



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 25 – Part I

Legal Capacity of Minors

WORKING PAPER

JANUARY 1972

INTRODUCTION

The Law Reform Committee has been asked to consider the recommendations contained in the New South Wales Commission's Report on *Infancy in Relation to Contracts and Property* as they relate to the laws in Western Australia and make recommendations in relation thereto.

The Committee has now completed its first consideration of the matter and issues this working paper. The paper does not necessarily represent the final views of the Committee.

Comments and criticisms are invited. *The Committee requests that they be submitted by 28 February 1972 as legislation in this matter is likely at an early date.*

Copies of the paper are being forwarded to:

The Chief Justice and Judges of the Supreme Court

The Judges of the District Court

The Law Society

The Magistrates' Institute

The Law School

The Crown Law Department

The Public Trustee

The Child Welfare Department

Bodies concerned with occupations for which minimum ages are prescribed

Political bodies

Trustee companies

Other Law Reform Commissions and Committees with which this Committee is in correspondence.

A notice has been published in *The West Australian* newspaper inviting those interested to obtain a copy of the paper and to send their comments to the Committee.

The research material on which this paper is based is at the offices of the Committee and will be made available on request.

ANALYSIS OF WORKING PAPER

		Paragraph
PART I -	TERMS OF REFERENCE, BACKGROUND AND METHOD OF APPROACH.	1 - 7
PART II -	REDUCTION OF THE AGE OF MAJORITY	8 - 27
	AREAS OF THE LAW WHICH COULD BE INVOLVED	10 - 24
	(1) General legal capacity - contractual and proprietary rights and liabilities	10 - 15
	(2) Civic rights and responsibilities	17 - 20
	(3) Age qualifications for entry into certain occupations	21 - 22
	(4) Terms and conditions of employment	23
	(5) Special provisions aimed at protecting the young.	24
	COMMITTEE'S TENTATIVE VIEWS	25 - 27
PART III -	CODIFICATION OF THE LAW OF LEGAL CAPACITY OF MINORS	28 - 56
	PRESENT LAW	29 - 37
	(1) Contracts	29 - 33
	(a) contracts for necessaries	33(a)
	(b) beneficial contracts of service	33(b)
	(c) voidable contracts	33(c)
	(2) Indirect enforcement of contractual obligation by action in tort	34
	(3) Guarantees of minor's contracts	35
	(4) Principal and agent	36
	(5) Dispositions of property by and to a minor	37
	CRITICISM OF THE PRESENT LAW	38 & 39
	REFORM AND PROPOSED REFORM IN OTHER PLACES	40 - 53
	(1) New South Wales	40 - 43
	(2) United Kingdom	44 - 46
	(3) New Zealand	47 - 53
	COMMITTEE'S TENTATIVE VIEWS	54 - 56
APPENDIX -	PART A	24 - 29
	PART B	30 - 33
	PART C	34 - 44

PART I

TERMS OF REFERENCE, BACKGROUND AND METHOD OF APPROACH

1. "To consider the recommendations contained in the report of the New South Wales Law Reform Commission on *Infancy in Relation to Contracts and Property* as they relate to the laws of Western Australia and to make recommendations in relation thereto".
2. The New South Wales Law Reform Commission recommended (see Report, L.R.C.6, paragraph 25) that the age of majority be reduced from 21 to 18 years so far as concerned the matters within its terms of reference. These were: "To review the law of infancy relating to contracts and dispositions of property and testamentary capacity, and incidental matters". The Commission interpreted these terms as requiring it to consider the law which would apply to those who are below whatever age of majority was adopted and concluded that this was a field in which the law ought to be codified (Report, L.R.C.6, paragraph 34).
3. The Commission included in the report a draft bill embodying its proposals. The *Minors (Property and Contracts) Act 1970* (N.S.W.) gave effect to the recommendations of the Commission.
4. Shortly after the reference set out in paragraph 1 above, the Government announced its intention to introduce legislation to 'lower from 21 to 18 years the age of responsibility for all citizens' of the State (Governor's speech at the opening of Parliament, on 15 July 1971). The Committee has accordingly accepted that it has been settled as a matter of policy that the age of majority is to be reduced to 18 years and has not dealt with the question whether it should be so reduced. This question is discussed both in the report of the English Committee on the Age of Majority (The Latey Committee - see Cmnd. 3342) and in the report of the New South Wales Law Reform Commission referred to above.
5. In this working paper the Committee has therefore confined its attention to considering:

- (a) the changes to be made to the law in Western Australia to give effect to the Government's intention to lower the age of majority to 18 years (see below, Part II, paragraphs 8 to 27).
- (b) the desirability of enacting a code along the lines of the New South Wales legislation (see paragraph 2 above) governing the legal capacity of persons under that age in relation to contracts and property (see below, Part III, paragraphs 28 to 56).

6. The Committee in its consideration of the subject has compiled a list of the Western Australian statutory provisions referring to age qualifications and limitations. The list is attached as an Appendix to this paper and divided into three Parts. The provisions in Part C of the Appendix are not directly relevant to the terms of reference, but may usefully provide a background when considering legislation based on age distinctions.

7. Two incidental matters may conveniently be dealt with first:

(1) The Latey Committee in its Report (Cmnd. 3342, paragraph 133) under a heading "A Minor Detail" says:

"The young, and all the sensible people connected with them, find it quite ludicrous that legally speaking a married man with three children and a car can be referred to as an 'infant'. Of all our conclusions the easiest we have found to arrive at is that this word should no longer be used and that the word 'minor' should instead be substituted for those under the age of majority".

The New South Wales Commission adopted the term 'minor' and we propose to do so as well.

(2) At common law a person attains a specified age at the commencement of the day preceding the relevant anniversary of his birthday (*Re Shurey: Savory v. Shurey* [1918] 1 Ch. 263). Both the Latey Committee (Cmnd. 3342, paragraph 515) and the New South Wales Commission (L. R. C. 6, App. G, paragraph 48) proposed that this rule be changed to make the commencement of the anniversary day itself the relevant time. We agree with these bodies that the law on this point is at variance with the ordinary ideas of the meaning of language and we suggest a similar change.

PART II

REDUCTION OF THE AGE OF MAJORITY

AREAS OF THE LAW WHICH COULD BE INVOLVED

8. What is generally thought of as 'reducing the age of majority', is removing by legislation the whole or some major part of that lack of legal capacity which helps to distinguish the minor from the adult. We have assumed that this idea is incorporated in the words in paragraph 4 above, quoted from the Governor's speech. Those areas of the law in which these differences in capacity presently exist, may be categorised as follows:

- (a) general legal capacity, involving mainly contractual and proprietary rights and liabilities (see paragraphs 10 to 15 below);
- (b) civic rights and responsibilities, e.g. the obligation to serve on a jury (see paragraphs 17 to 20 below);
- (c) age qualifications for entry into certain occupations (see paragraphs 21 & 22 below);
- (d) terms and conditions of employment (see paragraph 23 below); and
- (e) special provisions aimed at protecting the young (see paragraph 24 below).

9. In addition to New South Wales the following jurisdictions have enacted legislation reducing the age of majority:

- (a) England (*Family Law Reform Act 1969*, Part I - reduction to 18 years);
- (b) New Zealand (*Age of Majority Act 1970* - reduction to 20 years);
- (c) South Australia (*Age of Majority (Reduction) Act 1970-1971* - reduction to 18 years).

All these jurisdictions generally grant legal capacity in relation to that area of the law referred to in subparagraph (a) of paragraph 8 above. There is some difference however in their treatment of the other areas mentioned in subparagraphs (b) to (e) of that paragraph.

General legal capacity - contractual and proprietary rights and liabilities

10. The Committee assumes that the Government's decision to reduce the age of majority to 18 years would at least include the granting of the legal capacities referred to in paragraph 8(a) above to persons in the 18 to 21 year old age group.

11. The New South Wales legislation effects its reform in this broad area by conferring the capacities set out below. Comments have been appended in each case.

- (a) To freely enter into contracts and acquire and dispose of property.

Comment: The present disabilities of minors in this area are discussed in Part III of this paper. As incidental features, the legal rules of estoppel and acquiescence would also apply to them.

- (b) To act in a fiduciary capacity.

Comment: Section 25 of the *Administration Act* provides that a minor cannot be granted administration of an intestate estate. Section 33 of that Act provides that if a minor is sole executor, administration may be granted to his guardian. Although apparently a minor is not disqualified as trustee, the disabilities incident to his minority would prevent him acting effectively as such. This is acknowledged by s.7(1) (g) of the *Trustees Act*, which provides for the appointment of another person in the place of a minor who is a trustee.

- (c) To acquire a domicile of choice.

Comment: As a general rule a minor has the domicile of his father (7 *Halsb.* (3rd ed.), 23).

- (d) To conduct proceedings in any court.

Comment: At present a person under 21 years cannot sue or defend in the Supreme Court or District Court except through a next friend or guardian *ad litem* (R.S.C. 0.70). The proposed change would add nothing to what is now permissible in the Local Court (*Local Courts Act*, s.57) or Warden's Court (*Mining Act*, s.237).

- (e) To require, if absolutely entitled as beneficiary, the trustee to transfer the trust property to him.

Comment: Under the rule in *Saunders v. Vautier* (1841) 4 Beav. 115; 41 E.R. 482, this right is given to a person who is *sui juris*. The South Australian legislation expressly provided that this power did not apply to beneficiaries in respect of trusts already in existence, the reason being that the Government felt that the application of the rule might embarrass a trustee who had invested trust money for a fixed term on the assumption that the beneficiary would not be entitled to call for the trust property until he had attained the age of 21 years (*Debates (S.A.) H. of A. 1970*, p. 2011). The Committee has been informed that the application of the rule is not likely to result in similar embarrassment to the Public Trustee or to trustee companies in Western Australia. A restriction similar to that of South Australia seems therefore unnecessary.

- (f) To consent to medical or dental treatment.

Comment: It should be noted that section 49 of the New South Wales *Minors (Property and Contracts) Act 1970* provides that the consent of a minor aged 14 years or upwards is protection against a claim against the doctor or dentist for assault. In addition, the section provides that the consent of a parent or guardian of a minor aged less than 16 years is protection against a similar claim. The present law in Western Australia relating to the civil liability of a doctor or dentist who performs an operation on a minor without the consent of the minor's parent or guardian is not free from doubt. Section 338A of the

Health Act was enacted in 1962 to enable a doctor to perform a blood transfusion upon a person who is or appears to be under the age of 21 years, without the consent of the person's parent or guardian.

12. The New South Wales *Minors (Property and Contracts) Act 1970* (s.3) also reduced to 18 years the age at which a person may make a valid will (see the First Schedule to that Act, amending ss. 3 and 6 of the New South Wales *Wills, Probate and Administration Act 1898*). The Law in Western Australia already enables persons in the 18 to 21 year old age group to make valid wills (the *Wills Act 1970* (W.A.) s.7).

13. If the legal disabilities referred to in paragraph 11 above were removed from persons in the 18 to 21 year old age group it would no longer be necessary to provide for the guardianship of those persons. Thus the *Guardianship of Infants Acts 1920* and 1926 should be amended to confine their operation to persons under 18 years of age.

14. It should perhaps be noted at this point that no change made in this State to the age of majority would affect the minimum age at which a person can marry without consent. This is a matter for the Commonwealth Parliament which at present has fixed the minimum age at 21 years (the *Marriage Act 1961* (Cth.), ss. 5 and 13).

15. Part A of the Appendix lists those enactments which are related to general legal capacity and which the Committee considers should be amended to conform with the decision to lower the age of majority to 18 years.

16. In the remaining paragraphs of this Part the Committee draws attention to some of the considerations involved in deciding whether to grant persons in the 18 to 21 year old age group capacity in relation to the areas set out (b) to (e) of paragraph 8 above.

Civic rights and responsibilities

17. Another area in which minimum ages are prescribed is the civic field, for example, the minimum age at which a person can serve on a jury, vote or sit on a local council. Part B of the Appendix lists statutes in this field of which the Committee is aware. The reduction of the age of majority in the private law field need not necessarily be accompanied by a similar

reduction in the civic law field. Indeed the Latey Committee expressed the view that the capacity "to cope adequately with one's own personal and private affairs" is a very different thing from a capacity "to measure up to public and civic responsibilities" (Report: Cmnd. 3342, paragraph 25). Specific higher age qualifications may thus be justified for some civic responsibilities.

18. The Committee has in mind the fact that the Parliament of Western Australia has already reduced the minimum age to 18 years in one important area, namely the right to vote in the Legislative Council and the Legislative Assembly elections (s.17 (1) of the *Electoral Act 1907*, as amended in 1970). Consistently therefore the voting age in Local Government elections should also be reduced to 18 years (*Local Government Act 1960*, s.45).

19. More doubtful perhaps is the question of the minimum age at which a person should be called upon to serve on a jury (at present 21 years - see *Juries Act 1957*, s.4(1)). We agree however with the Latey Committee which said "it would not actually keep us awake at night if people under 21 were to serve on a jury - if, that is, one 18-year-old were liable to take his seat with eleven older people, since it is statistically unlikely to be more" (Report: Cmnd. 3342, paragraph 25.)

20. Similar considerations would appear to apply to the age qualifications for membership of the State Parliament (21 years - see the *Constitution Acts Amendment Act 1899*, ss.7 and 20) and of the Council of a local body (21 years - see the *Local Government Act 1960*, s.35).

Age qualifications for entry into certain occupations

21. The remainder of the statutes listed in Part B of the Appendix relate to the minimum age for entry into certain occupations. The list may not be complete.

22. The occupations field was outside the New South Wales Commission's terms of reference. However there would seem to be no reason why at this stage consideration should not be given to the question whether, in specific cases, the minimum ages should or should not be lowered. South Australia and New Zealand amended the Acts governing entry into certain occupations as part of the general reduction of the age of majority in those States. In some fields, such as law, the period of training is so long as to make it virtually impossible for

a person to qualify before reaching 21 years of age and reference to a minimum age qualification seem unnecessary and may perhaps be omitted. The South Australian Parliament abolished minimum ages in certain occupations for this reason (the *Age of Majority (Reduction) Act 1970-1971*).

Terms and conditions of employment

23. This matter concerns conditions of employment, including minimum wages to be paid to those in the 18 to 21 year old age group. These are left untouched in New South Wales and in South Australia. Because of the special problems involved, such as the impact on individual employers and on the economy generally, there may be merit in not including the field of industrial relations within the general scope of legislation reducing the age of majority. The Committee is provisionally of the view that if the matter is to be investigated it should be studied by those having special knowledge of the area.

Special provisions aimed at protecting the young

24. There are some statutory provisions which are essentially protective in nature. However, in so far as they make distinctions on the basis of age, they are logically to be considered in connection with any proposal for generally lowering the age of majority. Here again, it is proper to observe that because it is thought advisable to extend responsibility in a particular area or areas, it does not necessarily follow that all other distinctions based on age should also be removed.

A list of provisions belonging to this category (not necessarily complete) follows:

- (a) The *Child Welfare Act*, s.49 - which empowers the Minister to extend the period for which a child is committed to the care of the Department, up until the child is 21 years of age.
- (b) The *Criminal Code* s 19(6a) (b) - which empowers the court to commit certain offenders under the age of 18 to the care of the Child Welfare Department until they are 18 or for 2 years, whichever is the longer.

- (c) The *Criminal Code*, s.187 - which makes unlawful carnal knowledge of a girl under 16 a crime for which the maximum penalty is 5 years, unless the offender is under 21 in which event the offence is a misdemeanour for which the maximum penalty is 2 years.
- (d) The *Criminal Code*, s.191(1) - which makes the procurement of a girl or woman under 21 a misdemeanour.
- (e) The *Criminal Code*, s.194(3) - which makes it a misdemeanour for the keeper of a brothel to permit girls under 21 years of age to be in the brothel.
- (f) *Firearms and Guns Act*, s.8(1) - which prohibits a person under 21 from holding a pistol licence.
- (g) The *Married Persons and Children (Summary Relief) Act*, s.5 - defines 'dependant' as including a person under the age of 18 years, or who is over 16 but under 21 years of age and is receiving full-time instruction or training for a trade. Thus maintenance orders may be made in favour of such a person.
- (h) *Superannuation and Family Benefits Act*, s.57(2) and s.6 - which provide for the payment of benefits in respect of children under 16 years of age or 'student children' (i.e. children not less than 16 years but under 21 years who are receiving full-time instruction). In our view, this provision should not be interfered with as it is essentially a question of contract between contributor and employer. The general law is not involved.

Some of these provisions may be difficult to justify, and this may be a suitable opportunity to re-assess the policy which gave rise to them. The Committee would welcome comments on these matters.

COMMITTEE'S TENTATIVE VIEWS

25. The Committee thinks that reform should certainly cover the area of law referred to in paragraphs 10 to 15 above (general legal capacity). The desirability of reform in this area is sufficiently established by the report of the New South Wales Law Reform Commission.

26. Further, there seems to be no real objection to the extension of reform to the field of civic rights and responsibilities (see paragraphs 17 to 20 above).

27. The areas referred to in paragraphs 22 (entry into certain occupations), 23 (conditions of employment) and 24 (special protective provisions) are matters involving social, economic or political assessment and the Committee has no definite views on them at this stage. The Committee would welcome comment from those with special knowledge of these fields.

PART III

CODIFICATION OF THE LAW OF LEGAL CAPACITY OF MINORS

28. This Part stands independently of Part II. Whatever the age of majority, the question still arises of the need to reform the law as to the legal capacity of those persons who happen to be under that age.

Paragraphs 29 to 37 below summarise the main features of the present law. The summary is necessarily a simplified statement. As the New South Wales Commission pointed out (L.R.C.6, App. A, paragraph 1), the law in this area is full of uncertainties and inconsistencies.

Paragraphs 38 to 53 below summarise the changes, or proposed changes in this field in other jurisdictions.

PRESENT LAW

Contracts

29. The legal effect on a minor of a contract entered into by him is summarised by Cheshire and Fifoot, *Law of Contract* (2nd. Aus ed., 1969, p.509) as follows:

"The general rule at common law [is] that a contract made by an infant [is] voidable at his option. The word 'voidable', however, [is] used in two different senses. Certain contracts by which he [acquires] some permanent or durable interest in property and which [create] obligations of a continuing nature [are] void- able in the sense that they [are] valid and binding upon him unless he [repudiates] them before, or within a reasonable time after, the attainment of his majority. Other contracts [are] voidable in a different sense, i.e., they [are] not binding upon the infant unless ratified by him when he [reaches] 21 years of age.

"Two types of transactions, namely beneficial contracts of service and contracts for necessities, [are] treated as exceptional. The former [are] regarded as valid. The latter

[impose] liability upon the infant, though whether this [is] of a contractual nature or not [is] a matter of controversy".

30. On the other hand, as Cheshire and Fifoot point out (*ibid.*, p.523), because “infancy is a personal privilege of which no one can take advantage but the infant himself”

(*Bacon's Abridgement*, Infancy I, 4), at common law the other contracting party is bound.

31. In Western Australia certain contracts have been made binding on a minor by legislation. Instances are –

- (a) the *Housing Advances (Contracts with Infants) Act 1968* - which empowers a minor of or over the age of 18 years to enter into certain housing loan contracts;
- (b) section 150 of the *Land Act 1933* - which empowers a minor who is the holder of land under the Act to deal with it as if he were of full age, subject however to a review by the Supreme Court of the terms of the transaction.

Mention should also be made of s.82 of the *Trustees Act 1962*, which empowers the court to appoint a trustee to sell or deal with property in which the minor has a beneficial interest. To some extent this could overcome the general inability of a minor to enter into a binding contract involving a transfer of his property.

32. Even though a contract is not binding on a minor, he cannot recover money paid or property transferred unless there has been a total failure of consideration (Cheshire and Fifoot, *ibid.*, p.523). Land may be an exception. According to *Williams on Vendor and Purchase*, (4th ed., 861) a minor may recover land even though the sale is completed.

On the other hand, at any rate in the absence of fraud, a minor is under no obligation to repay money or return property which has been already transferred to him (*Cowern v. Nield* [1912] 2 K.B. 419; *Leslie (R) Ltd v. Sheill* [1914] 3 K. B. 607).

33. A brief analysis of the types of contracts referred to by Cheshire and Fifoot is as follows:

(a) Contracts for necessities:

These impose liability on a minor. Necessaries include goods and services and relate to the minor's particular station in life (*Peters v. Fleming* (1840) 6 M. & W. 42). Goods are not necessities if the minor's existing supply is sufficient, a fact which may be unknown to the supplier. It is clear that under s.2 of the *Sale of Goods Act 1895* (W.A.) where necessities are sold *and delivered* to a minor he must pay a reasonable price therefor, but the law is not clear as to whether a minor is liable on an executory contract for necessities.

(b) Beneficial contracts of service:

A minor is bound by a contract of service if it is on the whole for his benefit (*Clements v. L. and N.W. Rwy.* [1894] 2 Q.B. 482). This category does not extend to trading contracts (*Cowern v. Nield* [1912] 2 K.B. 419). The position is affected by the *Industrial Arbitration Act 1912*, Part VIII, which regulates *inter alia* apprenticeship agreements.

(c) "Voidable" contracts

The cases in which a contract is voidable in the sense that it binds both parties unless a minor repudiates before majority or within a reasonable time thereafter are:

- (i) contracts concerning land,
- (ii) shares in companies,
- (iii) partnership agreements,
- (iv) marriage settlements.

The effect of repudiation is to relieve the minor from all liabilities due to accrue after repudiation, but it appears that liabilities which have accrued before repudiation

remain. For a more detailed account of these contracts, see Cheshire and Fifoot, *ibid.*, pp. 517-519.

Other 'voidable' contracts, such as a contract for the loan of money, simply do not bind the minor (see Cheshire and Fifoot, quoted in paragraph 29 above). The rule as to ratification has been made stricter by s.15 of 9 Geo. IV, c.14 (Lord Tenterden's Act) which provides that ratification of a contract by a minor after he comes of full age is unenforceable unless in writing and signed by him. This statute was received in Western Australia as part of the law of England (see Cheshire and Fifoot, *ibid.*, p.510).

Although 'voidable' contracts in the latter sense, where unaffected by statute, do not bind the minor, they may have certain legal effects, as indicated in paragraph 32 above.

Indirect enforcement of contractual obligations

34. Although generally speaking a minor is liable in tort in the same way as an adult, the courts will not permit him to be sued in tort if to do so would be indirectly to enforce a contract which is not binding on him (Cheshire and Fifoot, *ibid.*, p.525). A minor is not liable if he induces another to contract with him by making a false representation, as for example that he is over 21 years of age. In such a case however the courts will permit a limited form of restitution (Cheshire and Fifoot, *ibid.*, p.527).

Guarantees of minors' contracts

35. Where the contract is one that simply does not bind the minor there is no primary debt and, therefore, a guarantee of, that primary debt is void (*Coutts & Co. v. Browne-Leaky* [1947] K.B. 104). Where the contract is one which may be repudiated by the minor the obligation of the guarantor ends at the time of repudiation and he is not liable to pay the balance of the money under the contract (*Land & Homes (W.A.) Ltd v. Roe* (1936) 39 W.A.L.R. 27).

Principal and agent

36. It seems clear that a minor can be agent to make a contract which he has no capacity to make on his own behalf (*Bowstead on Agency* (13th ed., p.15)). There is some doubt whether a minor can be made liable on a contract by an agent where he would be bound if he had made the contract personally (*Bowstead, ibid.*, p.13).

Dispositions of property by and to a minor

37. The effect of a disposition of property pursuant to a contract is set out in paragraphs 29 to 33 above. The general position regarding dispositions outside a contract is as follows:

Apparently a minor can effectually dispose of property by gift unless made under undue influence (*Taylor v. Johnston* (1882) 19 Ch.603. But cf. 18 *Halsb.* 369 where this decision is criticised). However a disposition by the minor by deed is voidable when he comes of age (21 *Halsb.* (3rd ed.) 160). Where property is given to a minor, it vests in the minor immediately upon the gift being completed. A gift *inter vivos* to a minor cannot afterwards be revoked (21 *Halsb.* (3rd ed.) 159). However a minor who has taken a freehold or leasehold estate in land may on reaching full age repudiate the grant, whereupon the estate re-vests in the grantor (*Williams on Vendor and Purchaser*, 4th ed. (1936), Vol.2, p.847). The same applies as regards personal property (21 *Halsb.* (3rd ed.) 158).

Under this heading may be noted s.30 of the *Property Law Act*, which empowers a married minor to give valid receipts for income paid over to him. This provision may, however, be superfluous: see Paget's *Law of Banking*, 6th ed., pp.24 & 25.

CRITICISM OF PRESENT LAW

38. The Latey Committee summarised the present position as follows:

"It is uncertain in a number of important respects, and is not easy to apply to concrete facts. It is complex, and the complexities of the law are not related to the needs of persons affected by it. It is said that it is unfair to those who deal with infants and

disadvantageous to infants themselves in that others are deterred from dealing with them" (Cmnd. 3342, paragraph 273).

39. The New South Wales Law Reform Commission has also criticised the law to the same effect (L.R.C.6, App.A, paragraph 1).

REFORM AND PROPOSED REFORM IN OTHER PLACES

New South Wales

40. The New South Wales Commission recommended fundamental changes in the law relating to contracts and property transactions by minors, which were enacted in the *Minors (Property and Contracts) Act 1970* (N.S.W.). The provisions are a code (see s.17) and take the place of the common law. Apart from attempting a general clarification of the law, the statute enacts that all beneficial contracts are binding on a minor (s.19). This alters the present law under which some only of such contracts are binding on the minor (see paragraphs 29 to 33 above).

41. Another important change made in New South Wales is that under s.26 power is given to the court to authorise a minor to enter into binding contracts and make binding dispositions of property. Limited power in this latter respect is also given to certain other authorities (ss. 28 and 29). The court is also given wide powers to adjust rights and liabilities in the case of the repudiation of a contract by a minor (s.37).

42. The following paragraphs summarise the relevant sections of the New South Wales statute:

The Act applies to the civil acts of minors. "Civil act" is defined with some particularity in s.6 but, broadly speaking, means any act relating to contractual rights or obligations or to any chose in action. The common law rule that lack of capacity to understand because of tender years renders a child incapable of the understanding necessary for the voluntary disposition of property or acceptance of a contract (*Johnson v. Clark* [1908] 1 Ch. 303) is preserved by s.18.

The Act provides that a civil act in which a minor participates is presumptively binding (i.e. binding unless void or voidable on grounds other than minority) on him in the following cases:

- (a) if participation is for his benefit at the time it was entered into (s.19);
- (b) if the consideration for a disposition of property made by or to him is not manifestly inadequate or excessive (s.20);
- (c) in the case of a gift made by him, if the disposition is reasonable (s.21);
- (d) if the civil act in question is made pursuant to a contractual or other duty binding on him (s.22);
- (e) if the civil act is an investment in prescribed securities (s.23);
- (f) if non-volunteer third parties without notice have acquired rights in property affected by the civil act, or altered their position in reliance on its validity (s.24) ;
- (g) if the civil act is the giving of a receipt by a married minor for rents, profits or other income or for accumulation of income (s.25);
- (h) if it is authorised or affirmed by a court (ss. 26, 27 and 30);
- (i) in the case of a disposition of property, if the Public Trustee or a solicitor instructed and employed independently of any other party, certifies within the seven days preceding that the minor understands the purport and effect of the disposition and is acting freely and voluntarily and that the consideration is not manifestly inadequate or excessive (ss. 28 and 29);
- (j) if it is affirmed by the minor after attaining full age, or by his representative in case of his death (s.30); and

- (k) in the case of contracts that are not otherwise presumptively binding, if the contract is not repudiated in writing by him during his minority or within one year after he attains full age; or, if he dies before he attains full age, before the end of nineteen years after his birth or one year after his death, whichever is the earlier (ss. 31, 32, 34 and 38).

Outside these cases, a civil act is not presumptively binding (s.17). Where this is so and the minor lawfully repudiates, the Act gives the court wide power to adjust the rights of interested persons affected by the repudiation (s.37).

To preserve the equities, s.39 provides that a court is not to enforce a civil act in favour of a minor participant unless the act is also presumptively binding on the minor.

43. Part V of the New South Wales statute deals with ancillary matters –

- (a) In substance, s.46 enables a minor to appoint an agent and act through him. The agent however, cannot bind him more than he can bind himself. The section also expressly provides that a minor can act as an agent.
- (b) Section 47 overcomes the decision in *Coutts & Co. v. Browne-Lecky* (see paragraph 35 above) and binds a guarantor of an obligation of a minor to the extent to which he would be bound if the minor were not a minor.
- (c) Section 48 provides that where a person under the age of 21 years is 'guilty of a tort', he is answerable for the tort whether or not the tort is connected with a contract. We take this to mean that, where a person would, but for the existence of a related contract, have been liable at law for a tort (see paragraph 34 above), he now becomes answerable for that tort, notwithstanding any connection it may have with the contract.

United Kingdom

44. The Latey Committee made certain tentative recommendations dealing with minor's contracts (Cmnd. 3342, paragraphs 271 to 427). It suggested that the recommendations should be referred to the English Law Commission for further study as part of a codification of the law of contracts (paragraphs 282 to 286). This has not been completed.

45. The Latey Committee's principal proposal was that contracts entered into by a minor should be unenforceable as such against him. The minor may perform the contract if he wishes, and may enforce performance against the other party, though only if he is willing to perform his part. But if the minor decides not to perform, or supplies a defective performance, he will escape liability for breach of contract. (Paragraph 299).

The Committee made the following recommendations in paragraphs 309 and 310 as to restitution and recovery of property:

- (a) that where a minor receives money, property or services under a contract which he fails to perform he should be liable to account to the other party for the benefit he received,
- (b) that the court should be empowered to relieve the minor from his liability to account, to such extent as it thinks fit,
- (c) where the minor has parted with money or property under a contract which is unenforceable against him he should be entitled to the return of the money or property, subject to his obligation to account to the other party for any benefit he has received, if he resiles from the contract before it is fully performed.

46. The Committee proposed, in paragraphs 351 and 354, that a minor should be liable in tort for deceit unconnected with his age even if the effect would be indirectly to enforce a contract. On the other hand, because of the possibility that persons dealing with minors might be tempted to make a declaration as to age a standard provision in the contract, a minor should remain exempt from liability in tort for deceit as to his age which induces a contract.

New Zealand

47. In 1969 New Zealand codified the law relating to the contractual capacity of minors by enacting the *Minors' Contracts Act 1969*. This codification in some respects agrees with the suggestions of the Latey Committee, but in others it breaks new ground. It covers the effect, validity, avoidance, repudiation and ratification of minors' contracts and also contracts of indemnity and guarantee in respect of such contracts (s.15).

48. New Zealand has legislated separately for contracts entered into by minors over 18 years of age (s.5). Because of the Western Australian Government's decision to lower the age of majority to 18, the provisions dealing with this category of minors will not be summarised.

49. Contracts of those under 18 have effect as if the minor was of full age, except for the important proviso that they cannot be enforced against the minor (s.6). However, in the event of proceedings, or on application by interested parties, a court, if satisfied that the contract when made was fair and reasonable, may enforce the contract against or declare it binding on the minor. The court has ancillary powers of compensation or restitution or of ordering a transfer of property.

In exercising its discretion in dealing with contracts of the under-18 age group the court is directed to consider the circumstances surrounding the making of the contract, the subject-matter and nature of the contract, the nature and value of any property involved, the age and means of the minor and all other relevant circumstances (s.6(3)).

50. The powers of the court as regards compensation and restitution may be used to relieve not only parties to the contract but also guarantors, indemnifiers, and persons claiming through, under or on behalf of any of these. Adequate powers are given to order the transfer or assignment of relevant property to any party (s.7).

51. A minor's contract entered into pursuant to the approval of a magistrate's court has effect as if the contracting minor was of full age (s.9). On a reference for approval being made to him, the magistrate may request a report from a guardian of the minor, from an independent solicitor appointed by the court, from the Public Trustee, or from any other person.

52. Adult guarantors and indemnifiers of a minor's contract are also, as in New South Wales, made liable on their contract to the extent that they would be if the minor had been of full age. However, any rights the guarantor or indemnifier may have against the minor subsist, as far as the general provisions of the Act permit (s.10).

53. In 1970 New Zealand made a cautious reduction of the age of majority from 21 to 20 years. (See the *Age of Majority Act 1970*, s.4(1)).

COMMITTEE'S TENTATIVE VIEWS

54. To the extent suggested in this Part of the working paper, the Committee agrees that a reform of the law as to the capacity of minors is called for. The attempts of the courts to find logical solutions to the problems frequently posed in this area of the law appear not to have succeeded. The formulation of a code is not without its dangers and there are many and valid arguments generally against such a method of reform. However, the Committee is of the view at this stage that this is one field in which the adoption of a code is justified.

55. As between the New South Wales approach on the one hand and the English and New Zealand approach on the other, the Committee is inclined to favour that of New South Wales. The New South Wales *Minors (Property and Contracts) Act 1970* is more specific and leaves less room for uncertainty.

56. It is not practicable, within the scope of this working paper, to set out the New South Wales legislation in great detail. Copies of the New South Wales legislation will be made available to readers of this paper, should they not have ready access to the legislation themselves.

APPENDIX

PART A

In the Committee's view the enactments listed hereunder relate to general legal capacity. Appropriate legislation will be needed to ensure that they conform to the new age of majority. In some cases, e.g. s 237 of the *Mining Act*, no change in the actual substance of the legislation is involved.

ADMINISTRATION ACT 1903

- 17 The court may authorise an executor or administrator to spend the infant's share of the estate on his maintenance.
- 17A The personal representatives of the deceased may appoint a trustee of the infant's share of the estate.
- 25 Administration may be granted only to persons of the full age of 21 years.
- 33 Where an infant is sole executor, administration may be granted to the infant's guardian or to such other person as the court thinks fit, until the infant attains the age of 21 years.
- 37 Where an executor neglects to obtain or renounce probate within two months of attaining 21 years, the court, on the application of an interested party, may grant administration with the will annexed to the applicant.

BETTING CONTROL ACT 1954

- 21 No bookmaker, and no employee of a bookmaker shall:
- (a) bet with, or pay money relating to a bet to, a person apparently under the age of 21 years;
 - (c) permit a person under the age of 21 years to enter registered premises (with some exceptions).

22 No person under 21 years of age shall:

- (a) enter registered premises (with some exceptions);
- (b) bet with a bookmaker;
- (c) request another person to place a bet for him.

23(2) No person shall:

- (b) take a person under 21 years of age into registered premises (with some exceptions);
- (d) place a bet for a person under the age of 21 years.

BUSINESS NAMES ACT 1962

7(2) If an applicant for the registration of a business name under the Act is an infant, the section provides that his application must describe him as such and that his date of birth must be set out.

12 (4) (a) The section concerns notification of changes in particulars relating to registered business names and provides for the case where there is a change in the persons operating the business and the new operator is an infant.

EDUCATION ACT 1928

37A & 37B A student is bound by his agreement with the Minister for admission to teacher training notwithstanding that he was under 21 years when he executed the agreement.

GUARDIANSHIP OF INFANTS ACT 1920

GUARDIANSHIP OF INFANTS ACT 1926

These Acts contain provisions relating to the appointment of guardians to infants.

HEALTH ACT 1911

338A(1) In certain circumstances; a medical practitioner may perform a blood transfusion upon a child without the authority of a person legally entitled to authorise the transfusion.

- (4) In the section, "child" means a person who is or appears to be under the age of 21 years.

HOSPITALS ACT 1927

33(2) The cost of hospital service given to a minor, whilst not excluding the liability of the minor, constitutes a debt due by each of the parents or the sole surviving parent of the minor, and may be recovered by action in any court of competent jurisdiction.

IMPERIAL ACTS ADOPTED IN WESTERN AUSTRALIA

11 Geo. IV & 1 W.IV, c.67

11 Geo. IV & 1 W. IV, c 65

2 & 3 V., c.11.

These Acts contain several provisions concerning the property of infants. In some cases, as when dealing with admission to copyhold, the provisions are obsolete. In others, they are either inoperative or have been overtaken by more recent legislation.

LAND ACT 1933

150 A person under 21 who is the holder of a conditional purchase lease, etc., under the Act may deal with it as if he were of full age. A Judge of the Supreme Court may review the terms of the deal.

LIMITATION ACT 1935

40 Persons who were within the age of 21 years when a cause of action accrued may commence the actions listed under s.38(1) :

"within such time as is before limited after being of full age ... as if that was the time at which the cause of action accrued".

16 In cases of 'infancy', the limitation period is six years from the termination of the infancy.

LOCAL COURTS ACT 1904

57 A person under the age of 21 years may sue by his next friend, and defend by a guardian *ad litem*.

- Provided that a minor may sue in his own name for wages or piecework, or for work or services as clerk, servant, mechanic or labourer in the same manner as if he were of full age.

MASTERS AND SERVANTS ACT 1892

3 "Employed" is defined as including any servant or apprentice, whether under or above the age of 21 years.

16 An infant under 21 years may lodge a complaint under the Act as if he were of full age.

MINING ACT 1904

237 Any person under the age of 21 years may sue or be sued in the Warden's Court in the same manner in all respects as if he were of full age.

PROPERTY LAW ACT 1969

30 A married minor has power to give valid receipts for all income (including accumulations during minority) as if he were of full age.

PERPETUAL EXECUTORS, TRUSTEES & AGENCY CO. (WA) LTD. ACT

8 (1) (d) The company may be appointed by a court or judge as guardian of the estate or person of an infant.

13 It is lawful for the guardian of an infant, with the approval of the court, to appoint the company to discharge the guardian's duties.

23 Persons entitled to moneys from the Testamentary & Trust Fund in the hands of the State Treasurer have 12 years to apply to the court for their money. But no time during which a claimant is an infant is taken into consideration when reckoning the 12 years.

PUBLIC TRUSTEE ACT 1941

18 Where the net amount payable to an infant out of an estate is under \$200, the Public Trustee may pay that amount to the widow or other person having care and custody of the infant, without incurring liability for the payment.

SALE OF GOODS ACT 1895

2 An infant or minor must pay a reasonable price for necessaries.

STRATA TITLES ACT 1966

24(1) (a) Strata titles proprietors have the right to vote on certain decisions concerning the building. Section 24 deals with the power to vote, and subsection (1) (a) provides that where the proprietor is an infant his powers of voting may be exercised by his guardian.

SUPREME COURT ACT 1935

- 16(1) (d) (ii) The court has jurisdiction to appoint guardians of the persons and estates of infants according to the order and course observed in England.
- 25 (11) In questions relating to custody and education of infants, the rules of equity prevail.
- 60(1) (f) No appeal lies to the Full Court without leave of a Judge of the Full Court except (amongst other exceptions) where the custody of infants is concerned.

TOTALISATOR AGENCY BOARD BETTING ACT 1960

- 42 No officer or employee may:
- (a) accept a bet, pay moneys to or sell tickets to persons apparently under 21 years;
 - (c) permit persons apparently under 21 years to enter or remain on the agency premises (with some exceptions);
 - (d) employ persons under 21 years.
- 43 No person under 21 shall :
- (a) enter or remain on the agency premises;
 - (b) make a bet through the Board;
 - (c) request any other person to bet for him.
- 44 No person shall knowingly:
- (b) take a person under 21 years into an agency;
 - (d) place a bet for a person under 21 years.

TRADE UNIONS ACT 1902

- 22 Membership of trade unions is open to persons under the age of 21 but above the age of 16, unless the rules of the union provide to the contrary.

TRANSFER OF LAND ACT 1893

59 If a certificate of title is to be issued to a minor the Registrar must state the minor's age on that certificate.

[ADDENDUM - see also s. 8IG]

TRUSTEES ACT 1962

6(3) For the purpose of the Act a person is deemed to be under a disability whilst he is not of full age,

7(1) (g) Where an appointed trustee is an infant any person having power to appoint may appoint another person in place of the infant,

30(1) (k) Before appropriating part of the estate to satisfy a legacy, a trustee must give notice to interested persons of full age and to guardians or parents of infants.

58(1) (a) A trustee may apply income towards the maintenance of an infant beneficiary.

(b) Where the beneficiary has no vested interest payment of the income is to be made to him after he attains the age of 21 years.

58(2) Accumulations of surplus income are to be held by the trustee until the infant attains the age of 21 years.

72(1)&(2) A trustee may hand over chattels to an infant.

73 An infant may give a valid receipt to a trustee for chattels vested in the infant absolutely.

- 82 Where an infant is beneficially entitled to property the court, where desirable or necessary in the interest of the infant, may appoint a person to deal with the property, stock or thing in action, as the case may be, as the court may direct.

WEST AUSTRALIAN TRUSTEE EXECUTOR & AGENCY CO. (LTD) ACT

- 9(1) The company may be appointed by any court guardian of an infant or guarantor for a person appointed his guardian.
- 12 Guardians of infants may, with the approval of the court, appoint the company to perform their duties.
- 23 As regards limitation of time for claiming monies from the State Treasurer's Testamentary & Trust Fund, time does not run against an infant whilst he is an infant.

NON-CONTENTIOUS PROBATE RULES 1967 (see Administration Act Rules 1903)

- 8(i) An applicant for probate or letters of administration with the will annexed must be of the full age of 21 years.
- 8(iv) A testator must have been of the full age of 21 years at the date of execution of the will
- 9(i) An applicant for letters of administration must be of the full age of 21 years.
- 22 Notice of application for administration must be given to the next of kin of full age and to the spouse.
- 26(1) Grants may be made to guardians of infants for administration 'durante minore actate'.

RULES OF THE SUPREME COURT 1971

O.70

- 2 An infant suing or defending must do so by his next friend or guardian ad litem acting through a solicitor, unless a judge orders otherwise.
- 3 Prescribes rules for the appointment of the next friend or guardian ad litem of an infant.
- 4 Contains special rules for the appointment of the next friend or guardian ad litem of an infant, where probate action is concerned.
- 5 Gives the procedure, where no appearance is entered for the infant.
- 6 Regulates the application for the discharge or variation of orders served on an infant under O.18, r.7 (change of parties).
- 7 Prescribes the procedure for removing a next friend or guardian ad litem of an infant.
- 8 An infant who does not traverse the pleadings of the opposite party is not taken to have admitted the truth of any allegation made in those pleadings.
- 9 This rules makes orders 26 and 27 (which give the procedure for discoveries and interrogatories) apply to an infant.
- 10 No settlements, compromise, etc., entered into by an infant is valid unless approved by court.
- 11 Gives the procedure for obtaining the court's approval to an agreement for settlement or compromise made before action is commenced.

- 12 Money recovered or paid in any proceeding on behalf of an infant must be paid to the Public Trustee for investment.
- 13 Gives the rules for the service of proceedings and documents on an infant party.

O.66

- 24 Gives the rules relating to solicitor's costs where money is recovered in proceedings by or on behalf of an infant

O.24

- 4 Money recovered in proceedings on behalf of an infant needs an order of the court before it is paid out.

O.31

- 4 In any cause or matter to which an infant is a party, a special case cannot be set down without leave of the court.

O.76

Prescribes the rules for proceedings under the *Guardianship of Infants Acts*, 1920 and 1926.

[ADDENDUM - see also the *Rural and Industrial Bank Act 1944*, ss. 65E and 65V]

APPENDIX

PART B

(Enactments in the civic and occupational fields where the minimum age of 21 years is prescribed).

ARCHITECTS ACT 1922

14 No person may be registered as an architect unless he proves that he has attained the age of 21 years.

BETTING CONTROL ACT 1954

11 (5) (b) The Totalisator Agency Board cannot grant a bookmaker's licence to a person under the age of 21 years. [Note: in the first issue of the working paper this item was included in Part A.]

BUILDERS' REGISTRATION ACT 1939

10(1) (b) (i) An applicant for registration must satisfy the Board that he has attained the age of 21 years.

BUILDING SOCIETIES ACT 1920

12A(2) A person is not qualified to be a director of the committee of management of a building society unless he is a member of the society and has attained the age of 21 years.

15 A person under the age of 21 years may be a member or depositor of any society, and may execute all instruments and give all necessary acquittances; but until he is 18 years of age he is not competent to vote or hold office.

CHIROPODISTS ACT 1957

10(1) A person cannot register as a chiropodist unless he has attained the age of 21 years.

CHIROPRACTORS ACT 1964

20 (1) A person who proves to the satisfaction of the Board that, among other things, he has attained the age of 21 years, may be registered as a chiropractor.

CONSTITUTION ACTS AMENDMENT ACT 1899

7 One qualification for membership of the Legislative Council is that the candidate must be of the full age of 21 years.

20 One qualification for membership of the Legislative Assembly is that the candidate must be of the full age of 21 years.

CO-OPERATIVE AND PROVIDENT SOCIETIES ACT 1903

23 A person under the age of 21 years but above the age of 16 may be a member of a registered society, unless provision is made in the rules of the society to the contrary, but may not be a member of the committee, trustee, etc. [This appears also in Part C of the Appendix, below].

DEBT COLLECTORS LICENSING ACT 1964

9 (1) The court shall refuse to grant a licence as debt collector if the applicant is not of the age of 21 years or more.

DECLARATIONS AND ATTESTATIONS ACT 1913

2 A person under 21 years of age is not qualified to take a statutory declaration or attest any such instrument.

DENTISTS ACT 1939

- 44 (1) (a) A person is not qualified for registration as a dentist unless he proves to the satisfaction of the Dental Board of Western Australia amongst other things, that he is over the age of 21 years when he applies.

FRIENDLY SOCIETIES ACT 1894

- 14(7) The rules of a society may provide for the admission as members of persons under the age of 21 years; a member under 21 may (if he is over 16) execute all instruments and give all acquittances required under the rules; but he cannot be a member of the committee, or a trustee, manager or treasurer of a friendly society or branch of such a society.

INQUIRY AGENTS LICENSING ACT 1954

- 4(1) To be licensed, a person must, amongst other things, have attained the age of 21 years.
- 6(2) If a Court of Petty Sessions is satisfied that, amongst other things, an applicant has attained the age of 21 years, the Court may issue a license.

INSPECTION OF MACHINERY ACT 1921

- 15(4) No person under 21 years may be in control of a passenger lift. unless:
- (a) he has served the empire in a war; or
 - (b) he is physically incapable of undertaking more exacting or laborious work.

JURIES ACT 1957

- 4(1) To qualify as a Juror a person must, amongst other things, have attained the age of 21 years.

LAND AGENTS ACT 1922

4(1) Every person who desires to obtain a land agent licence must lodge with the Clerk of the Court of Petty Sessions an application in the form of the First Schedule to the Act; that form contains the following:

“I ... of ... having attained the age of 21 years, hereby apply ...”.

LEGAL PRACTITIONERS ACT 1893

15 No person may be admitted as a practitioner unless, amongst other things, he is of the full age of 21 years.

LICENSED SURVEYORS ACT 1909

7(1) To be entitled to be registered as a licensed surveyor, the applicant must have attained the age of 21 years.

LIQUOR ACT 1970

49(2)(a) A court may not grant a licence under the Act to a person under the age of 21 years.

LOCAL GOVERNMENT ACT 1960

35 One of the qualifications for election as a member of a local council is to be over 21 years of age.

45(1) (a) A person must have attained the age of 21 years to be eligible to be registered as an elector for a municipality.

MOTOR VEHICLE DRIVERS INSTRUCTORS ACT 1963

7(5) Before granting a motor vehicle drivers instructors' licence, the Commissioner of Police must satisfy himself, amongst other things, that the applicant has attained the age of 21 years.

OCCUPATIONAL THERAPISTS ACT 1957

8(1) One of the requirements for registration under the Act is to have attained the age of 21 years.

8(la) If a person under 21 can satisfy the Board as to certain other qualifications he may be registered in spite of his age.

8A An occupational therapist who is under 21 years is not entitled to practise on his own.

OPTOMETRISTS ACT 1940

34(a) One of the qualifications for registration as an optometrist is that the applicant

34A(a) shall be over the age of 21 years when he applies.

34B(a) &

35(1) (a)

PAINTERS' REGISTRATION ACT 1961

12 One of the qualifications for registration as a painter is that the applicant shall have attained the age of 21 years when he applies.

PHARMACY ACT 1964

21(1) One of the qualifications for registration as a pharmaceutical chemist is that the applicant shall have attained the age of 21 years when he applies.

PHYSIOTHERAPISTS ACT 1950

10(1) One of the qualifications for registration as a physiotherapist is to have attained the age of 21 years.

USED CAR DEALERS ACT 1964

12(1) (a) One of the qualifications for a licence under the Act is to be of the full age of 21 years.

VETERINARY SURGEONS ACT 1960

20(1) (a) To be entitled to be registered under the Act the applicant must prove, to the satisfaction of the Veterinary Surgeons' Board, that, amongst other things, he has attained the age of 21 years.

SCALE OF ALLOWANCES TO WITNESSES (S.R.C. 0.66, r.11(3) and Fourth Schedule, item 28).

28. Allowances are payable as under:

(2) to adult persons not qualifying as professionals, not exceeding
... \$10 per day.

(3) to persons under 21 years of age in receipt of salary or wages, not exceeding
... \$ 7 per day.

(4) to persons under 21 years of age, not in receipt of salary or wages, the amount of any loss in respect of which the Taxing Officer thinks the persons should be indemnified, but not exceeding
... \$ 7 per day.

CHILD WELFARE (CARE CENTRES) REGULATIONS 1968

15(1) A licensee of a child minding centre must be of the full age of 21 years.

TRANSFER OF LAND ACT 1893

145 Any adult person may validly witness any instrument or power of attorney under the Act executed within the Commonwealth of a Territory. [In the first issue of this working paper, this was in Part A.]

APPENDIX

PART C

Enactments where ages other than 21 years appear.

ADOPTION OF CHILDREN ACT 1896

- 2 “Child” is defined as meaning a person who has not attained the age of 18 years or a person who has attained that age and in respect of whom an order for adoption is sought
- 5 15 and 12 years old are used as dividing lines in relation to certain safeguarding assurances the court must have before it makes an adoption order.

CENSORSHIP OF FILMS ACT 1947

- 4 "Children" is defined as meaning children under 16 years of age.
- 12(1) (b) A censor may approve a film as being not suitable for exhibition before children.
- 12A (2) Where a person who has attained the age of six years but not the age of 18 years is present at an "R" film show, the exhibitor commits an offence.
- (3) Persons between 14 and 18 years of age who attend an "R" certificate film commit an offence.
- (4) Where a person who has attained the age of 18 allows a person between 6 and 18 years of age to be present at an "R" film show, he commits an offence.

CHILD WELFARE ACT 1947

- 4 "Child" is defined as meaning a boy or girl under 18 years of age.

- 20 A Children's Court has exclusive jurisdiction to hear and determine complaints for offences committed by children and may commit a child over 14 years to the Supreme Court or the District Court for sentence. This jurisdiction applies even if the child who is alleged to have committed the offence has now reached 18 years.
- 20B(2) The section provides that certain offences against or in respect of children under 16 may be dealt with summarily by a Children's Court.
- 20C(1) Assaults against children under 16 may be dealt with by the Children's Court.
- 23(3) The prohibition against the publication of the proceedings in a Children's Court is not to apply in the case of a child over 16 convicted, for the second time or more, of specified offences.
- 34A(1) (a) No sentence of imprisonment may be imposed on a child under 14 years old.
- (b) Where a child is 14 to 16 years old, imprisonment (cumulative or not) cannot exceed three months.
- (c) Where a child is over 16 imprisonment (cumulative or not) cannot exceed six months.
- 39 A child over 16 may be committed for up to 2 years to the care of the Child Welfare Department.
- 52 Wards over 6 years old must attend school regularly.
- 106(1) The Department may issue a licence to a male child over 12 years old to engage in street trading.
- 107 Employing an unlicensed child or a child under 12 in street trading is an offence.

- 108 Begging or performing by children under 16 is forbidden.
Work connected with training of animals for racing cannot be done by children under 14.
Children under 16 cannot generally take part in public entertainment without a licence issued by the Minister of Child Welfare.
- 116 Places for reception of children under 6 years must be licensed.
- 119 No advertisement for the adoption of a child under 15 or for taking care of a child under 6 may be published unless approval of the Director of Child Welfare has been obtained. No premium or reward may be offered or paid for taking care of or maintaining a child under 6.
- 130 It is an offence for a parent to desert or neglect a "child" (boy or girl under 18 years of age).
- 137 The section provides a punishment for misconduct or neglect leading to the delinquency of a child under 14.
- 138 A child under 14 employed in a show or circus where his life, health, welfare or safety is likely to be endangered, is deemed to be a "neglected child" for the purposes of the Act.

COAL MINES REGULATIONS ACT 1946

- 5 "Boy" is defined as meaning a male under the age of 19 years.
- 24 (1) No "boy" under the age for compulsory attendance at school under the *Education Act* shall be employed in or about a mine.
- (2) No "boy" shall be employed in caging or uncaging trucks or skips in or at any shaft.

- (3) No "boy" shall be employed as a lander or braceman in or at any shaft,
- (6) The extract of birth of every "boy" employed must be produced to the manager or owner of a mine.

25 A register of all "boys" over 14 employed below ground and of all "boys" generally employed above ground, must be kept.

CO-OPERATIVE AND PROVIDENT SOCIETIES ACT 1903

18(1) A member of a registered society, not being under the age of 16 years, may by writing nominate any person to whom his property in the society should be transferred when he dies.

23 A person under the age of 21 years but above the age of 16 may be a member of a registered society, unless provision is made in the rules of the society to the contrary, but may not be a member of the Committee, trustee, etc. [This appears also in Part B of the Appendix, above].

CRIMINAL CODE

19(6a) A child or young person under 18, convicted on indictment of an offence punishable by imprisonment, may instead be:

- (a) detained in such place and for such time as the Governor directs, or
- (b) committed to the care of the Child Welfare Department until he is 18, or for 2 years, whichever is the longer.

29 A person under 7 is not criminally responsible.
A person under 14 is not criminally responsible for any act or omission unless at the time of the offence he had the capacity to know that he ought not to have done or omitted to have done the act in question.
A male person under 14 is presumed incapable of having carnal knowledge.

- 183 A person 'dealing' indecently with a boy under 14 is guilty of a crime.
- 185 A person having or attempting to have unlawful carnal knowledge of a girl under 13 commits a crime.
- 186 A householder inducing or permitting the defilement of girls under 16 and girls under 13 commits offences of varying gravity.
- 187 A person who has or attempts to have unlawful carnal knowledge of a girl under 16 commits a crime.
- 189 The section creates the crime of indecent 'dealing' with:
- (i) girls under 13 or under 16, or
 - (ii) girls under 17, where the offender is the guardian, employer, teacher, or schoolmaster, of any such girl.
- 190 The defilement of a girl under 17 by her guardian, employer, teacher, or schoolmaster is a crime.
- 193 It is a misdemeanour to abduct a girl under 18 with intent that she be carnally known.
- 195 It is a misdemeanour to permit boys under 18 to resort to brothels.
- 198 A woman or girl above 18 who permits incest on her person is, guilty of a misdemeanour.
- 206(1) For certain offences on a girl under 13, where the offender is a male over 16, whipping may be ordered.
- 263 The section imposes a duty on the head of a family to provide the necessaries of life for his child under 16.

- 264 There is a duty on masters who have contracted to so do to provide food, clothing, and lodging to a servant or apprentice under 16.
- 303 Where a master unlawfully does or fails to do something, whereby the life or health of his apprentice or servant under 16 is endangered, he is guilty of a misdemeanour.
- 304 Endangering by exposure the life of a child under 7 is a misdemeanour.
- 322 Where an assault is on a male child under 17, the assault is punishable as an aggravated assault.
- 330 The abduction of a girl under 16 is a misdemeanour.
- 343 The stealing of a child under 16, by forcibly taking him or fraudulently enticing him away from his parents or guardian, is a crime.
- 343A The publication of the stealing of a child under 16, if done without the approval of the Commissioner of Police, is an offence.
- 344 The desertion of a child under 16 by his parents is a misdemeanour.
- 659 The punishment of whipping is not to exceed 12 strokes for offenders under 18.
- 670 Convicted males under 18 may, in addition to or in substitution for any other punishment, be sentenced to whipping.
- 679 Where a death sentence passed on a person under 18 is commuted, he will be detained during the Governor's pleasure in such place as the Governor directs.
- 680 The whipping of a boy under 18 must be inflicted privately.

716 A woman or girl is deemed to be unlawfully detained for 'immoral purposes' if she is detained to be carnally known and:

- (1) is under 17; or
- (2) is between 17 and 18, and detained against her will or that of her parents, etc...; or
- (3) is over 18, and detained against her will.

736 The court may divest a parent, guardian, master or mistress of the custody of a girl under 17. If the court finds that the parent, etc. has encouraged the seduction or prostitution of the girl.

DESTITUTE PERSONS RELIEF ORDINANCE 1845

3 It is an offence for a father or mother unlawfully to desert a child under 10 years old.

5 Persons about to leave the Colony must give surety for the maintenance of such of their children under 10 years old as are left behind.

11 Two Justices have power to bind as an apprentice a child who has attained the age of 10 years and in respect of whom a maintenance order has been made under the Act, until he or she attains the age of 18 years.

EDUCATION ACT 1928

3 & 13A "Leaving age" is defined as meaning the age of the child at the end of the school year in which he attains 15 years.

13(1) Attendance at school is compulsory for children under "leaving age".

13(4) The Minister may, under certain conditions, exempt a person who has attained 14 years of age from attending school.

17 The employment of children of an age when school is compulsory is forbidden.

ELECTORAL ACT 1907

17(1) Any person who is not under 18 years of age is entitled to be enrolled as an elector for the Legislative Council and the Legislative Assembly.

EVIDENCE ACT 1906

101(1) The evidence of a child of tender years may be received though not under oath where, in the opinion of the court, the child does not understand the nature of an oath. Such a child may be indicted and punished for perjury in all respects as of his evidence had been on oath.

EXPLOSIVES AND DANGEROUS GOODS ACT 1961

30(3) Explosives and other dangerous goods may not be sold to persons apparently under 18 years of age. (There are some specified exceptions. e.g. for bon-bon crackers, toy caps, streamer bombs, etc.)

FACTORIES AND SHOPS ACT 1963

5 "Child" is defined as meaning a person who is not of school leaving age as defined in s.3 of the *Education Act 1928*.

"Young person" is defined as meaning a person between leaving age and 16 years of age.

50 There is a prohibition on the employment of a 'child' except under certain conditions.

51 'Young persons' cannot work in factories between 9.00pm. and 6. 00am.

54 The certificate of age of certain 'young persons' must be produced.

- 55 Limitations are imposed on the working hours of 'young persons', except under certain circumstances.
- 62(1) (c) Minister may recommend that the Governor make regulations for the employment of 'young persons' where work may cause risk or injury to their health.
- 112 Parent may be fined if a 'young person' or 'child' is wrongfully employed.

FIREARMS AND GUNS ACT 1931

- 8(2) A person under 16 cannot hold any licence under the Act.

FRIENDLY SOCIETIES ACT 1894

- 14(7) Admission as a member of a friendly society may be as from birth.
A member of or over 16 years of age who is a minor may by himself, and a member under 16 years may by a parent or guardian, execute all instruments and give all acquittances necessary under the rules of the society.
Provided also that societies composed wholly of members under 16 years may be registered under the Act subject to special regulations.

HOUSING ADVANCES (CONTRACTS WITH INFANTS) ACT 1968

- 2 In the Act, 'infant' is defined as meaning an infant who has attained the age of 18 years.
- 3 Notwithstanding any law to the contrary, an 'infant' is capable:
- (a) of entering into a contract with a lending authority for moneys to be advanced or lent by it to him for the purpose of erecting or purchasing a dwelling house for his occupation; and

- (b) of executing a mortgage or other instrument by way of security for the repayment of any moneys advanced or lent or to be advanced or lent to the infant under the contract,
to the same extent as if he was of full age and capacity at the time he entered into the contract or executed the mortgage or other instrument.

INDUSTRIAL ARBITRATION ACT 1912

- 6 "Worker" is defined as meaning any person not less than 14 years employed by ...etc.
- 179(1) (vii) The section gives power to make regulations for the registration of union workers under a prescribed age employed in any industry.

INSPECTION OF MACHINERY ACT 1921

- 15 (1) No young person under 14 years of age may be employed in working or assisting to work machinery.
- (2) No male person under 18 years may be employed to clean machinery in motion.
- (3) A person less than 18 years of age may not be in charge of a boiler.

LAND ACT 1933

- 26 No person under 16 years is eligible to select, acquire by transfer, or hold land under the Land Act, except in the case of land disposed of under Part IV (Town and Suburban Land).

LIQUOR ACT 1970

- 7 For the purposes of the Act 'juvenile' means a person under the age of 18 years.

- 69(4) (a) It must be a term of every club licence that a person who is a 'juvenile' cannot be elected honorary member of the club, unless the court approves.
- (c) A 'juvenile' cannot be employed by a club except in clerical or administrative work.
- 129 The section creates offences relating to 'juveniles' and liquor and licensed premises.

LOCAL COURTS ACT 1904

- 57 A minor above the age of 18 years may sue or be sued without a next friend or guardian, as if he were of the full age of 21 years.

MARRIED PERSONS & CHILDREN (SUMMARY RELIEF) ACT 1965

The Act provides for the making of maintenance orders in respect of 'dependants'.

- 5 "Dependant" is defined as meaning, *inter alia*, one who is under the age of 18 years.

MENTAL HEALTH ACT 1962

- 27(1) A person may be admitted to an approved mental hospital:
- (a) if under 18 years on the request of one of his parents or of his guardian;
 - (b) if not less than 18 years, on his own request, provided the superintendent is of the opinion that he is able to understand the nature and effect of his request.
- 51(1) & (2) A patient having a status under Division I of the Act (which refers to patients admitted informally) must be discharged within 72 hours after the patient or, in the case of a patient under the age of 18 years, the parent or guardian at whose request the patient was admitted applies for his discharge.

- 79 For the purposes of the Act, a person under the age of 18 years, who is suffering from a mental disorder necessitating treatment in his own or the public interest, and is not receiving treatment, is a 'neglected child' within the meaning of the *Child Welfare Act 1947*.

MINES REGULATION ACT 1946

- 41(2) Except in the case of a cadet or apprentice who is gaining the required experience as training for a profession or trade, a boy under the age of 16 years may not be employed underground.

PAWNBROKERS ACT 1860

- 26 A pawnbroker who purchases or takes in pledge any article from a person apparently under the age of 18 years commits an offence.

POISONS ACT 1964

- 34(1) The sale of prescribed poisons to persons apparently under the age of 18 years is prohibited unless accompanied by an adult known to both parties.

PRISONS ACT 1903

- 64B The section gives power to the Governor to direct that persons apparently of the age of 18 years or upwards are transferred from gaol to a reformatory prison.

PUBLIC SERVICE ACT 1904

- 29 (1) The age of new appointees to the clerical division cannot be less than 15 years at the last birthday previous to the appointment.
- (2) The age of new appointees to the general division cannot be less than 14 years at the last birthday previous to the appointment.

RULES OF THE SUPREME COURT 1971

O.70

r.3(7) & (8)

(c) (iv) In non-probate actions, in the case of an infant who has attained the age of 14 years, amongst the documents that have to be filed before a person can act as a next friend or guardian *ad litem*, there must be filed a consent by the infant to that person acting as such.

r.4(3) (c) In probate actions, in the case of an infant who has attained the age of 16 years, a person may act as next friend or guardian *ad litem* without an order of the court where there is no testamentary or statutory guardian and the proposed next friend or guardian is a next of kin or spouse and has been appointed by the infant.

r.13(3) Where the infant has no next friend or guardian *ad litem*, personal service may be effect on him if he is aged 18 years or upwards; if he is not, then on a parent, guardian or the person with whom he resides or in whose care he is.

SPEAR GUNS CONTROL ACT 1955

4(1) (k) of the TABLE.

It is an offence for a person under 14 years of age to use a spear-gun otherwise than under the supervision of a person who has attained the age of 21 years.

SUPERANNUATION AND FAMILY BENEFITS ACT 1938

57(2) (a) Benefits are payable in respect of children under 16 years of age, or student children.

TRADE UNIONS ACT 1902

23 A member of a registered trade union who is not under the age of 16 years may, by writing under his hand, nominate a person to whom, in the event of the members' death, monies due to him may be paid.

TRAFFIC ACT 1919

23(2) (a) The minimum age for licensing a driver is 17 years, unless the Commissioner of Police considers that a denial of the licence will cause undue hardship;

(b) If under 18, consent of a parent in writing is necessary before a licence can be granted.

WELFARE AND ASSISTANCE ACT 1961

4 "Child" is defined as meaning a person under the age of 18 years.

11 Paragraph (a) of that section makes 'the adult children' of a person liable to pay or contribute towards the funeral expenses incurred in respect of the burial of the person.

(It is not clear whether 'adult child' in this section means a child over 21 years, as per the general law, or a child over 18, if the definition in section 4 above is given weight.)

WESTERN AUSTRALIAN MARINE ACT 1948

17 (Va) The Governor has power to make regulations prescribing the records that are to be kept concerning all persons under the age of 16 years employed on harbour and river ships.

114 (1) A seaman is not entitled to the rating A.B. unless he is, amongst other things, 18 years of age;

- (2) A seaman is not entitled to the rating O.S. (ordinary seaman) unless he is 17 years of age or, with the approval of the Shipping Master, 16 years of age.
- 115 (1) The minimum age for any employment at sea is 15 years.
- (2) The minimum age for employment in the stokehold of a steamer in the capacity of a fireman or a trimmer is 20 years.
- 116 No person under the age of 18 years may be engaged for service at sea in any capacity unless he is certified by a medical practitioner as being physically fit for service at sea in that capacity.

WILLS ACT 1970

- 7 Subject to provisions of Part VI of the Act, a will made by a person under the age of 18 years is not valid.

WORKERS' COMPENSATION ACT 1912

7 & First Schedule - (1) (a)

Where death results from an injury which justifies compensation under the Act, a specified sum is made payable by the Act in respect of each dependent child or step-child of the deceased worker who is under the age of 16 years.

YOUTH SERVICE ACT 1964

- 3 "Young person" is defined as meaning a person over the age of 13 and under the age of 25 years.

APPRENTICESHIP REGULATIONS 1964

- 2 Definition of 'minor': a person not less than 14 and not more than 18 years.

- 3 No 'minor' may be employed as an apprentice except under prescribed conditions.

CHILD WELFARE REGULATIONS 1934

- 53(9) When wards reach 18 years of age their Savings Bank Account is transferred to the Secretary of the Child Welfare Department as trustee.

CHILD WELFARE (CARE CENTRES) REGULATIONS 1968

- 15(2) Persons in charge of centres must be females over 18 years.

EXPLOSIVES REGULATIONS 1963

- 52(7) No person under the age of 16 years is permitted to work in an explosive magazine, and no such person shall enter a magazine unless under the supervision of an adult.

- 72 No explosives may be sold or delivered to a person apparently under 18 years of age.

- 77 No safety fuses may be sold to a person apparently under 18 years of age.

- 103(2) Driver of a vehicle carrying more than 500 lbs. of explosives must have an assistant at least 18 years old.

- 115 (1) No person under 18 may carry out or be in charge of blasting operations.

- (2) No person under 15 may enter a place where explosives are fired or prepared for firing.

- 131(3) (b) A person of or above 18 years of age may be sold certain pyrotechnic devices which are used only for specified purposes.

- 144(1) At least two operators, not less than 18 years old, must be on duty at firework displays.

FIREARMS REGULATIONS 1931

- 14 When the age of an applicant for a firearm licence appears to be under 16, the issuing officer may require proof of age.

FLAMMABLE LIQUIDS REGULATIONS 1967

- 31 A person under 14 years old is not allowed in licensed depots unless he is under the supervision of an adult person appointed by the licensee for that purpose.