

# Minors (Property and Contracts) Act 1970 No 60

[1970-60]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Succession Act 2006 No 80](#) (not commenced — to commence on 1.3.2008)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

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# Minors (Property and Contracts) Act 1970 No 60



New South Wales

An Act relating to the contractual and testamentary capacity and proprietary rights and obligations of persons under the age of twenty-one years; for these and other purposes to amend the [Conveyancing and Law of Property Act 1898](#) and the [Wills, Probate and Administration Act 1898](#) and certain other Acts in certain respects; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the [Minors \(Property and Contracts\) Act 1970](#).
- (2) Subject to subsection (3), this Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette, being a day not earlier than six months after the day on which Her Majesty's assent to this Act was signified.
- (3) If on the anniversary of the day on which Her Majesty's assent to this Act is signified a day has not been appointed under subsection (2), this Act shall, notwithstanding that subsection, commence on that anniversary.

### 2 (Repealed)

### 3 Amendments and saving

- (1) (Repealed)
- (2) An amendment made by subsection (1) does not:
  - (a) affect the previous operation of the Act amended, or anything duly suffered, done, or commenced to be done under the Act amended,
  - (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.

- (3) Any investigation, legal proceeding, or remedy mentioned in paragraph (c) of subsection (2) may be instituted, continued or enforced as if this Act had not been passed.
- (4) Notwithstanding the amendments made by subsection (1):
  - (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,
  - (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 commencement of this Act.
- (5) The amendments made by subsection (1) to Part 4 of the *Conveyancing and Law of Property Act 1898* apply to and in respect of proceedings in the 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.
- (6) The amendments made by subsection (1) to Part 5 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.
- (7) The amendments made by subsection (1) 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 Savings

- (1) 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 Second Schedule.
- (2) This Act does not affect any power or authority which any person would have if this Act had not been passed, to give consent or to acquiesce in relation to a person under the age of twenty-one years where, under any law of the Commonwealth, such consent or acquiescence is required or permitted.

#### 5 The Crown

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

#### 6 Definitions

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

**Civil act** means:

- (a) a contract,

- (b) an election to rescind or determine a contract for fraud, mistake, breach or otherwise,
- (c) a disposition of property,
- (d) a disclaimer,
- (e) an acknowledgment of receipt of property,
- (f) a discharge or acquittance,
- (g) an exercise of a power under a contract or under a settlement, will or other instrument,
- (h) an assent or consent to, acquiescence in, or acknowledgment or waiver of, any matter by a person affecting the person's rights or obligations under a contract or relating to property,
- (i) a release of any cause of action,
- (j) a grant of any leave or licence,
- (k) an election in relation to rights under a will or other instrument, or in relation to conversion as between realty and personalty, or
- (l) an act done:
  - (i) in relation to the formation,
  - (ii) in relation to becoming or ceasing to be a member or officer, or
  - (iii) as a member or officer:  
of a partnership, or of an association, company or society, whether a corporation or not,
- (m) without limiting the generality of the foregoing, any act relating to contractual or proprietary rights or obligations or to any chose in action:  
whether having effect at law or in equity.

**Disposition of property** includes:

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

(d) the grant of a power in respect of property:

whether having effect at law or in equity.

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

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

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

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

- (2) The making of a will, whether in exercise of a power of appointment or otherwise, or the revocation of a will, is not a civil act and is not a disposition of property for the purposes of this Act.
- (3) Where a person participates in a civil act while a minor and by this Act the civil act is or becomes presumptively binding on the person:
  - (a) the civil act is, at and after the time of the person's participation, as binding on the person and the person's personal representative and has effect as if the person were not under the disability of infancy at the time of the person's participation, and
  - (b) except where other provision is made by this Act, the civil act is binding and has effect as mentioned in paragraph (a) in favour of all persons.

## **7 This and other Acts cumulative**

- (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 or diminished by anything in Part 2 or Part 3.
- (2) Where, under any provision in Part 2 or Part 3, 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 any other Act.

## **Part 2 Capacity at eighteen years**

### **8 Civil acts generally**

A person is not under the disability of infancy in relation to a civil act in which the person



participates when aged eighteen years or upwards and after the commencement of this Act.

## **9 Full age generally**

(1) After the commencement of this Act:

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

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

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

except so far as the context otherwise requires.

(3) Subsection (1) does not affect:

- (a) the construction of any reference to “the adult male basic wage”, the “adult female basic wage”, or any similar expression in any Act or in any instrument made under an Act,
- (b) the construction of any Act, or of any instrument made under an Act, so far as the Act or instrument gives rise to any liability for fine or imprisonment or other punishment for an offence, or
- (c) the power to make any order under Part 3 of the [Guardianship Act 1987](#) or the

construction or operation of an order made under that Part.

## **10 Fiduciary office**

- (1) A person aged eighteen years or upwards may, after the commencement of this Act:
  - (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,
  - (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
  - (g) be appointed to any other fiduciary office.
- (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 (1) 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.

## **11 Legal proceedings**

After the commencement of this Act, a person aged eighteen years or upwards:

- (a) is not under the disability of infancy in relation to proceedings in any court, and
- (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.

## **12 Estoppel**

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

## **13 Laches and acquiescence**

A person is bound by the person's laches or acquiescence when aged eighteen years or upwards and after the commencement of this Act as if the person were aged twenty-one years or upwards.

#### **14 Tort: consent etc**

(1) In matters of tort, the doctrines of:

- (a) leave and licence,
- (b) consent,
- (c) volenti non fit injuria, and
- (d) voluntary assumption of risk:

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) Subsection (1) applies to:

- (a) a leave and licence granted after the commencement of this Act,
- (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.

(3) This section does not affect such operation as the doctrines mentioned in subsection (1) may have in the case of a minor.

#### **15 Domicile**

(1) The acts and state of mind after the commencement of this Act of a person aged eighteen years or upwards have, as regards the domicile of that person or of any other person, the same effect as if the person 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 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 3 Capacity of minors**

#### **16 Application**

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

#### **17 Preliminary**

Where a minor participates in a civil act, the civil act is not binding on the minor except as

provided by this Act.

## **18 Age of understanding**

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

## **19 Beneficial civil act**

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

## **20 Disposition for consideration**

(1) Where:

- (a) a minor makes a disposition of property for a consideration received or to be received by the minor,
  - (b) the consideration is not manifestly inadequate at the time of the disposition, and
  - (c) the minor receives the whole or any part of the consideration:
- the disposition is presumptively binding on the minor.

(2) Where:

- (a) a disposition of property is made to a minor for a consideration given or to be given by the minor, and
  - (b) the consideration is not manifestly excessive at the time of the disposition:
- the disposition is presumptively binding on the minor.

- (3) Save to the extent to which, under Part 3 of the [Sale of Goods Act 1923](#) or otherwise, a promise may operate as a disposition of property, subsection (2) does not make presumptively binding on a minor a promise by the minor which is the whole or part of the consideration for a disposition of property to the minor.
- (4) Where the burden of, or arising under, a covenant or other promise runs with property so as to impose an obligation or restriction on a person to whom a disposition of the property is made in any manner or circumstances, subsection (2) does not make presumptively binding on a minor a disposition of that property to the minor in that manner or those circumstances.

## **21 Gift**

Where a minor makes a disposition of property wholly or partly as a gift, and the

disposition is reasonable at the time when it is made, the disposition is presumptively binding on the minor.

## **22 Act pursuant to duty**

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

## **23 Investment in government securities**

An investment by a minor in:

- (a) any public funds or government stock or government securities of any State of Australia or of the Commonwealth, or
  - (b) any debentures or securities guaranteed by the Government or by the Treasurer:
- is presumptively binding on the minor.

## **24 Protection of strangers**

Where a minor participates in a civil act and a person who is not a party to the civil act:

- (a) acquires property affected by the civil act or any estate or interest in property so affected for valuable consideration, or
- (b) acts, otherwise than as a volunteer and so as to alter his or her 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 or her participation in the civil act a minor, the civil act is, in favour of that person and in favour of any person claiming under that person, presumptively binding on the minor participant.

## **25 Receipt by married minor**

A receipt by a married minor for rents, profits or other income or for accumulations of income is presumptively binding on the minor.

## **26 Capacity by order of Supreme Court**

- (1) The Supreme Court, on application by a minor, may, by order:
  - (a) grant to the minor capacity to participate in any civil act or in any description of civil acts or in all civil acts, and
  - (b) rescind or vary an order under paragraph (a).
- (2) The Court may make an order under subsection (1) on such terms and conditions as the Court thinks fit.
- (3) The Court shall not make an order under this section unless it appears to the Court

that the order is for the benefit of the minor.

- (4) A civil act in which a minor participates is, if authorised by a grant of capacity under this section, presumptively binding on the minor.
- (5) An order of rescission or variation under paragraph (b) of subsection (1) does not affect the validity of a civil act in which the minor has participated before the making of the order of rescission or variation.

## **27 Approval of contract or disposition**

- (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 the minor.
- (2) A Local Court 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.
- (3) The powers of a Local Court under this section may be exercised only by a Magistrate sitting alone.
- (4) A Local Court may make an order under this section on such terms and conditions as the Court thinks fit.
- (5) A Local Court shall not make an order under this section unless it appears to the Court that:
  - (a) the minor would not undertake obligations under the proposed contract or dispose of property under the proposed disposition of property to the value of \$10,000 or upwards, and
  - (b) the order is for the benefit of the minor.
- (6) A refusal to make an order under this section or the making of an order subject to any terms or conditions does not prevent the minor making a further application, whether on evidence of the same or other facts, to the Supreme Court under section 26.
- (7) Parts 2, 3 and 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* (as applied by section 64 of the *Local Courts Act 1982*) do not apply to an order under this section.

## **28 Certified disposition by a minor**

- (1) Where a minor makes a disposition of property for consideration and a certificate in respect of the disposition is given in accordance with this section, the disposition is presumptively binding on the minor.
- (2) A certificate for the purposes of this section in respect of a disposition of property made by a minor for consideration must:

- (a) be given before, but not more than seven days before, the making of the disposition, and
- (b) be given:
  - (i) by a solicitor instructed and employed independently of any other party to the disposition, or
  - (ii) by the Public Trustee, and
- (c) state that the person giving the certificate is satisfied that:
  - (i) the minor understands the true purport and effect in law of the disposition, and
  - (ii) the minor makes the disposition freely and voluntarily, and
- (d) state that the person giving the certificate has received a written statement from an independent and appropriately qualified valuer or other financial adviser to the effect that the consideration for the disposition is not manifestly inadequate, and
- (e) have annexed to the certificate a copy of the written statement referred to in paragraph (d).

## **29 Certified disposition to a minor**

- (1) Where a disposition of property is made to a minor for consideration and a certificate in respect of the disposition is given in accordance with this section, the disposition is presumptively binding on the minor.
- (2) A certificate for the purposes of this section in respect of a disposition of property made to a minor for consideration must:
  - (a) be given before, but not more than seven days before, the making of the disposition, and
  - (b) be given:
    - (i) by a solicitor instructed and employed independently of any other party to the disposition, or
    - (ii) by the Public Trustee, and
  - (c) state that the person giving the certificate is satisfied that:
    - (i) the minor understands the true purport and effect in law of the disposition, and
    - (ii) the minor takes the disposition freely and voluntarily, and
  - (d) state that the person giving the certificate has received a written statement from an independent and appropriately qualified valuer or other financial adviser to the

effect that the consideration for the disposition is not manifestly excessive, and

(e) have annexed to the certificate a copy of the written statement referred to in paragraph (d).

- (3) Save to the extent to which, under Part 3 of the [Sale of Goods Act 1923](#) or otherwise, a promise may operate as a disposition of property, this section does not make presumptively binding on a minor a promise by the minor which is the whole or part of the consideration for a disposition of property to the minor.
- (4) Where the burden of, or arising under, a covenant or other promise runs with property so as to impose an obligation or restriction on a person to whom a disposition of the property is made in any manner or circumstances, this section does not make presumptively binding on a minor a disposition of that property made to the minor in that manner or those circumstances.

### **30 Affirmation**

- (1) Where a person participates in a civil act while the person is a minor, the civil act may be affirmed:
- (a) while the person remains a minor, on the person's behalf by order of a court having jurisdiction under this section,
  - (b) after the person attains the age of eighteen years, by the person, or
  - (c) after the person's death, by the person's personal representative.
- (2) The court may affirm a civil act on behalf of a minor participant in the civil act under paragraph (a) of subsection (1) on application by the minor participant or by any other person interested in the civil act.
- (3) Subject to section 36, the court shall not affirm a civil act on behalf of a minor participant in the civil act under paragraph (a) of subsection (1) unless it appears to the court that the affirmation is for the benefit of the minor participant.
- (4) Where a civil act is affirmed pursuant to this section by or on behalf of a minor participant in the civil act, or by the personal representative of a deceased minor participant in the civil act, the civil act is presumptively binding on the minor participant.
- (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:
- (a) may be by words, written or spoken, or by conduct, and
  - (b) need not be communicated to any person.



### **31 Repudiation by minor**

- (1) Where a minor has participated in a civil act, then, subject to sections 33 and 35 and subject to subsection (2), the minor participant may repudiate the civil act at any time during his or her minority or afterwards but before the minor attains the age of nineteen years.
- (2) A repudiation of a civil act by a minor participant in the civil act does not have effect if it appears that, at the time of the repudiation, the civil act is for the benefit of the minor participant.

### **32 Repudiation by representative of deceased minor**

- (1) Where a minor has participated in a civil act and dies before attaining the age of nineteen years, then, subject to sections 33 and 35 and subject to subsection (2), his or her personal representative may repudiate the 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.

### **33 Notice of repudiation**

- (1) Where a civil act is repudiated under section 31 or section 32:
  - (a) the repudiation does not affect any person unless notice in accordance with subsection (2) is served on that person or on a person under whom that person claims,
  - (b) the repudiation has effect against a person served with the notice and against a person claiming under the person served as if made on the date of service of the notice.
- (2) A notice of repudiation must be in writing and signed by the person making the repudiation or by the person's agent.
- (3) A notice of repudiation may be served as provided in section 170 of the [Conveyancing Act 1919](#).

### **34 Repudiation by court for minor**

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

- (2) The court shall not repudiate a civil act on behalf of a minor participant if it appears to the court that the civil act is for the benefit of the minor participant.
- (3) Where the court repudiates a civil act on behalf of a minor participant, the court shall give such directions as it thinks fit for service of notice of the order of repudiation on persons interested in the civil act.

### **35 Restriction on effect of repudiation**

- (1) Where a civil act is presumptively binding on a minor participant in the civil act in favour of another party to the civil act or in favour of any other person, a repudiation of the civil act under any of sections 31, 32 and 34 by or on behalf of the minor participant, or, if the minor participant has died, by his or her personal representative, does not have effect as against that other party or person.
- (2) Where a person becomes a member of an association while the person is a minor and after the person becomes a member any civil act in which the person has participated for the purpose of becoming a member of the association, or as a member of the association, or otherwise in relation to the association, is repudiated under any of sections 31, 32 and 34 by the person or on the person's behalf, or, if the person has died, by the person's personal representative, the repudiation does not affect such right as 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 the person has died the interest of the person's 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 or omitted before the repudiation.
- (3) For the purposes of subsection (2), **association** includes a partnership but does not include a corporation.

### **36 Election by court**

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

### **37 Adjustment on repudiation**

- (1) Where a civil act is repudiated under any of sections 31, 32 and 34, a court having jurisdiction under this section may, on the application of any person interested in the civil act, make orders:
  - (a) for the confirmation, wholly or in part, of the civil act or of anything done under the civil act, or

- (b) for the adjustment of rights arising out of the civil act or out of the repudiation or out of anything done under the civil act.
- (2) Without limiting the generality of paragraph (a) of subsection (1), 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 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 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 the person's rights except with the person's consent.
- (4) Subject to subsection (3), and except so far as the court confirms the civil act or anything done under the civil act, the court shall make such orders as are authorised by this section and as the court thinks fit for the purpose of securing so far as practicable that:
  - (a) each minor participant in the civil act makes just compensation for all property, services and other things derived by him or her by or under the civil act to the extent that the derivation of that property or of those services or things is for his or her benefit,
  - (b) each other participant in the civil act makes just compensation for all property, services and other things derived by him or her by or under the civil act, and
  - (c) subject to paragraphs (a) and (b), the parties to the civil act and those claiming under them are restored to their positions before the time of the civil act.
- (5) Any court having jurisdiction under this section may, for the purposes of this section, make orders:
  - (a) for the delivery of goods, and
  - (b) for the payment of money.
- (6) In addition to its jurisdiction under subsection (5), the Supreme Court may, for the purposes of this section, make orders for:
  - (a) the making of any disposition of property,
  - (b) sale or other realisation of property,
  - (c) the disposal of the proceeds of sale or other realisation of property,
  - (d) the creation of a charge on property in favour of any person,

- (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
  - (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 it is confirmed under this section, presumptively binding on the person.
- (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.
- (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 3 of that Act.

### **38 Civil act not repudiated**

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

### **39 Enforceability by minor participant**

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

## **Part 4 Courts**

### **40 Jurisdiction**

- (1) The courts having jurisdiction under sections 30, 34, 36 and 37 are as specified in this section.
- (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 proceedings relate, does not amount to a value exceeding \$100,000.

- (4) A Local Court has jurisdiction where it appears to the Local Court that the matter in question, so far as concerns any minor participant in the civil act to which the proceedings relate, does not amount to a value exceeding \$10,000.
- (5) A district court or Local Court 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.

#### **41 Removal into Supreme Court**

- (1) This section applies to proceedings under any of sections 30, 34, 36 and 37.
- (2) A district court or a Local Court 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 Local Court 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:
  - (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 42.

#### **42 Transfer**

- (1) A district court or Local Court before which proceedings under this Act are pending may, by order and subject to such terms as it thinks fit, direct that the proceedings be transferred to another district court or Local Court as the case may be.
- (2) On the making of an order under subsection (1) 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 transferred.
- (3) In proceedings transferred to a court under this section the court to which the

proceedings are transferred:

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

#### **43 Reference of questions of benefit etc**

- (1) Where, in proceedings under any of sections 19, 26, 27, 30, 31, 32, 34, 37 and 50, a question arises whether a civil act or some other matter is or was for the benefit of a person who at any material time is a minor, the court may:
  - (a) refer the question to a parent of the minor or to a guardian of his or her person or of his or her estate or to any other person, and
  - (b) order any party to the proceedings to pay the reasonable costs and expenses of the referee.
- (2) A referee under this section may:
  - (a) subject to any order of the court, make inquiries and otherwise conduct himself or herself in the matter of the reference in such manner as the referee thinks fit, whether or not in accordance with the principles of natural justice,
  - (b) file in the court a report of the referee's consideration and examination of the question and making such recommendations as the referee 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 the referee consents to the appointment and until the referee's reasonable costs and expenses have been secured to the referee's satisfaction.
- (4) Where a referee has filed a report under this section:
  - (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), 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.

#### 44 Costs

A court may, in proceedings under any of sections 30, 34, 36 and 37, make such order as it thinks fit as to the costs of the proceedings including, in the case of proceedings removed under section 41 or proceedings transferred under section 42, the costs of the proceedings before removal or transfer and may assess the whole or any part of any costs.

#### 45 Allowance of time

- (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 the minor an extension of time to obey or satisfy the substantive order or judgment,
  - (b) stay execution or enforcement of the substantive order or judgment against the minor, 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 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 which a minor participates after the commencement of this Act.

### Part 5 General

#### 46 Agency

- (1) After the commencement of this Act, a person under the age of twenty-one years:
  - (a) may appoint an agent by power of attorney or otherwise, and
  - (b) may, by an agent, participate in any civil act and otherwise do or suffer anything which a person aged twenty-one years or upwards may participate in or do or suffer by an agent.
- (2) A civil act in which a minor participates by an agent after the commencement of this Act and anything which a minor otherwise does or suffers by an agent after the commencement of this Act has no greater validity or effect as against the minor than it would if participated in or done or suffered by the minor without an agent.

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

#### **47 Guarantee**

- (1) A guarantor of an obligation of a minor is bound by the guarantee to the extent to which he or she would be bound if the minor were not a minor.
- (2) For the purposes of subsection (1) a minor has, under a civil act in which the minor participates, the obligation which the minor would have if the minor were not a minor at the time of his or her participation.
- (3) This section applies to a guarantee given after the commencement of this Act.

#### **48 Liability for tort**

Where a person under the age of twenty-one years is guilty of a tort, the person is answerable for the tort whether or not:

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

#### **49 Medical and dental treatment**

- (1) Where medical treatment or dental treatment of a minor aged less than sixteen years is carried out with the prior consent of a parent or guardian of the person of the minor, the consent has effect in relation to a claim by the 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.
- (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 or her consent has effect in relation to a claim by him or her 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, he or she 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
  - (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:

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

## **50 Property of minor**

- (1) Where a minor is beneficially entitled at law or in equity to property, the Supreme Court may, on such terms as the Court thinks fit, make orders authorising a person, either generally or in any particular instance:
  - (a) to make any disposition of the property,
  - (b) to receive the proceeds of disposition of the property,
  - (c) to call for a disposition of the property to the person so authorised or as the person directs,
  - (d) to receive the income of the property,
  - (e) to sue for and recover any chose in action comprised in the property,
  - (f) to invest the property, or
  - (g) to apply the capital or income of the property for the benefit of the minor.
- (2) The Court shall not make an order under this section unless it appears to the Court that the order is for the benefit of the minor.

## **51 Rules of court**

- (1) The practice and procedure in proceedings under this Act in the Supreme Court shall be as prescribed by rules of court made under the [Supreme Court Act 1970](#).
- (2) Rules of court not inconsistent with this Act may be made by a majority of the District Court judges for the regulation of the practice and procedure in proceedings under this Act in the District Courts.
- (3)–(5) (Repealed)

- (6) Rules of court not inconsistent with this Act may be made by the Governor for the regulation of the practice and procedure in proceedings under this Act in a Local Court.

## First Schedule (Repealed)

## Second Schedule Saving of specific enactments

Reference to Act	Subject	Provision
No 13, 1898	Wills, Probate and Administration	Section 54. Section 57 (c).
No 22, 1900	University and University Colleges	Section 9C.
No 70, 1901	Western Lands	Section 18JJ.
No 37, 1904	Closer Settlement	Section 26.
No 49, 1906	Mining	Section 13A.
No 41, 1912	Parliamentary Electorates and Elections	Section 20 (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.
No 25, 1923	Veterinary Surgeons	Section 12.
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).
No 20, 1930	Optometrists	Section 19.
No 9, 1945	Physiotherapists Registration	Section 21 (1).
No 18, 1945	Public Accountants Registration	Section 18 (1) (a).
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).
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).

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).