

1969

PARLIAMENT OF NEW SOUTH WALES

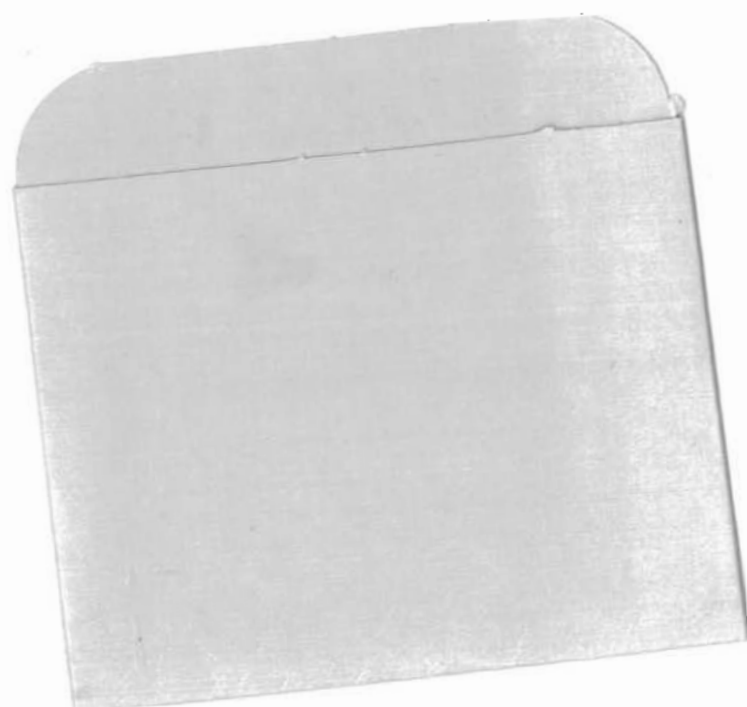
REPORT
OF THE
LAW REFORM COMMISSION
ON
INFANCY IN RELATION TO
CONTRACTS AND PROPERTY

L. R. C. 6

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PREFACE

The Law Reform Commission has been functioning since the beginning of 1966. It is constituted by the Law Reform Commission Act, 1967. The Commissioners are—

The Honourable Mr Justice Manning, Chairman.

Mr R. D. Conacher, Deputy Chairman.

Professor W. L. Morison.

Mr J. O. Stevenson.

The Executive Member of the Commission is Mr R. E. Walker. The offices of the Commission are at Park House, 187 Macquarie Street, Sydney.

This is the sixth report of the Commission. Its short citation is L.R.C. 6.

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LAW REFORM COMMISSION

REPORT ON INFANCY IN RELATION TO CONTRACTS AND PROPERTY

To the Honourable K. M. McCaw, M.L.A.,
Attorney General for New South Wales.

1. You have made a reference to this Commission in the following terms—

“To review the law of infancy relating to contracts and dispositions of property and testamentary capacity, and incidental matters.”

You gave us these terms of reference on the 31st January, 1968, in substitution for earlier terms of reference which you gave to us on the 11th of March, 1966. The earlier terms of reference were—

“To consider the question of whether citizens of this community should become civilly responsible for debts and liabilities and entitled to own and deal with property at an earlier age than 21 years, and the nature and extent of the liabilities (if any) of such persons upon their attaining such earlier age as may be proposed.”

In considering the matters mentioned in the earlier terms of reference, you requested us to have regard also to the question whether any of our recommendations should also apply to extending the franchise to any such persons. This request was withdrawn upon substitution of the terms of reference of the 31st of January, 1968.

2. Upon taking up our work under the earlier terms of reference, we prepared a note on the relevant law and distributed copies to interested persons. Appendix A is a copy of the note, with some corrections and additional references.

3. In April, 1966, we had published in the Sydney daily newspapers notices stating the terms of reference of the 11th of March, 1966, offering copies of the note mentioned in paragraph 2 and inviting interested persons to send us statements of their views. In response to these notices, we received letters from a small number of people, all of whom favoured a reduction in the age of full legal capacity either in relation to contracts and property generally or in relation to specified transactions. The general view was that the age should be dropped from 21 to 18 years. We are grateful to those who responded to our invitation.

4. We also, in accordance with our practice, sought the help of the New South Wales Bar Association and of the Law Society of New South Wales. Neither of these bodies expressed a corporate view on the questions which arise, but each gave us valuable help in other ways. Messrs Gleeson and McLelland, of the New South Wales bar, looked into the matter at the request of the Bar Council and gave us a thoughtful and useful memorandum. The Law Society gave us copies of recommendations made by the Albury and District Law Society, by the North and North West Law Society and by a sub-committee of the Young Members Committee of the Law Society. These have all been useful to us and, again, we express our gratitude.

5. We have also sought help from several other people, amongst whom we mention in particular Professor Stapleton and Dr Helen Walsh of the Institute of Child Welfare at the Royal Alexandra Hospital for Children, Miss Mary Tenison-Woods, and Mr Paul Allsop, secretary of the Australian Council of Salaried and Professional Associations. Each of these has given us valuable assistance and we are grateful to them.

6. Our work has been greatly facilitated by the report made in June, 1967, by the Committee on the Age of Majority (the Latey Committee) in England (Cmnd. 3342). This most valuable report has covered much of the field of our work and enables us to shorten our report. As will appear, we agree (within the limits of our terms of reference) with the main recommendation of the Latey Committee that the age of majority be lowered to 18 years.

7. There is an account in the Latey Report of the history which led to the age of 21 years being fixed as the age of majority for most legal purposes. There is no point in our performing that task again: it is enough to note that, so far as the reasons can be ascertained, they are reasons which carry little weight in the circumstances of today, and carry no weight in favour of saying that 21 years is the right age and that any higher or lower age would be wrong.

8. The disability of infancy is a restriction on the ordinary capacity which our law allows in matters of contract and property. On this capacity depend the security of the transactions in which it is exercised and the fulfilment of the economic needs of the participants in those transactions. The presumption must therefore be in favour of freedom to enter into contractual and proprietary transactions and against restriction: the onus is on those who say that an existing restriction should be retained or that a new restriction should be imposed.

9. As the Latey Committee observed (pages 22, 23), on the general question of what the age of majority should be, the inquiry ought to be: what provision will be best for the young people of today? It is a wrong approach to see what changes have occurred over the years in ages of maturity, in conjugal condition, in home ownership, in education, in income and in other relevant matters and then to see whether these changes justify some alteration of the present line drawn at the age of 21 years.

10. But the matters mentioned in paragraph 9 do have this significance. We take it to be beyond controversy that the present disabilities of infancy, enduring until the age of 21 years, are, and have been for very many years, quite extensive enough to save the vast majority of young people from the mistakes of youthful inexperience. If, then, we can perceive changes which tend to show that as a rule maturity will be earlier and education better than they were fifty years or more ago, these changes will enable us to say that some reduction of the age of majority can be made without significant risk.

11. Further, if we can perceive also that, by reason of changes in social patterns and in working practices, the need of contractual and proprietary capacity and the means (by way of income or otherwise) to enter into contractual and proprietary transactions are likely, in a significant number of cases, to arise at an earlier age, these changes will encourage us to go to what we think are the limits of safety in proposing relief of the disabilities of infancy.

12. Whatever age may be fixed as the general age of majority, people will still make improvident contracts which they would not have made had they been more experienced. Just as today some people over 21 years old make improvident contracts, so if the age of majority is reduced to 18 years some people between 18 and 20 years will make improvident contracts. The problem is to attempt to foresee whether, if the age of majority is reduced, the scale of improvident contracts made by people of the critical ages will be too high a price to pay for the freedom of contract and security of transactions which the reduction would achieve.

13. In paragraphs 8 to 12 of this report we have stated the general considerations by which we are guided. We pass now to factual matters which seem relevant.

14. Since about the middle of the nineteenth century there has been a secular trend toward earlier maturity. The trend, which still continues, is that boys and girls mature about one year younger than did similar boys and girls born 30 years earlier. Most of the data examined comes from Norway, Finland, Sweden, Germany, the United States of America and Great Britain, and relates to the growth spurt in adolescence and to the age of first menstruation of girls. A study of the heights of school children in New South Wales in 1914-16, 1937 and 1954 (Dr E. S. A. Meyers in (1956) 1 M.J.A. 435) and studies on other episodes of adolescence in other countries have given consistent results. It has been suggested that changes in diet and environment generally are contributory causes of the secular trend, but these changes are insufficient in themselves to account fully for the secular trend. There is no evidence for, but some evidence against, the proposition that adolescence occurs earlier in hot climates than in cold climates. The secular trend cannot have extended indefinitely into the past and it cannot continue indefinitely in the future, but it does appear to have continued at least until the late 1950's. There is some evidence to suggest that puberty in girls in ancient and in medieval times in the civilized parts of Europe occurred around the age of 14 and that a considerable retardation appeared at the beginning of the nineteenth century. This retardation has been ascribed to factors connected with industrialization. There is not sufficient evidence to ground a positive conclusion that the secular trend towards earlier physical maturity is accompanied by a trend towards earlier mental maturity, but it would be reasonable to infer that the latter trend does exist, though to a much smaller extent than the trend in physical maturation. The statements in this paragraph are based on two works by Dr J. M. Tanner, *Education and Physical Growth* (1961) (pp. 92-96, 114-119) and *Growth at Adolescence*, 2nd edn (1962) (pp. 104 et seq., 143 et seq., 149, 152-155, 211 et seq.). See also an article by Dr Tanner, "Earlier Maturation in Man", in (1968) 218 *Scientific American* at p. 21.

15. In 1880 schooling was made compulsory for the period between the ages of 6 and 14 years (Public Instruction Act of 1880, s. 20). In 1916 the period was changed to that between the ages of 7 and 14 years (Public Instruction (Amendment) Act, 1916, s. 4 (1)). For 1940 the period was changed to that between the ages of 6 and 14 years (Child Welfare Act, 1939, s. 177 (b) (i)). In each of the three following years the end of the period was postponed by 4 months so that in and since 1943 the period has been that between the ages of 6 and 15 years (Youth Welfare Act, 1940, s. 2 (1)). The ages of compulsory schooling have not been further altered, but a new system of secondary education (the Wyndham scheme) was introduced in 1962. Under the new system the full secondary course lasts 6 years instead of the former 5 years.

16. Appendix B shows (amongst other things) the numbers and percentages of people in the specified age groups who were shown in the 1966 census as full-time students or children attending school. The material in Appendices B, C, and D has been furnished by the Commonwealth Statistician. In applying these figures in estimating what the future position will be, allowance must be made for the additional year of secondary education envisaged by the Wyndham scheme. The outlook nevertheless is that the great majority of 18-year-olds will have completed their education. The point scarcely needs to be made that, taking the population as a whole, the 18-year-old of today is vastly better educated than was the 21-year-old of a hundred years ago.

17. The point is sometimes made that prudence in contractual and proprietary affairs is more likely to come from first-hand experience in the world than from formal education and that a period of experience after formal education has ended is necessary to fit a boy or girl to engage on tolerably equal terms in business affairs. While it must be true that general worldly experience is valuable for adult life, it is also true that the boy or girl in secondary or tertiary education is by no means wholly sheltered from worldly experience. Otherwise, the fact that about 4 per cent of 21-year-old men are still students (see Appendix B) might be taken to show, against all reason, and against any view which has been put to us, that the age of majority ought to be raised.

18. It has been put to us by Professor Stapleton and Dr Walsh that it would be an error to argue from the premise that some older infants at present behave irresponsibly to the conclusion that a similar

degree of irresponsibility would be shown by those who would have complete or at least greater civil capacity on an alteration of the law regarding the incapacity of infants. Responsibility and irresponsibility are, it is put, self-regenerating: give a person responsibility and he will tend to behave responsibly. We think that there is force in this view and we find in it support for some relaxation of the incapacities of infancy.

19. Amongst those aged 18, 19 and 20 years, the number married has increased in recent years. Figures based on the results of the 1966 census are included in Appendix C. Comparative percentages based on the 1911 census are also given in Appendix C.

20. Until the 1st of September, 1963, the marriageable age was 14 years for boys and 12 years for girls: since that date the ages have been 18 years for boys and 16 years for girls (Marriage Act, 1961, s. 11), but these ages may, by order of a court, be reduced by not more than two years (Marriage Act, 1961, s. 12). Parental or other consent is, and for many years past has been, required for the first marriage of a person under 21 years of age (Marriage Act, 1899, s. 9; Marriage Act, 1961, s. 13).

21. A husband or wife has an obvious need of contractual and proprietary capacity for the purpose of setting up and maintaining a household. Of those in the critical years, the size of the number of those who are married is such as to encourage us to recommend a reduction in the age of majority.

22. Award salary and wage rates payable to young people have, over a long term, improved in comparison to the award rates payable to adults, in comparison to the retail price index numbers published by the Commonwealth Statistician, and in comparison to the adult basic wage. The following table is given as an example and concerns the award rates of salary for male bank officers—

	1924	1966	Factor of increase, 1924-1966	1969	Factor of increase, 1924-1969
	\$	\$		\$	
Under 21 years of age, 3 years service	230	1,600	7.0	1,825	7.9
Under 21 years of age, 4 years service	280	1,860	6.6	2,120	7.6
Under 21 years of age, 5 years service	320	2,115	6.6	2,410	7.5
21 years of age, 6 years service ..	440	2,375	5.4	2,705	6.1
22 years of age, 7 years service ..	464	2,495	5.4	2,840	6.1
33 years of age, 18 years service ..	804	3,735	4.6	4,225	5.3
Adult male basic wage (six capital cities).	442	1,710	3.9	..	..
Retail price index number	164	517	3.1	..	..

We are indebted to the Australian Council of Salaried and Professional Associations and to the Bank of New South Wales for the material from which the foregoing figures are compiled.

23. Appendix D shows figures based on the results of the 1966 census relating to householders of occupied private dwellings in New South Wales. The large increase in the number of owners at the ages of 21 and 22 years may be caused to some extent by the fact that the disability of infancy generally prevents the purchase of land by an infant. However, there may be many other causes. The figures are consistent with, but do not compel, the view that there is some frustrated wish amongst older infants for capacity to buy (and borrow on mortgage of) land and dwellings.

24. An indirect effect on the present incapacities of infants in relation to house purchase has been pointed out to us, namely, that what is in fact a purchase and mortgage on behalf of an infant is done by a parent or some other adult as trustee for the infant. While no

doubt this device works well enough, it does increase the legal expense and does put the trustee to trouble and risk. It would be better if this expense, trouble, and risk could be avoided.

25. The material reviewed in the foregoing paragraphs has a tendency to support the conclusion that there should be a reduction in the age of majority. But the tendency is slight. We have searched for factual matter from which a conclusion can be drawn as a matter of logic or of compelling inference. The search has been in vain. In the end, we must base a recommendation on our own views, formed from our own observation and experience as members of the community. Our views are influenced by the opinions of many others. These opinions have been expressed in response to the invitations we have mentioned, in published material, and in the many informal discussions which we have had in the years in which we have had the problem under study. These opinions have not been unanimous: people whose views we respect have been against the conclusion to which we have come; but the great weight of opinion is in line with our conclusion. Our recommendation is that the age of majority be reduced from 21 to 18 years, so far as concerns the matters within our terms of reference.

26. Why 18 years and not 17, 19 or 20 years? We reject 17 years or any lower age simply because we do not think it would be safe. Had we not had the advantage of knowing the views of others, we might have recommended some higher age than 18 years, but in recent years a great body of opinion, both in New South Wales and elsewhere, has come to favour 18 years as the age of majority. The weightiest expression of this opinion is the majority report of the Latey Committee, but there have been many others throughout the English speaking world. We have formed the view that 18 years may be adopted as the age of majority without undue risk, thus promoting uniformity with what has been done or is in prospect in other places.

27. To reduce the age of majority is not wholly a venture into the unknown. There is, in New South Wales, a long history of relaxation of the disabilities of infancy in the case of youthful holders of land on a number of statutory tenures. The present legislation appears in section 240 of the Crown Lands Consolidation Act, 1913; section 9 of the Closer Settlement (Amendment) Act, 1914; section 18K of the Western Lands Act of 1901; section 20 (5) of the Prickly-pear Act, 1924; and regulation 11 under the Returned Soldiers Settlement Act, 1916. Section 240 of the Crown Lands Consolidation Act, 1913, is typical: these are its terms—

“Any person between the ages of sixteen and twenty-one years who before or after the passing of this Act becomes the owner of any holding under the Crown Lands Acts and during his ownership either personally or by an agent enters into any agreement for or in relation to the performance of any work or rendering of any services on such holding or in relation thereto or to the loan of money whether secured on such holding or otherwise or the sale or purchase of goods and chattels of any description whatsoever or who in like manner mortgages or transfers by way of mortgage such holding, or enters into any agreement connected with the occupation management or general purposes of such holding or who accepts a transfer of any holding under the Crown Lands Acts subject to an existing mortgage—not being in violation of the provisions of the Crown Lands Acts—shall be subject to the same liabilities and have the same rights in respect of such agreement mortgage or transfer as if he were of the full age of twenty-one years.

“Provided however that no mortgage or transfer by way of mortgage or acceptance of the transfer of a holding, subject to an existing mortgage, by any such person shall be valid unless the consent in writing of the Public Trustee thereto has been first obtained. Application for such consent shall be made as prescribed.

“Where a person between the ages of sixteen and twenty-one years is the owner of a holding under this Act and is also entitled absolutely to any other land which is held or used in conjunction with that holding, such person may make or give an agreement or mortgage under the authority of this section in relation to such other land together with the holding.

"For the purposes of this section a person between the ages of sixteen and twenty-one years who either personally or by an agent enters into any agreement or contract to purchase or acquire any holding under the Crown Lands Acts shall be deemed to have become the owner of such holding."

28. The history of this legislation goes back to the enactment of section 11 of the Lands Acts Amendment Act 1875. The legislation has given rise to only one reported decision (*Lakeman v. Edmundson* (1883) 4 L.R. (N.S.W.) 150) where it was held that the legislation as it then stood did not authorize a mortgage of land under conditional purchase. The legislation has been enlarged in its scope no less than 12 times since 1875: particulars are set out in Appendix E. The terms of section 240 are very wide and would, for example, as it seems to us, enable a 16-year-old, without any supervision, to take a tractor worth thousands of dollars on hire purchase or to borrow money to an unlimited extent, and without restriction as to interest, on any security except the land itself. The section applies not only to country lands, but also, for example, to a suburban holding purchase.

29. Under section 240 and similar legislation, the consent of the Public Trustee is required for a mortgage of a holding and for the acceptance of a transfer subject to an existing mortgage. A substantial number of applications for consent are made each year. Thus, in the year ended the 30th of June, 1968, 103 applications were dealt with and consent was given in 96 cases. Five of the remaining six cases were outside the ambit of the legislation because the land was under the Real Property Act. The aggregate amount of borrowings to which consents were given during the year was \$5,150,848.

30. Most of the applications to the Public Trustee are in connection with the purchase of land. In these cases he has regard to the reasonableness of the purchase price, the extent to which the payments of mortgage principal and interest are within the earning capacity of the land, and the extent of working capital available to the infant. He also has regard to the training and aptitude of the infant for the working of the holding, and to the question whether the infant will have full control of the land on reaching majority.

31. No cases have come to the notice of the Public Trustee where an exercise by an infant of his powers under the legislation has led to loss or other detriment to the infant. This applies as well to cases where the Public Trustee's consent is required as to cases where consent is not required. It must be recognized, however, that there is no reason why any such case of loss or detriment should come to his notice, at least in cases where his consent is not required.

32. It is, of course, impossible to know to what extent these powers are used in cases where the Public Trustee's consent is not required. The repeated enlargement of the ambit of the legislation is, however, evidence that Parliament and governments have found it to be a success. We have found nothing to suggest that it has led to improvident dealings by infants on a significant scale. The legislation and its history support the view that there is room for a general reduction of the age of majority, and that 18 years is not dangerously low.

33. Our recommendation on the age of majority extends to all matters of contract and property, including credit transactions such as borrowing of money at interest and taking goods on hire purchase. Loans to infants have long been a special concern of the law: see for example sections 35, 36 and 37 of the Money-lenders and Infants Loans Act, 1941. We have felt some anxiety that a reduction of the age of majority to 18 years would expose a significant number of young people to a temptation to borrow rashly. We have come to the view, however, that the general safeguards which Parliament has put on money-lending and hire-purchase transactions are adequate. We refer particularly to section 30 of the Money-lenders and Infants Loans Act and section 32 of the Hire-Purchase Act, 1960, which provide for the re-opening of transactions, and to the provisions for the licensing of money-lenders in Part II of the Money-lenders and Infants Loans Act. In the decision not to recommend any special provisions relating to borrowing money, or taking goods on hire purchase, by persons aged 18 to 20 years we are in agreement with the majority report of the Law Commission.

34. The law relating to the contracts and dispositions of property of infants is in a confused state. There are comparatively few reported decisions and many of the English authorities are affected by the Infants Relief Act, 1874, which has not been adopted here. Our proposal that the age of majority be reduced to 18 years would, of course, narrow the field in which these confused rules of law would operate. Our terms of reference, however, require us to consider the law which would apply to those who are below whatever age of majority may be adopted. We have come to the conclusion that this is a field in which the law ought to be codified. Part III of the proposed Bill contains provisions drawn for that purpose. The scheme of Part III is explained in paragraphs 10 to 42 of the notes in Appendix G to this report.

35. Our reference extends also to matters of the testamentary capacity of infants. Here we think that there is a stronger case for full capacity at 18 years than there is in relation to contracts and dispositions of property during life. The history of the testamentary capacity of infants, though not decisive on the question we must answer, is both curious and instructive. A summary will be useful.

36. The power of any person, even an adult, to dispose of freehold land by will is statutory. It depended at first on Imperial Acts of the reign of Henry the Eighth (32 Hen. 8, c. 1; 34 & 35 Hen. 8, c. 5), and infants (amongst others) were excepted from the persons who were empowered to make wills of land. These Imperial Acts were no doubt introduced into New South Wales either on settlement or by the Australian Courts Act, 1828 (9 Geo. 4 c. 83), s. 24, but were repealed in New South Wales in 1840 by the Act 3 Vic. No. 5. The latter Act adopted the Imperial Wills Act of 1837 which, by section 3, continued the power to dispose of freehold land by will but, by section 7, provided that no will made by an infant should be valid. These sections were repealed by the Wills, Probate and Administration Act, 1898, and replaced in similar terms by sections 5 and 6 of that Act.

37. As to personal property (including leasehold land), until 1840 a girl might have disposed of it by will at 12 years of age and a boy might have done so at 14 years. Since 1840 the minimum age has been 21 years (Wills Act, 1837, s. 7; Wills, Probate and Administration Act, 1898, s. 6). The change was made in England on a recommendation in 1833 by the Real Property Commissioners in their fourth report. The Commissioners dealt with the matter at pages 22 and 23 of the report. After referring to the various ages at which wills might be made under the common law and by custom, the Commissioners said that it appeared to them that all these distinctions should be abolished. They saw no reason for any exception to the rule of law which, for the protection of infants, rendered them incapable of making any disposition or contract. They therefore proposed that no person under the age of twenty-one years should be capable of making a will.

38. We do not see how a testamentary disability can be a protection to an infant who might otherwise make a will: we see such a disability rather as a protection to those entitled on his intestacy. We think that, in the case of a testator aged 18 years or upwards, the ordinary rules for the making of a valid will, including the doctrines of fraud and undue influence, and the provisions of the Testator's Family Maintenance and Guardianship of Infants Act, are sufficient safeguards for those interested in his estate. We accordingly recommend that the age of full testamentary capacity be reduced from 21 years to 18 years. We further recommend that a married person should have full testamentary capacity, even though under 18 years of age.

39. We have hitherto not spoken of the special position of soldiers in actual military service and persons in the other categories mentioned in section 10 of the Wills, Probate and Administration Act. They have privileges concerning the age at which a will may be made and concerning the form of wills. Our work under this reference has involved a critical examination of section 10 and other sections of the Wills, Probate and Administration Act and, as an incidental matter, we propose amendments of that Act in relation to privileged testators. There is a discussion of the proposals in paragraphs 51 to 64 of the notes in Appendix G to this report.

40. The provisions which we recommend concerning infants' contracts and property lead us to propose a series of incidental changes in the law concerning guardianship and custody. The first step is that if 18 years is to be the age of majority in matters of contract and property, it would be inconsistent to retain guardianship of the estate of an infant aged 18 years or upwards. If guardianship of the estate is to end at 18 years then it is appropriate that guardianship of the person should also end at the same age and that it should no longer be possible for a person aged 18 years or upwards to be a ward of court. Further, if guardianship of the person is to end at 18 years, so also provisions as to custody in infancy and as to access should cease to operate at that age.

41. The proposed Bill would therefore add a new section 20A to the Testator's Family Maintenance and Guardianship of Infants Act, 1916, which would bring about the result we have mentioned so far as concerns guardianship of the person and of the estate of an infant and so far as concerns wards of court. The proposed new section 4A of the Infants' Custody and Settlements Act of 1899 would confine to infants under the age of 18 years the law concerning custody and access, but contains a saving as to maintenance. The saving as to maintenance is introduced because Parliament has, in recent legislation, provided for maintenance in some cases of children up to 21 years of age: Maintenance Act, 1964, s. 27. We think that special matters of policy govern this question, and that those matters are outside our proper consideration.

42. The amendments which we propose include an amendment to section 9 of the Child Welfare Act, 1939, under which the Minister would not be guardian of an ex-ward aged 18 years or upwards. This amendment appears to us to be incidental to our other proposals, but we mention it here for the purpose of drawing the particular attention of the Government to it.

43. A number of other incidental matters have arisen. Examples are competency to act as executor and in other fiduciary offices, and competency as to matters of domicile. These are discussed in paragraphs 6 to 9 of the notes in Appendix G to this report.

44. We recommend the enactment of a Bill in the terms appearing in Appendix F to this report. The proposed Bill takes account of legislation passed before the 1st of January, 1969, and also takes account of the Imperial Acts Application Act, 1969, the Limitation Act, 1969 and the Interpretation (Amendment) Act, 1969. Notes on the proposed Bill appear in Appendix G to this report.

45. We are concerned about the position of persons recovering substantial judgments for damages for personal injuries. The proposed Bill would amend section 16 of the Infants' Custody and Settlements Act of 1899 and would amend the Damages (Infants and Persons of Unsound Mind) Act, 1929, so as to withdraw from the operation of those enactments cases of infancy where the person recovering damages is aged 18 years or upwards. There have recently been expressions of concern about the prospect of large verdicts for damages being dissipated in the hands of plaintiffs who, although adult and of sound mind, are without experience in investing or otherwise safeguarding large sums of money. See for example the words of McClemens J., in *Crouch v. Hudson* ((1968) 89 W.N. (Pt 1) 35, at pp. 39, 40). See also *Payne v. Egan* ((1967) 86 W.N. (Pt 1) 64, at p. 73) per Moffitt J.

46. The proposed Bill would aggravate the problems by allowing large verdicts to get into the hands of plaintiffs at earlier ages than 21 years. The problem, however, is not confined to those plaintiffs who are under 21 years of age: cases arise from time to time where plaintiffs of mature years and of sound mind appear to be quite unfitted for the management of a large amount of damages.

47. We refrain from recommending a solution to this problem, because to do so would, we think, be to go beyond our terms of reference. One possible solution, however, which the Government may see fit to consider, is an enactment, perhaps by amendment to the Damages (Infants and Persons of Unsound Mind) Act, whereby, if the trial Judge lacked confidence in the ability of a successful plaintiff to manage damages awarded to him, he could require that he be satisfied

of the ability of the plaintiff. In default of such satisfaction, provision might be made for payment of the damages to the Public Trustee to be administered for the benefit of the plaintiff. The difficulty, of course, is to devise something which will meet the need, without opening the way to what might be called an officious meddling in the affairs of a man of full age and understanding. There is some consideration of similar problems in the Report of the Committee on Funds in Court (1959; Cmnd. 818).

48. Finally, we draw attention to two matters which may follow from a reduction from 21 years to 18 years of the age of majority in respect of contracts and property. The first matter is that such a reduction may bring in its wake economic and financial problems. For example, it may be claimed that employees aged 18 years and upwards should be paid wages at adult rates. We regard these economic and financial problems as being outside our proper field of consideration, but we draw attention to them so that they may be considered by those responsible for the policy questions involved.

49. The second matter concerns the consequences of allowing a person aged 18 years or upwards to give a good discharge for money or other property to which he is entitled. This change may have serious results in the initial period of operation of an Act founded on the proposed Bill, particularly as regards the Public Trustee and the trustee companies. They may find it necessary to realize substantial investments as much as three years earlier than would otherwise be necessary. The Government may think that this problem would be sufficiently met by allowing a substantial time between the passing and the commencement of such an Act.

8th July, 1969.

J. K. MANNING,
Chairman.

R. D. CONACHER,
Member.

APPENDIX A

Infancy in Relation to Contracts and Dispositions of Property

NOTE ON THE LAW

1. *Introductory*

The purpose of this note is to review the law as it now stands in New South Wales and to refer to some legislative changes of the common law made in other countries.¹ The authorities on the law of infancy in relation to contracts and dispositions of property are in a disorderly condition and the law cannot be stated both coherently and accurately. The grapplings of the text-writers with the cases have led to accounts of the law unsatisfactory in themselves and irreconcilable one with another. For many, perhaps most, of the propositions in the following notes a contrary proposition may be found in the cases or in the textbooks or in both. Much of the trouble comes from two ill-conceived statutes and the attempts of lawyers to escape the injustices to which those statutes would, on their ordinary meanings, lead. The statutes are Lord Tenterden's Act (Statute of Frauds Amendment Act, 1828), s. 5, and the Infants Relief Act, 1874, and their Australian counterparts. New South Wales has an enactment in the terms of Lord Tenterden's Act (Usury, Bills of Lading, and Written Memoranda Act, 1902, s. 9) but none based on the Infants Relief Act, 1874.

2. *The period of infancy*

A person is in law an infant until he reaches the age of 21 years. He reaches that age at the beginning of the day before his 21st birthday.² The common law does not, in relation to contracts and dispositions of property, distinguish between infants of tender years and infants of mature years.³ A contract or disposition of property said to be made by an infant of tender years may fail, not only by reason of the law of infancy, which protects, on grounds of presumed immature discretion and want of experience, an infant who understands the nature of the transaction, but also by reason of the more general rule of law which requires, for the validity in law of an act, an intention to do the act (and this implies a knowledge of its nature and consequences) as well as the doing of the act in fact.⁴

3. *Age limits in other fields*

A boy is of marriageable age when he is 18 and a girl when she is 16,⁵ but these ages may, by order of a court, be reduced by not more than two years.⁶ In general, an infant may not marry without parental consent.⁷

¹ See generally the article by H. J. Hartwig: *Infants' Contracts in English Law: with Commonwealth and European Comparisons* (1966) 15 I.C.L.Q. 780.

² *Prowse v. McIntyre* ((1961) 111 C.L.R. 264).

³ *Simpson on Infants*, 4th edn. (1926), p. 1. Note the distinction in Scotland between pupillarity and minority: (1964) 114 L.J. 683, 689.

⁴ *Salmond & Williams on Contracts*, 2nd edn. (1945), p. 297; *Johnson v. Clark* (1908) 1 Ch. 303, at pp. 311, 312; *Edwards v. Carter* (1893) A.C. 360 at p. 367; 28 A.L.J. 407. See also *O'Shannassy v. Joachim* ((1876) 1 App. Cas. 82) and cases there cited.

⁵ Marriage Act 1961, s. 11.

⁶ Marriage Act 1961, s. 12.

⁷ Marriage Act 1961, ss. 13-21.

An infant under 8 years of age cannot be guilty of crime.⁸ There is a rebuttable presumption that an infant between the ages of eight and fourteen is *doli incapax*, that is, incapable of forming a criminal intent.⁹

An infant is not entitled to be enrolled as an elector for the Legislative Assembly,¹⁰ nor for the Senate or the House of Representatives,¹¹ nor for a local government election.¹²

A boy of 18 is, in time of war, liable to serve in the Citizen Forces¹³; a boy of 20 is, in general, liable to render national service.¹⁴

4. Contracts generally

The liability of an infant under a contract to which he is a party and the effect generally of such a contract depends on the character of the contract. The various kinds of contract are treated separately below. The effect of a contract and acts done under it in disposing of property is treated later in connection with dispositions of property.

5. General position

The contract of an infant, unless the contract falls within one of the classes mentioned in later paragraphs, cannot be enforced against him by action or suit on the contract save where he has, on reaching full age, ratified the contract.¹⁵ For the purpose of action against him on the contract, the ratification of any promise or simple contract must be in writing and signed by him¹⁶ and, in the case of a covenant by deed, the ratification must itself be by deed.¹⁷ An infant may, during infancy, enforce his contract by action or suit against an adult party,¹⁸ but not by way of specific performance.¹⁹ Prosecution by an infant of such an action or suit to judgment or decree would, it might be supposed, be such a ratification of the contract as to enable the other party to sue the infant on it, but the point does not appear to have been decided.

6. Trading contracts

A contract made by an infant in the course of a trade carried on by him is one of those contracts which are not binding on him unless ratified.²⁰

7. Loan to an infant

A contract by an infant to repay (with or without interest) money lent is one of those contracts which are not binding unless ratified. A new contract made after full age to pay money in respect of a loan during infancy is void,²¹ but there is nothing to invalidate a mere ratification, if in writing and signed.²² Where an infant borrows money for the purchase of necessities²³ and so applies the borrowed money, the lender is, in equity, subrogated to the position of the provider of the necessities and may recover accordingly from the infant.²⁴

⁸ Child Welfare Act, 1939–1964, s. 126.

⁹ *McDonald v. Lucas* ((1922) V.L.R. 47), Halsbury's Laws of England, 3rd edn. Vol. 10 (1955), p. 286.

¹⁰ Parliamentary Electorates and Elections Act, 1912–1961, s. 20 (1).

¹¹ Commonwealth Electoral Act 1918–1962, s. 39 (1).

¹² Local Government Act, 1919, s. 50.

¹³ Defence Act 1903–1965, s. 59.

¹⁴ National Service Act 1951–1965, s. 25 (1).

¹⁵ *Cowern v. Nield* ((1912) 2 K.B. 419), *Nash v. Inman* ((1908) 2 K.B.1, at pp. 11, 12).

¹⁶ Usury, Bills of Lading, and Written Memoranda Act, 1902, s. 9. For other purposes a ratification not by signed writing is sufficient: Pollock on Contracts, 13th edn (1950), p. 52.

¹⁷ *Baylis v. Dineley* ((1815) 3 M. & S. 477; 105 E.R. 689); *Salmond & Williams on Contracts*, 2nd edn (1945), p. 299.

¹⁸ *Holt v. Ward Clarencieux* ((1732) 2 Stra. 937; 93 E.R. 954); *Pearce v. Kelly* ((1919) 20 S.R. 88).

¹⁹ *Boyd v. Ryan* ((1947) 48 S.R. 163).

²⁰ *Cowern v. Nield* ((1912) 2 K.B. 419); *Whundo Copper Syndicate v. Ferrari* ((1962) W.A.R. 24).

²¹ Money-lenders and Infants Loans Act, 1941–1961, s. 37.

²² Usury, Bills of Lading, and Written Memoranda Act, 1902, s. 9. Such a ratification would, in England, be avoided by the Infants Relief Act, 1874, s. 2.

²³ See paragraph 11 post.

²⁴ *Yorkshire Rly. Wagon Co. v. Maclure* ((1881) 19 Ch. D. 478, at p. 487).

8. Long term contracts

Some contracts under which an infant acquires enduring property or under which there are continuous or recurrent obligations are binding on the infant if for his benefit when made, but are liable to termination on the infant repudiating the contract before the lapse of a reasonable time after reaching full age.²⁵ Since ratification is unnecessary for this class of contract the statutes concerning ratification²⁶ do not apply: this class of contract tends to grow at the expense of those contracts requiring ratification. Contracts in this class include an infant shareholder's contract with a company,²⁷ a contract by an infant to purchase land²⁸ or a business,²⁹ a lease to an infant,³⁰ a partnership agreement,³¹ a marriage settlement,³² a service agreement,³³ and other contracts incidental to the carrying on of an occupation.³⁴ Apart from the feature that these contracts are binding unless repudiated, the law relating to these contracts is generally similar to that relating to contracts not binding unless ratified.

9. Marriage settlement

By statute, a boy of 20 years or a girl of 17 years or upwards may, with the approval of the Supreme Court in Equity, make a binding marriage settlement.³⁵

10. Beneficial contracts of service

A contract of continuing or recurrent obligation, being a service agreement or a contract incidental to the carrying on by an infant of an occupation, is, if beneficial to the infant, binding on him during infancy, notwithstanding that, on the rules discussed above,³⁶ it is open to him on reaching full age to repudiate the contract.³⁷ The contract is, however, enforceable by action against the infant only to a limited extent.³⁸

11. Contracts for necessities

"Necessaries" are goods or services which, having regard to the condition in life of the infant and his actual requirements, it is reasonable that he should be able to obtain on credit.³⁹ A contract for the provision of necessities to an infant is, if for his benefit⁴⁰ fully binding on him.⁴¹ If such a contract is not for his benefit then it is not binding on him unless he ratifies it on reaching full age, but he is during infancy and afterwards liable to pay a reasonable sum for necessities received by him under the contract.⁴¹

²⁵ *Hamilton v. Lethbridge* ((1912) 14 C.L.R. 236); cf. *Chaplin v. Leslie Frewin (Publishers) Ltd* ((1966) Ch. 71).

²⁶ Usury, Bills of Lading, and Written Memoranda Act, 1902, s. 9; and, in England, the Infants Relief Act, 1874, s. 2.

²⁷ *North Western Ry Co. v. McMichael* ((1850) 5 Exch. 114; 155 E.R. 49).

²⁸ *Thurstan v. Nottingham Permanent Benefit Building Society* ((1902) 1 Ch. 1); *Pearce v. Kelly* ((1919) 20 S.R. 88) *Voumard on the Sale of Land*, 2nd edn. (1965), p. 166; *Emmett on Title*, 14th edn. Vol. 1 (1955), p. 316.

²⁹ *Aroney v. Christianus* ((1915) 15 S.R. 118).

³⁰ *Davies v. Beynon-Harris* ((1931) 47 T.L.R. 424); cf. *Kell v. Harris* ((1915) 15 S.R. 473).

³¹ *Lovell & Christmas v. Beauchamp* ((1894) A.C. 607).

³² *Edwards v. Carter* ((1893) A.C. 360); *Royal Exchange Assurance v. Hall* ((1952) 69 W.N. 338). See paragraph 9 below.

³³ *Hamilton v. Lethbridge* (above).

³⁴ *Doyle v. White City Stadium Ltd* ((1935) 1 K.B. 110); *Sellin v. Scott* ((1901) 1 S.R. Eq. 64).

³⁵ Infants' Custody and Settlements Act, 1899-1934, ss. 12-15.

³⁶ See paragraph 8.

³⁷ *Hamilton v. Lethbridge* ((1912) 14 C.L.R. 236); *Doyle v. White City Stadium Ltd* ((1935) 1 K.B. 110). cf. *Sellin v. Scott* ((1901) 1 S.R. Eq. 64); *Chaplin v. Leslie Frewin (Publishers) Ltd* ((1966) Ch. 71); *Minister for Education v. Oxwell* ((1966) W.A.R. 39).

³⁸ *De Francisco v. Barnum* ((1889) 43 Ch. D.165).

³⁹ *Salmond & Williams on Contracts*, 2nd edn. (1945), pp. 302-305; *Sale of Goods Act*, 1923-1953, s. 7; *McLaughlin v. Darcy* ((1918) 18 S.R. 585).

⁴⁰ *Blennerhasset's Institute of Accountancy Pty. Ltd. v. Gairns* ((1938) 55 W.N. 89).

⁴¹ This is taken in a shortened form from *Salmond & Williams*, p. 301. There are many reported cases on the subject, and there are difficulties which are not explicit in the above statement. The extent to which the infant's liability is contractual or quasi-contractual is a matter of controversy: *Cheshire and Fifoot's Law of Contract* (Australian edition) (1966), p. 499.

12. *Crown land holders*

An infant of 16 years or upwards may, in relation to a holding under the Crown Lands Consolidation Act, 1913, and other Acts, owned by him or other land owned by him and held or used in conjunction with that holding, make any of a wide range of contracts including contracts of loan and may, with the consent of the Public Trustee, mortgage his holding or other land as mentioned above and the contract or mortgage is as good as if he were of full age.⁴²

13. *Principal and agent—infant principal*

"It is perfectly familiar law that no infant of any age (though twenty years) can appoint any agent whatever."⁴³ "It has been the law of this country for many centuries that an infant cannot appoint an agent to act for him, neither by means of a power of attorney, nor by any other means."⁴⁴ But on the other hand it is said that "an infant . . . is bound by a contract made by his agent with his authority, where the circumstances are such that he would have been bound if he had himself made the contract".⁴⁵ A girl, if married, may by deed appoint an attorney as fully and as effectively as if she were of full age.⁴⁶

14. *Principal and agent—infant agent*

"An infant may be appointed by name to be the agent of any other person."⁴⁷

15. *Payments to and discharges by infants*

In general, an infant cannot give a good discharge for a payment in the nature of property, for example a legacy, but he can give a good discharge for payment under some contracts, for example, wages and rent⁴⁸ and, if married, generally for payments of income.⁴⁹ It has been suggested that the infant's discharge or acknowledgment of receipt is only one form of evidence of payment and, if payment is otherwise proved, the infant cannot recover again on the same account.⁵⁰

16. *Disposition of property to an infant*

An infant may take a freehold or leasehold estate in land, but may on reaching full age repudiate the grant, whereupon the estate re-vests in the grantor.⁵¹ The position is similar in regard to personality.⁵² Money paid to an infant under a contract for the sale of property by the infant is not recoverable even on a total failure of consideration.⁵³ Where, by a lie that he is of full age, an infant induces another person to contract with him and the other party disposes of property to the infant under the contract, the infant is under an equitable obligation to restore the property.⁵⁴

17. *Disposition of property by an infant*

An infant may dispose of property, including land, chattels, and money, for or without consideration. He may, however, until the lapse of a reasonable time after he reaches full age, repudiate the disposi-

⁴² Crown Lands Consolidation Act, 1913, s. 240. See also Closer Settlement (Amendment) Act, 1914, s. 9; Western Lands Act of 1901, s. 18k; Prickly-pear Act, 1924, s. 20 (5); Returned Soldiers Settlement Regulations, reg. 11.

⁴³ *Drinkwater v. Arthur* ((1871) 10 S.C.R. 193, at p. 219, Hargrave J.).

⁴⁴ *Shephard v. Cartwright* ((1953) Ch. 728, at p. 755, Denning L.J.).

⁴⁵ Bowstead on Agency, 12th edn. (1959), p. 14; 18 M.L.R. 461.

⁴⁶ Married Women's Property Act, 1901, s. 25.

⁴⁷ *Drinkwater v. Arthur* ((1871) 10 S.C.R. 193, at p. 219, Hargrave J.). And see Bowstead on Agency 12th edn. (1959), p. 15.

⁴⁸ *Farmer & Co. Ltd v. Griffiths* ((1940) 63 C.L.R. 603 at p. 608, Dixon J.).

⁴⁹ Conveyancing Act, 1919-1964, s. 151b; Halsbury 3rd edn. Vol. 21, p. 139.

⁵⁰ Paget's Law of Banking, 6th edn. (1961), pp. 22-25.

⁵¹ Williams on Vendor and Purchaser, 2nd edn. (1911), Vol. 2, p. 870; 4th edn (1936), Vol. 2, p. 847.

⁵² Halsbury's Laws of England, 3rd edn. Vol. 21 (1957), pp. 157, 158.

⁵³ *Cowern v. Nield* ((1912) 2 K.B. 419).

⁵⁴ *R. Leslie Ltd v. Sheill* (1914) 3 K.B. 607; see article by D. C. Pearce: "Fraudulent Infant Contractors" (1968) 42 A.L.J. 294.

tion.⁵⁵ Apart from statutory protection⁵⁶ he may on repudiation recover land conveyed by him⁵⁷ but must, if he seeks equitable relief, submit to equitable terms, which may include reimbursement of the grantee for improvements and outgoings, but not return of purchase money.⁵⁸ As to chattels and money, he may, on repudiation, recover them if the disposition was a gift or, there being a contract, there is a total failure of consideration.⁵⁹ Where an infant is beneficially entitled to property (including the case where he is owner at law) the Supreme Court in Equity may make orders with a view to the sale of the property and applying the proceeds for the benefit of the infant.⁶⁰ An infant under covenant or agreement to renew a lease may, by direction of the Supreme Court in Equity, take a surrender of the lease and grant a renewal.⁶¹

18. Wards of Court

The Supreme Court in Equity may approve, on behalf of a ward of Court, some contracts⁶² and dispositions of property.⁶³ The jurisdiction has, however, little current use and is affected, in matters both of procedure and of substance, by archaic, complex and inaccessible rules.⁶⁴

19. Torts connected with contracts

An infant is, in general, as fully liable as if he were of full age for torts committed by him. He is not, however, liable for a tort directly connected with a contract which is not binding on him.⁶⁵

LAW OF OTHER COMMON LAW COUNTRIES

20. New Zealand

A noteworthy innovation was made in New Zealand in 1951 by the insertion of a new section 12A in the Infants Act 1908.⁶⁶ The section is as follows:—

12A. (1) Notwithstanding anything in this Act or in any other Act or any rule of law, no contract shall be void or voidable by reason of any party thereto being an infant if, before the contract is entered into by the infant, it has been approved under this section on behalf of the infant by a Magistrate's Court.

(2) Any application to a Magistrate's Court under this section may be made by the infant on whose behalf the contract is to be approved or by the parent or guardian of the infant.

(3) The Court may, in its discretion, refer any such application to a parent or guardian of the infant, or, where the Court deems it necessary for the purposes of the application, to a solicitor nominated by the Court, or to the Public Trustee or the Maori Trustee, or to any other person, and may order the applicant to pay the reasonable costs and expenses of any person to whom the application is so referred. Any

⁵⁵ *Chaplin v. Leslie Frewin (Publishers) Ltd.* (1966) Ch. 71).

⁵⁶ E.g., Real Property Act, 1900–1956, s. 42; *Percy v. Youngman* ((1941) V.L.R. 275). See article by F. D. Hennessy: "Mortgages of Land by Infants" (1950) 24 A.L.J. 278.

⁵⁷ *Rein v. Fullarton* ((1900) 21 N.S.W.L.R. (Eq.) 311).

⁵⁸ *Hall v. Loder* ((1885) 7 N.S.W.L.R. (Eq.) 44); *Coras v. Webb* ((1942) Q.S.R. 66).

⁵⁹ *English v. Gibbs* ((1888) 9 N.S.W.L.R. 455); *Steinberg v. Scala (Leeds) Ltd.* ((1923) 2 Ch. 452); *Pearce v. Brain* ((1929) 2 K.B. 310), cf. *Chaplin v. Leslie Frewin (Publishers) Ltd.* ((1966) Ch. 71).

⁶⁰ Trustee Act, 1925–1942, s. 73; *Re White* ((1959) V.R. 661).

⁶¹ Conveyancing and Law of Property Act, 1898, s. 85.

⁶² *De Francisco v. Barnum* ((1890) 45 Ch. D. 430, at pp. 442, 443); *Craven v. Stubbins* ((1864) 34 L.J., Ch. 126; 13 W.R. 68, 208); *Seton's Judgments and Orders*, 7th edn. Vol. 2 (1912), pp. 962, 963, 969.

⁶³ *Martin v. Gale* ((1876) 4 Ch.D. 428).

⁶⁴ See *Re White* ((1959) V.R. 661).

⁶⁵ *Cheshire & Fifoot on Contracts*, Australian edn (1966), pp. 511, 512; see also article by D. C. Pearce: "Fraudulent Infant Contractors" (1968) 42 A.L.J. 294.

⁶⁶ Statutes Amendment Act 1951, s. 14.

person to whom the application is so referred may file a report in the Magistrate's Court setting out the results of his consideration and examination of the application and making in respect thereof such recommendations as he thinks proper, and may appear and be heard at the hearing of the application; but no such person shall be under any obligation to consider or examine any such application until his reasonable costs and expenses have been paid or secured to his satisfaction.

21. *United States of America*

Accounts of the law of infancy in relation to contracts and dispositions of property may be found in Williston on Contracts⁶⁷ and in American Jurisprudence.⁶⁸ A review of the law of the State of New York and of the statutory changes made in that State and others of the United States has been made by the New York Law Revision Commission.⁶⁹ Amongst the noteworthy features of the laws of some of the American States are—

- (1) Full age is reached on the 21st birthday and not at the beginning of the day before.⁷⁰
- (2) Full contractual capacity may be given to an infant by court order.⁷¹
- (3) Contracts not fully binding are binding unless repudiated: there is no class of contracts not binding unless ratified.⁷²
- (4) Trading contracts binding where there is a representation of full age⁷³ or where the infant is over 18 years.⁷⁴
- (5) Restitution of property on repudiation.⁷⁵
- (6) Full contractual capacity on marriage.⁷⁶

22. *Other Australian States*

Grants of capacity to persons under the age of 21 years have been made in Victoria and in Queensland. Statutory provisions in Victoria validate certain housing loan transactions or mortgages made with specified financial institutions by infants over the age of 18 years.⁷⁷ More extensive statutory provision has been made in Queensland, whereby any person of the age of 18 years but under the age of 21 years may acquire, transfer, mortgage or otherwise deal with any estate or interest in land under the Real Property Acts as if he were 21 years of age.⁷⁸

⁶⁷ 3rd edn. Vol 2 (1959), ss. 222-248.

⁶⁸ 27 Am. Jur. (1940) Infants, ss. 10-89.

⁶⁹ Act. Recommendation and Study relating to Infancy as a Defense to a Contract, Legislative Document (1938) No. 65 (1), New York Legislative Documents (1938) Vol. 19. This Study is hereunder referred to as the "1938 Study".

⁷⁰ Williston s. 224.

⁷¹ 1938 Study, p. 45 and statutes in Appendix.

⁷² 1938 Study, pp. 20, 21, 28, 42, 43 and statutes in Appendix; Williston, ss. 226, 231.

⁷³ 1938 Study, p. 38.

⁷⁴ Act. Recommendation and Study relating to Payments and Distributions by Corporations to Infant Stockholders, etc., State of New York Law Revision Commission Report, etc. 1952, p. 279.

⁷⁵ 1938 Study, pp. 26, 27, 38, 42, 43, 44 and statutes in Appendix. Williston, s. 238.

⁷⁶ Williston, s. 224.

⁷⁷ Property Law Act 1958, ss. 28A, 28B.

⁷⁸ Real Property Acts, 1861 to 1963, s. 111A.

APPENDIX B

Occupational Status of the Population, N.S.W., Census 30th June, 1966

Age (years)	Sex	Total population	In work force							% in W.F.	Not in work force		% Stu- dents
			Em- ployer	Self- em- ployed	Employee	Helper	Total at work	Unem- ployed	Total in work force		Total	Stu- dents	
0-14	M	612,004	..	..	..	..	..	..	..	..	612,004	400,413	65.43
	F	583,801	..	..	..	..	..	..	..	..	583,801	382,651	65.54
	P	1,195,805	..	..	..	..	..	..	..	..	1,195,805	783,064	65.48
15	M	38,156	9	71	9,176	312	9,568	841	10,409	27.28	27,747	27,234	71.38
	F	36,392	3	17	8,280	127	8,427	1,156	9,583	26.33	26,809	25,728	70.70
	P	74,548	12	88	17,456	439	17,995	1,997	19,992	26.82	54,556	52,962	71.04
16	M	38,017	34	185	20,207	366	20,792	873	21,665	56.99	16,352	15,245	40.10
	F	36,328	11	26	18,503	157	18,697	1,430	20,127	55.40	16,201	13,917	38.31
	P	74,345	45	211	38,710	523	39,489	2,303	41,792	56.21	32,553	29,162	39.23
17	M	37,333	80	319	27,882	315	28,596	856	29,452	78.89	7,881	6,916	18.53
	F	35,120	14	46	24,563	197	24,820	1,133	25,953	73.90	9,167	5,924	16.87
	P	72,453	94	365	52,445	512	53,416	1,989	55,405	76.47	17,048	12,840	17.72
18	M	38,384	95	512	31,925	243	32,775	785	33,560	87.43	4,824	3,878	10.10
	F	35,877	23	60	26,559	241	26,883	869	27,752	77.35	8,125	3,278	9.14
	P	74,261	118	572	58,484	484	59,658	1,654	61,312	82.56	12,949	7,156	9.64
19	M	41,521	167	672	35,336	206	36,381	815	37,196	89.58	4,325	3,240	7.80
	F	39,187	42	92	28,403	262	28,799	818	29,617	75.58	9,570	2,253	5.75
	P	80,708	209	764	63,739	468	65,180	1,633	66,813	82.78	13,895	5,493	6.81
20	M	34,516	233	751	29,712	174	30,870	605	31,475	91.19	3,041	2,072	6.00
	F	32,690	73	111	22,361	217	22,762	594	23,356	71.45	9,334	1,130	3.46
	P	67,206	306	862	52,073	391	53,632	1,199	54,831	81.59	12,375	3,202	4.76

Age (years)	Sex	Total population	In work force							% in W.F.	Not in work force		% Stu- dents
			Em- ployer	Self- em- ployed	Employee	Helper	Total at work	Unem- ployed	Total in work force		Total	Stu- dents	
21	M	34,032	347	1,001	29,694	146	31,188	567	31,755	93·31	2,277	1,353	3·98
	F	33,124	96	191	21,163	207	21,657	546	22,203	67·03	10,921	554	1·67
	P	67,156	443	1,192	50,857	353	52,845	1,113	53,958	80·35	13,198	1,907	2·84
22	M	33,451	440	1,232	29,270	144	31,086	594	31,680	94·71	1,771	911	2·72
	F	31,802	112	253	18,423	192	18,980	440	19,420	61·07	12,382	282	0·89
	P	65,253	552	1,485	47,693	336	50,066	1,034	51,100	78·31	14,153	1,193	1·83
23	M	30,256	523	1,300	26,480	82	28,385	456	28,841	95·32	1,415	623	2·06
	F	28,546	142	223	14,304	184	14,853	318	15,171	53·15	13,375	151	0·53
	P	58,802	665	1,523	40,784	266	43,238	774	44,012	74·85	14,790	774	1·32
24	M	30,479	771	1,459	26,579	88	28,897	456	29,353	96·31	1,126	380	1·25
	F	29,034	172	291	12,859	216	13,538	342	13,880	47·81	15,154	119	0·41
	P	59,513	943	1,750	39,438	304	42,435	798	43,233	72·64	16,280	499	0·84
Over 24	M	1,156,313	80,767	99,221	791,952	2,488	974,428	11,573	986,001	85·27	170,312	1,088	0·09
	F	1,187,459	19,086	21,860	278,767	10,566	330,279	5,424	335,703	28·27	851,756	439	0·04
	P	2,343,772	99,853	121,081	1,070,719	13,054	1,304,707	16,997	1,321,704	56·39	1,022,068	1,527	0·07
N.S.W.	M	2,124,462	83,466	106,723	1,058,213	4,564	1,252,966	18,421	1,271,387	59·85	853,075	463,353	21·81
	F	2,109,360	19,774	23,170	474,185	12,566	529,695	13,070	542,765	25·73	1,566,595	436,426	20·69
	P	4,233,822	103,240	129,893	1,532,398	17,130	1,782,661	31,491	1,814,152	42·85	2,419,670	899,779	21·25

APPENDIX C

Marital Status of the Population, N.S.W., Census 30th June, 1966

Age	Sex	Total population	Never married	Married		1911 married per cent
				Number	Per cent	
0-14	M	612,004	612,004	..	..	..
	F	583,801	583,801	..	..	..
	P	1,195,805	1,195,805	..	..	..
15	M	38,156	38,150	6	0.02	0.01
	F	36,392	36,377	15	0.04	0.32
	P	74,548	74,527	21	0.03	0.16
16	M	38,017	38,009	8	0.02	0.06
	F	36,328	35,906	422	1.16	1.13
	P	74,345	73,915	430	0.58	0.59
17	M	37,333	37,263	70	0.19	0.18
	F	35,120	33,266	1,854	5.28	2.96
	P	72,453	70,529	1,924	2.66	1.55
18	M	38,384	37,722	662	1.72	0.59
	F	35,877	31,337	4,540	12.65	7.33
	P	74,261	69,059	5,202	7.01	3.91
19	M	41,521	39,398	2,123	5.11	1.53
	F	39,187	30,272	8,915	22.75	11.86
	P	80,708	69,670	11,038	13.68	6.59
20	M	34,516	30,648	3,868	11.21	4.01
	F	32,690	20,606	12,084	36.97	18.70
	P	67,206	51,254	15,952	23.74	11.20
21	M	34,032	27,270	6,762	19.87	..
	F	33,124	16,215	16,909	51.05	..
	P	67,156	43,485	23,671	35.25	..
22	M	33,451	23,162	10,289	30.76	..
	F	31,802	11,798	20,004	62.90	..
	P	65,253	34,960	30,293	46.42	..
23	M	30,256	17,478	12,778	42.23	..
	F	28,546	7,985	20,561	72.03	..
	P	58,802	25,463	33,339	56.70	..
24	M	30,479	14,638	15,841	51.97	..
	F	29,034	6,554	22,480	77.43	..
	P	59,513	21,192	38,321	64.39	..
20-24	M	162,734	113,196	49,538	30.44	14.14
	F	155,196	63,158	92,038	59.30	32.95
	P	317,930	176,354	141,576	44.53	23.31
Over 24	M	1,156,313	153,962	1,002,351	86.69	68.57
	F	1,187,459	100,305	1,087,154	91.55	79.55
	P	2,343,772	254,267	2,089,505	89.15	73.68
N.S.W.	M	2,124,462	1,069,704	1,054,758	49.65	34.95
	F	2,109,360	914,422	1,194,938	56.65	40.57
	P	4,233,822	1,984,126	2,249,696	53.14	37.65

1. "Married" includes "Married but permanently separated", "widowed", and "divorced".

2. The figures in the right-hand column are based on the results of the census of 2nd-3rd April, 1911.

3. In calculating the figures in the right-hand column, cases of age "not stated" or conjugal condition "unspecified" have been excluded.

APPENDIX D

Householders of Occupied Private Dwellings, N.S.W., Census
30th June, 1966

Age (years)	Sex	Total population	Householders		
			Owner	Other occupancy	Total
Under 16	M	650,160	20	19	39
	F	620,193	27	19	46
	P	1,270,353	47	38	85
16	M	38,017	32	46	78
	F	36,328	25	41	66
	P	74,345	57	87	144
17	M	37,333	60	152	212
	F	35,120	25	147	172
	P	72,453	85	299	384
18	M	38,384	152	519	671
	F	35,877	47	339	386
	P	74,261	199	858	1,057
19	M	41,521	312	1,535	1,847
	F	39,187	98	703	801
	P	80,708	410	2,238	2,648
20	M	34,516	501	2,513	3,014
	F	32,690	126	796	922
	P	67,206	627	3,309	3,936
21	M	34,032	1,129	4,459	5,588
	F	33,124	133	1,071	1,204
	P	67,156	1,262	5,530	6,792
22	M	33,451	2,207	6,637	8,844
	F	31,802	147	1,189	1,336
	P	65,253	2,354	7,826	10,180
23	M	30,256	3,291	7,614	10,905
	F	28,546	166	1,091	1,257
	P	58,802	3,457	8,705	12,162
24	M	30,479	4,950	8,697	13,647
	F	29,034	203	1,103	1,306
	P	59,513	5,153	9,800	14,953
Over 24	M	1,156,313	677,427	248,066	925,493
	F	1,187,459	131,167	69,121	200,288
	P	2,343,772	808,594	317,187	1,125,781
N.S.W.	M	2,124,462	690,081	280,257	970,338
	F	2,109,360	132,164	75,620	207,784
	P	4,233,822	822,245	355,877	1,178,122

APPENDIX E

Legislation concerning Infant Landholders

- Crown Lands Act of 1884, s. 123.
- Crown Lands Act of 1895, s. 22.
- Crown Lands Amendment Act, 1912, s. 36.
- Crown Lands (Amending and Declaratory) Act, 1912, s. 24.
- Crown Lands Consolidation Act, 1913, s. 240.
- Closer Settlement (Amendment) Act, 1914, s. 9.
- Regulation 11 under the Returned Soldiers Settlement Act, 1916.
- Crown Lands and Closer Settlement (Amendment) Act, 1924,
ss. 7 (f) 8.
- Western Lands (Amendment) Act, 1934, s. 11.
- Prickly-pear (Amendment) Act, 1934, s. 4 (b) (viii).
- Crown Lands and Closer Settlement (Amendment) Act, 1938, s. 8 (n).
- Crown Lands (Amendment) Act, 1964, s. 5.

APPENDIX F

MINORITY BILL, 1969

Arrangement

PART I.—PRELIMINARY.

- Section 1—Short title and commencement.
 2—Division into Parts.
 3—Amendments and saving.
 4—Citation.
 5—Saving of specific enactments.
 6—The Crown.
 7—Interpretation.
 8—This and other Acts cumulative.

PART II.—CAPACITY AT EIGHTEEN YEARS.

- Section 9—Civil acts generally.
 10—Full age for purposes of Acts.
 11—Fiduciary office.
 12—Legal proceedings.
 13—Estoppel.
 14—Laches and acquiescence.
 15—Tort: consent, etc.
 16—Domicile.

PART III.—CAPACITY OF MINORS.

- Section 17—Application.
 18—Preliminary.
 19—Age of understanding.
 20—Beneficial civil act.
 21—Disposition for consideration.
 22—Gift.
 23—Act pursuant to duty.
 24—Investment in government securities.
 25—Protection of strangers.
 26—Receipt by married minor.
 27—Capacity by order of Supreme Court.
 28—Approval of contract or disposition.
 29—Affirmation.
 30—Repudiation by minor.
 31—Repudiation by representative of deceased minor.
 32—Notice of repudiation.
 33—Repudiation by court for minor.
 34—Restriction on effect of repudiation.
 35—Election by court.
 36—Adjustment on repudiation.
 37—Civil act not repudiated.
 38—Enforceability by minor participant.

PART IV.—COURTS.

Section 39—Jurisdiction.

40—Removal into Supreme Court.

41—Transfer.

42—Reference of questions of benefit, etc.

43—Costs.

44—Allowance of time.

PART V.—GENERAL.

Section 45—Agency.

46—Guarantee.

47—Liability for tort.

48—Medical and dental treatment.

49—Property of minor.

50—Rules of Court.

SCHEDULES.

FIRST SCHEDULE—Amendment of Acts.

SECOND SCHEDULE—Citation.

THIRD SCHEDULE—Saving of enactments.

No. , 1969.

A BILL

Relating to the capacity and disability of persons under the age of twenty-one years; to amend the Trade Union Act 1881, and other Acts, and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Minority Act, 1969".
- (2) Short title and commencement.

Minority.

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows:—
- 5 **PART I.—PRELIMINARY—ss. 1–8.** Division
into
Parts.
- PART II.—CAPACITY AT EIGHTEEN YEARS—ss. 9–16.**
- PART III.—CAPACITY OF MINORS—ss. 17–38.**
- PART IV.—COURTS—ss. 39–44.**
- PART V.—GENERAL—ss. 45–50.**
- 10 **3. (1) Each Act specified in the first column of the First Amendments**
 Schedule to this Act is amended as specified opposite that and saving.
First
Schedule.
 Act in the second column of that Schedule.
- (2) An amendment made by subsection (1) of this Act No. 4,
1897, s. 8.
 section does not—
- 15 (a) affect the previous operation of the Act amended,
 or anything duly suffered, done, or commenced to
 be done under the Act amended;
- 20 (b) affect any right, privilege, obligation, or liability
 acquired, accrued, or incurred under the Act
 amended; or
- (c) affect any investigation, legal proceeding, or
 remedy in respect of any such right, privilege,
 obligation, or liability as aforesaid.
- 25 (3) Any investigation, legal proceeding, or remedy Act No. 4,
1897, s. 8.
 mentioned in paragraph (c) of subsection (2) of this section
 may be instituted, continued or enforced as if this Act had
 not been passed.

(4)

Minority.

(4) Notwithstanding the amendments made by subsection (1) of this section—

- 5 (a) the law in force immediately before the commencement of this Act and relating to testamentary capacity and to the form of wills continues to apply to a will made before the commencement of this Act;
- 10 (b) the law in force immediately before the commencement of this Act and relating to the revocation of wills continues to apply to a revocation before the commencement of this Act.

(5) The amendments made by subsection (1) of this section to Part IV of the Conveyancing and Law of Property Act, 1898, apply to and in respect of proceedings in the
15 Supreme Court under that Part commenced after the commencement of this Act and to and in respect of a lease made under section 68 of that Act after the commencement of this Act.

20 (6) The amendments made by subsection (1) of this section to Part V of the Conveyancing and Law of Property Act, 1898, apply to and in respect of a surrender or renewal made after the commencement of this Act.

25 (7) The amendments made by subsection (1) of this section to the Usury, Bills of Lading, and Written Memoranda Act, 1902, do not apply to a promise or ratification made before the commencement of this Act.

4. Each Act specified in the first column of the Second Citation. Schedule to this Act, as amended by subsequent Acts and by
this Act, may be cited in the manner specified opposite that
30 Act in the second column of that Schedule.

5. This Act (except subsection (1) of section 3) does not affect the operation of the provisions relating to age in the enactments specified in the Third Schedule to this Act.

Saving of
specific
enactments
Third
Schedule.
6.

Minority.

6. This Act binds the Crown not only in right of New The Crown.
South Wales but also, so far as the legislative power of
Parliament permits, the Crown in all its other capacities.

7. (1) In this Act, unless the context or subject matter Interpretation.
5 otherwise indicates or requires—

“Civil act” means—

- (a) a contract;
- (b) an election to rescind or determine a
contract for fraud, mistake, breach or
10 otherwise;
- (c) a disposition of property;
- (d) a disclaimer;
- (e) an acknowledgment of receipt of property;
- (f) a discharge or acquittance;
- 15 (g) an exercise of a power under a contract or
under a settlement, will or other instrument;
- (h) an assent or consent to, acquiescence in, or
acknowledgment or waiver of, any matter
by a person affecting his rights or obliga-
20 tions under a contract or relating to
property;
- (i) a release of any cause of action;
- (j) a grant of any leave or licence;
- 25 (k) an election in relation to rights under a will
or other instrument, or in relation to
conversion as between realty and
personality; or
- (l) an act done—
 - (i) in relation to the formation;
 - 30 (ii) in relation to becoming or ceasing to
be a member or officer; or
 - (iii)

Minority.

(iii) as a member or officer—

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

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

whether having effect at law or in equity.

- 10 “Disposition of property” includes—

(a) a conveyance, transfer, assignment, appointment, settlement, mortgage, delivery, payment, lease, bailment, reconveyance or discharge of mortgage;

- 15 (b) the creation of a trust;

(c) the release or surrender of any property; and

(d) the grant of a power in respect of property—
whether having effect at law or in equity.

- 20 “Minor” means a person under the age of eighteen years; and “minority” has a corresponding meaning.

“Minor participant”, in relation to a civil act, means a person who, while he is a minor, participates in the civil act.

- 25 “Party”, in relation to a civil act, includes a person who does, makes, accepts, suffers or joins in the civil act; and “participate” and “participant” have corresponding meanings.

- 30 “Property” includes real and personal property and any estate or interest in property real or personal, and money, and any debt, and any cause of action for damages (including damages for personal injury), and any other chose in action, and any other right or interest.

cf. Act No. 6, 1919, s. 7 (1); Act No. 47, 1920, s. 3 (1).

(2)

Minority.

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

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

10 (a) the civil act is, at and after the time of his participation, as binding on him and on his personal representative and has effect as if he were not under the disability of infancy at the time of his participation; and

15 (b) except where other provision is made by this Act, the civil act is binding and has effect as mentioned in paragraph (a) of this subsection in favour of all persons.

8. (1) Where, under any Act, a civil act in which a person participates while under the age of twenty-one years is given any force or effect, that force or effect is not vitiated
20 or diminished by anything in Part II or Part III of this Act. This and other Acts cumulative.

(2) Where, under any provision in Part II or Part III of this Act, a civil act in which a person participates while under the age of twenty-one years is given any force or effect, that force or effect is not vitiated or diminished by anything in
25 any other Act.

PART II.

CAPACITY AT EIGHTEEN YEARS.

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

10.

Minority.

10. (1) After the commencement of this Act, for the purposes of any Act (whether passed before or after the commencement of this Act), except so far as the context otherwise requires, a person aged eighteen years or upwards—

Full age
for purposes
of Acts.

- 5 (a) is of full age, adult and sui juris; and
 (b) is not under any disability or incapacity of infancy.

(2) Subsection (1) of this section—

- 10 (a) does not affect the construction of any reference to the “adult male basic wage”, the “adult female basic wage” or any similar expression in any Act; and
 (b) does not affect the construction of any enactment so far as that enactment gives rise to any liability for fine or imprisonment or other punishment for an offence.
- 15

11. (1) A person aged eighteen years or upwards may, after the commencement of this Act—

Fiduciary
office.

- 20 (a) be granted probate of a will as executor or letters of administration as administrator of the estate of a deceased person;
 (b) become a trustee upon a constructive or other trust by declaration, appointment or otherwise;
 (c) be a guardian of the person or of the estate of a minor;
25 (d) be a next friend or guardian ad litem of a minor or of a mentally ill person for the purpose of proceedings in any court;
 (e) be appointed as a receiver;
 (f) be appointed as a committee or manager under the Mental Health Act, 1958; and
30 (g) be appointed to any other fiduciary office.

(2)

Minority.

(2) After the commencement of this Act a person aged eighteen years or upwards and holding any of the offices mentioned in paragraphs (a) to (f) of subsection one of this section or any other fiduciary office may exercise the powers of that office and shall not be under the disability of infancy in relation to the rights duties and liabilities incident to that office.

12. After the commencement of this Act, a person aged eighteen years or upwards— Legal proceedings.

10 (a) is not under the disability of infancy in relation to proceedings in any court; and

15 (b) may commence, carry on, defend, compromise, settle, abandon, and otherwise engage in, and act in relation to, proceedings in any court without a next friend or guardian ad litem.

13. A person is estopped by his deed made, or by his words written or spoken, or by his conduct, when aged eighteen years or upwards and after the commencement of this Act, as if he were aged twenty-one years or upwards. Estoppel.

20 **14.** A person is bound by his laches or acquiescence when aged eighteen years or upwards and after the commencement of this Act as if he were aged twenty-one years or upwards. Laches and acquiescence.

15. (1) In matters of tort, the doctrines of—

- (a) leave and licence;
- 25 (b) consent;
- (c) volenti non fit injuria; and
- (d) voluntary assumption of risk—

Tort:
consent,
etc.

apply in the case of a person aged eighteen years or upwards as they apply in the case of a person aged twenty-one years or upwards.

(2)

Minority.

(2) Subsection one of this section applies to—

- (a) a leave and licence granted after the commencement of this Act;
- 5 (b) a consent given after the commencement of this Act;
- (c) a person who is volens after the commencement of this Act; and
- (d) a risk voluntarily assumed after the commencement of this Act.

10 (3) This section does not affect such operation as the doctrines mentioned in subsection one of this section may have in the case of a minor.

16. (1) The acts and state of mind after the commencement of this Act of a person aged eighteen years or upwards
15 have, as regards the domicile of himself or of any other person, the same effect as if he were aged twenty-one years or upwards.

(2) The acts and state of mind after the commencement of this Act of any person have, as regards the domicile
20 of a person aged eighteen years or upwards, such effect only as those acts and state of mind would have if the latter person were aged twenty-one years or upwards.

PART III.

CAPACITY OF MINORS.

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

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

19.

Minority.

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

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

21. (1) Where—

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

15 the disposition is presumptively binding on him.

(2) Where—

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

the disposition is presumptively binding on him.

(3) Save to the extent to which, under Part III of the Sale of Goods Act, 1923, or otherwise, a promise may operate as a disposition of property, subsection (2) of this section does not make presumptively binding on a minor a promise by him which is the whole or part of the consideration for a disposition of property to him.

(4) Subsection (2) of this section does not make presumptively binding on a minor a covenant or other promise
30 the burden of which runs with property which is the subject of a disposition of property to him.

22.

Minority.

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

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

24. An investment by a minor in—

- 10 (a) any public funds or government stock or govern- Investment in government securities. ment securities of any State of Australia or of the cf. Act No. 14, 1925, s. 14 (2) Commonwealth of Australia; or (a), (b).
(b) any debentures or securities guaranteed by the Government or by the Treasurer—

is presumptively binding on the minor.

15 **25.** Where a minor participates in a civil act and a person Protection of strangers. who is not a party to the civil act—

- (a) acquires property affected by the civil act or any estate or interest in property so affected for valuable consideration; or
20 (b) acts, otherwise than as a volunteer and so as to alter his position, on the basis of the validity of the civil act—

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

26. A receipt by a married minor for rents, profits or Receipt by married minor. other income or for accumulations of income is presumptively Act No. 6, 1919, s. 151B.
30 binding on him.

27.

Minority.

27. (1) The Supreme Court, on application by a minor, may, by order—

Capacity
by order
of Supreme
Court.

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

5

(b) rescind or vary an order under paragraph (a) of this subsection.

(2) The Court may make an order under subsection (1) of this section on such terms and conditions as the Court thinks fit.

10

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

(4) A civil act in which a minor participates is, if authorised by a grant of capacity under this section, presumptively binding on him.

15

(5) An order of rescission or variation under paragraph (b) of subsection (1) of this section does not affect the validity of a civil act in which the minor has participated before the making of the order of rescission or variation.

20

28. (1) A contract made by a minor or a disposition of property made by or to a minor pursuant to an approval under this section is presumptively binding on him.

Approval of
contract
or dis-
position.

(2) A court of petty sessions may, on application by a minor, by order approve a contract proposed to be made by a minor or a disposition of property proposed to be made by or to a minor.

cf. N.Z. Act
No. 86, 1908
s. 12A (1).

25

(3) The powers of a court of petty sessions under this section may be exercised only by a stipendiary magistrate sitting alone.

30

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

(5)

Minority.

(5) A court of petty sessions shall not make an order under this section unless it appears to the court that—

- 5 (a) the minor would not undertake obligations under the proposed contract or dispose of property under the proposed disposition of property to the value of seven hundred and fifty dollars or upwards; and
- (b) the order is for the benefit of the minor.

(6) A refusal to make an order under this section or the making of an order subject to any terms or conditions
 10 does not prevent the minor making a further application, whether on evidence of the same or other facts, to the Supreme Court under section 27 of this Act.

(7) Part V of the Justices Act, 1902, does not apply to an order under this section.

15 **29.** (1) Where a person participates in a civil act while Affirmation.
 he is a minor, the civil act may be affirmed—

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

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

(3) Subject to section 35 of this Act, the court shall not affirm a civil act on behalf of a minor participant in the civil act under paragraph (a) of subsection (1) of this section unless it appears to the court that the affirmation is for the
 30 benefit of the minor participant.

(4)

Minority.

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

(5) An affirmation of a civil act under this section by a minor participant in the civil act or by the personal representative of a deceased minor participant in the civil act—

10 (a) may be by words, written or spoken, or by conduct;
and

(b) need not be communicated to any person.

30. (1) Where a minor has participated in a civil act, then, subject to sections 32 and 34 of this Act and subject to subsection (2) of this section, the minor participant may
15 repudiate the civil act at any time during his minority or afterwards but before he attains the age of nineteen years.

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

31. (1) Where a minor has participated in a civil act and dies before attaining the age of nineteen years, then, subject to sections 32 and 34 of this Act and subject to subsection (2) of this section, his personal representative may repudiate the
25 civil act at any time before the end of nineteen years after the birth of the minor participant or before the end of one year after the death of the minor participant whichever is the earlier.

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

32.

Minority.

32. (1) Where a civil act is repudiated under section 30 Notice of repudiation.
or section 31 of this Act—

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

(2) A notice of repudiation must be in writing and
signed by the person making the repudiation or by his agent.

(3) A notice of repudiation may be served as pro-
vided in section 170 of the Conveyancing Act, 1919.

15 **33.** (1) Where a minor has participated in a civil act, Repudiation by court for minor.
then, subject to section 34 of this Act and subject to subsec-
tion (2) of this section, a court having jurisdiction under this
section may, by order, repudiate the civil act on behalf of the
minor participant at any time during his minority.

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

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

34. (1) Where a civil act is presumptively binding on a Restriction on effect of repudiation.
minor participant in the civil act in favour of another party
to the civil act or in favour of any other person, a repudiation
30 of the civil act under any of sections 30, 31 and 33 of this
Act by or on behalf of the minor participant, or, if the minor
participant has died, by his personal representative, does not
have effect as against that other party or person.

(2)

Minority.

(2) Where a person becomes a member of an association while he is a minor and after he becomes a member any civil act in which he has participated for the purpose of becoming a member of the association, or as a member of the
 5 association, or otherwise in relation to the association, is repudiated under any of sections 30, 31 and 33 of this Act by him or on his behalf, or, if he has died, by his personal representative, the repudiation does not affect such right as
 10 any other member of the association or a creditor of the association may have for the application of the interest of the firstmentioned person, or if he has died the interest of his estate, in the property of the association in or towards satisfaction of any liability of the association which accrues before the repudiation or which accrues by reason of anything done
 15 or omitted before the repudiation.

(3) For the purposes of subsection (2) of this section, "association" includes a partnership but does not include a corporation.

35. Where, on application to a court having jurisdiction
 20 under this section by a person interested in a civil act, it appears to the court that the civil act is not presumptively binding on a minor participant in the civil act in favour of the applicant, the court shall either affirm the civil act under section 29 of this Act or repudiate the civil act under section
 25 33 of this Act on behalf of the minor participant. Election
by court.

36. (1) Where a civil act is repudiated under any of
 sections 30, 31 and 33 of this Act, a court having jurisdiction
 under this section may, on the application of any person
 interested in the civil act, make orders— Adjust-
ment on
repudiation.

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

(2)

Minority.

(2) Without limiting the generality of paragraph (a) of subsection (1) of this section, where, on an application under this section, it appears to the court that any party to the civil act was induced to participate in the civil act by a
 5 misrepresentation made by a minor participant in the civil act, being a fraudulent misrepresentation as to the age of the minor participant or as to any other matter affecting the capacity of the minor participant to participate in the civil act, the court may confirm the civil act and anything done
 10 under the civil act.

(3) Where a civil act is presumptively binding in favour of any person, the court shall not make any order under this section adversely affecting his rights except with his consent.

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

- 20 (a) each minor participant in the civil act makes just compensation for all property, services and other things derived by him by or under the civil act to the extent that the derivation of that property or of those services or things is for his benefit;
- 25 (b) each other participant in the civil act makes just compensation for all property, services and other things derived by him by or under the civil act; and
- 30 (c) subject to paragraphs (a) and (b) of this subsection, the parties to the civil act and those claiming under them are restored to their positions before the time of the civil act.

(5) Any court having jurisdiction under this section may, for the purposes of this section, make orders—

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

(6)

Minority.

(6) In addition to its jurisdiction under subsection (5) of this section, the Supreme Court may, for the purposes of this section, make orders for—

- (a) the making of any disposition of property;
- 5 (b) the sale or other realization of property;
- (c) the disposal of the proceeds of sale or other realization of property;
- (d) the creation of a charge on property in favour of any person;
- 10 (e) the enforcement of a charge so created;
- (f) the appointment and regulation of the proceedings of a receiver of property;
- (g) the vesting of property in any person; and
- 15 (h) the rescission or variation of any order of the Supreme Court under this section.

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

(8) A civil act to which a person is a party while a minor and anything done thereunder is, to the extent to which
20 it is confirmed under this section, presumptively binding on him.

(9) Sections 78 and 79 of the Trustee Act, 1925, apply to a vesting order, and to the power to make a vesting order, under this section.

25 (10) Subsection (2) of section 78 of the Trustee Act, 1925, applies to a vesting order under this section as if this section were included in the provisions of Part III of that Act.

37. Where a person participates in a civil act while he is
30 a minor and the civil act is not repudiated under any of ^{Civil act not re-} sections 30, 31 and 33 of this Act by himself or by his ^{pudiated.} personal

Minority.

personal representative or by a court on his behalf within the times respectively fixed by those sections, the civil act is presumptively binding on the minor participant.

38. Subject to section 36 of this Act, a court shall not
 5 give any judgment or make any order in favour of a minor participant in a civil act, or in favour of the personal representative of a deceased minor participant in a civil act, for the enforcement of the civil act, unless the civil act is presumptively binding on the minor participant in favour of the person
 10 against whom the judgment is given or order is made.

Enforce-
ability by
minor par-
ticipant.

PART IV.

COURTS.

39. (1) The courts having jurisdiction under sections
 29, 33, 35 and 36 of this Act are as specified in this section.
- 15 (2) The Supreme Court has jurisdiction without limitation as to value.
- (3) A district court has jurisdiction where it appears to the district court that the matter in question, so far as concerns any minor participant in the civil act to which the
 20 proceedings relate, does not amount to a value exceeding six thousand dollars.
- (4) A court of petty sessions held before a stipendiary magistrate sitting alone has jurisdiction where it appears to the court of petty sessions that the matter in question, so
 25 far as concerns any minor participant in the civil act to which the proceedings relate, does not amount to a value exceeding seven hundred and fifty dollars.

(5)

Minority.

(5) A district court or court of petty sessions has jurisdiction as provided in this section whether or not any party to the proceedings is present or resident in the district of the court and whether or not the subject matter of the proceedings has any connection with the district of the court.

40. (1) This section applies to proceedings under any of sections 29, 33, 35 and 36 of this Act. Removal
into
Supreme
Court.

(2) A district court or a court of petty sessions before which proceedings are pending may, at any time before final order in the proceedings, order that the proceedings be removed into the Supreme Court.

(3) The Supreme Court, on application by a party to proceedings in a district court or a court of petty sessions made before final order in the proceedings, or made pursuant to a summons or other document filed in the Supreme Court before final order in the proceedings, may, on such terms as the Supreme Court thinks fit, order that the proceedings be removed into the Supreme Court.

(4) On the making of an order for removal under this section the registrar or clerk of the court from which the proceedings are removed shall send the record of the proceedings to the Supreme Court.

(5) In proceedings removed into the Supreme Court under this section the Supreme Court—

25 (a) has the jurisdiction which it would have if the application commencing the proceedings had been made in the Supreme Court; and

(b) may vary or rescind any order made in the proceedings by any court from which the proceedings have been removed under this section or transferred under section 41 of this Act.

Minority.

41. (1) A district court or court of petty sessions before Transfer.
which proceedings under this Act are pending may, by order
and subject to such terms as it thinks fit, direct that the pro-
ceedings be transferred to another district court or court of
5 petty sessions as the case may be.

(2) On the making of an order under subsection (1)
of this section the registrar or clerk of the court in which the
order is made shall send the record of the proceedings to the
registrar or clerk of the court to which the proceedings are
10 transferred.

(3) In proceedings transferred to a court under this
section the court to which the proceedings are transferred—

- 15 (a) has the jurisdiction which it would have if the appli-
cation commencing the proceedings had been made
in that court; and
- (b) may vary or rescind any order made in the proceed-
ings by any court from which the proceedings have
been transferred under this section to the same
20 extent as it might vary or rescind the order if the
order were its own order in the proceedings.

42. (1) Where, in proceedings under any of sections 20, Reference
27, 28, 29, 30, 31, 33, 36 and 49 of this Act, a question of questions
arises whether a civil act or some other matter is or was for of benefit,
etc.
the benefit of a person who at any material time is a minor, cf. N.Z. Act
25 the court may— No. 86,
1908, s. 12A
(3).

- (a) refer the question to a parent of the minor or to a
guardian of his person or of his estate or to any
other person; and
- 30 (b) order any party to the proceedings to pay the
reasonable costs and expenses of the referee.

(2)

Minority.

(2) A referee under this section may—

- 5 (a) subject to any order of the court, make inquiries and otherwise conduct himself in the matter of the reference in such manner as he thinks fit, whether or not in accordance with the principles of natural justice;
- 10 (b) file in the court a report of his consideration and examination of the question and making such recommendations as he thinks fit in respect of the question; and
- (c) appear and be heard in the proceedings.

(3) A referee is under no obligation to do anything under the reference unless he consents to the appointment and until his reasonable costs and expenses have been secured to
15 his satisfaction.

(4) Where a referee has filed a report under this section—

- 20 (a) any party to the proceedings who is interested in the question referred may inspect and make a copy of the report; and
- (b) the court may, in determining the question referred, have such regard to the report as the court thinks fit.

(5) Subject to paragraph (a) of subsection (4) of
25 this section, the court may make such orders as it thinks fit for the purpose of preventing or limiting publication of a report filed under this section.

43. A court may, in proceedings under any of sections Costs.
29, 33, 35 and 36 of this Act, make such order as it thinks
30 fit as to the costs of the proceedings including, in the case of proceedings removed under section 40 of this Act or proceedings transferred under section 41 of this Act, the costs of the proceedings before removal or transfer and may assess the whole or any part of any costs.

Minority.

44. (1) A court making an order or giving judgment (whether under this Act or otherwise) against a minor participant in a civil act in civil proceedings in respect of the civil act (in this section called "the substantive order or judgment") may, on such terms and conditions as the court thinks fit, by order—

- (a) give to him an extension of time to obey or satisfy the substantive order or judgment;
- 10 (b) stay execution or enforcement of the substantive order or judgment against him; or
- (c) alter or rescind an order made under this section.

(2) The court may make an order under this section at the time when the substantive order or judgment is made or given or at any later time or times, but not after the minor 15 participant attains the age of eighteen years.

(3) This section does not authorise an extension or stay enduring beyond the time when the minor participant reaches the age of eighteen years.

(4) This section applies in relation to a civil act in 20 which a minor participates after the commencement of this Act.

PART V.

GENERAL.

45. (1) After the commencement of this Act, a person 25 under the age of twenty-one years—

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

(2)

Minority.

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

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

46. (1) A guarantor of an obligation of a minor is Guarantee.
bound by the guarantee to the extent to which he would be cf. *Coutts & Co. v. Brown-Lecky*
bound if the minor were not a minor. (1947) K.B. 104.

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

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

47. Where a person under the age of twenty-one years Liability
is guilty of a tort, he is answerable for the tort whether or for tort.
not— cf. *R. Leslie Ltd. v. Sheill*
(1914) 3 K.B. 607.

(a) the tort is connected with a contract; or
25 (b) the cause of action for the tort is in substance a cause of action in contract.

48. (1) Where medical treatment or dental treatment of Medical
a minor aged less than sixteen years is carried out with the and dental
prior consent of a parent or guardian of the person of the treatment.
30 minor, the consent has effect in relation to a claim by the

minor

Minority.

minor for assault or battery in respect of anything done in the course of that treatment as if, at the time when the consent is given, the minor were aged twenty-one years or upwards and had authorised the giving of the consent.

5 (2) Where medical treatment or dental treatment of a minor aged fourteen years or upwards is carried out with the prior consent of the minor, his consent has effect in relation to a claim by him for assault or battery in respect of
10 time when the consent is given, he were aged twenty-one years or upwards.

(3) This section does not affect—

- (a) such operation as a consent may have otherwise than as provided by this section; or
15 (b) the circumstances in which medical treatment or dental treatment may be justified in the absence of consent.

(4) In this section—

“dental treatment” means—

- 20 (i) treatment by a dentist registered under the Dentists Act, 1934, in the course of the practice of dentistry; or
 (ii) treatment by any person pursuant to directions given in the course of the practice of
25 dentistry by a dentist so registered; and

“medical treatment” means—

- (i) treatment by a medical practitioner in the course of the practice of medicine or surgery; or
30 (ii) treatment by any person pursuant to directions given in the course of the practice of medicine or surgery by a medical practitioner.

Minority.

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

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

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

50. (1) Rules of court not inconsistent with this Act may ^{Rules of} be made for the regulation of the practice and procedure in ^{court.} proceedings under this Act.

(2) Rules of court so made shall—

- (a) be published in the Gazette;
- 25** (b) take effect on and from the date of publication or a later date to be specified in the rules; and
- (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(3)

Minority.

(3) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after the rules have been laid before it, disallowing any rule or part of a rule, that rule or part
5 thereupon ceases to have effect.

(4) For the purposes of subsections two and three of this section, sitting days shall be counted, whether or not they occur during the same session.

(5) The power to make rules given by this section
10 may be exercised—

- (a) in relation to proceedings in the Supreme Court, by the judges of the Supreme Court or any five of them;
 - 15 (b) in relation to proceedings in the District Courts, by a majority of the District Court judges; and
 - (c) in relation to proceedings in courts of petty sessions, by the Governor.
-

Minority.

FIRST SCHEDULE.
AMENDMENT OF ACTS.

Sec. 3.

First Column.			Second Column.
5	Reference to Act.	Subject. Section, etc., to be amended.	Amendment.
10	45 Vic. No. 12	Trade Unions	Section 19 .. Omit "twenty-one"; insert "eighteen". Omit "but shall not"; insert "but a person shall not".
15	No. 4, 1897	Interpretation	..... After section 21A, insert the following section:— 21B. Except in so far as a Age. contrary intention appears, for the purposes of any Act, whether passed before or after the commencement of the Minority Act, 1969, or of an instrument made, whether before or after that commencement, under any such Act, a person attains an age in years at the beginning of his birthday for that age.
20	No. 4, 1898	Trustee ..	Section 18 .. After subsection (2), insert the following subsections:— (3) The power conferred by subsection one of this section extends to the payment, after the commencement of the Minority Act, 1969, of income to an infant who has reached the age of eighteen years, but this section does not limit the generality of subsection one of this section. (4) This section does not affect such right as an infant may have in consequence of the Minority Act, 1969, upon reaching the age of eighteen years or otherwise, to call for payment or transfer of property to which he is absolutely entitled.
25	No. 13, 1898	Wills, Probate and Administration.	Section 3 .. Insert next after the definition of "Judge" or "Judges" the following new definition:— "Minor" means a person under the age of eighteen years.
30			
35			
40			
45			

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment
5 No. 13, 1898 — <i>cont.</i>	Wills, Probate and Administration— <i>cont.</i>	Section 3— <i>cont.</i>	Insert next after the definition of "Personal estate" the following new definition:— "Privileged testator" means—
10			(a) a soldier of any country or a member of an air force of any country, being in either case in actual military service;
15			(b) a member of a naval or marine force of any country, being so circumstanced that, if he were a soldier, he would be in actual military service; or
20			(c) a mariner or seaman, being at sea.
25		Section 6 ..	Omit the section; insert the following section:— 6. (1) Subject to subsection two of this section, a will made by a minor shall not be valid. Will of minor. (2) A valid will may be made by—
30			(a) a married person;
35			(b) a soldier of any country;
			(c) a member of a naval, marine or air force of any country; or
40			(d) a mariner or seaman—notwithstanding that he is a minor.
			(3) This section applies to a will made after the commencement of the Minority Act, 1969.
45		Section 10 ..	Omit the section; insert the following section:— 10. (1) Sections seven, eight and nine of this Act do not apply to a will made by a person while he is a privileged testator. Will of privileged testator. (2) A will made by a person while he is a privileged testator in exercise of a power of appointment by will shall not be invalid by reason of any requirement that a will made in exercise of the power should be made or executed with some form or solemnity.
50			
55			

FIRST

Minority.

FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 13, 1898 — <i>cont.</i> Wills, Probate and Administration— <i>cont.</i>	Section 10— <i>cont.</i>	(3) It shall not be necessary to have the evidence of two witnesses for the proof of a will of a privileged testator which is not in writing.
10		Section 11 ..	(4) This section applies to a will made after the commencement of the Minority Act, 1969.
15			Omit the section; insert the following section:— 11. A will made in accordance with this Act shall be valid without any other publication.
20		Section 13 ..	Omit the section; insert the following section:— 13. (1) Where any beneficial gift is given or made by will to a person who attests the execution of the will or to his spouse—
25		Section 17 ..	(a) the gift shall be void so far only as concerns him or his spouse or any person claiming under either of them; but
30			(b) the person so attesting shall be admitted as a witness to prove the execution of the will or to prove the validity or invalidity of the will, notwithstanding the gift.
35			(2) Paragraph (a) of subsection one of this section does not apply to a gift in a will made by a person while he is a privileged testator.
40			(3) In this section "gift" includes a devise, legacy, estate, interest or appointment of or affecting any real or personal estate, but does not include a charge or direction for the payment of any debt.
45			Omit the section; insert the following section:— 17. (1) A will shall not be revoked wholly or in part except as mentioned in section fifteen of this Act or in this section.
50			(2) A will may be revoked by another will.
55			

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 13, 1898— <i>cont.</i>	Section 17— <i>cont.</i>	(3) A will may be revoked—
10	Wills, Probate and Administration— <i>cont.</i>		(a) by some writing declaring an intention to revoke the will and executed in the manner in which a will is required to be executed by sections seven and eight of this Act;
15			(b) if the will is in writing, by the burning, tearing or destruction otherwise of the will by the testator or by some person in his presence and by his direction, with the intention of revoking the will; or
20			(c) if at the time of the revocation the testator is a privileged testator, by his declaration of an intention to revoke the will.
25			(4) A testator may revoke his will as mentioned in subsection three of this section notwithstanding that he is a minor.
30			(5) This section applies to a revocation made after the commencement of the Minority Act, 1969.
35		Section 18 ..	Before "No" insert "(1)". After "part of the will." insert the following subsection:—
40			(2) Subsection one of this section does not apply to an obliteration, interlineation or other alteration made while the testator is a privileged testator.
45		Section 19 ..	Omit the section; insert the following section:—
50			19. (1) No will or any part thereof which is in any manner revoked shall be revived otherwise than by—
55			(a) the re-execution thereof; or (b) a codicil executed in the manner required by sections seven and eight of this Act and showing an intention to revive the same.

Revival.

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5			
No. 13, 1898 — <i>cont.</i>	Wills, Probate and Administration— <i>cont.</i>	Section 19— <i>cont.</i>	(2) Subsection one of this section does not apply to a revival made while the testator is a privileged testator but the revocation of a will shall not of itself revive an earlier will.
10			(3) Where a will which is partly revoked and afterwards wholly revoked is revived, the revival shall not extend to so much of the will as was revoked before the revocation of the whole of the will, unless an intention to the contrary is shown.
15			
20		Section 21 ..	Omit "executed"; insert "made".
		Section 63 ..	Omit "being of the full age of twenty-one years"; insert "not being minors".
25		Section 70 ..	Omit the section; insert the following section:—
			70. Where a minor is sole executor, administration with the will annexed may be granted to—
30			(a) a guardian of the person or of the estate of the minor; or
			(b) such other person as the Court thinks fit—
35			until the minor attains the age of eighteen years, with full or limited powers to act in the premises until probate is granted to the executor or administration is granted to some other person.
40		Section 75 ..	In subsection (1), omit "twenty-one"; insert "eighteen".
		Section 75A ..	In paragraph (b) of subsection (4), omit "full age of twenty-one"; insert "eighteen".
45			
No. 17, 1898	Conveyancing and Law of Property.	Section 1 ..	In subsection (1), omit "INFANTS"; insert "MINORS".
50			In subsection (1), omit "OF PERSONS UNDER DISABILITY AND PERSONS OUT OF THE JURISDICTION".

Minority of sole executor

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 17, 1898 — <i>cont.</i>	.....	Next after section 2, insert the following section:—
10	Conveyancing and Law of Property— <i>cont.</i>		2A. In this Act, unless the context or subject matter otherwise indicates or requires— “Minor” means a person under the age of eighteen years.
15		Heading Part IV. to	Omit “INFANTS”; insert “MINORS”. In subsection (7), omit “an infant”; insert “a minor”.
20		Section 37 ..	Omit the section.
25		Section 56 ..	Omit the section; insert the following section:—
30		Section 70 ..	70. All powers given by this Part of this Act and all applications to the Court under this Part of this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Part of this Act may be given to guardians on behalf of minors, and by or to committees or other persons entrusted with the care, control, and management of their estates on behalf of persons of the following descriptions within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts, namely, mentally ill persons, incapable persons and protected persons.
35			
40		Section 71 ..	Omit subsections (1) and (2).
45		Section 72 ..	Omit the section.
50		Section 73 ..	Omit the section; insert the following section:— 73. A married woman may make or consent to an application whether or not she is a minor.
		Heading Part V. to	Omit “OF PERSONS UNDER DISABILITY”.
		Section 82 ..	Omit the section; insert the following section:— 82. Where a minor is entitled to a lease made or granted for a life or for any term of years,

Interpretation.

Minors, mentally ill persons, etc.

Application by or consent of married woman.

Surrender and renewal of leasehold of minor.

FIRST

Minority.

FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 17, 1898 — <i>cont.</i>	Conveyancing and Law of Property— <i>cont.</i>	
10		Section 82— <i>cont.</i>	either absolute or determinable on a death or otherwise, the minor or his guardian, or some other person on behalf of the minor, may apply to the Supreme Court, and by the order and direction of the Court the minor or his guardian, or any person appointed in the place of the minor by the Court, may be enabled from time to time to surrender the lease, and accept and take in the place and for the benefit of the minor a new lease of the premises in the surrendered lease for and during such number of lives, or for such term of years either absolute or determinable as aforesaid as was mentioned in the surrendered lease, or otherwise as the Court directs.
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25			
30		Section 83 ..	In subsection (1), omit "infant"; insert "minor".
		Section 85 ..	Omit subsection (2). Omit the section; insert the following section:—
35			85. Where any minor might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life of any person or for any term of years absolute or determinable on a death, the minor, or his guardian, in the name of the minor, may, by the direction of the Supreme Court on the application of the minor, or his guardian, or of any person entitled to the renewal, from time to time accept a surrender of the lease, and make and execute a new lease of the premises comprised in the surrendered lease for and during such number of lives, or for such term of years determinable upon such number
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Renewal of lease for minor.

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment
5	No. 17, 1898 — <i>cont.</i>	Section 85— <i>cont.</i>	of lives, or for such term of years absolute, as was mentioned in the surrendered lease or otherwise as the Court by order directs.
10		Section 88 ..	Omit "an infant"; insert "a minor". Omit "the infant"; insert "the minor".
15		Section 89 ..	Omit paragraph (b). Omit "and unmarried".
20	No. 39, 1899 Infants' Custody and Settlements.	Section 1 ..	Omit the section; insert the following section:— 1. (1) This Act may be cited as the "Infants' Custody and Settlements Act of 1899". (2) This Act is divided into Parts, as follows— PART I. — CUSTODY OF MINORS— <i>ss.</i> 4A–11. PART III. — SETTLEMENT OF DAMAGES— <i>s.</i> 16. PART IV. — GENERAL — <i>ss.</i> 17, 18.
25			
30		Section 3 ..	After the definition of "Maintenance", insert— "Minor" means a person under the age of eighteen years.
35		.....	After the heading "PART I.", omit "INFANTS"; insert "MINORS".
40		.....	Next before section 5, insert the following section:— 4A. (1) A person shall, upon reaching the age of eighteen years, cease to be under the custody in infancy of any other person, whether under the common law, under any Act, or under the order of any court.
45			(2) An order of any court for access to a minor shall cease to have effect when he reaches the age of eighteen years.
50			(3) A court shall not make any order for the custody in infancy of, or access to, a person who has reached the age of eighteen years.

Short title and division into Parts.

Custody to end at 18 years.

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 39, 1899 — <i>cont.</i>	.....	(4) This section does not affect the power of any court under any Act to make an order relating to the maintenance of an infant.
10	Infants' Custody and Settlements — <i>cont.</i>	Section 5 ..	Omit "any infant"; insert "any minor".
15			Omit "the infant" (wherever occurring); insert "the minor".
			Omit "an infant" (wherever occurring); insert "a minor".
			Omit "child" (wherever occurring); insert "minor".
20		Section 6 ..	Omit "child" (wherever occurring); insert "minor".
		Section 7 ..	Omit "child" (wherever occurring); insert "minor".
		Section 8 ..	After "a parent", insert "of a minor".
25			Omit "his child" (wherever occurring); insert "the minor".
			Omit "the child" (wherever occurring); insert "the minor".
30		Section 9 ..	After "by the parent", insert "of a minor".
			Omit "a child"; insert "the minor".
			Omit "the child" (wherever occurring); insert "the minor".
35			Omit "any child"; insert "a minor".
			Omit "its"; insert "his".
		Section 10 ..	Omit "a child"; insert "a minor".
40			Omit "the child"; insert "the minor".
			Omit "such child"; insert "the minor".
			Omit "the child's maintenance"; insert "the maintenance of the minor".
45		Section 10A ..	Omit "an infant" (wherever occurring); insert "a minor".
			Omit "the infant" (wherever occurring); insert "the minor".
			Omit "any infant" (wherever occurring); insert "a minor".
50		Section 10D ..	Omit "an infant"; insert "a minor".
		Section 11 ..	Omit "any infants"; insert "a minor".
			Omit "such infants"; insert "the minor".
55			Omit "the infants"; insert "the minor".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5			
No. 39, 1899 — <i>cont.</i>	Infants' Custody and Settlements — <i>cont.</i>	..... .....	Omit Part II. After the heading "PART III.", omit "SETTLEMENT OF DAMAGES RECOVERED ON BEHALF OF CHILDREN."; insert "SETTLEMENT OF DAMAGES."
10		Section 16 ..	Omit "by any child by its next friend"; insert "a minor".
15		.....	Omit "such child"; insert "the minor".
20		Section 17 ..	After the heading "PART IV.", omit "Provisions applicable in all courts."; insert "GENERAL".
25		Section 18 ..	Omit "an infant" (wherever occurring); insert "a minor".
			Omit "the infant"; insert "the minor".
		Section 18 ..	Omit "an infant"; insert "a minor".
			Omit "the infant"; insert "the minor".
No. 25, 1900	Real Property	Section 3 ..	Insert next after the definition of "Land" the following definition:— "Minor"—A person under the age of eighteen years.
30		Section 12 ..	In paragraph (e), omit "any person under the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the colony"; insert "any minor or mentally ill person".
35		Section 14 ..	Omit paragraph (f) of subsection (2); insert the following paragraph:— (f) By a parent or guardian of the estate of a minor, in the name of the minor.
40		Section 33 ..	In subsection (2), omit "an infant"; insert "a minor".
45			In the same subsection, omit "such infant"; insert "the minor".
50		Section 130 ..	Omit subsection (2); insert the following subsections:— (2) Any minor or mentally ill person may bring an action to which subsection one of this section applies within six years from the date on which he ceases to be a minor or a mentally ill person as the case may be.
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FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5			
10	No. 25, 1900 — <i>cont.</i>	Real Property — <i>cont.</i>	Section 130— <i>cont.</i>
15	No. 24, 1901	Equity ..	Section 19 .. Section 28 ..
20	No. 45, 1901	Married Women's Property.	Section 25 ..
25	No. 70, 1901	Western Lands.	Section 18j .. Section 18k ..
30			(3) The amendments made to this section by the Minority Act, 1969, shall not shorten the time during which an action may be commenced on any cause of action arising before the commencement of that Act.
35			Omit the section. Omit "infant, married woman"; insert "minor".
40	No. 17, 1902	Building and Co-operative Societies.	Section 21 ..
45			Omit the section.
50			In subsection (2), omit "full age of twenty-one years"; insert "eighteen years". Omit "and twenty-one years" (twice occurring); insert "and eighteen years". Omit "full age of twenty-one years" (twice occurring); insert "eighteen years". At the end of the section, insert the following paragraph:— The amendments to this section made by the Minority Act, 1969, apply to and in respect of an agreement entered into, a mortgage or transfer by way of mortgage executed, or a transfer accepted after the commencement of that Act.
			In subsection (1), omit "twenty-one"; insert "eighteen years". Omit subsection (2); insert the following subsections:— (2) A member under the age of eighteen years may execute all necessary instruments and give all necessary acquittances. (3) A member under the age of twenty-one years shall not be competent to hold office as director, trustee, treasurer, or manager of such society.

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 43, 1902	Usury, Bills of Lading, and Written Memoranda.	Section 9 .. Section 12 .. Omit the section. Omit "sections nine or ten"; insert "section ten".
10	No. 48, 1906	Government Savings Bank.	Section 48P .. Omit the section; insert the following section:— 48P. (1) If any person being Minors. under the age of eighteen years signs a contract for the renting of a safe deposit box, the bank shall not incur any liability by reason of the fact that the renter is under the age of eighteen years, and the bank shall have all remedies against the renter as if he were not under the age of eighteen years. (2) This section applies to a contract signed after the commencement of the Minority Act, 1969.
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20			
25	No. 7, 1912	Housing ..	Section 25 .. In paragraph (a), omit "twenty-one"; insert "eighteen".
30	No. 23, 1912	District Courts.	Section 57 .. Omit "twenty-one"; insert "eighteen". Omit "full age"; insert "the age of eighteen years or upwards". Section 75 .. In paragraph (c) of subsection (1), omit subparagraph (i); insert the following subparagraph:— "(i) infancy, or the Minority Act, 1969; or".
35			
40	No. 25, 1912	Gaming and Betting.	Section 12 .. Omit "full age"; insert "the age of twenty-one years or upwards". Section 13 .. Omit "full age"; insert "the age of twenty-one years or upwards".
45	No. 33, 1912	Small Debts Recovery.	Section 21 .. Omit "twenty-one"; insert "eighteen". Omit "full age"; insert "the age of eighteen years or upwards".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 45, 1912	Public Works	.....
10			After section 50, insert the following section:— 50A. For the purposes of this Part of this Act, a person aged eighteen years or upwards shall, after the commencement of the Minority Act, 1969, not be under the disability or incapacity of infancy and shall be in all respects in the same position as if of full age. Infancy.
15			
20	No. 46, 1912	Friendly Societies.	Section 103 ..
25			In subsection (1), omit "twenty-one"; insert "eighteen". Omit subsection (2); insert the following subsections:— (2) Any such member may, if he is over sixteen years of age by himself and, if he is under that age, by his parent or guardian, execute all instruments and give all acquittances necessary to be executed or given under the rules. (3) A person under the age of twenty-one years shall not be a member of the committee, or a trustee, secretary, or treasurer of a registered society or branch.
30			
35	No. 7, 1913	Crown Lands Consolidation.	Section 239 ..
40			In subsection (2), omit "full age of twenty-one years"; insert "age of eighteen years". Section 240 ..
45			Omit "twenty-one years who before or after the passing of this Act"; insert "eighteen years who before or after the commencement of the Minority Act, 1969,". Omit "full age of twenty-one years"; insert "age of eighteen years". In each of the third and fourth paragraphs, omit "twenty-one"; insert "eighteen". At the end of the section, insert the following paragraph:— The amendments to this section made by the Minority Act, 1969, apply to and in respect of
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FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment
5 No. 7, 1913 — <i>cont.</i>	Crown Lands Consolidation— <i>cont.</i>	Section 240— <i>cont.</i>	an agreement entered into, a mortgage or transfer by way of mortgage executed, or a transfer accepted after the commencement of that Act.
10 No. 19, 1913		Section 2	Omit "1-4"; insert "1-4A". After section 4, insert the following section:— 4A. In this Act, unless the context or subject matter otherwise indicates or requires— "Adult" means a person who has attained the age of eighteen years. "Minor" means a person under the age of eighteen years.
15	Public Trustee	Section 12 ..	In paragraph (vi) of subsection (1), omit "an infant"; insert "a minor".
20		Section 17 ..	Omit "an infant"; insert "a minor".
25		Section 34 ..	Omit "an infant"; insert "a minor".
30			Omit "such infant" (wherever occurring); insert "such minor".
35 No. 7, 1914		Section 9 ..	Omit "twenty-one years who, before or after the commencement of this Act,"; insert "eighteen years who, before or after the commencement of the Minority Act, 1969,".
40			Omit "full age of twenty-one years"; insert "age of eighteen years".
45			In the fourth paragraph, omit "twenty-one"; insert "eighteen". At the end of the section, insert the following paragraph:— The amendments made to this section by the Minority Act, 1969, apply to an agreement entered into, a mortgage or transfer by way of mortgage executed, or a transfer accepted, after the commencement of the Minority Act, 1969.
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FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
5 Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
No. 41, 1916	Testator's Family Maintenance and Guardianship of Infants.	Section 2 ..	After the definition of "Executor", insert— "Minor" means a person under the age of eighteen years.
10		Section 5 ..	In subsection (2A), omit "infants" (wherever occurring); insert "minors".
15		.....	In the heading next before section 13, omit "infants"; insert "minors".
20		Section 13 ..	Omit "an infant" (wherever occurring); insert "a minor". Omit "the infant" (wherever occurring); insert "the minor".
25		Section 14 ..	Omit "an infant" (wherever occurring); insert "a minor". Omit "the infant" (wherever occurring); insert "the minor".
30		Section 17 ..	In subsection (1), omit "an infant"; insert "a minor". In subsection (2), omit "the infant" (wherever occurring); insert "a minor".
35		Section 18 ..	Omit "infant" (wherever occurring); insert "minor".
40		Section 19 ..	Omit "they"; insert "the court". Omit "an infant"; insert "a minor".
45		Section 20 ..	Omit the section; insert the following sections:— 20. Subject to section 20A of this Act, this Act does not restrict or affect the jurisdiction of the court to appoint or remove guardians in respect of infants. Savings.
50			20A. (1) Guardianship of the person or of the estate of a minor, whether under an appointment by the court of otherwise, shall cease upon the minor reaching the age of eighteen years. Guardianship to end at 18 years. (2) Where a minor has been made a ward of court, the wardship shall not continue after he reaches the age of eighteen years.

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.	
5	Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
10	No. 41, 1916 — <i>cont.</i>	Testator's Family Maintenance and Guardianship of Infants— <i>cont.</i>	Section 20— <i>cont.</i>	(3) A guardian shall not be appointed, by the court or otherwise, of the person or of the estate of a person who has reached the age of eighteen years.
15			Section 21 ..	(4) The court shall not make a person aged eighteen years or upwards a ward of court. Omit "an infant"; insert "a minor". Omit "such infant" (twice occurring); insert "the minor".
20	No. 6, 1919	Conveyancing	Section 2 ..	Omit "INFANTS AND INFANTS' PROPERTY"; insert "MINORS AND MINORS' PROPERTY".
25			Section 7 ..	In subsection (1), after the definition of "Land under the provisions of the Real Property Act, 1900," insert the following definition:— "Minor" means a person under the age of eighteen years; and "minority" has a corresponding meaning.
30				In subsection (2), omit "an infant" (wherever occurring); insert "a minor".
35				In subsection (2), omit "the infant" (wherever occurring); insert "the minor".
40			Section 29A ..	In subsection (2), omit "of the age of not less than twenty-three years". In subsection (4), omit the quotation marks. After subsection (4), insert the following subsection:— (5) This section as amended by the Minority Act, 1969, applies only to dealings effected after the commencement of that Act, but applies to powers created or arising either before or after such commencement.
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50			Section 29B ..	In subsection (1), omit "twenty-one"; insert "eighteen".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 6, 1919— — <i>cont.</i>	Conveyancing — <i>cont.</i>	
10		Section 29B— <i>cont.</i>	After subsection (2), insert the following subsection:— (3) This section as amended by the Minority Act, 1969, applies where the executory limitation is contained in an instrument coming into operation after the commencement of that Act.
15		Section 31 ..	In subsection (1), omit "minority" (wherever occurring); insert "infancy".
20		Section 31A ..	In subsection (1), omit "full age"; insert "the age of twenty-one years". Omit "a minority"; insert "an infancy". Omit "such minority"; insert "an infancy".
25		Section 66A ..	In subsection (2), omit "an infant"; insert "a minor".
30		Section 66D ..	In subsection (3), omit "full age"; insert "the age of eighteen years or upwards". In subsection (5), omit "an infant"; insert "a minor". In subsection (5), omit "the infant"; insert "the minor".
35		Section 66G ..	In subsection (5), omit "full age"; insert "the age of eighteen years or upwards". Omit "an infant"; insert "a minor". Omit "the infant"; insert "the minor".
40		Section 66H ..	Omit "full age"; insert "the age of eighteen years or upwards".
45		Section 89 ..	Omit "full age and capacity"; insert "the age of eighteen years or upwards and of full capacity".
50		Section 137 ..	Before "Where", insert "(1)". Omit "twenty-one years"; insert "eighteen years, unless the lease is presumptively binding on him in accordance with the Minority Act, 1969".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 6, 1919— — <i>cont.</i>	Section 137— <i>cont.</i>	At the end of the section, insert the following subsection:— (2) The amendments made to this section by the Minority Act, 1969, apply to a lease granted after the commencement of that Act.
10		Section 151 ..	In subsection (1), omit "of full age"; insert "aged eighteen years or upwards".
15			In subsection (1), omit "attains full age"; insert "attains the age of eighteen years".
20			In subsection (2), omit "an infant"; insert "a minor".
			After subsection (3), insert the following subsection:— (4) The amendments made to this section by the Minority Act, 1969, apply to a settlement or agreement for a settlement made after the commencement of that Act.
25		.....	After the heading "PART XIVA", omit "INFANTS AND INFANTS' PROPERTY"; insert "MINORS AND MINORS' PROPERTY".
30		Section 151A	Omit "an infant"; insert "a minor".
35			After subsection (2), insert the following subsection:— (3) The amendments made to this section by the Minority Act, 1969, apply only to appointments made after the commencement of that Act.
40		Section 151B..	Omit the section.
		Section 151C	Omit "an infant"; insert "a minor." Omit "the infant" (wherever occurring); insert "the minor".
45			Omit "full age"; insert "the age of eighteen years or upwards".
		Section 151D	Omit "an infant"; insert "a minor".
50			Omit "the infant" (wherever occurring); insert "the minor".
		Section 157A	In paragraph (a) of subsection (5), omit "full age"; insert "the age of eighteen years or upwards".
55			In paragraph (c) of subsection (5), omit "an infant"; insert "a minor".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 6, 1919 — <i>cont.</i>	Conveyancing — <i>cont.</i>	Section 181 ..
10			After subsection (1) insert the following subsection:— (1A) For the purposes of any deed, contract, will, order or other instrument (whether relating to property or not and whether made before or after the commencement of the Minority Act, 1969) a person attains an age in years at the beginning of his birthday for that age, unless the contrary intention appears.
15			
	No. 41, 1919	Local Govern- ment.	Section 50 ..
20	No. 1, 1923	Sale of Goods	Section 7 ..
	No. 1, 1924	Co-operation	Section 38 ..
25			Omit "full". Omit "to an infant or". Omit "infant or other". Omit subsection (4); insert the following subsections:— (4) A person under the age of eighteen years shall not be competent to be one of the persons by whom a society may be formed. (4A) Unless otherwise provided by the rules, a person under the age of eighteen years may be a member of a society. (4B) A person under the age of eighteen years who is a member of a society may execute all instruments and give all necessary acquittances. (4C) A person under the age of twenty-one years shall not be competent to hold any office in a society. (4D) Notwithstanding the provisions of section eighty-six of this Act, a member of a society who is under the age of eighteen years shall not be entitled to vote.
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50	No. 31, 1934	Prickly-pear ..	Subsection (5) of section 20.
			Omit "and twenty-one" (wherever occurring); insert "and eighteen". Omit "the full age of twenty-one years" (wherever occurring); insert "the age of eighteen years or upwards".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment
5	No. 14, 1925	Trustee ..	
10		Section 5 ..	In the definition of "Incapable person", omit "an infant"; insert "a minor". After the definition of "Legal representatives", insert the following definition:— "Minor" means a person under the age of eighteen years.
15		Section 6 ..	In paragraph (e) of subsection (2), omit "an infant"; insert "a minor".
20		Section 43 ..	After subsection (1), insert the following subsection:— (1A) The power conferred by subsection one of this section extends to the payment, after the commencement of the Minority Act, 1969, of income to an infant who has reached the age of eighteen years, but this subsection does not limit the generality of subsection one of this section.
25			After subsection (9), insert the following subsection:— (9A) This section does not affect such right as an infant may have in consequence of the Minority Act, 1969, upon reaching the age of eighteen years or otherwise, to call for payment or transfer of property to which he is absolutely entitled.
30			
35			
40		Section 44 ..	In subsection (5), omit "of full age"; insert "of the age of eighteen years or upwards".
45		Section 46 ..	In subsection (5), omit "of full age and capacity"; insert "of the age of eighteen years or upwards and of full capacity". In paragraph (a) of subsection (7), omit "an infant"; insert "a minor".
50			In paragraph (a) of subsection (8), omit "an infant"; insert "a minor".
55		Section 47 ..	Omit "an infant" (wherever occurring); insert "a minor". In subsection (2), omit "the infant"; insert "the minor".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	Trustee— <i>cont.</i>	Section 71 ..	In paragraph (d) of subsection (2), omit "an infant"; insert "a minor".
10		Section 73 ..	Omit the section.
		Section 74 ..	Omit "an infant" (wherever occurring); insert "a minor".
		Section 82 ..	In subsection (1), omit "infant"; insert "minor".
15		Section 82A ..	In subsection (1), omit "infant"; insert "minor".
		Section 83 ..	Omit "an infant" (wherever occurring); insert "a minor".
			Omit "the infant" (wherever occurring); insert "the minor".
20		Section 84 ..	In subsection (1), omit "an infant"; insert "a minor".
			In subsection (4), omit "the infant" (wherever occurring); insert "the minor".
25		Section 96 ..	Omit "an infant"; insert "a minor".
	Workers' Compensation.	Section 8 ..	In subsection (3), omit "a minor"; insert "under the age of twenty-one years".
30		Section 53D ..	Omit "twenty-one"; insert "eighteen".
35		Section 57 ..	In subsection (2), after "those dependants", insert the following paragraph:— For the purposes of this subsection a widow is under no disability if she is aged eighteen years or upwards and is not mentally ill.
40		Section 58 ..	In subsection (1), omit "under any legal disability"; insert "who is under the age of eighteen years or is mentally ill".
45			In subsection (1), omit "during the disability"; insert "until he attains the age of eighteen years or ceases to be mentally ill, as the case may be,".
			In subsection (2), omit "a minor"; insert "a person under the age of eighteen years".
50			In subsection (2), omit "the benefit of the minor"; insert "his benefit".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5	No. 8, 1929	Public Hospitals.	Section 24 .. In paragraph (a) of subsection (2), omit "a minor"; insert "under the age of twenty-one years".
10	No. 25, 1929	Damages (Infants and Persons of Unsound Mind).	Section 3 .. After the definition of "action", insert the following definition:— "Minor" means a person under the age of eighteen years.
15		Section 4 ..	Omit "an infant"; insert "a minor".
			Omit "the infant" (wherever occurring); insert "the minor".
		Section 5 ..	Omit "the infant"; insert "the minor".
20		Section 7 ..	Omit "the infant" (wherever occurring); insert "the minor".
			In subsection (4), omit "an infant"; insert "a minor".
25	No. 17, 1939	Child Welfare	Section 9 .. Omit subsection (2); insert the following subsections:— (2) Where any ward of whom the Minister is guardian attains the age of eighteen years, the guardianship shall terminate. (3) Where an ex-ward aged eighteen years or upwards is under the guardianship of the Minister under this Act on the commencement of the Minority Act, 1969, the guardianship shall terminate on the commencement.
30			
35			
	No. 2, 1940	Industrial Arbitration.	Section 92 .. In subsection (4), omit "of full age"; insert "of the age of eighteen years".
40	No. 67, 1941	Money-lenders and Infants Loans.	Section 3 .. In subsection (1), after the definition of "Loan", insert the following definition:— "Minor" means a person under the age of eighteen years.
45		Section 35 ..	Omit "an infant" (wherever occurring); insert "a minor".
			In subsection (3), omit "the infant"; insert "the minor".
			In subsection (3), omit "full age"; insert "the age of eighteen years or upwards".
50		Section 36 ..	Omit "an infant"; insert "a minor".
		Section 37 ..	Omit the section.

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5			
No. 17, 1943	Legal Assistance.	Section 2 ..	In the definition of "Assisted person", omit "an infant"; insert "a minor".
10			After the definition of "Assisted person", insert the following definition:—
			"Minor" means a person under the age of eighteen years.
15		Section 6 ..	In subsection (2), omit "an infant"; insert "a minor".
			In subsection (2), omit "the infant" (wherever occurring); insert "the minor".
20			In paragraph (d) of subsection (4A), omit "an infant"; insert "a minor".
			In paragraph (d) of subsection (4A), omit "the infant"; insert "the minor".
25	No. 45, 1958	Mental Health	Section 74 ..
			Omit subsection (3); insert the following subsection:—
30			(3) The owner of the said moneys or of the proceeds of the said sale shall, upon proving his ownership, be entitled to recover the same from the Treasurer.
No. 17, 1961	Conveyancing (Strata Titles).	Section 24 ..	In paragraph (a) of subsection (1), omit "an infant"; insert "under the age of eighteen years".
35	No. 11, 1962	Business Names.	Section 4 ..
			In subsection (1), after the definition of "Initial", insert the following definition:—
40			"Minor" means a person under the age of eighteen years.
		Section 7 ..	In subsection (2), omit "an infant"; insert "a minor".
		Section 12 ..	In paragraph (a) of subsection (4), omit "an infant"; insert "a minor".
45	No. 6, 1964	Trustee Companies.	Section 3 ..
			In subsection (1), after the definition of "Manager", insert the following definition:—
			"Minor" means a person under the age of eighteen years.

FIRST

Minority.

FIRST SCHEDULE—*continued.*

First Column.			Second Column
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5			
No. 6, 1964 — <i>cont.</i>	Trustee Companies— <i>cont.</i>	Section 11 ..	In paragraph (d) of subsection (1), omit "an infant"; insert "a minor".
10		Section 18 ..	In subsection (1), omit "an infant"; insert "a minor".
		Section 21 ..	In subsection (1), omit "infant"; insert "minor".
No. 23, 1965	Adoption of Children.	Section 18 ..	In paragraph (a) of subsection (1), omit "twenty-one"; insert "eighteen".
15		Section 26 ..	In subsection (6), omit "twenty-one"; insert "eighteen".
		Section 33 ..	Omit "twenty-one"; insert "eighteen".
No. 18, 1967	Permanent Building Societies.	Section 22 ..	Omit "twenty-one"; insert "eighteen".
20		Section 27 ..	In subsection (1), omit "adult persons"; insert "persons aged eighteen years or upwards".
25		Section 50 ..	Omit the section; insert the following section:— 50. (1) Unless provided otherwise by the rules, a person under the age of eighteen years may be a member of a society. Minor members. (2) A person under the age of eighteen years who is a member of a society may, to the extent required by reason of his membership, execute all instruments and give all necessary acquittances. (3) A person under the age of twenty-one years shall not be competent to hold any office in a society. (4) Notwithstanding the provisions of section seventy-five of this Act, a member of a society who is under the age of eighteen years shall not be entitled to vote.
30			
35			
40			
45			
No. 30, 1969	Imperial Acts Application.	Section 21 ..	Before "A guardian", insert "(1)".
50			Omit "an infant"; insert "a minor". Omit "the infant" (wherever occurring); insert "the minor".

FIRST

*Minority.*FIRST SCHEDULE—*continued.*

First Column.			Second Column.
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
5 No. 30, 1969 — <i>cont.</i>	Imperial Acts Application — <i>cont.</i>	Section 21— <i>cont.</i>	Omit “twenty-one”; insert “eighteen”. At the end of the section, insert the following subsection:— (2) In this section “minor” means a person under the age of eighteen years.
10 No. 31, 1969	Limitation ..	Section 11 ..	In paragraph (a) of subsection (3), omit “an infant”; insert “under the age of eighteen years”.
15			

SECOND

Minority.

SECOND SCHEDULE.

Sec. 4.

CITATION.

First Column.		Second Column.
5	Reference to Act.	Citation.
	Subject.	
	45 Vic. No. 12	Trade Union Act, 1881-1969.
	No. 4, 1897 ..	Interpretation Act, 1897-1969.
	No. 4, 1898 ..	Trustee Act, 1898-1969.
10	No. 13, 1898 ..	Wills, Probate and Administration Act, 1898-1969.
	No. 17, 1898 ..	Conveyancing and Law of Property Act, 1898-1969.
	No. 39, 1899 ..	Infants' Custody and Settlements Act, 1899-1969.
15	No. 25, 1900 ..	Real Property Act, 1900-1969.
	No. 24, 1901 ..	Equity Act, 1901-1969.
	No. 45, 1901 ..	Married Persons (Property and Torts) Act, 1901-1969.
20	No. 17, 1902 ..	Building and Co-operative Societies Act, 1902-1969.
	No. 43, 1902 ..	Usury, Bills of Lading, and Written Memoranda Act, 1902-1969.
25	No. 48, 1906 ..	Government Savings Bank Act, 1906-1969.
	No. 7, 1912 ..	Housing Act, 1912-1969.
	No. 23, 1912 ..	District Courts Act, 1912-1969.
	No. 25, 1912 ..	Gaming and Betting Act, 1912-1969.
30	No. 33, 1912 ..	Small Debts Recovery Act, 1912-1969.
	No. 46, 1912 ..	Friendly Societies Act, 1912-1969.
	No. 19, 1913 ..	Public Trustee Act, 1913-1969.
35	No. 41, 1916 ..	Testator's Family Maintenance and Guardianship of Infants Act, 1916-1969.
	No. 6, 1919 ..	Conveyancing Act, 1919-1969.
	No. 1, 1923 ..	Sale of Goods Act, 1923-1969.
	No. 1, 1924 ..	Co-operation Act, 1924-1969.
40	No. 31, 1924 ..	Prickly-pear Act, 1924-1969.
	No. 14, 1925 ..	Trustee Act, 1925-1969.
	No. 15, 1926 ..	Workers' Compensation Act, 1926-1969.
	No. 8, 1929 ..	Public Hospitals Act, 1929-1969.
45	No. 25, 1929 ..	Damages (Infants and Persons of Unsound Mind) Act, 1929-1969.
	No. 17, 1939 ..	Child Welfare Act, 1939-1969.
	No. 2, 1940 ..	Industrial Arbitration Act, 1940-1969.
50	No. 67, 1941 ..	Money-lenders and Infants Loans Act, 1941-1969.

SECOND

*Minority.*SECOND SCHEDULE—*continued.*

First Column.		Second Column.
5	Reference to Act.	Subject.
		Citation.
	No. 17, 1943 ..	Legal Assistance
	No. 45, 1958 ..	Mental Health
	No. 17, 1961 ..	Conveyancing (Strata Titles).
10	No. 11, 1962 ..	Business Names
	No. 6, 1964 ..	Trustee Companies
	No. 23, 1965 ..	Adoption of Children ..
	No. 18, 1967 ..	Permanent Building Societies.
		Legal Assistance Act, 1943–1969.
		Mental Health Act, 1958–1969.
		Conveyancing (Strata Titles) Act, 1961–1969.
		Business Names Act, 1962–1969.
		Trustee Companies Act, 1964–1969.
		Adoption of Children Act, 1965–1969.
		Permanent Building Societies Act, 1967–1969.

THIRD

Minority.

THIRD SCHEDULE.

Sec. 5.

SAVING OF SPECIFIC ENACTMENTS.

Reference to Act.	Subject.	Provision.
5	No. 13, 1898 .. Wills, Probate and Administration.	Section 54.
	No. 22, 1900 .. University and University Colleges.	Section 57 (c). Section 9c.
10	No. 70, 1901 .. Western Lands	Section 18π.
	No. 37, 1904 .. Closer Settlement	Section 26.
	No. 49, 1906 .. Mining	Section 13A.
	No. 41, 1912 .. Parliamentary Electorates and Elections.	Section 20 (1).
15	No. 42, 1912 .. Liquor	Section 24 (1).
	No. 7, 1913 .. Crown Lands Consolidation	Section 239.
	No. 6, 1919 .. Conveyancing	Section 36.
	No. 41, 1919 .. Local Government	Section 50.
	No. 8, 1921 .. Architects	Section 12.
20	No. 25, 1923 .. Veterinary Surgeons	Section 12.
	No. 31, 1924 .. Prickly-pear	Section 20 (5) first paragraph.
	No. 7, 1926 .. Farm Produce Agents	Section 8 (a).
	No. 3, 1927 .. Land Agents	Section 4 (5) (a).
	No. 3, 1929 .. Surveyors	Section 10 (1).
25	No. 20, 1930 .. Optometrists	Section 19.
	No. 67, 1941 .. Money-lenders and Infants Loans.	Section 5 (6) (c).
	No. 9, 1945 .. Physiotherapists Registration	Section 21 (1).
	No. 18, 1945 .. Public Accountants Registration.	Section 18 (1) (a).
30	No. 10, 1953 .. Nurses Registration	Section 16. Section 22 (2). Section 34 (2).
	No. 34, 1953 .. University of New England ..	Section 11 (a). Section 15 (1).
35	No. 60, 1961 .. Motor Vehicle Driving Instructors.	Section 5 (4) (a).
	No. 17, 1962 .. Chiropodists Registration ..	Section 22 (1).
	No. 4, 1963 .. Commercial Agents and Private Inquiry Agents.	Section 10 (10) (a) (iii).
40	No. 35, 1963 .. Optical Dispensers	Section 22 (1).
	No. 29, 1964 .. Macquarie University. ..	Section 11 (a).
	No. 48, 1964 .. Pharmacy	Section 17 (1) (a).
	No. 72, 1964 .. University of Newcastle ..	Section 11 (a). Section 14 (1).

APPENDIX G

Notes on Proposed Bill

1. Sections 1 and 2 need no comment. As to section 3, it is convenient to postpone until later in these notes (paragraphs 47 and following) comment on the amendments which would be made by that section and the First Schedule. Section 4 needs no comment.

2. Section 5, read with the Third Schedule, contains a list of enactments which, we think, ought not to be affected by the Bill and which, in the absence of the section, might give rise to doubts. The list is probably not exhaustive: it contains those enactments of the character we have mentioned which we have considered in our work under the present terms of reference.

3. Sections 6, 7 and 8 of the Bill, while of basic importance to the operation of the Bill, do not call for explanatory comment. We draw particular attention, however, to section 7 (3), which states the effect of the words "presumptively binding". The intention is to leave room for the vitiating effect of such things as fraud, mistake, mental illness, and failure of conditions precedent.

4. Section 9 would effect the general change of making 18 years the age of majority in relation to any "civil act", as that expression is defined in section 7 (1).

5. Section 10 makes a general provision for the construction of statutory references to "full age" and so on. The First Schedule to the Bill would make amendments to many Acts, which amendments will make recourse to section 10 unnecessary in many instances. However, there are presumably other Acts which have escaped our notice and it is sometimes convenient to retain such expressions as "of full age" subject to the change in meaning which section 10 would effect.

6. Section 11 would remove, as to persons aged 18 years or upwards, disabilities of infancy in relation to a variety of fiduciary offices. This follows as a matter incidental to the reduction of the age of majority as to contracts and dispositions of property.

7. Sections 12, 13 and 14, dealing with legal proceedings, estoppel, and laches and acquiescence, are further incidental provisions.

8. Section 15 deals with consent and other defensive matters in cases of tort. These matters are on or near the border-line between contract and tort and are within our terms of reference at least as incidental matters.

9. Section 16 deals with domicile. Domicile affects contractual capacity and the law of succession to movables and is thus within our terms of reference. We draw the attention of the Government to the relevance of domicile to questions of death duty under the Stamp Duties Act. Domicile is also relevant in the law of divorce, but that is a matter for the federal Parliament.

10. We come now to Part III of the Bill which is intended to introduce a code (see section 18) as to the "civil acts" of minors, that is, persons under the age of 18 years. The Part would not apply to a civil act in which a minor participates before the commencement of an Act founded on the Bill (section 17), thus existing rights and liabilities would not be disturbed.

11. Section 19 would preserve the common law as to children of tender years. See Salmond & Williams on Contracts (1945), p. 297; *Johnson v. Clark* (1908) 1 Ch. 303, at pp. 311, 312).

12. In outline, the scheme of Part III is that a civil act in which a minor participates is presumptively binding on him if one of a number of objective tests is satisfied (sections 20 to 26), or if it is authorised or affirmed by a court (sections 27, 28 and 29), or if it is affirmed

by the minor after reaching 18 years or by his representative in case of his death (section 29), or if it is not repudiated before a year after his 18th birthday or his death (sections 30, 31, 33, 37). If a civil act is not presumptively binding and is duly repudiated, wide judicial discretions would be given for the adjustment of the rights of persons interested (section 36). A minor would not be entitled to enforce a civil act unless it were presumptively binding on him (section 38).

13. Section 20 states what should, we think, be the general rule: if a minor participates in a civil act which is for his benefit, the civil act is binding on him. This would put a single simple rule in place of the many distinctions which are drawn, or appear to be drawn, by the present law. It is the simple and reasonable proposition foreseen by Salmond & Williams (at p. 310).

14. But section 20 is not enough by itself. There are cases where a minor ought to be bound even though the transaction cannot be seen to be for his benefit. There are cases too where parties should be able to know immediately whether a transaction is binding, without waiting until some occasion for enforcement arises or until the time for repudiation runs out. Provision must also be made for the adjustment of rights where a civil act is found to be not binding on a minor. The following sections of Part III of the Bill are concerned with these matters.

15. Section 21 deals with dispositions for a consideration which is wholly or partly executed. The present law appears to be that an infant cannot recover personal property with which he has parted for a consideration, unless there is a total failure of the consideration. It is probably a necessity that as a rule an executed transaction should not be open to avoidance on grounds of infancy, but an absolute statutory provision to that effect would be too rigid. We have therefore inserted safeguards in case of considerations being manifestly inadequate or manifestly excessive. These safeguards will not endanger ordinary transactions, but will give a protection, which is absent today, against some possible forms of reckless improvidence. For example, on our reading of the law, if today a minor exchanges his car worth \$2,000 for another car worth \$200, and took delivery of and used the second car, his infancy would not allow him any redress. Under the Bill, section 21 would not apply (because of the disproportionate consideration) and the way would be open for an adjustment of rights by further agreement (section 20), or if need be, by Court order (section 36).

16. Section 22 will validate gifts which are reasonable in the circumstances, for example, gifts of moderate value to relatives and friends, but which could not be said to be beneficial to the donor in the sense that a contract may be beneficial.

17. Section 23 states a ground of validation which would perhaps be implied if it were not expressed. If by some means a minor became entitled to a debt secured by mortgage, and the debt were paid to him, he would as a rule be under an obligation to execute a discharge of the mortgage: this section would validate the discharge. So too if, by a contract binding on him, he promised to transfer some shares in a company, this section would validate the transfer.

18. Section 24 deals with cases of negligible risk and it is expedient to state a simple rule which may facilitate safe investment by minors. The specified securities are, as a rule, freely marketable, so that there is not a significant risk of a minor putting out of his reach money which he needs for other purposes.

19. Section 25 would afford a proper measure of protection to strangers who might be damnified by the invalidity of the civil act of a minor but who do not know that a minor is involved. Paragraph (a) deals with the case of a stranger taking property previously disposed of by a minor and will protect the stranger in case of repudiation of the minor's disposition. In case of such a repudiation, a frequent result would be that some one must suffer: section 25 would confine the suffering to the immediate parties to the disposition and volunteers claiming under them, while section 36 would enable adjustments to be made amongst persons not protected by section 25.

20. An example of the operation of section 25 (b) would be the protection of a company which registers a transfer of shares where the transferor is a minor but the company does not know that he is a minor.

21. Section 26 repeats the substance of section 151B of the Conveyancing Act, which the proposed Bill would repeal.

22. Section 27 will provide for the occasional case where it appears that a young person is in fact competent to engage in affairs relating to contract and property even though he is under 18 years of age and it appears to be for his benefit that he should not be under legal disability. Such a case might arise, for example, where a boy has for some years taken part in a business run by his father, say a green grocery business, and the father dies while the boy is 16 or 17 years old leaving the boy as the breadwinner for the family. On being satisfied that the boy is competent to carry on the business, a Supreme Court Judge might make an appropriate grant of civil capacity, so that the boy would not be handicapped in, say, credit transactions with suppliers.

23. Section 27 would also enable the Supreme Court to give to a minor capacity to participate in any specific civil act or description of civil act. By way of example, this would extend to concurrence by a minor in the variation of a trust under which he is a beneficiary, and to his joining and taking part in a partnership business.

24. We propose that the jurisdiction under section 27 should be confined to the Supreme Court for several reasons. First, the jurisdiction is unlimited as to the extent of the rights and liabilities which may arise pursuant to a grant of capacity under the section. Secondly, the parental jurisdiction of the Crown in respect of infants has traditionally been exercised by the Supreme Court. Thirdly, the jurisdiction is a novel one and it would be advantageous, if, at least at the outset, the jurisdiction were exercised by a court of high authority.

25. Section 28 would adopt, with some extension and other modification, a device which has been a success in New Zealand. Subject to a limit as to value, a contract or disposition of property in which a minor participated with the prior approval of a court of petty sessions would be presumptively binding on the minor. Within the limit as to value, section 28 would provide an alternative course to that under section 27 where all that is needed is capacity to participate in one or more specific contracts or dispositions.

26. Section 29, dealing with affirmation, is a key provision. By subsection (4), a civil act which is affirmed pursuant to the section would be presumptively binding on the minor, notwithstanding that no other provision of the Bill would make the civil act so binding. Thus, for example, a contract which was not originally for the benefit of the minor might be affirmed and accordingly become binding.

27. One of the defects of the present law is that, where a contract is voidable by an infant, another party to the contract may, so to speak, be held in suspense until after the infant reaches full age. This period of suspense may cause hardship to the other party. The Bill would therefore enable a court to affirm (s. 29 (1) (a)) or repudiate (s. 33) during minority a civil act not otherwise binding on the minor. By section 35, the court would be required, on application by a person interested in a civil act, either to affirm or to repudiate the civil act on behalf of a minor participant. We do not think that occasions for approach to a court under these provisions would be frequent, and the prospect of adverse orders for costs would discourage frivolous or oppressive applications, but the power would be a useful one to have in reserve. The existence of the power would, we think, promote the settlement of these problems by agreement.

28. Apart from affirmation during minority by a court, section 29 would enable a minor to affirm his civil act after he reaches 18 years of age and would enable affirmation by the personal representative of a deceased minor. The proposed Bill would put no ulterior time limit on affirmation by a minor or his representative. The relevant time limit would be put on repudiation under sections 30, 31 and 33: the civil act would become presumptively binding unless repudiated within the times fixed by those sections (section 37).

29. Where a civil act is not presumptively binding on a minor participant, section 30 would enable him to repudiate it during minority or during the first year of majority. But a repudiation would not be effective if it were shown that the civil act were for his benefit at the time of repudiation. Thus, in the case of a contract to which section 20 applied, the contract would be open to repudiation only if not for his benefit when made and if repudiation were for his benefit at the time of repudiation. This double test of benefit is, we think, desirable for the purpose of confining the privileges of minority to what is really necessary for the protection of the minor. Provision is also made for repudiation by the personal representative of a deceased minor (s. 31), and for repudiation by a court (s. 33).

30. Where a civil act is duly repudiated, a case arises for the adjustment of the rights of those interested in the civil act. Section 36 would provide for this adjustment. Section 36 would give wide discretionary powers. We do not think that it is practicable to propose legislation which would itself prescribe the adjustment to be made on repudiation: the cases which would arise might take any of an infinite number of forms. We think that a rigid prescription of the consequences of repudiation would operate unjustly as often as it operated justly and, reluctant though we are to see proprietary and contractual rights subjected to a new judicial discretion, we think that any other approach would be either unworkable or unjust.

31. Section 37 completes the scheme concerning the binding effect of a civil act of a minor. If the civil act is not presumptively binding on him when he reaches the age of 18 years, he has a year within which he may repudiate it. If he does not, the civil act is presumptively binding on him.

32. Section 38 deals with the case of enforcement of a civil act by a minor participant. He would not be permitted to do so unless the civil act were presumptively binding on him. Thus he would not be allowed to enforce his rights under the civil act unless he also undertook its burden. Where he is still under the age of 18 years, and the civil act is not otherwise presumptively binding on him, the civil act would be open to affirmation on his behalf by a court under section 29.

33. We go to Part IV of the proposed Bill, relating to courts. Sections 39, 40 and 41 are important, but we think that they are self-explanatory.

34. Section 42 adopts, with enlargement and other modification, a provision in force in New Zealand and applying to the counterpart in New Zealand of section 28. The New Zealand provision has been a success. In dealing with questions of benefit to a minor, we think that a court ought to be treated as if exercising the parental powers of the Crown in respect of minors and ought not to be treated as merely making an adjudication between parties. It seems appropriate, therefore, that on these questions ordinary rules of evidence should be relaxed to the extent appearing in the section.

35. Section 44 would introduce a novel indulgence to minors. While we think that Part III has adequate safeguards against a minor being bound by improvident transactions, cases must arise where a minor will suffer judgment, perhaps in a large sum of money or affecting property of large value. We think that there ought to be room to allow time during minority and thus to soften the blow. Section 44 provides accordingly.

36. We go on to Part V, which deals with general matters.

37. Section 45 deals with matters of agency. Subsection one deals with a person under 21 years of age acting by an agent, and provides quite generally that he may do so. The subsection does not distinguish between persons who have reached 18 years and those who have not. In the case of a minor, however, the effect of a civil act in which he participates by an agent would depend on Part III (section 45 (2)).

38. Section 45 (3) deals with the case of an agent aged less than 21 years. If a person wishes to put his affairs in the hands of a young person, we do not see why he should not be his own judge as to the wisdom of doing so and be at liberty to do so if he thinks fit.

39. Section 46 will overcome the effect of the decision noted in the margin and will take away a trap for the unwary.

40. We pass on to section 47. In cases of tort, there is at present an unsatisfactory, and perhaps unreal, distinction. An infant is said to be not liable in tort where the tort is connected with a contract or where the cause of action in tort is in substance a cause of action in contract. In other cases, however, he is answerable for his torts. A particular instance of his immunity occurs where he has induced some person to contract with him by a fraudulent representation that he is of full age: he is not liable in damages for deceit. The ground of the distinction is that were it otherwise his liability in tort would open an indirect way of enforcing a contract not enforceable directly. We have considered the reported cases and have concluded that the distinction has been haphazard and, as often as not, unjust in its operation and that it ought to be abolished.

41. There is indeed one kind of tort where the operation of the distinction is clear enough. That is the case we have mentioned of a fraudulent misrepresentation as to age inducing a contract. It has been put as a reason for retaining the rule in these cases that otherwise people dealing with infants, or with persons possibly infants, would adopt the device of obtaining a representation that the party was of full age and thus put themselves in a position to enforce a liability, if not in contract at least in deceit. The Latey Committee found this reason persuasive and they proposed that the exemption from liability in this case should remain (pages 92, 93).

42. We do not agree. If the device mentioned in the last paragraph were adopted, we think that it would not be a proper view of the facts that the plaintiff had acted on the faith of the truth of the representation. The inference would rather be that the plaintiff had made the contract because he thought that, if the representation was true, he would have contractual rights but, if it were false, he would have a cause of action in deceit. He would indeed be acting with indifference to the truth or falsity of the representation. If that were the inference there would not, we think, be the inducement which is essential to a cause of action in deceit. We think that tribunals of fact would be quite capable of dealing with this device and that its possible use does not justify retention of the immunity.

43. In general, we do not see that a minor should be exempt from liability for his deceit, whether it induces the making of a contract or not. We propose, therefore, that the distinction be abolished.

44. Section 48 deals with consents to medical treatment and dental treatment. The law is uncertain at present and we think that this section would effect a useful, though still incomplete, clarification. The section is limited to claims for assault: it has nothing to do with negligence. It would protect persons acting with reasonable care and with consent, but that is as far as it goes. In the case of a minor up to 15 years of age, the consent of a parent or guardian of his person would be effective; in the case of a minor aged 14 years or upwards, the consent of the minor himself would be effective. There is an overlap, but we see no harm in that. We think that these special provisions are justified having regard to the needs which arise for the treatment concerned and having regard to the fact that the treatment will be by, or under the direction of, members of skilled and responsible professions. The consent in question may or may not be contractual in character: the matter is at least an incidental matter within our terms of reference.

45. Section 49 replaces, with considerable enlargement in scope, section 73 of the Trustee Act, 1925. Section 73 has been found to be of considerable utility in recent years, but as matters stand the section is expressed too briefly and its utility depends too much on boldness of judicial interpretation. The need for some such provision would continue notwithstanding Part III of the Bill, because apart from any other reason, some provision must be made for the case of children of tender years (see section 19 of the proposed Bill).

46. The final section, section 50, dealing with rules of court, does not require comment. We pass on to a consideration of the amendments set out in the First Schedule.

47. The Trade Union Act 1881, section 19, would be amended verbally but not in substance, for the sake of consistency with the substantive parts of the proposed Bill.

48. The Interpretation Act, 1897, would be amended by the insertion of a section dealing with the time of attainment of an age. The law on the subject is at variance from ordinary ideas of the meaning of language. See *Prowse v. McIntyre* ((1961) 111 C.L.R. 264). We also propose a corresponding amendment to the Conveyancing Act, 1919, by the insertion of a new subsection 1(A) of section 181. We regard this as an incidental matter within our terms of reference.

49. The Bill would amend section 18 of the Trustee Act, 1898, by inserting provisions to make the section consistent with the substantive provisions of the Bill. We would allow the section to remain operative throughout infancy rather than confine it to the period before the attainment of the age of 18 years because the section is concerned with a problem which arises not only because of the disability of infancy but also because trust dispositions are often contingent on the attainment of the age of 21 years.

50. We would have preferred to recommend the repeal of section 18 of the Trustee Act, 1898, and the remainder of that Act so far as not already repealed, and to recommend a corresponding extension of section 43 of the Trustee Act, 1925. Section 18 of the 1898 Act does not apply where the instrument, if any, creating the trust came into operation on or after the 1st of March, 1926 (Trustee Act, 1925, ss. 1 (2), 43 (1)). There can be few trusts created by such instruments which now have, or may in the future have, infant beneficiaries. However, there may be some such trusts, and to apply to them the more extensive powers in section 43 of the 1925 Act may have the effect of disturbing settled expectations.

51. The Wills, Probate and Administration Act, 1898, would be amended in several ways. "Minor" is defined as meaning a person under the age of 18 years. We propose the use of "minor" rather than "infant" because it is better not to use a word in a sense repugnant to its established legal sense and because "minor" is more consonant with ordinary usage. See the Latey Report at pp. 41, 42.

52. A new definition of "privileged testator" is inserted. The expression, as defined, includes the persons mentioned in the present section 10, but also includes other persons. On the present section 10, it is not clear whether "soldier" includes a soldier of a country outside the Queen's dominions. The present section 10, in its application to members of naval, marine and air forces, is confined to Her Majesty's forces. We do not see why the privilege should not extend to any soldier and to a member of any naval, marine or air force, including (subject necessarily to any legislation dealing with enemy property) members of the forces of countries with which Australia is at war. We deal with this point as an incidental matter to which we are led by our study of section 10 of the Wills, Probate and Administration Act. The expression is used in sections 10, 13 (2), 17 (3) (c), 18 (2), 19 (2) as proposed to be amended by the Bill.

53. The new section 6 (1) of the Wills, Probate and Administration Act would effect the general reduction of the age of testamentary capacity from 21 years to 18 years.

54. The new section 6 (2) would enable a will to be made by a married minor. This is the law in Queensland (The Succession Acts, 1867 to 1968, s. 37 (1) (b)) and in New Zealand (Wills Amendment Act 1955, s. 12).

55. The new section 6 (2) would also enable a will to be made by a minor who is a soldier or a member of a naval, marine or air force of any country. The description of persons is the same as in the new definition of "privileged testator", but there is no reference to "in actual military service" or similar requirements. At present, an infant soldier cannot make a will until he is in actual military service, which is absurd. Here too we follow the recent Queensland legislation (The Succession Acts, 1867 to 1968, s. 37 (1) (b)).

56. The substituted section 10 of the Wills, Probate and Administration Act is confined to the form of wills: distinguish the present section which deals also with testamentary capacity. The present section is a patchwork and is difficult to follow. The present section is also defective in that the second paragraph of subsection (1) speaks of an infant soldier disposing of personalty by will "as he might have done before the coming into operation of this Act". Before the coming into operation of the Act of 1898, the position was governed by the Imperial Wills Act, 1837, and, if the reasoning of Younger J., in *In re Wernher* ((1918) 1 Ch. 339) is right, an infant soldier had no capacity to dispose of personalty by will.

57. Subsection (3) of the new section 10 would clear up a point on which there is some difficulty at present. See the note at 21 A.L.J. 153.

58. The present section 10 (4) deals with the appointment by a privileged testator of a guardian of his child. It follows an English provision which was made necessary by the terms of the Tenures Abolition Act, 1660, s. 8 (*In re Tollemache* (1917) P. 247). Having regard to section 14 of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, it does not appear to be necessary in New South Wales. The proposed Bill would omit the subsection and put nothing in its place.

59. The proposed Bill would substitute a new section 11 of the Wills, Probate and Administration Act. In the present section, "executed" does not fit the making of a will orally by a privileged testator. In the new section, "made" is used instead of "executed". The expression of the section is otherwise made more consonant with current usage.

60. The proposed Bill would substitute a new section 13 of the Act of 1898. By an interpretation which does not immediately present itself to a reader of the section, it has been held that the section does not avoid a legacy to an attesting witness to the will of a privileged testator: *In re Limond* ((1915) 2 Ch. 240). The section is recast so as to make this point more apparent.

61. The proposed Bill would substitute a new section for section 17 of the Wills, Probate and Administration Act, 1898, which deals with the manner of revocation of a will. The new section 17 also covers the ground now covered by section 10 (5). It will, we think, more clearly state the present law, which depends in part on judicial interpretations not immediately apparent on the face of the Act. For example, notwithstanding section 17, a privileged testator may revoke a will without any formality: *In re Gossage* ((1921) P. 194).

62. The proposed Bill would add a subsection to section 18, which deals with alterations to a will. Here again, the amendment states a result reached by judicial interpretation (*In re Tweedale* (1874) L.R. 3 P. & D. 204) but not immediately apparent on the face of the Act.

63. The draft Bill would also introduce a substituted section 19. The purpose is to allow a privileged testator to revive a will without formality. We know of no authority to the effect that this is now the law, but it should be the law, for the sake of consistency with the other provisions allowing informal testamentary acts by privileged testators. The second sentence is a safeguard against the restoration of what may have been the rule before the commencement of the Imperial Wills Act, 1837. See Jarman on Wills 8th edn. (1951) Vol. 1, p. 207. The existence of the rule is doubtful (*Usticke v. Bawden* (1824) 2 Add. 116; 162 E.R. 238), but it is better not to leave the doubt unresolved.

64. The amendment to section 21 is merely verbal: it will more aptly apply to the informal will of a privileged testator.

65. The amendment to sections 63, 70 and 75 are consequential on section 11 of the proposed Bill. The amendment to section 75A is consequential on section 9 of the proposed Bill.

66. The amendment to section 37 of the Conveyancing and Law of Property Act, 1898, would, in cases of infancy, confine the operation of Part IV to cases where the infant is under 18 years of age. The substantive provisions of the proposed Bill would render the Part unnecessary for the later years of infancy.

67. The proposed Bill would substitute a new section for section 70. It is necessary for the sake of consistency with the substantive provisions of the Bill to alter the references to infants. As an incidental matter, the new section would bring up to date the provisions as to mentally ill persons and would drop the provisions, which are spent, as to estates tail.

68. Sections 71 (1), (2) and 72 would be omitted because they are spent. We deal with these sections because section 73, which refers to them, requires alteration. Section 71 (3) must be retained because the married woman's restraint on anticipation has not been abolished in New South Wales.

69. A substituted section 73 is proposed. The substituted section does not alter the law.

70. Sections 82, 83, 85 and 88 would be altered by substitution or amendment. The references to infants are made references to minors and the provisions as to married women, which are spent, are dropped.

71. In section 89, "and unmarried" is dropped as a minor incidental omission of spent matter. "Full age" would mean aged 18 years or upwards: see section 10 of the proposed Bill.

72. We go to the amendments which we propose to the Infants' Custody and Settlements Act of 1899. We have discussed the new section 4A in paragraphs 40 and 41 of our report. The proposed amendments to sections 5 to 11 and 16 to 18 are self-explanatory. Part II of the Act of 1899 would be rendered unnecessary by an Act founded on the proposed Bill: see sections 9, 27 and 28 of the proposed Bill. We have mentioned the problem of damages in personal injury cases in paragraphs 45 to 47 of our report.

73. The amendments proposed to the Real Property Act, 1900, are of a minor and consequential character and are self-explanatory.

74. As to the Equity Act, 1901, section 19, which we propose should be omitted, is obsolete. The amendment to section 28 is self-explanatory.

75. Section 25 of the Married Women's Property Act, 1901 (having, in its amended form, the short title "Married Persons (Property and Torts) Act, 1901-1964" would be superseded by section 45 of the proposed Bill.

76. The proposed amendments to the Western Lands Act of 1901 are merely consequential on the substantive provisions of the proposed Bill. The same is true of the proposed amendments to the Building and Co-operative Societies Act, 1901.

77. The Usury, Bills of Lading, and Written Memoranda Act, 1902, would be amended by omitting section 9. The section is inappropriate to the scheme of Part III of the proposed Bill in relation to the contracts of minors.

78. The proposed amendments to the Government Savings Bank Act, 1906, are merely consequential on the substantive provisions of the Bill.

79. The proposed amendment to section 25 of the Housing Act, 1912, is consequential on the reduction of the age of majority to 18 years in matters of contract and property. The proposed amendments to the District Courts Act, 1912, are consequential on the substantive provisions of the proposed Bill, so also are the proposed amendments to the Gaming and Betting Act, 1912, the Small Debts Recovery Act, 1912, the Public Works Act, 1912, the Friendly Societies Act, 1912, the Crown Lands Consolidation Act, 1913, the Public Trustee Act, 1913, and the Closer Settlement (Amendment) Act, 1914.

80. In the Testator's Family Maintenance and Guardianship of Infants Act, 1916, we do not propose in this report an alteration of the last paragraph of section 3 (1A), because we do not know what were the considerations which led to the confinement of "children" in that subsection to persons under the age of 21 years and we do not see this report as an occasion to propose a restriction on the categories of those for whom provision may be made under the Act. Consequently, we do not propose an amendment to the second subparagraph of section 5 (2A) (c).

81. The amendment to section 5 (2A) is merely consequential on the substantive provisions of the proposed Bill. The amendments to sections 13 and following would give effect to the proposals discussed in paragraphs 40 and 41 of our report.

82. We come now to the proposed amendments to the Conveyancing Act, 1919. Many of the amendments are merely consequential on the substantive provisions of the proposed Bill or otherwise have a purpose which will be apparent and these amendments will not be discussed further here.

83. We do not understand why there is the age limit of 23 years in section 29A. We propose its omission.

84. Section 29B speaks of issue attaining the age of 21 years. The section assimilates the executory limitations within its operation to limitations subsequent to an estate tail. The latter limitations could be barred by the first tenant in tail upon his attaining the age of 21 years, that is, upon losing the disabilities of infancy in relation to property and court proceedings. It is thus consistent with the substantive provisions of the proposed Bill that the age fixed by this section should be lowered to 18 years. See, as to the section generally, Challis's Real Property, 3rd edn (1911), pp. 178, 179.

85. Sections 31 and 31A deal with accumulations of income. The sections are much in need of general review, but we think that this report is not the occasion for proposing a shortening of the permissible periods of accumulation. We therefore propose merely verbal changes for the purpose of maintaining the present law.

86. We also think that this is not the occasion for proposing changes in provisions relating to the rule against perpetuities: we therefore do not propose any amendment of section 36.

87. We propose that section 181 be amended so as to apply to deeds and other instruments the rule as to attainment of age which we have discussed in paragraph 48 of these notes in relation to the proposed amendment to the Interpretation Act, 1897.

88. We propose an amendment to section 7 of the Sale of Goods Act, 1923, which would withdraw infants from the operation of the section as to necessities. The present rules as to necessities are inconsistent with the scheme of Part III of the proposed Bill.

89. Our proposal for amendment of section 38 of the Co-operation Act, 1923-1967, is merely consequential.

90. The proposed amendments to the Prickly-pear Act, 1924, are merely consequential.

91. The proposed amendments to section 43 of the Trustee Act, 1925, are merely consequential. As with section 18 of the Trustee Act, 1898 (see paragraph 49 of these notes) we do not propose that the section be confined to cases where the beneficiary is under 18 years of age, because the power is required for cases where a gift is contingent on the beneficiary attaining 21 years. The other amendments to the Trustee Act, 1925, are merely consequential.

92. Subject to what we say presently about section 58 (2), the proposed amendments to the Workers' Compensation Act, 1926, are merely consequential. We should draw attention to the proposed amendments to section 58 (2), which may require the special consideration of the Government.

93. In relation to section 24 of the Public Hospitals Act, 1929, we note that in this and other cases where we have found the word "minor" used to denote a person under the age of 21 years, we have proposed an amendment substituting some other word or words, in the hope that "minor" will come to be used to denote a person under the age of 18 years.

94. We propose amendments to the Damages (Infants and Persons of Unsound Mind) Act, 1929, whereby, in cases of infancy, the Act would only apply where the infant is under 18 years of age. We refer to paragraphs 45 to 47 of our report, on the problem, not confined to infancy, of the risk of awards of damages being improvidently dissipated.

95. We have spoken of our proposals for amendment of the Child Welfare Act, 1939, at paragraphs 40 to 42 of our report.

96. Our proposal for amendment of the Industrial Arbitration Act, 1940, is merely consequential.

97. The amendments we propose to sections 35 and 36 of the Money-lenders and Infants Loans Act, 1941, follow from our general recommendation for reduction of the age of majority in matters of contract and property. We propose the omission of section 37 because it is inconsistent with Part III of the proposed Bill. See also paragraph 33 of our report.

98. The proposed amendments to the Legal Assistance Act, 1943, are merely consequential.

99. We propose the substitution of a new subsection (3) of section 74 of the Mental Health Act, 1958. Some alteration is required having regard to the Limitation Act, 1969, and to the amendment to that Act which we propose. We have compared this section with section 9 of the Unclaimed Moneys Act, 1917, section 286 of the Companies Act, 1961, and sections 26 and 27 of the Trustee Companies Act, 1964. There is no limitation period for claims under these other enactments, but there is for a claim under section 74 of the Mental Health Act. We see no reason for this limitation period and we propose an amendment which would abolish it.

100. The proposed amendment to the Conveyancing (Strata Titles) Act, 1961, is merely consequential. So also are the proposed amendments to the Business Names Act, 1962, and to the Trustee Companies Act, 1964.

101. The amendment which we propose to sections 18 and 26 of the Adoption of Children Act, 1965, appears to us to be required for consistency with our recommendations concerning guardianship. The proposed amendment to section 33 appears to us to follow as a matter incidental to our general recommendations.

102. The proposals for amendment of the Permanent Building Societies Act, 1967, are merely consequential. So also are the proposals for amendment of the Imperial Acts Application Act, 1969, and the Limitation Act, 1969.

103. We note that the Second Schedule to the Bill makes no provision for the citation of the Imperial Acts Application Act, 1969, and the Limitation Act, 1969, as those Acts would be amended by the Bill.
