* 294 at p 301, where it is suggested that the fraud could not be regarded as independent of the contract and the discussion of the case in Treitel at pp500-501, where the order of a new trial on the question of fraud is also criticised.

⁷³ For an explanation of the historical basis of this approach see J D McCamus "Restitution of Benefits Conferred under Minors' Contracts" (1979) 28 *UNBLJ* 89 who states at pp 102-103 that "[T]he historical explanation for this doctrine [that a minor cannot recover the value of benefits conferred unless there has been total failure of consideration] would appear to be that the claims in question are claims for the recovery of money had and received, and as such were thought to be subject to the total failure of consideration requirement which was recognized as a necessary element of quasi-contractual money claims in other contexts...The total failure of consideration analysis... dictates an all-or-nothing approach."

⁷⁴ The common law and equitable rules surrounding minors, fraud and restitution are complex in the extreme: see P S Atiyah "The Liability of Infants in Fraud and Restitution" (1959) 22 *Modern Law Review* 273; and D C Pearce "Fraudulent Infant Contractors" (1968) 42 *Australian Law Journal* 294.

⁷⁵ Commentators disagree about the circumstances which must be shown before the return of property will be ordered. One view is that, despite the common belief that fraud must be proved in order to invoke the equitable doctrine of restitution against a minor, there is in fact no such requirement or, if there is, then merely refusing to pay for goods, or to repay a loan, is itself fraudulent. On this view the fraud consists of the minor's attempt to abuse the privilege of minority by seeking to retain a benefit without making any recompense for it, rather than of a reckless or dishonest statement which would be required to constitute fraud at common law. (P S Atiyah "The Liability of Infants in Fraud and Restitution" (1959) 22 *Modern Law Review* 273 at pp 275, 286; Greig & Davis p 784). The alternative view is that restitution is available only where the minor has been guilty of legal fraud, for example, by deliberately misrepresenting his or her age. (Treitel pp 497-498; Carter & Harland p 267.) For a discussion of these competing views see D C Pearce "Fraudulent Infant Contracts" (1968) 42 *Australian Law Journal* 294 at pp 298-299.

⁷⁶ D C Pearce "Fraudulent Infant Contractors" (1968) 42 *Australian Law Journal* 294 at pp 299-301.

that the tort is not directly connected with a contract which the minor would be entitled to avoid.⁷⁷

In some jurisdictions, legislation gives courts wide powers to order restitution in cases involving minors.⁷⁸

3.4 Consumer legislation

The common law position has been altered by consumer legislation. For example, the general consumer protection provisions of legislation such as the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1989* (Qld) have probably attenuated the need perceived by the common law to protect minors in particular.

Another problem of the common law which has been partially addressed by consumer legislation is the question of enforceability of guarantees of unenforceable minors' obligations. It has been held in England that a guarantee of a promise which is void under the *Infants Relief Act 1874* (UK)⁷⁹ is not enforceable.⁸⁰ It is arguable that the principle is not applicable in jurisdictions like Queensland in which no legislation equivalent to the *Infants Relief Act 1874* (UK) exists.⁸¹ Nevertheless, review agencies in all jurisdictions which have reviewed this subject have recommended legislation to provide that such a guarantee is not unenforceable merely because of the principal obligor's minority.⁸² Such legislation has been enacted in most of those jurisdictions.⁸³

⁷⁷ *R Leslie Ltd v Sheill* [1914] 3 KB 607 (CA) per Lord Sumner at 611.

⁷⁸ *Minors (Property and Contracts) Act 1970* (NSW) s 37 (reproduced in Appendix 2); *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) s 7 (reproduced in Appendix 3); *Minors' Contracts Act 1987* (UK) s 3 (reproduced in Appendix 4); *Infants Act* (RSBC 1979 c 196) s 16.3; *Minors' Contracts Act 1969* (NZ) s 7. See: J D McCamus "Restitution of Benefits Conferred under Minors' Contracts" (1979) 28 *UNBLJ* 89.

⁷⁹ See note 63 above.

⁸⁰ *Coutts & Co v Browne-Lecky* [1947] KB 104 (Oliver J).

⁸¹ Carter & Harland p 270.

⁸² New South Wales Law Reform Commission *Report on Infancy in Relation to Property and Contracts* (LRC 6 1969) pp 52, 88; Alberta Institute of Law Research and Reform *Minors' Contracts* (Report No 14 1975) p 42; British Columbia Law Reform Commission *Report on Minors' Contracts* (LRC 26 1976) pp 43-44; South Australia Law Reform Committee *41st Report Relating to the Contractual Capacity of Infants* (1977) p 8; Ireland Law Reform Commission *Report on Minors' Contracts* (LRC 15 1985) pp 156-157; United Kingdom Law Commission *Law of Contract: Minors' Contracts* (Law Com No 134 1984) pp 12-13; Law Reform Commission of Tasmania *Report on Contracts and the Disposition of Property by Minors* (Report No 48 1987) pp 10, 14; Ontario Law Reform Commission *Report on Amendment of the Law of Contract* (1987) pp 186, 212; and Law Reform Commission of Western Australia *Report on Minors' Contracts* (Project No 25 Part 2 1988) pp 102-107.

⁸³ *Minors (Property and Contracts) Act 1970* (NSW) s 47 (reproduced in Appendix 2); *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) s 5 (reproduced in Appendix 3); *Minors' Contracts Act 1987* (UK) s 2 (reproduced in Appendix 4); *Minors Contracts Act 1988* (Tas) s 4; *Infants Act* (RSBC 1979 c 196) s 16.6; *Minors' Contracts Act 1969* (NZ) s 10; *Credit Act 1987* (Qld) s 136(1) and equivalent legislation in other Australian

The *Credit Act 1987* (Qld) section 136(1) makes a guarantor liable for the guaranteed obligation of a minor (but only under a regulated credit contract) to the same extent as if the minor had not been a minor. By section 136(2), subsection (1) does not apply unless the guarantee document included a prominent notice that the guarantor may not be able to obtain an indemnity against the minor in the event of default.

Section 55(3) of the new *Consumer Credit (Queensland) Code* (which is intended to replace the *Credit Act 1987* (Qld) in late 1995⁸⁴) is in these terms—

A guarantee which guarantees the liability of a debtor who was under 18 years of age when the liability was incurred cannot be enforced against the guarantor unless it contains a prominent statement to the effect that the guarantor may not be entitled to an indemnity against the debtor.

These provisions relate only to certain credit contracts to which the Act and Code respectively apply. There is no general provision in Queensland law like section 47 of the *Minors (Property and Contracts) Act 1970* (NSW)⁸⁵ or section 5 of the *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA).⁸⁶

3.5 Anti-discrimination legislation

The common law is also affected by the *Anti-Discrimination Act 1991* (Qld), which prohibits direct and indirect discrimination on the basis of age⁸⁷ in a number of areas. For example, a person may not discriminate in relation to the supply of

jurisdictions; and *Consumer Credit (Queensland) Code* s 55(3) (reproduced in section 3.4).

⁸⁴ See C Turner "The *Consumer Credit (Queensland) Act 1994*: The Forerunner of New National Credit Laws" (1994) 15 *Queensland Lawyer* 77.

⁸⁵ The text of the New South Wales Act is reproduced in Appendix 2.

⁸⁶ The text of the South Australian Act is reproduced in Appendix 3.

⁸⁷ Section 7(1)(f).

goods and services.⁸⁸ Similarly, a person may not discriminate in relation to accommodation.⁸⁹ Both these prohibitions are subject, however, to a general exemption⁹⁰ which provides that—

Legal incapacity

112. A person may discriminate against another person because the other person is subject to a legal incapacity if the incapacity is relevant to the transaction in which they are involved.

Example—

It is not unlawful for a person to refuse to enter into a contract with a minor, or a person whose estate is being managed under Schedule 5 of the *Mental Health Act 1974*, if the contract cannot be legally enforced.

3.6 New South Wales

The common law of minors' contracts has been replaced in New South Wales by a code of minors' civil law capacity, the *Minors (Property and Contracts) Act 1970 (NSW)*.⁹¹ This Draft Report is not the place for a detailed exposition of the Act.⁹² It should be noted, however, that the broad scheme of the Act is to reverse the general principle that a contract is not binding on a minor. The application of that principle is, by section 19, that a "civil act" (which includes a contract) in which a minor participates, and which is for the minor's benefit at the time of the civil act, is "presumptively binding" on the minor.

⁸⁸ Section 46(1).

⁸⁹ Sections 82-84.

⁹⁰ Section 112.

⁹¹ The principal provisions are reproduced in Appendix 2.

⁹² For detailed treatment see D J Harland *The Law of Minors in Relation to Contracts and Property* (Butterworths 1974).

The Act also contains detailed provisions for the approval and ratification of contracts, and the reopening of transactions and adjustment of rights under contracts.

CHAPTER 4: EMPLOYMENT

4.1 Common law

The common law did not (apart from rules incidental to employment such as those relating to contractual capacity⁹³) develop any particular principles as to the employment of children. This perhaps is a consequence of medieval and feudal notions of children as property⁹⁴ and serfs in general as unemancipated labour to whom the notion of a freely entered commercial arrangement would have been quite foreign.

At common law, a contract for the services of a minor was binding on the minor only if the contract, taken as a whole, was beneficial to the minor.⁹⁵ If the contract was not beneficial, it was not binding on the minor unless ratified within a reasonable time of attaining majority. There were no special rules as to the employment of children as to conditions or minimum age.

The industrial revolution saw the beginning of statutory regulation, particularly of conditions in factories, as a reaction against the worst features of rapid industrialisation in the early 19th century. Following the barbarism of the industrial revolution, child welfare statutes began to appear. In England, for example, the position of children in industry gradually improved to the point where, pursuant to the *Employment of Women, Young Persons and Children Act 1920* and the *Children and Young Persons Act 1933*, children could not be employed in "industrial undertakings", or at all in the case of children under 13. They could not work more than 2 hours on a school day, and then only between specified hours.⁹⁶

⁹³ See section 3.2(b) above.

⁹⁴ F Bates 'Children as Property: Hindsight and Foresight' (1988) 13 *Australian Child and Family Welfare* 3.

⁹⁵ *De Francesco v Barnum* (1890) 45 ChD 430 (Fry LJ); *Doyle v White City Stadium Ltd* [1935] 1 KB 110 (CA). See for more detail section 3.2(b) above.

⁹⁶ See generally J R Carby-Hall & I Boruta 'The Contractual Position of Minors and the Prohibition on Employment' in D Freestone (ed) *Children and the Law* (Hull University Press 1990) p 32.

However, in the post-industrial era, where workplace health and safety measures are quite sophisticated and of general application,⁹⁷ measures specific to the protection of children are again becoming less common.

4.2 Training legislation

Numerous statutes now affect the legal position of persons undergoing work training.

(a) *Education (Student Work Experience) Act 1978 (Qld)*

The *Education (Student Work Experience) Act 1978 (Qld)* provides that, subject to the *Children's Services Act 1965 (Qld)* Part 11, any law "relating to the prohibition or regulation of the employment of children or other persons who are under the age of 21 years shall not apply ... where a student is provided with work experience" under the Act.⁹⁸

Student work experience is, however, subject to certain conditions.⁹⁹ For example, a student may not obtain work experience without the consent of a parent (if the student is under 18), nor for more than 30 days per year, nor outside school term periods, nor be paid for work done.

(b) *Vocational Education, Training and Employment Act 1991 (Qld)*

Apprenticeships and other training programs are now provided for by the *Vocational Education, Training and Employment Act 1991 (Qld)*. That Act

⁹⁷ See further sections 4.2 and 4.3 below.

⁹⁸ Section 4(1).

⁹⁹ Section 8(1).

provides for an integrated State-wide training system. Under the Act, training schemes comprise traineeships and apprenticeships.¹⁰⁰ Employment under training schemes is regulated generally by Part 3. Age and educational qualifications for training schemes are determined by the State Training Council.¹⁰¹ A "youth" (under 21) cannot be employed in an apprenticeship calling unless the youth is an apprentice or tradesperson in that calling.¹⁰² The Industrial Relations Commission may fix wages and other conditions.¹⁰³ A person who employs an apprentice or trainee at under-award rates commits an offence.¹⁰⁴ A training scheme employee cannot be required to join a union.¹⁰⁵ The State Training Council has disciplinary powers over trainees and apprentices.¹⁰⁶ Expedient procedures for the recovery of underpaid wages or other entitlements are available.¹⁰⁷

Section 106 provides that, despite any other Act, a minor is permitted to be on any premises for employment purposes.¹⁰⁸

The *Vocational Education, Training and Employment Regulation 1991 (Qld)* sections 12 and 13 safeguard young persons by restricting the circumstances in which they can be employed as trainees or apprentices in electrical and other hazardous work.

¹⁰⁰ Section 68.

¹⁰¹ Section 77.

¹⁰² Section 78.

¹⁰³ Sections 83, 86 & 87.

¹⁰⁴ Section 99.

¹⁰⁵ Section 76.

¹⁰⁶ Section 96.

¹⁰⁷ Sections 100-104.

¹⁰⁸ The provision is reproduced in Appendix 1.

(c) ***Vocational Education and Training (Industry Placement) Act 1992 (Qld)***

The *Vocational Education and Training (Industry Placement) Act 1992 (Qld)* provides for industry placement of vocational students. Section 6 provides that, with exceptions, "any Act or law (other than the *Anti-Discrimination Act 1991 (Qld)*) relating to the prohibition or regulation of the employment of persons on the basis of their age does not apply to an industry placement student." An industry placement in excess of 240 hours is subject to the supervision of the Industrial Relations Commission. All industry placements require the consent of a parent or guardian if the student is under 18.¹⁰⁹ Placements under 240 hours need not be paid, and must start and finish in the same academic year.¹¹⁰

4.3 Employment legislation

A number of enactments deal with the employment of children, either directly in that they refer to children as such, or indirectly in that they relate to employment generally so as to be for the benefit of children and other workers.

(a) ***Children's Services Act 1965 (Qld)***

The *Children's Services Act 1965 (Qld)* Part 11 makes provisions for the employment of children in care under that Act. It also makes general provision for the employment of children which may be summarised as

¹⁰⁹ Section 15(1)(a).

¹¹⁰ Section 15(1).

follows—

- a child¹¹¹ must not be used in street trading (section 114) unless it is authorised by section 113;
- street trading is authorised by section 113 if—
 - (a) the child is a male person of at least 12; and
 - (b) the trading is carried on between 6.00 a.m. and 10.00 p.m.; and
 - (c) if the child is of compulsory school attendance age—the trading is not carried on when attendance is required;
- by section 115, a person must not counsel or procure a child, or allow a child in the person's custody—
 - (a) to beg or receive alms;
 - (b) where the child is under school leaving age—to be employed in the racing industry;
 - (c) to be in dangerous or indecent performances;
 - (d) where the child does not have a permit under section 116—to be employed or used in performance, advertisement or public entertainment;
- the Director General may issue permits under section 116 for the employment of children for a purpose specified in section 115(d).

¹¹¹ Defined as a person under or apparently under the age of 17: see note 15 above.

The Commission understands that these provisions are administered only if a prospective employer insists. In any event, they have been the subject of a general review of the Act, as a result of which it is understood that the provisions will be repealed and, in reliance on the general industrial and workplace laws, not replaced.

(b) *Education (General Provisions) Act 1989 (Qld)*

The *Education (General Provisions) Act 1989 (Qld)* has already been considered as to compulsory education.¹¹² Section 62 of the Act makes it an offence for a parent to employ or allow to be employed a child during school hours unless the parent has a section 58 dispensation.

(c) *Factories and Shops Act 1960 (Qld)*

Until 1989, the *Factories and Shops Act 1960 (Qld)* Part 7 dealt with children's employment in factories and shops.¹¹³ Section 45 provided that a factory occupier could not, without the Minister's permission, employ—

- (a) a child (defined by section 5 as "a person of school age¹¹⁴ or younger") at any time; or
- (b) a young person (defined by section 5 as a person under the age of 16) between 6.00 p.m. and 6.00 a.m.

Section 46 prohibited the employment of "children" in shops unless a certificate under the equivalent of the *Education (General Provisions) Act*

¹¹² See section 2.2 above.

¹¹³ Part 7 has now been repealed: see section 4.3(d) below.

¹¹⁴ As to which see section 2.2 above.

1989 (Qld) section 62 had been issued.¹¹⁵ Under section 47, "young persons" could not be employed in a noxious industry prescribed in the *Factories and Shops Regulation 1961* (Qld) section 19 unless a medical practitioner certified the person to be fit to be employed in that industry. By section 48, a "young person" could not be employed in a non-section 47 factory unless the factory occupier held a birth certificate or equivalent showing that the young person had reached school leaving age.

(d) *Workplace Health and Safety Act 1989* (Qld)

The *Factories and Shops Act 1960* (Qld) Part 7 was repealed by the *Workplace Health and Safety Act 1989* (Qld)¹¹⁶ and the *Industrial Relations Act 1990* (Qld)¹¹⁷ (although the *Factories and Shops Regulation 1961* (Qld) is still on the books). The *Workplace Health and Safety Act 1989* (Qld), forsaking the previous coercive regime, introduced a new system of self-regulation. It imposes general duties on employers and employees to ensure their own and each other's health and safety. The Act also prohibits the performance by a person of work in dangerous occupations prescribed by the *Workplace Health and Safety Regulation 1989* (Qld) Part 5 (e.g. crane operator, demolisher, plant and machinery operator, rigger, scaffolder, welder) unless the person holds a certificate of competency. Thus although the legislation does not make special provision for minors, its general provisions would tend generally to protect minors from the evils contemplated by the old factories and shops legislation.

¹¹⁵ See section 2.2 above.

¹¹⁶ Sections 147 & 148.

¹¹⁷ Section 1.4 of the Act. See also section 4.3(e) below.

(e) **Industrial Relations Act 1990 (Qld)**

The *Industrial Relations Act 1990 (Qld)* is also relevant to the employment of minors. The effect of the Act is that minimum conditions are safeguarded for all kinds of employees (including minors) by Parts 12 (General conditions of employment) and 18 (Wages). The Act also contains scattered provisions which further fortify the position of minors. These are reproduced in Appendix 1.

4.4 Anti-discrimination legislation

The *Anti-Discrimination Act 1991 (Qld)* prohibits direct and indirect discrimination on the basis of age¹¹⁸ in a number of areas. For example, a person may not discriminate in relation to numerous matters relevant to employment (hiring, terms, training, dismissal, partnership, industrial organisation activity).¹¹⁹ This prohibition is subject to a number of specific exemptions.¹²⁰ For example, section 25 provides that "A person may impose genuine occupational requirements for a position." Section 33 provides that "A person may remunerate a worker who is under 21 years of age according to the worker's age." Similarly, a person may not discriminate in relation to superannuation and insurance.¹²¹ All three of these prohibitions are subject, however, to the general exemption in relation to legal incapacity discussed above.¹²²

¹¹⁸ Section 7(1)(f).

¹¹⁹ Chapter 2, Part 4, Division 2, Subdivision 1.

¹²⁰ Chapter 2, Part 4, Division 2, Subdivision 2.

¹²¹ Chapter 2, Part 4, Divisions 5 and 6.

¹²² Section 112; see note 90 above.

CHAPTER 5: REAL PROPERTY

5.1 General

Freehold land law in Queensland operates under a system of registration known as the Torrens system.¹²³ The basic idea is that registration in the freehold land register is conclusive evidence of legal ownership. The Torrens system did away with the previous English system under which the validity of a person's legal title to land depended on a record of all transactions between previous owners. In practice, the Torrens system means that any defect in a person's legal title to land is cured once the person's interest in the land (whether as owner, lessee, mortgagee or otherwise) is registered.

5.2 Capacity

Section 111 of the *Real Property Act 1861* (Qld) provided in part—

If any person interested in any land ... is by reason of infancy ... incapable of ... doing anything required or permitted by this Act to be made or done by a proprietor then the guardian ... if any of [the infant] or if there be none then any person appointed by [the Supreme Court] ... may ... do such thing ... on behalf of such [infant] ...

The Commission's proposal in its review of the Real Property Acts to extend that power to all courts of competent jurisdiction¹²⁴ was not implemented. The *Land Title Act 1994* (Qld) section 136 allows the Supreme Court to authorise a person to act on behalf of a registered proprietor where the proprietor is, by reason (among other things) of minority, unable to manage the proprietor's own affairs.

¹²³ The Torrens system in Queensland was based on the *Real Property Act 1861* (Qld) and the *Real Property Act 1877* (Qld), and is now based on the *Land Title Act 1994* (Qld).

¹²⁴ Queensland Law Reform Commission *Consolidation of Real Property Acts* (Report No 40 1991) p 42.

The *Land Title Act 1994* (Qld) goes further and provides in section 137(1) that, even in the absence of authorisation under section 136—

If—

- (a) an act is required or permitted to be done by or in relation to a person under this Act; and
- (b) the person is a minor ...,

the act may be done by or in relation to a person who is responsible by law for the management and care of the [minor's] interests.

5.3 Recording minority in the register

Under the *Real Property Act 1861* (Qld) until 1986, section 33 provided that, where a certificate of title was—

issued to a minor or to a person otherwise under disabilities [the Registrar] shall state the age of such minor or the nature of the disability so far as known to [the Registrar].

Philp J in *Coras v Webb*¹²⁵ took the view that the words "so far as known" applied equally to the minority and the disabilities, "such that a person dealing with the registered proprietor is put upon inquiry as to his capacity since the section contemplates that there may be an unnotified incapacity." The better view is that if a minor obtained a certificate of title on which the fact of minority was not recorded, the common law vitiation of capacity was overridden. In other words, the defect in the minor's title at common law was cured by registration notwithstanding the

¹²⁵

[1942] StRQd 66 at 71.

avoidability of the transaction at common law.¹²⁶ Philp J in *Coras v Webb*¹²⁷ held that a minor who gave a mortgage which was registered during his minority had, after attaining majority, "disaffirmed the mortgage ... so that ... I would make a declaration that the mortgage is now void." This finding has been described as "an unfortunate lapse," and would probably not be followed today.¹²⁸

Section 33 was replaced in 1986, and the provisions were made mandatory in the sense that any contemplation of unrecorded incapacities disappeared—

(2) If a certificate of title is issued to a minor the Registrar of Titles shall record on the certificate of title, the age of the minor.

(3) A certificate of title issued under this section shall be delivered to the person entitled thereto unless that person is a minor.

The Commission understands, however, that the practice of the Registrar of Titles in relation to minority did not alter at that time.

The Commission's proposed Real Property Bill contained clauses 28(3) and 29(4) as follows—¹²⁹

28(3) If an estate or interest of a minor is registered, the Registrar must endorse the minor's date of birth on the certificate of title.

29(4) If the person entitled to the duplicate certificate of title at the time the duplicate is issued is a minor, the Registrar must—

¹²⁶ *Percy v Youngman* [1941] VLR 275 per Martin J at 282.

¹²⁷ [1942] StRQd 66 at 69.

¹²⁸ Greig & Davis p 773; See generally for the attitude of the highest authorities to indefeasibility of title *Frazer v Walker* [1967] 1 AC 569 (PC(NZ)) and *Breskvar v Wall* (1971) 126 CLR 376 (HCA).

¹²⁹ Queensland Law Reform Commission *Consolidation of Real Property Acts* (Report No 40 1991) p 15.

- (a) (i) hold the duplicate certificate of title on the minor's behalf until the minor reaches eighteen years of age; and
- (ii) on the request of the [minor], deliver the duplicate certificate of title to [the minor] as soon as possible after [the minor's] eighteenth birthday; or
- (b) deal with it as a court may order.

The *Land Title Act 1994* (Qld) section 28(1)(d) provides that—

The Registrar must record in the freehold land register the particulars necessary to identify—if the person who holds a registered interest is a minor—the minor's date of birth.

5.4 Anti-discrimination legislation

The *Anti-Discrimination Act 1991* (Qld) prohibits direct and indirect discrimination on the basis of age¹³⁰ in a number of areas. For example, a person may not discriminate by refusing to dispose of an interest in land to another or in the terms on which an interest in land is offered to another.¹³¹ This prohibition is subject to exemptions for dispositions by will or gift, and in relation to sites of religious or cultural significance.¹³² The prohibition is also subject to the general exemption in relation to legal incapacity discussed above.¹³³

¹³⁰ Section 7(1)(f).

¹³¹ Section 77.

¹³² Sections 79 and 80.

¹³³ Section 112; see note 90 above.

CHAPTER 6: THE NEED FOR REFORM

6.1 General

The Commission's investigations to date have not revealed any pressing need for general reform of the law of minors' civil law capacity. In particular, the Commission is not satisfied that a thoroughgoing reform of the kind embodied in the New South Wales *Minors (Property and Contracts) Act 1970* (NSW) is warranted, although the superior clarity and logic of that scheme over the common law makes it very appealing. The Commission is mindful of the urgings of commentators who have argued strongly in favour of uniform legislation on the New South Wales model. However, with three exceptions, the Commission does not believe that the practical effect of such changes, particularly in light of the lowering of the age of majority twenty years ago,¹³⁴ would be sufficient to justify any change.

6.2 Contracts

There is little doubt that the law is complex and confused. It has also been criticised on the grounds that its development largely reflects nineteenth century economic and social conditions which are no longer applicable.¹³⁵ However, the question arises as to whether the defects and uncertainties in the law cause practical difficulties of such a magnitude as to warrant significant legislative intervention. Clearly, the lowering of the age of majority from 21 to 18 will have resolved the problem in some cases.

¹³⁴ *Age of Majority Act 1974* (Qld): see section 2.1 above.

¹³⁵ H J Hartwig 'Infants' Contracts in English Law: with Commonwealth and European Comparisons' (1966) 15 *International and Comparative Law Quarterly* 780 at pp 784-789. At 780 Hartwig cites this passage from Holdsworth's *History of English Law* (vol 3 p 514)—

The fact that the later law of infancy ... has been constructed from the piecing together of a mass of exceptions to an archaic principle has ... rendered it difficult and obscure. We who write history ought not to complain of survivals; but in this instance we must admit the deplorable effect of this particular survival.

There is also the issue of whether the introduction of legislation would change the realities of the existing situation. For example, it may be that, in order to avoid the possible repercussions of an unenforceable contract, credit providers, as a matter of general policy, do not knowingly contract with a minor alone. However, a change in the law may not result in a change in policy, since enforceability would ultimately depend on ability to repay. Credit may therefore continue to be withheld unless accompanied by a guarantee or an indemnity from an adult with the capacity to repay.

On the other hand, it may be that disputes are solved in a way which is not in accordance with the strict legal position—such as a parent accepting moral responsibility even when there is no legal liability to pay—or that claims are abandoned or settled on the basis of the existing law and unfairly to one of the participants. Certainly, the informal consultation carried out by the Commission to date¹³⁶ does not, with one exception considered below, reveal any adverse impact of the law of minors' contracts in practice.

On balance, the Commission agrees with the majority of law reform agencies which have reviewed minors' contract law in Commonwealth jurisdictions in the last thirty

¹³⁶

See section 1.3 above.

years.¹³⁷ It respectfully adopts what the English Law Commission said—¹³⁸

In spite of the numerous criticisms that could justifiably be made of the existing law, its defects and uncertainties [give] rise in practice to relatively few difficulties of importance. The reduction of the age of majority to 18, the enactment in recent years of 'consumer protection' legislation and the fact that minors can nowadays obtain credit only in very exceptional circumstances, unless at the same time an adult agrees to indemnify the creditor, have combined to make most of the problems which might be caused by the unsatisfactory state of the law more theoretical than real.

In three particulars, however, the Commission believes that relatively simple alterations of the law would have a beneficial effect for a significant part of the community. These are dealt with in turn.

(a) Residential tenancies

The Commission's informal consultations have revealed that young persons, typically those in their early years of tertiary training and education, experience some difficulty in obtaining accommodation because of their

¹³⁷ South Australia Law Reform Committee *41st Report Relating to the Contractual Capacity of Infants* (1977), Law Reform Commission of Western Australia *Report on Minors' Contracts* (Project No 25 Part 2 1988), Law Reform Commission of Tasmania *Report on Contracts and the Disposition of Property by Minors* (Report No 48 1987), United Kingdom Law Commission *Law of Contract: Minors' Contracts* (Law Com No 134 1984), Ireland Law Reform Commission *Report on Minors' Contracts* (LRC 15 1985), Ontario Law Reform Commission *Report on Amendment of the Law of Contract* (1987) pp 210-213, and British Columbia Law Reform Commission *Report on Minors' Contracts* (LRC 26 1976) all recommend the retention of the common law principle of "qualified unenforceability", each with more or less consequential amendments as to restitution, adjustment of rights, fortification of guarantees and other ancillary matters. Only New South Wales Law Reform Commission *Report on Infancy in Relation to Contracts and Property* (LRC 6 1969) and Alberta Institute of Law Research and Reform *Minors' Contracts* (Report No 14 1975) have proposed more thorough reforms. The Victorian Chief Justice's Law Reform Committee *Report on Infancy in Relation to Contracts and Property* (Report No 3 1970) recommended the adoption of the New South Wales model but this has never been implemented. The principal recommendations of the major reviews are summarised in Appendix 5. As to implemented reforms, only New South Wales and New Zealand legislation operates as a code: *Minors (Property and Contracts) Act 1970* (NSW) s 17; *Minors' Contracts Act 1969* (NZ) s 15.

¹³⁸ *Law of Contract: Minors' Contracts* (Law Com No 134 1984) p 8.

incapacity at law to enter into a residential tenancy agreement unless the agreement is for necessities, and is for the benefit of the person. Landlords are understandably reluctant to commit to a contract whose validity is subject to those two variables, whose application in practice must be a matter of vagueness and uncertainty. The *Residential Tenancies Act 1994* (Qld) section 19 simply restates the common law in these terms: "A minor has the capacity to enter into a residential tenancy agreement if it is an agreement for necessities."

In light of the increased social and economic mobility of young people in today's society, the law should clarify that a young person has capacity to enter into a contract for the provision of residential accommodation to that person and his or her family.

(b) Guarantees

Like the review bodies whose views were referred to earlier¹³⁹ and several legislatures,¹⁴⁰ the Commission firmly believes that the now artificial distinction between guarantees and indemnities which renders the former unenforceable in relation to the obligations of minors should be abolished. The Commission considers that section 55(3) of the *Consumer Credit (Queensland) Code* is only partially adequate, and that a provision of general application should be enacted. The Commission considers that section 5 of the *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) is the most suitable model for a provision of this kind.¹⁴¹ The Commission does not consider that a separate enactment need be passed for this purpose.¹⁴² A suitable location for the recommended provision is the *Property Law Act 1974* (Qld) Part 6 Division 2 (alongside section 56).

¹³⁹ See section 3.4 above.

¹⁴⁰ See note 83 above.

¹⁴¹ The section is reproduced in Appendix 3.

¹⁴² The *Law Reform Commission Act 1968* (Qld) s 10(1)(d) requires the Commission, in keeping the law under review, to have a view to "the reduction of the number of separate enactments".

The Law Reform Commission of Western Australia did not see the need for a warning of the sort required by credit laws as a pre-requisite to enforceability in general.¹⁴³ The Commission calls for submissions on whether such a requirement should attend any general provision as to the enforceability of guarantees of minors' obligations.

(c) **Restitution**

The complexity and injustice of the common law and equitable principles of restitution have already been described.¹⁴⁴ Although the remedies are probably not of great practical significance today, the Commission considers that the possibility, however slight, of injustice resulting from the application of those rules can be simply averted by granting courts a broad general power to adjust rights between parties to contracts involving minors in such a manner as the court thinks just. Broad powers of adjustment have been a regular feature of recommendations of the various bodies which have considered this area of the law.¹⁴⁵

The Commission considers that section 7 of the *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) is the most suitable model for a provision of this kind.¹⁴⁶ The Commission does not consider that a

¹⁴³ *Report on Minors' Contracts* (Project No 25 Part 2 1988) pp 106-107.

¹⁴⁴ Section 3.3(c) above.

¹⁴⁵ New South Wales: Law Reform Commission *Report on Infancy in Relation to Property and Contracts* (LRC 6 1969) pp 44-46, 87; Alberta Institute of Law Research and Reform *Minors' Contracts* (Report No 14 1975) pp 28-29; British Columbia Law Reform Commission *Report on Minors' Contracts* (LRC 26 1976) pp 31-32; South Australia Law Reform Committee *41st Report Relating to the Contractual Capacity of Infants* (1977) p 8; Ireland Law Reform Commission *Report on Minors' Contracts* (LRC 15 1985) pp 109-110; United Kingdom Law Commission *Law of Contract: Minors' Contracts* (Law Com No 134 1984) pp 14-16; Ontario Law Reform Commission *Report on Amendment of the Law of Contract* (1987) pp 204, 211; and Law Reform Commission of Western Australia *Report on Minors' Contracts* (Project No 25 Part 2 1988) pp 65-84.

¹⁴⁶ The section is reproduced in Appendix 3.

separate enactment need be passed for this purpose.¹⁴⁷ A suitable location for the recommended provision is the *Property Law Act 1974* (Qld) Part 6 Division 2.

There are, however, some features of the South Australian provision which should be addressed before its inclusion in Queensland legislation. Its scope should not be limited to restitution of property, but should extend to compensation for services performed under the unenforceable contract. The right to apply for restitution should not be limited to the minor alone, but to all parties to the contract.

The Commission has not reached a final view about whether damages for breach of contract should be payable to adults in respect of goods or services which a minor has agreed to supply but have not been supplied. Its concern is that, in the context of a general scheme of non-enforceability, such compensation would amount in effect to enforcing minors' contracts.

A related concern is whether the fraudulent mis-statement by a minor as to his or her age in the course of forming a contract should entitle a party defrauded to seek compensation. The Commission seeks submissions on both these questions.

6.3 Employment

As indicated at the outset,¹⁴⁸ there have been a number of reviews of both specific and general legislation covering the employment of minors. The Commission's consultations to date have not revealed any major problem, either theoretical or practical, with existing minors' employment law. General employment law appears sufficiently effective in protecting the interests and welfare of workers below the age of majority and their families.¹⁴⁹

¹⁴⁷ The *Law Reform Commission Act 1968* (Qld) s 10(1)(d) requires the Commission, in keeping the law under review, to have a view to "the reduction of the number of separate enactments".

¹⁴⁸ See section 1.2 above.

¹⁴⁹ Australian Law Reform Commission *Child Welfare* (ALRC 18 1981) p 369.

The Commission's attention has been drawn to occasional difficulties experienced by young people, particularly in the casual employment sector, in relation to the payment of under-award wages. Those difficulties cannot be remedied by any reform of the law, however; they are problems of enforcement, which in any event are possibly insuperable in transient sectors of the economy.

6.4 Real property

Although, as pointed out earlier,¹⁵⁰ there are some possible difficulties arising from the requirement on the Registrar of Titles to note the fact of a land owner's minority in the Register, none has been brought to the Commission's attention. In the absence of fraud (which under the Torrens legislation vitiates a legal title even if registered¹⁵¹), the Commission believes the efficient operation of the Register is best served by enhancing certainty.

As to the legal title of a minor whose interest is, despite incapacity, registered, the Commission believes that *Coras v Webb*¹⁵² would, even if the point did arise, probably not be followed in Queensland today in light of other developments.¹⁵³ Accordingly no reform on that point is called for.

¹⁵⁰ See Chapter 5.

¹⁵¹ *Land Title Act 1994* (Qld) s 169(3)(b).

¹⁵² [1942] StRQd 66 at 71.

¹⁵³ See note 128 above.

CHAPTER 7: PRELIMINARY RECOMMENDATIONS

The Commission's preliminary recommendations are—

1. that section 19 of the *Residential Tenancies Act 1994* (Qld) be replaced with a provision that a minor has, in relation to a residential tenancy agreement for the provision of accommodation for the minor or his or her family, the same capacity as if the minor had attained majority; and
2. that the *Property Law Act 1974* (Qld) be amended to include a provision like section 5 of the *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA) to make a guarantee of a minor's contractual obligations enforceable as if the minor had attained majority; and
3. that the *Property Law Act 1974* (Qld) be amended to include a provision that where a contract is unenforceable by reason of a party's minority, a court of competent jurisdiction may, on application of a party to the contract, order on such terms as the court thinks just another party to make—
 - (a) restitution of any property that passed; or
 - (b) compensation for any services performed,under the contract.

APPENDIX 1: QUEENSLAND LEGISLATION

Industrial Relations Act 1990 (Qld)

PART 2—INTERPRETATION

Meaning of terms

5.(1) In this Act ...

"award" means an award of the Industrial Commission made ... under this Act and an award as varied for the time being ...

"certified agreement" means an agreement certified under Part 11, Division 2 ...

"employee" means a person employed in any calling ...

"employer" means—

- (a) a person employing, or who usually employs, 1 or more employees, on behalf of that person or any other person ...

"enterprise flexibility agreement" means an agreement approved for implementation under Part 11, Division 3 ...

"industrial agreement" means an agreement in writing relating to an industrial matter [defined in section 6] and approved by the Industrial Commission [under Part 10 Division 2] ...

"permit" means a permit granted under this Act ...

PART 4—INDUSTRIAL RELATIONS COMMISSION

Division 3—Specific powers of Commission

Power to vary or void contracts

40.(1) If an individual ... is required [by a contract or arrangement] to perform work, the Industrial Commission may vary ... the terms and conditions ... on the ground that the contract [or] arrangement ... is—

- (c) unfair; or

- (d) harsh or unconscionable; or
- (e) against the public interest; or
- (f) provides ... a total remuneration less than that which a person performing the work as an employee would have received.

PART 11—PROMOTING BARGAINING AND FACILITATING AGREEMENTS

Division 2—Certified agreements

Commission to protect interests of certain employees

164.(2) The Commission must identify the employees who may be covered by [a certified] agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement.

(3) Examples of employees whose interest may not have been taken into account are...

- (c) young persons.

Division 3—Enterprise flexibility agreements

Commission to protect interests of certain employees

184.(2) The Commission must identify any employees who may be covered by [an enterprise flexibility] agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement.

(3) Examples of employees whose interests may not have been taken into account are...

- (c) young persons.

Division 6—Provisions common to certified agreements and enterprise flexibility agreements

Employer not to discriminate between union members and non-union members when negotiating agreements

217. When negotiating the terms of [a certified or enterprise flexibility] agreement ... an employer must not discriminate between ... employees—

- (a) because some of the employees are members of an industrial organisation of employees while others are not members; or
- (b) because some of the employees are members of a particular industrial organisation of employees, while others are not members or are members of a different industrial organisation.

PART 12—GENERAL CONDITIONS OF EMPLOYMENT

Division 1—Conditions other than leave conditions

Student's work permit

226.(1) On application, the Industrial Registrar and, on appeal from the registrar, the Commission, may grant to a student participating in a tertiary study course a permit to work for a period in a calling.

(2) The student must provide satisfactory proof on the application that the period of work in the calling is necessary to complete the course.

(3) The registrar or Commission granting the permit must determine and specify in the permit—

- (a) the period of the work; and
- (b) the rate of the student's wage ...

(5) This section applies despite any award, industrial agreement, certified agreement or enterprise flexibility agreement.

Aged or infirm persons

227.(1) An aged or infirm person alleged to be unable to earn the minimum wage provided for by any award ... or ... agreement applicable to the calling in which the person wants to be employed, or an Industrial Inspector on behalf of the person, may apply to an Industrial Magistrate for a permit to work in the relevant calling for less than such minimum wage.

(2) ... an Industrial Magistrate has jurisdiction to determine whether, and on what conditions, such a permit should be granted.

PART 14—INDUSTRIAL ORGANISATIONS**Division 8—Membership of industrial organisations****Membership of persons under 18**

381.(1) A person is not to require or compel an employee who has not attained the age of 15 years to become or remain a member of an industrial organisation.

(2) A person who has not attained 18 years of age—

- (a)** may be a member of an industrial organisation ...
- (b)** ... may enjoy all the rights of a member of the industrial organisation;
- (c)** may execute all instruments and give all acquittances required by the rules of an industrial organisation;

but cannot be a member of the committee of management, trustee or treasurer of an industrial organisation.

Division 13—Miscellaneous**Prejudice of employee by reason of non-membership of industrial organisation**

477.(1) ...an employer is not—

- (a)** to dismiss, or threaten to dismiss, an employee;
- (b)** to injure, or threaten to injure, an employee in employment;
- (c)** to alter, or threaten to alter, an employee's position to the employee's prejudice,

by reason that the employee is not a member of an industrial organisation or intends to terminate membership of an industrial organisation ...

PART 18—WAGES**Division 2—Payment and recovery of wages****Minor may sue**

547. A person under 18 years of age may sue, or bring other proceedings under this Division, in respect of wages due and payable in respect of the person as an employee, in the same manner and to the same extent as if the person were of the age of 18 years.

PART 19—OFFENCES**Publication of statement re employment at less than lawful rates**

598.(1) A person who publishes ... a statement that can be reasonably construed to indicate—

- (a) on the part of an employer, that the employer is ready and willing to employ a person; or
- (b) on the part of a person seeking employment, that the person is ready and willing to be employed;

at a rate of wages that is less than the rate provided for in the award, industrial agreement, certified agreement or enterprise flexibility agreement relevant to the employment in question, commits an offence against this Act, unless such rate is permitted under the terms of a permit held by the person.

Maximum penalty—16 penalty units ...

Breaches of awards etc. generally

600.(1) A person who breaches a relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit commits an offence against this Act ...

Vocational Education, Training and Employment Act 1991 (Qld)**Act prevails in event of inconsistency**

106.(1) Despite any other Act, a minor is authorised by this Act—

(a) to be on any part of premises for the purpose of—

(i) performing duties as an employee of the owner of the premises or the occupier of that part of the premises; or

(ii) performing duties in the conduct of a lawful business ...

(2) This Act prevails over any provision of an industrial award or industrial agreement that is inconsistent with this Act ...

APPENDIX 2: NEW SOUTH WALES LEGISLATION

Minors (Property and Contracts) Act 1970 (NSW)

PART 1—PRELIMINARY

...

Definitions

6.(1) In this Act, unless the context or subject matter otherwise indicates or requires:

"civil act" means:

- (a) a contract;
- (b) an election to rescind or determine a contract for fraud, mistake, breach or otherwise;
- (c) a disposition of property;
- (d) a disclaimer;
- (e) an acknowledgment of receipt of property;
- (f) a discharge or acquittance;
- (g) an exercise of a power under a contract or under a settlement, will or other instrument;
- (h) an assent or consent to, acquiescence in, or acknowledgment or waiver of, any matter by a person affecting his rights or obligations under a contract or relating to property;
- (i) a release of any cause of action;
- (j) a grant of any leave or licence;
- (k) an election in relation to rights under a will or other instrument, or in relation to conversion as between realty and personalty; or

- (l) an act done:
- (i) in relation to the formation;
 - (ii) in relation to becoming or ceasing to be a member or officer; or
 - (iii) as a member or officer:

of a partnership, or of an association, company or society, whether a corporation or not;

- (m) without limiting the generality of the foregoing, any act relating to contractual or proprietary rights or obligations or to any chose in action:

whether having effect at law or in equity;

"disposition of property" includes:

- (a) a conveyance, transfer, assignment, appointment, settlement, mortgage, delivery, payment, lease, bailment, reconveyance or discharge of mortgage;
- (b) the creation of a trust;
- (c) the release or surrender of any property; and
- (d) the grant of a power in respect of property:

whether having effect at law or in equity;

"minor" means a person under the age of 18 years; and **"minority"** has a corresponding meaning;

"minor participant", in relation to a civil act, means a person who, while he is a minor, participates in the civil act;

"party", in relation to a civil act, includes a person who does, makes, accepts, suffers or joins in the civil act; and **"participate"** and **"participant"** have corresponding meanings;

"property" includes real and personal property and any estate or interest in property real or personal, and money, and any debt, and any cause of action for damages

(including damages for personal injury), and any other chose in action, and any other right or interest.

(2) The making of a will, whether in exercise of a power of appointment or otherwise, or the revocation of a will, is not a civil act and is not a disposition of property for the purposes of this Act.

(3) Where a person participates in a civil act while a minor and by this Act the civil act is or becomes presumptively binding on him:

- (a) the civil act is, at and after the time of his participation, as binding on him and his personal representative and has effect as if he were not under the disability of infancy at the time of his participation; and
- (b) except where other provision is made by this Act, the civil act is binding and has effect as mentioned in paragraph (a) in favour of all persons ...

PART 2—CAPACITY AT EIGHTEEN YEARS

Civil acts generally

8. A person is not under the disability of infancy in relation to a civil act in which he participates when aged eighteen years or upwards and after the commencement of this Act.

Full age etc generally

9.(1) After the commencement of this Act:

- (a) for the purposes of any rule of law; and
- (b) except so far as the context otherwise requires, for the purposes of:
 - (i) any Act, whether passed before or after the commencement of this Act; and
 - (ii) any instrument made under an Act, whether the instrument is made before or after the commencement of this Act:

a person aged eighteen years or upwards on the commencement of this Act or who attains the

age of eighteen years after the commencement of this Act:

- (c) is of full age and adult;
 - (d) is sui juris, subject however to the law relating to mental illness; and
 - (e) is not under any disability or incapacity of infancy.
- (2) Subsection (1) does not affect the construction of words which:
- (a) are contained in:
 - (i) any matter (whether in writing or not) constituting or evidencing a civil act in which any person participates before the commencement of this Act; or
 - (ii) the will of a person dying before the commencement of this Act; and
 - (b) refer to infancy or adulthood, to full age, to incapacity or capacity, or to disability or ability, or refer to a person being or not being sui juris, or make any similar reference:

except so far as the context otherwise requires.

- (3) Subsection (1) does not affect:
- (a) the construction of any reference to "the adult male basic wage", the "adult female basic wage", or any similar expression in any Act or in any instrument made under an Act;
 - (b) the construction of any Act, or of any instrument made under an Act, so far as the Act or instrument gives rise to any liability for fine or imprisonment or other punishment for an offence; or
 - (c) the power to make any order under Part 3 of the *Disability Services and Guardianship Act 1987* or the construction or operation of an order made under that Part ...

PART 3—CAPACITY OF MINORS

Application

16. This Part applies in relation to a civil act in which a minor participates after the commencement of this Act.

Preliminary

17. Where a minor participates in a civil act, the civil act is not binding on him except as provided by this Act.

Age of understanding

18. This Part does not make presumptively binding on a minor a civil act in which he participates, or appears to participate, while lacking, by reason of youth, the understanding necessary for his participation in the civil act.

Beneficial civil act

19. Where a minor participates in a civil act and his participation is for his benefit at the time of his participation, the civil act is presumptively binding on him.

Disposition for consideration

20.(1) Where:

- (a) a minor makes a disposition of property for a consideration received or to be received by him;
- (b) the consideration is not manifestly inadequate at the time of the disposition; and
- (c) he receives the whole or any part of the consideration:

the disposition is presumptively binding on him.

(2) Where:

- (a) a disposition of property is made to a minor for a consideration given or to be given by him; and
- (b) the consideration is not manifestly excessive at the time of the disposition:

the disposition is presumptively binding on him.

(3) Save to the extent to which, under Part 3 of the *Sale of Goods Act 1923* or otherwise, a

promise may operate as a disposition of property, subsection (2) does not make presumptively binding on a minor a promise by him which is the whole or part of the consideration for a disposition of property to him.

(4) Where the burden of, or arising under, a covenant or other promise runs with property so as to impose an obligation or restriction on a person to whom a disposition of the property is made in any manner or circumstances, subsection (2) does not make presumptively binding on a minor a disposition of that property to him in that manner or those circumstances.

Gift

21. Where a minor makes a disposition of property wholly or partly as a gift, and the disposition is reasonable at the time when it is made, the disposition is presumptively binding on him.

Act pursuant to duty

22. Where a minor participates in a civil act pursuant to a contractual or other duty binding on him, the civil act is presumptively binding on him ...

Protection of strangers

24. Where a minor participates in a civil act and a person who is not a party to the civil act:
- (a) acquires property affected by the civil act or any estate or interest in property so affected for valuable consideration; or
 - (b) acts, otherwise than as a volunteer and so as to alter his position, on the basis of the validity of the civil act:

in either case without notice that the minor participant is at the time of his participation in the civil act a minor, the civil act is, in favour of that person and in favour of any person claiming under that person, presumptively binding on the minor participant ...

Capacity by order of Supreme Court

26.(1) The Supreme Court, on application by a minor, may, by order:

- (a) grant to the minor capacity to participate in any civil act or in any description of civil acts or in all civil acts; and

- (b) rescind or vary an order under paragraph (a).
- (2) The Court may make an order under subsection (1) on such terms and conditions as the Court thinks fit.
- (3) The Court shall not make an order under this section unless it appears to the Court that the order is for the benefit of the minor.
- (4) A civil act in which a minor participates is, if authorised by a grant of capacity under this section, presumptively binding on him.
- (5) An order of rescission or variation under paragraph (b) of subsection (1) does not affect the validity of a civil act in which the minor has participated before the making of the order of rescission or variation.

Approval of contract or disposition

- 27.(1) A contract made by a minor or a disposition of property made by or to a minor pursuant to an approval under this section is presumptively binding on him.
- (2) A court of petty sessions may, on application by a minor, by order approve a contract proposed to be made by a minor or a disposition of property proposed to be made by or to a minor ...
 - (4) A court of petty sessions may make an order under this section on such terms and conditions as the court thinks fit.
 - (5) A court of petty sessions shall not make an order under this section unless it appears to the court that:
 - (a) the minor would not undertake obligations under the proposed contract or dispose of property under the proposed disposition of property to the value of \$10 000 or upwards; and
 - (b) the order is for the benefit of the minor ...

Certified disposition by a minor

- 28.(1) Where a minor makes a disposition of property for consideration and a certificate in respect of the disposition is given in accordance with this section, the disposition is presumptively binding on him.

(2) A certificate for the purposes of this section in respect of a disposition of property made by a minor for consideration must: ...

- (b) be given:
 - (i) by a solicitor instructed and employed independently of any other party to the disposition; or
 - (ii) by the Public Trustee; and
- (c) state that the person giving the certificate has satisfied himself that:
 - (i) the minor understands the true purport and effect of the disposition;
 - (ii) the minor makes the disposition freely and voluntarily; and
 - (iii) the consideration is not manifestly inadequate.

Certified disposition to a minor

29.(1) Where a disposition of property is made to a minor for consideration and a certificate in respect of the disposition is given in accordance with this section, the disposition is presumptively binding on him ...

Affirmation

30.(1) Where a person participates in a civil act while he is a minor, the civil act may be affirmed:

- (a) while he remains a minor, on his behalf by order of a court having jurisdiction under this section;
- (b) after he attains the age of eighteen years, by him; or
- (c) after his death, by his personal representative.

(2) The court may affirm a civil act on behalf of a minor participant in the civil act under paragraph (a) of subsection (1) on application by the minor participant or by any other person interested in the civil act.

(3) Subject to section 36, the court shall not affirm a civil act on behalf of a minor participant in the civil act under paragraph (a) of subsection (1) unless it appears to the court that the affirmation is for the benefit of the minor participant.

(4) Where a civil act is affirmed pursuant to this section by or on behalf of a minor participant in the civil act, or by the personal representative of a deceased minor participant in the civil act, the civil act is presumptively binding on the minor participant ...

Repudiation by minor

31.(1) Where a minor has participated in a civil act, then, subject to sections 33 and 35 and subject to subsection (2), the minor participant may repudiate the civil act at any time during his minority or afterwards but before he attains the age of nineteen years.

(2) A repudiation of a civil act by a minor participant in the civil act does not have effect if it appears that, at the time of the repudiation, the civil act is for the benefit of the minor participant ...

Notice of repudiation

33.(1) Where a civil act is repudiated under section 31 or section 32:

- (a) the repudiation does not affect any person unless notice in accordance with subsection (2) is served on that person or on a person under whom that person claims;
- (b) the repudiation has effect against a person served with the notice and against a person claiming under the person served as if made on the date of service of the notice ...

Repudiation by court for minor

34.(1) Where a minor has participated in a civil act, then, subject to section 35 and subject to subsection (2), a court having jurisdiction under this section may, by order, repudiate the civil act on behalf of the minor participant at any time during his minority.

(2) The court shall not repudiate a civil act on behalf of a minor participant if it appears to the court that the civil act is for the benefit of the minor participant.

(3) Where the court repudiates a civil act on behalf of a minor participant, the court shall give such directions as it thinks fit for service of notice of the order of repudiation on persons interested in the civil act.

Restriction on effect of repudiation

35.(1) Where a civil act is presumptively binding on a minor participant in the civil act in favour of another party to the civil act or in favour of any other person, a repudiation of the civil act under any of sections 31, 32 and 34 by or on behalf of the minor participant, or, if the minor participant has died, by his personal representative, does not have effect as against that other party or person ...

Election by court

36. Where, on application to a court having jurisdiction under this section by a person interested in a civil act, it appears to the court that the civil act is not presumptively binding on a minor participant in the civil act in favour of the applicant, the court shall either affirm the civil act under section 30 or repudiate the civil act under section 34 on behalf of the minor participant.

Adjustment on repudiation

37.(1) Where a civil act is repudiated under any of sections 31, 32 and 34, a court having jurisdiction under this section may, on the application of any person interested in the civil act, make orders:

- (a) for the confirmation, wholly or in part, of the civil act or of anything done under the civil act; or
- (b) for the adjustment of rights arising out of the civil act or out of the repudiation or out of anything done under the civil act ...

(4) Subject to subsection (3), and except so far as the court confirms the civil act or anything done under the civil act, the court shall make such orders as are authorised by this section and as the court thinks fit for the purpose of securing so far as practicable that:

- (a) each minor participant in the civil act makes just compensation for all property, services and other things derived by him by or under the civil act to the extent that the derivation of that property or of those services or things is for his benefit;
 - (b) each other participant in the civil act makes just compensation for all property, services and other things derived by him by or under the civil act; and
 - (c) subject to paragraphs (a) and (b), the parties to the civil act and those claiming under them are restored to their positions before the time of the civil act.
- (5)** Any court having jurisdiction under this section may, for the purposes of this section, make

orders:

- (a) for the delivery of goods; and
- (b) for the payment of money ...

(7) A court may make an order under this section on such terms and conditions as the court thinks fit ...

Civil act not repudiated

38. Where a person participates in a civil act while he is a minor and the civil act is not repudiated under any of sections 31, 32 and 34 by himself or by his personal representative or by a court on his behalf within the times respectively fixed by those sections, the civil act is presumptively binding on the minor participant.

Enforceability by minor participant

39. Subject to section 37, a court shall not give any judgment or make any order in favour of a minor participant in a civil act, or in favour of the personal representative of a deceased minor participant in a civil act, for the enforcement of the civil act, unless the civil act is presumptively binding on the minor participant in favour of the person against whom the judgment is given or order is made ...

PART 5—GENERAL

Agency

46.(1) After the commencement of this Act, a person under the age of twenty-one years:

- (a) may appoint an agent by power of attorney or otherwise; and
- (b) may, by an agent, participate in any civil act and otherwise do or suffer anything which a person aged twenty-one years or upwards may participate in or do or suffer by an agent.

(2) A civil act in which a minor participates by an agent after the commencement of this Act and anything which a minor otherwise does or suffers by an agent after the commencement of this Act has no greater validity or effect as against the minor than it would if participated in or done or suffered by the minor without an agent.

(3) After the commencement of this Act, a person may, by an agent under the age of twenty-one years, participate in any civil act and otherwise do or suffer anything which a person may participate in or do or suffer by an agent aged twenty-one years or upwards.

Guarantee

47.(1) A guarantor of an obligation of a minor is bound by the guarantee to the extent to which he would be bound if the minor were not a minor.

(2) For the purposes of subsection (1) a minor has, under a civil act in which he participates, the obligation which he would have if he were not a minor at the time of his participation.

(3) This section applies to a guarantee given after the commencement of this Act ...

Property of minor

50.(1) Where a minor is beneficially entitled at law or in equity to property, the Supreme Court may, on such terms as the Court thinks fit, make orders authorising a person, either generally or in any particular instance:

- (a) to make any disposition of the property;
- (b) to receive the proceeds of disposition of the property;
- (c) to call for a disposition of the property to the person so authorised or as he directs;
- (d) to receive the income of the property;
- (e) to sue for and recover any chose in action comprised in the property;
- (f) to invest the property; or
- (g) to apply the capital or income of the property for the benefit of the minor.

(2) The Court shall not make an order under this section unless it appears to the Court that the order is for the benefit of the minor.

APPENDIX 3: SOUTH AUSTRALIA LEGISLATION

Minors Contracts (Miscellaneous Provisions) Act 1979 (SA)

Interpretation

3. In this Act, unless the contrary intention appears—

"minor", in relation to a contract, includes a person who was, at the time of entering into the contract, a minor.

Contract that is unenforceable by reason of minority remains unenforceable unless ratified in writing

4. Where a person has entered into a contract that is, by reason of his minority at the time of entering into the contract, unenforceable against him, the contract shall remain unenforceable against him unless it is ratified by him, in writing, on or after the day on which he attains his majority.

Guarantees

5.(1) When a person (other than a minor) guarantees the performance by a minor of his obligations under a contract, the guarantee shall be enforceable against the guarantor to the same extent as if the minor had, before entering into the contract to which the guarantee relates, attained his majority.

(2) This section does not operate to render a guarantee enforceable if it would, apart from this section, be unenforceable otherwise than by reason of the minority of the person whose obligations are guaranteed.

Approval of minor's contract by court

6.(1) A contract with a minor shall have effect as if the minor had, before entering into the contract, attained his majority if, before the contract was entered into by the minor, its terms were approved by a court ...

Restitution of property to minor**7.(1) Where—**

- (a) a person has avoided a contract on the ground of his minority; and
- (b) before the avoidance of the contract, property passed thereunder to some other contracting party,

a court may, on an application made by or on behalf of the minor, order restitution of that property.

(2) An order under this section—

- (a) may be made on such terms and conditions as the court considers just; and
- (b) may be made notwithstanding that the minor has received some benefit under the contract, or that any other party to the contract has partly performed his obligations under the contract ...

Appointment of agent to act on behalf of minor**8.(1) A court may—**

- (a) on the application of a minor; or
- (b) on the application of a parent or guardian of a minor,

appoint a person to transact any specified business, or business of a specified class, or to execute any documents, on behalf of the minor.

(2) Where a person appointed to transact business on behalf of a minor under this section incurs any liabilities in the course of so doing those liabilities are enforceable against the minor ...

APPENDIX 4: UNITED KINGDOM LEGISLATION

Infants Relief Act 1874 (UK)¹⁵⁴

Contracts by infants, except for necessaries, to be void

1. All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void: Provided always, that this enactment shall not invalidate any contract which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

No action to be brought on ratification of infant's contract

2. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age ...

Betting and Loans (Infants) Act 1892 (UK)¹⁵⁵

Avoiding contract for payment of loan advanced during infancy

5. If any infant, who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement, and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement, or otherwise in relation to the payment of money representing or in respect of such loan, shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

For the purposes of this section any interest, commission, or other payment in respect of such loan shall be deemed to be a part of such loan.

¹⁵⁴ Repealed by the *Minors' Contracts Act 1987* (UK) (reproduced below).

¹⁵⁵ Repealed by the *Minors' Contracts Act 1987* (UK) (reproduced below).

Minors' Contracts Act 1987 (UK)

Disapplication of Infants Relief Act 1874 etc

1. The following enactments shall not apply to any contract made by a minor after the commencement of this Act:

- (a) the *Infants Relief Act 1874* ...; and
- (b) section 5 of the *Betting and Loans (Infants) Act 1892* ...

Guarantees

2. Where:

- (a) a guarantee is given in respect of an obligation of a party to a contract made after the commencement of this Act; and
- (b) the obligation is unenforceable against him (or he repudiates the contract) because he was a minor when the contract was made,

the guarantee shall not for that reason alone be unenforceable against the guarantor.

Restitution

3.(1) Where:

- (a) a person ("**the plaintiff**") has after the commencement of this Act entered into a contract with another ("**the defendant**"), and
- (b) the contract is unenforceable against the defendant (or he repudiates it) because he was a minor when the contract was made,

the court may, if it is just and equitable to do so, require the defendant to transfer to the plaintiff any property acquired by the defendant under the contract, or any property representing it.

(2) Nothing in this section shall be taken to prejudice any other remedy available to the plaintiff.

Consequential amendments and repeals

4. ...

(2) The *Infants Relief Act 1874* and the *Betting and Loans (Infants) Act 1892* are hereby repealed (in accordance with section 1 of this Act) ...

APPENDIX 5: COMPARATIVE REFORM PROPOSALS

	NSW ¹	SA ²	WA ³	Tas ⁴	Eng ⁵	Ire ⁶	Ont ⁷	BC ⁸	Alta ⁹
General enforceability	N	N	Y	N	N	N	N	N	N
Minor's benefit = enforceability	Y	NC	NC	NC	NC	NC	Y	NC	Y
Infants Relief Act ¹⁰	N/A	N/A	N/A	Y	Y	N*	N/A	Y	N/A
Lord Tenterden's Act ¹¹	R	NC	R	N/A	N/A	—	R	N/A	Y*
Goods Act ¹²	R	NC	R	NC	NC	NC	R*	R	R
Coutts ¹³	R	R	R*	R	R	R	R	R	R
Executory/ executed	B	—	B	—	—	—	B	B	B
Court approval	Y	Y	N	N	N	Y	Y	Y	Y
Affirmation/ repudiation	D	NC	NC	NC	NC	NC	D	D	D
Reopen at minor's instance	Y	Y*	D	N	N	Y	Y	Y	Y
Restitution after repudiation	Y	Y	N	N	Y	Y	Y	Y	Y
Tort liability under contract	Y	NC	Y	NC	NC	N	Y	N	Y
Misrepresentation of age: effect	NC	NC	N	NC	NC	N	N*	N	N
Property/ attorney/ agency	D	NC	NC	NC	NC	D	D	D	D
Implementation	1970 ¹⁴	1979 ¹⁵	N	1988 ¹⁶	1987 ¹⁷	N	N	1985 ¹⁸	N

B: both; D: detailed proposals; N: no; N/A: not applicable; NC: no change or no recommendation; R: repeal; Y: yes; *: qualification

- 1 New South Wales Law Reform Commission *Report on Infancy in Relation to Contracts and Property* (LRC 6 1969)
- 2 South Australia Law Reform Committee *41st Report Relating to the Contractual Capacity of Infants* (1977)
- 3 Law Reform Commission of Western Australia *Report on Minors' Contracts* (Project No 25 Part 2 1988)
- 4 Law Reform Commission of Tasmania *Contracts and the Disposition of Property by Minors* (Report No 48 1987)
- 5 United Kingdom Law Commission *Law of Contract: Minors' Contracts* (Law Com No 134 1984)

- 6 Ireland Law Reform Commission *Report on Minors' Contracts* (LRC 15 1985)
- 7 Ontario Law Reform Commission *Report on Amendment of the Law of Contract* (1987)
- 8 British Columbia Law Reform Commission *Report on Minors' Contracts* (LRC 26 1976)
- 9 Alberta Institute of Law Research and Reform *Minors' Contracts* (Report No 14 1975)
- 10 *Infants Relief Act 1874* (UK) and *Betting and Loans (Infants) Act 1892* (UK) or their equivalents
- 11 *Statute of Frauds Amendment Act 1828* (UK) s 5 or its equivalent
- 12 *Sale of Goods Act 1893* (UK) s 2 (see now *Sale of Goods Act 1979* (UK) s 3) or its equivalent
- 13 The rule in *Coutts & Co v Browne-Lecky* [1947] 1 KB 104 that a guarantee by an adult of an unenforceable minor's obligation is itself unenforceable
- 14 *Minors (Property and Contracts) Act 1970* (NSW)
- 15 *Minors Contracts (Miscellaneous Provisions) Act 1979* (SA)
- 16 *Minors Contracts Act 1988* (Tas)
- 17 *Minors' Contracts Act 1987* (UK)
- 18 *Law Reform Amendment Act 1985* (SBC 1985 c 10); see now *Infants Act* (RSBC 1979 c 196 Pt 2.1)

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¹⁵⁷ *C v Director of Public Prosecutions* [1994] 3 WLR 588; [1994] 3 All ER 190 (QBD: Div Ct).

¹⁵⁸ [1935] 1 KB 110 (CA).

¹⁵⁹ (1992) 175 CLR 353 (HCA).

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¹⁶² See G H Treitel "The *Infants Relief Act 1874*" (1957) 73 *Law Quarterly Review* 194 and P S Atiyah "The *Infants' Relief Act 1874: A Reply*" (1958) 74 *Law Quarterly Review* 97.

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