



THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 25 – Part I
Legal Capacity Of Minors

REPORT

APRIL 1972

**REPORT
ON
THE LEGAL CAPACITY OF MINORS**

To the Hon. T.D. Evans, M.L.A.,
ATTORNEY GENERAL

TERMS OF REFERENCE AND COMMENTS THEREON

1. "To consider the recommendations contained in the New South Wales Law Reform Commission's *Report 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 Commission's report recommended the lowering of the age of majority to 18 years (see Report, L.R.C. 6, paragraph 25), and the codification of the law applicable to those below that age in so far as concerns contracts and property transactions (Report, L.R.C. 6, paragraph 34).

3. Because of the announcement of the Government's intention to lower the age of majority to 18 years, the Committee accepted that as a matter of policy the age is to be reduced, and confined its attention to considering -
 - (1) the changes to be made in the law in Western Australia to give effect to the Government's intention, and
 - (2) the desirability of enacting a code governing the legal capacity of persons below the age of 18 years.

WORKING PAPER

4. The Committee issued a working paper in January of this year. A copy is attached. Part II of the paper discusses the areas of the law which could be involved in the decision to reduce the age of majority, and Part III deals with the question of the codification of the law relating to persons below the reduced age of majority.

5. The Committee is of the view that Part II and Part III of the working paper are quite independent of each other, and that the reform of the law in each Part can proceed separately. The codification of the law relating to minors needs further consideration. In particular it may be advisable to wait to see how the New South Wales legislation works in practice. This however should not hold up the enactment of legislation reducing the age of majority.

6. The Committee has therefore in this report confined its attention to the areas of the law relating to the lowering of the age of majority to 18 years, that is the areas covered by Part II of the working paper.

7. These areas are -

- (a) general legal capacity - principally contractual and proprietary rights and liabilities (working paper, paragraphs 10 to 15);
- (b) civic rights and responsibilities (working paper, paragraphs 17 to 20);
- (c) age qualification for entry into certain occupations (working paper, paragraphs 21 and 22);
- (d) terms and conditions of employment (working paper, paragraph 23);
- (e) special provisions aimed at protection of the young (working paper, paragraphs 24).

General legal capacity

8. In paragraph 11 of the working paper the committee listed the capacities which would be conferred on persons in the 18 to 21 year old age group by a lowering of the age of majority in this area to 18 years. The capacities are -

- (a) To freely enter into contracts and acquire and dispose of property.
- (b) To act in a fiduciary capacity.
- (c) To acquire a domicile of choice (together with the other incidents of domicile).
- (d) To conduct proceedings in any court.
- (e) To require, if absolutely entitled as beneficiary, the trustee to transfer the trust property to him.
- (f) To consent to medical and dental treatment.

(A person in the 18 to 21 year age group already has the capacity to make a valid will - see the *Wills Act 1970*, s.7). The Committee expressed the view in the working paper (see paragraph 10) that the Government's decision would almost certainly extend to altering the law in this area.

9. Few comments were received on this area. The Child Welfare Department expressed misgiving about granting persons in the 18 to 21 year old age group the capacity freely to enter into contracts. The Director of the Citizens Advice Bureau doubted the wisdom of permitting persons in this age group to act in a fiduciary capacity.

10. One of the Supreme Court Judges pointed out that to give a person in the 18 to 21 age group the capacity to acquire a domicile of choice could result in him having one domicile for the purposes of State law and another for Commonwealth law (for example, for the purpose of the Commonwealth *Matrimonial Causes Act*). The Committee's view is that this possibility of inconsistency should not of itself be a sufficient reason for refusing to grant persons in this age group the capacity to acquire a domicile of choice in the areas governed by State law.

11. On the question of the capacity to consent to medical and dental treatment (see working paper, paragraph 11(f)), the Committee is of the opinion that for the present at any rate no age limit (other than the general reduction of the age of majority to 18 years) should be introduced. The Committee will consider the question of a lower age limit in this particular field when it deals with the codification of the law relating to minors.

12. The Committee recommends that legislation be introduced conferring the capacities listed in paragraph 8 above on persons in the 18 to 21 year age group. Part A of the Appendix of the working paper contains a list of enactments relating to general legal capacity. Appropriate legislation will be required to ensure that these enactments conform to the new age of majority. This list may not be complete.

Civic rights and responsibilities

13. Comments were received from the Local Government Association and the Citizens Advice Bureau. The Local Government Association in its comments accepted the view that

the voting age at local government election should be reduced to 18 years. It did not deal with the minimum age for election to the Council as Mayor or President, but the secretary of the Association has stated that a similar reduction in the age qualification in these respects would probably also be accepted.

14. The Director of the Citizens Advice Bureau expressed doubt about the desirability of reducing the minimum age for jury service to 18 years.

15. In the Committee's view there is no real objection to reducing the age to 18 years in relation to all the matters under this heading. The major step (lowering of the voting age for State Parliament elections) has already been taken, and it seems unnecessary to draw fine distinctions between the capacity to vote and the capacity to exercise other functions in this area.

16. The Committee therefore recommends amendments to the following legislation to reduce the minimum age to 18 years -

The *Constitution Acts Amendment Act*, ss.7 and 20,

(qualification for membership of the Legislation Council and Legislative Assembly) .

The *Juries Act*, s.4, (qualification as juror).

The *Local Government Act*, ss.35 and 45 (1) (a) (qualification for membership of, and eligibility for voting for, local councils).

The *Declarations and Attestations Act*, s.2, (qualification for taking statutory declarations).

The *Transfer of Land Act*, s.145, (qualification for witnessing instruments).

Age qualification for entry into occupations

17. Part B of the Appendix to the working paper includes a list of enactments in the occupational field in which the prescribed minimum age of entry is 21 years. The list may not be complete. Comments in this area have been received from individuals and bodies connected with some of these occupations and the views expressed are summarised below -

Architects

- (a) **The Royal Australian Institute of Architects (W.A. Chapter)** considers that the minimum age for entry in the profession should remain at 21 years.
The Architects Board of W.A. says that the present wording of the *Architects Act* should remain unaltered.

Builders (registered)

- (b) **The Building Workers' Industrial Union of Australia** merely notes that the requirement of 7 years employment in the industry before one can become a registered builder makes 22 years the earliest age at which one could qualify.
The Builders Registration Board calls attention to the fact that when the applicant for registration is from another state or country, the Act requires the Board to be satisfied that he has sufficient building experience. The Board says that in the exercise of its discretion it would not find that a person under 21 could have had the necessary experience. In other cases the requirements of the law as to professional qualifications or practical experience result in persons over 21 only being capable of applying for registration.

Building Societies

- (c) **The Registrar of Building Societies** says that the minimum age for qualification as a director of a building society should remain at 21, so as to ensure experience and ability.

Child minding centres

- (d) **The Director of the Child Welfare Department** says that the provisions of the Child Welfare (Care Centres) Regulations should remain because they provide protection for the young children concerned.

Chiropodists

- (e) **The Chiropodists Registration Board** considers that, in view of the duration of the training course of three years following matriculation, there is no necessity for a minimum age for entry.

Chiropractors

- (f) **The Chiropractors Registration Board**, whilst pointing out that graduation in one of the accepted Chiropractic Colleges of the U.S.A. or Canada could not be achieved by a person under 21 years, goes on to say that it is in the interests of the profession and the clients that a registered chiropractor should be mature and, in the Board's view, not under 21 years.

Dentists

- (g) **The Dental Board** comments that the university qualification necessary makes it virtually impossible for a person to qualify before reaching the age of 21.

Licences (liquor)

- (h) **The Liquor Trade Council** thinks that 18 years is a reasonable age for the assumption of responsibility generally and entry into the liquor industry for all purposes except that of being a licensee. It considers that the under 21s do not have the training, experience or maturity to hold a license successfully, and would find the control of customers difficult.

The Licensing Court also considers that the 18 to 21 year olds should not hold licenses except for those premises where liquor is sold in containers only.

Occupational Therapists

- (i) **Occupational Therapists Registration Board** points out that its Act already allows a person under 21 to register as an occupational therapist, other than for private practice.

Optometrists

- (j) **The Australian Optometrical Association (W.A. Division)**, whilst stressing that the necessity for completing a four-year university course makes it virtually impossible to register before 21 years, adds that neither the Association nor the Optometrists' Registration Board would be likely to recommend a reduction in the minimum age for entry.

Painters (registered)

- (k) **The Master Painters, Decorators and Signwriters Association of W.A.** wants entry as a registered painter to remain at 21 because it feels that this is the only means of ensuring sufficient experience.

Pharmacists

- (l) **The Pharmaceutical Council** states that because pharmacy is a four-year course after obtaining the Leaving Certificate, it is almost impossible to qualify before reaching 21 years. It says that although in isolated cases a person could graduate before 21, this would not be a sufficient objection to the lowering of the age for legal capacity.

Physiotherapists

- (m) **The Physiotherapists Registration Board** states that, in view of the duration of the training course (3½years) following matriculation, there is no necessity for a minimum age entry.

Surveyors

- (n) **The Institution of Surveyors, Australia (W.A. Division)** considers that the age requirement for entry in the profession should remain at 21.

Veterinary surgeons

- (o) **The Veterinary Surgeons Board** says that, because the length of the course is five years, it is extremely unlikely that a graduate would qualify before 21 years of age. A minimum age entry requirement is therefore unnecessary.

18. In conformity with the general principles governing the reduction of the age of majority, the Committee considers that the age for entry into occupations should be correspondingly reduced unless, for reasons particular to an occupation, it is undesirable to do so in that case.

19. Although most comments disclose a reluctance towards reduction of the minimum age for entry, no commentator gave convincing reasons for maintaining the age limit as an absolute bar. In the Committee's view, the only age which, as such, has relevance is the age when a person obtains general legal capacity, and provided he has the necessary training and experience any other age qualification seems irrelevant and unnecessary. Indeed, those commentators who opposed reduction gave as their reason the need for training and experience. In any case in which training and experience are considered necessary it should be ensured that the controlling authority has the necessary discretion.

20. The occupations considered by the Committee fall conveniently into two categories -

- (a) those where it is desirable to prescribe that an applicant for entry must have general legal capacity (i.e. under the new law be at least 18 years old) because it may be possible for him to qualify at an earlier age;
- (b) those where the length of training is such that it is not necessary to prescribe a minimum age limit at all, because it is not possible for an applicant to complete the prescribed training before the age of 18. (In most cases in this category, by the time the training is completed, the applicant will be much nearer 21 than 18).

Examples of occupations in category (a) are -

liquor licensees, directors of building societies, debt collectors, inquiry agents and used car dealers .

Examples of occupations in category (b) are -

architects, chiropodists, legal practitioners, optometrists and veterinary surgeons.

21. The Committee recommends therefore that, where entry into an occupation is restricted, references in the legislation to a minimum age should be omitted, except in cases where, because little training is required, it would be possible for a person who is still a minor to gain entry. In these cases the minimum age of 18 years should be prescribed.

Terms and conditions of employment

22. The Committee received no comments on this area.

23. In some industrial awards provision is made for higher wages to be paid to 'adult' workers. There may be no reason why in principle, adult wages should not be paid to persons less than 21 years old provided they possess the educational qualifications and experience necessary to adequately perform the job. However, as the Committee indicated in paragraph 23 of its working paper, matters beyond the competence of the Committee are involved. The Committee is unqualified (certainly at this stage) to make any recommendation in this area and accordingly refrains from doing so.

Special provisions for protecting the young

24. Only the Child Welfare Department commented in this area. The Department considers that s.39 and s.49 of the *Child Welfare Act* (dealing with committal to the care of the Department) should remain unchanged, on the ground that there is a need to provide support for inadequate young people. It also considers that the Director's consent should continue to be required by wards requiring medical or dental treatment.

25. The Committee is not entirely persuaded that young adults should continue to be subject to the control of the Child Welfare Department (it is to be noted that s.49 of the *Child Welfare Act* gives the Minister power to extend the period of a committal order up until a person is 21 years). However as the matter involves practical experience and a policy decision, the Committee has not pursued any investigation on the matter and refrains from making any firm recommendation.

26. In other parts of the area the Committee's general view is that in so far as the age of 21 years was prescribed simply because that was the age of majority at the time the legislation was enacted, the statutes concerned should be amended to reduce the age to 18 years. The Committee has particularly in mind ss. 187, 191(1), 194(3) of the *Criminal Code*. The age in these sections should be reduced to 18.

27. On the other hand the *Married Persons and Children (Summary Relief) Act*, s.11, which enables maintenance orders to be made in favour of children receiving full time instruction up to the age of 21 years, and the *Superannuation and Family Benefits Act* ss. 6 and 57(2), which provides for payment of benefits to student children under 21 appear to be based on a different consideration, namely, the need of young persons to be adequately educated. It may be desirable in principle to impose no upper age limit at all, since a person's need for education could well extend beyond 21, but is not within the Committee's terms of reference to recommend that the age limit be removed in order to achieve this objective. The Committee would not favour a reduction of the present age limit as this would tend to defeat the policy.

Incidental matters

28. The Committee received little or no comment on the following matters, but considers that the law is in need of change and therefore recommends that:

- (a) The rule laid down in *Re Shurey* (see working paper, paragraph 7 (2)) be changed to make the commencement of the anniversary day itself the time at which a person attains a specified age.
- (b) The word "infant" wherever it occurs in legislation should be omitted (see Part A of the Appendix of the working paper) and "minor" substituted. (In some

cases it may be desired, as a matter of drafting, to substitute a reference to the specific age of 18 years). This could be done by amending the enactments concerned in a schedule to the statute lowering the age of majority.

SUMMARY OF RECOMMENDATIONS

29. The following is a summary of the Committee's recommendations -

1. Legislation should be introduced -

- (a) giving general legal capacity to persons in the 18 to 21 year age group (paragraph 12 above);
- (b) lowering to 18 years the minimum age for membership of the State Parliament, voting at local body elections, membership of local bodies, jury service, taking declarations and witnessing land transfer documents (paragraph 16 above);
- (c) lowering to 18 years the minimum age for entry into certain occupations and removing any age requirement from the qualifications for entry into other occupations (paragraph 21 above);
- (d) amending ss.187, 191(1) and 194(3) of the *Criminal Code* to reduce the age to 18 years (paragraph 26 above);
- (e) providing that a person attains a particular age at the commencement of the day of the anniversary of his birth (paragraph 28(a), above);
- (f) replacing the word "infant" where it occurs in legislation by the word "minor" (paragraph 28(b) above).

2. No change should be made to s.11 of the *Married Persons and Children (Summary Relief) Act* or to s.6 or 57(2) of the *Superannuation and Family Benefits Act* (paragraph 27 above).

30. The Committee makes no recommendations on the following matters -

(a) terms and conditions of employment (paragraph 23 above) :

(b) ss.39 and 49 of the *Child Welfare Act*: and s.19 (6a) (b) of the *Criminal Code* which aimed at giving special protection to young persons (paragraph 25 above) .

31. The Committee repeats that it has not in this report dealt with the question of the codification of the law relating to persons below the age of majority (paragraph 6 above) .It will report on this question in due course.

CHAIRMAN

MEMBER

MEMBER

11 April, 1972.