

## Minors' Contracts

### Terms of Reference

In 1971, the Committee was asked to examine the law relating to contracts made by minors. This reference was part of a general reference to review the legal capacity of minors in relation to contracts and property.

### Background of Reference

The law in Western Australia governing contracts made by minors (that is, persons under the age of 18) is based on general common law principles developed by the English courts over many years. Under these principles, contracts made by minors are divided into a number of different categories with different consequences attaching to each. For instance contracts for necessary goods and services and beneficial contracts of service are generally binding upon a minor. Other contracts such as those involving the purchase of land or shares are voidable – the minor may repudiate them within a reasonable time of attaining the age of majority. Some contracts, such as those for the sale or purchase of motor vehicles and televisions, are void unless ratified in writing by the minor after attaining the age of majority. Finally, certain contracts are absolutely void – for instance where the minor is too young to understand the nature of the agreement or where the contract is not just non-beneficial, but prejudicial to the minor.

Where contracts are declared void for reason of legal incapacity, certain problems may arise, such as whether the ownership of property passes under an invalid contract, and the extent to which the law permits recovery of money or property transferred, either by or to a minor. On many of these matters, the law remains uncertain.<sup>1</sup> Apart from being uncertain and, in some cases, unnecessarily complex the law relating to minors' contracts was further perceived to be out of touch with modern conditions. For instance, the category of 'necessaries' depended upon the 'rank' and 'station in life' of the minor concerned. This nineteenth century language betrays a legal distinction based on wealth and status that is now widely considered objectionable.<sup>2</sup> Further, because the law is divided into strict categories it is perceived to be unreasonably inflexible such that if a contract does not fall within a category of enforceable contract it cannot be sued upon, even though beneficial to the minor.<sup>3</sup>

When the Committee was formally reconstituted as a Commission in January 1973, the new body assumed the conduct of this reference. The Commission released a working paper for comment in June 1978 but then suspended further work on the project in order to take advantage of the findings of the English Law Commission, which had undertaken a reference on the same topic. The English Law Commission submitted its report in 1984,<sup>4</sup> and its proposals were implemented in England by the *Minors' Contracts Act 1987* (UK).

### Nature and Extent of Consultation

Following the release of the English Law Commission report, the project was revived and Mr LL Proksch, Senior Lecturer in Law at the University of Western Australia and former member of the Commission, was engaged as a consultant for the project. Mr Proksch visited the English Law Commission and studied its research and the responses to a survey it had undertaken. He also consulted with Canadian law reform agencies working in the same area. Mr Proksch's report, adopted by the Commission, drew upon the experience of these law and other reform agencies and was submitted in May 1988.<sup>5</sup>

<sup>1</sup> It is important to note that these rules were mainly developed by the common law courts and equitable doctrines such as undue influence or unconscionability (application of which lead to the contract being declared voidable and subject to rescission) have been little used by courts in the protection of minors. For a fuller account of the law see Law Reform Commission of Western Australia, *Legal Capacity of Minors*, Working Paper (No 2), Project No 25(II) (1978) ch 1.

<sup>2</sup> Law Reform Commission of Western Australia, *Legal Capacity of Minors*, Project No 25(II) (1988) 31.

<sup>3</sup> *Ibid* 33.

<sup>4</sup> Law Commission (UK), *Minors' Contracts* Report No 134 (1984).

<sup>5</sup> Law Reform Commission of Western Australia, *Minors' Contracts*, Project No 25(II) (1988).

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### Recommendations

The Commission acknowledged the primary objective of the law of minors' contracts to be the protection of minors. However, rather than retaining the approach of the existing law, which seeks to place disincentives in the path of other parties intending to contract with minors, the Commission preferred to accept that minors will make contracts and that the law should provide relief for minors to the extent that protection is required. In summary, the Commission recommended that:

- Any contract to which a minor is a party should be enforceable both by and against the minor.
- General contractual principles found in the existing law, and particularly the equitable doctrines of undue influence and unconscionability, should continue to apply to contracts made with minors, in the same way as they do to contracts made between adults.
- In any action on or involving a contract made with a minor (including an action by the minor to seek relief from a contract, whether fully executed or not) the court should have the power, at the instance of the minor, to grant relief where it is satisfied that the contract is prejudicial to the minor's interests.
- The object of the court in granting relief should be to do what is fair, just and reasonable in all the circumstances of the case. Relief might take the form of deleting or altering terms of the contract, rescinding the contract, restoring property acquired under the contract, ordering repayment of money paid pursuant to the contract, or ordering the payment of compensation.

A comprehensive discussion of the Commission's recommendations may be found in chapters five and six of its final report.

### Legislative or Other Action Undertaken

To date there has been no legislative action to reform the law relating to minors' contracts.

### Currency of Recommendations

The Commission's recommendations remain current. Minors are significant consumers of goods and services. Particular markets such as entertainment, leisure and new technology specifically target young people.<sup>6</sup> The existing law does not reflect that some young people below the age of majority are in full-time employment and live independently. Such people should have greater contractual capacity, including the ability to enter credit contracts.

### Action Required

The appropriate action would be to introduce legislation that reverses the general principle that a contract is not binding on a minor. This could be based on the law in comparable jurisdictions such as New South Wales.<sup>7</sup> The Australian Law Reform Commission, in its report *Seen and Heard: Priority for Children in the Legal Process*, considered that legislation based on the New South Wales model should be adopted nationally for young people aged 16 and 17.<sup>8</sup>

### Priority – Medium–High

The existing law affecting minors' contracts does not reflect social reality. It is important that young people under the age of majority, particularly those who live independently, be able to enter valid contracts for essential services.

6 This includes on-line shopping and access to a variety of web-based services and mobile telephone services. See Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84, (1997) Recommendation 52.

7 *Minors (Property and Contracts) Act 1970* (NSW). The Act provides that where a minor participates in a civil act (including a contract) for his or her own benefit, that act is presumptively binding on the child provided he or she has the necessary understanding to participate in it.

8 See above n 6, ch 11.