

MINORS' CONTRACTS

EXPLANATORY NOTE

THIS Bill is a substantial revision of the law relating to minors' contracts. It is based on four main propositions:

- (a) That a contract entered into by a minor who has attained the age of 18 years, a contract of life insurance whereby a minor over the age of 16 years insures his own life, and a contract of service entered into by a minor shall in general be enforceable against the minor, but that the Court should have power to refuse to enforce any such contract if the Court is satisfied that, at the time the contract was entered into,—
 - (i) The consideration for a minor's promise or act was so inadequate as to be unconscionable; or
 - (ii) Any provision of any such contract imposing an obligation on any party thereto who was a minor was harsh or oppressive.
- (b) That other contracts entered into by minors who have not attained the age of 18 years should not in general be enforceable against them, but that the Court should have power to enforce such contracts if they were fair and reasonable ones at the time when they were entered into.
- (c) That, to prevent minors from being unjustly enriched as a result of the operation of the law, the Court should have power to grant relief to parties to contracts that are unenforceable against minors.
- (d) That married minors should have full contractual capacity.

Clause 1 relates to the Short Title and commencement of the Bill, which is to come into force on 1 January 1970.

Clause 2 is an interpretation clause.

Clause 3 provides that the Act shall bind the Crown.

Contractual Capacity of Minors

Clause 4: Subclause (1) provides that a minor who is or has been married shall have the same contractual capacity as if he were of full age.

Subclause (2) provides that, subject to *clause 15*, any compromise or settlement of a claim agreed to, and any discharge or receipt given for any purpose, by any such minor shall have effect as if the minor were of full age.

Clause 5: Subclause (1) contains the general proposition that every contract which is—

- (a) Entered into by a minor who has attained the age of 18 years; or
 - (b) Entered into pursuant to section 75 of the Life Insurance Act 1908; or
 - (c) A contract of service entered into by a minor;
- shall have effect as if the minor were of full age.

Subclause (2) confers certain powers on the Court which will enable it to ameliorate the difficulties that would arise from the strict application of *subclause (1)*. In particular the Court will be able to declare a contract unenforceable against a minor if it is satisfied that, at the time the contract was entered into,—

- (a) The consideration for the minor's promise or act was so inadequate as to be unconscionable; or
- (b) Any provision of the contract imposing an obligation on any party thereto who was a minor was harsh or oppressive.

Subclause (3) provides that for the purposes of *subclause (2)*, the Court may receive evidence of commercial practice in contracts of the same kind.

Subclause (4) provides that nothing in *subclause (2)* shall apply to certain contracts of apprenticeship and indentures of apprenticeship which must be entered into in accordance with procedures prescribed by statute.

Subclause (5) provides that nothing in this section shall apply to certain other contracts in respect of which specific provision is made in this Bill.

Clause 6: Subclause (1) contains the general proposition that every contract (other than a contract to which *paragraph (b)* or *paragraph (c)* of *subclause (1)* of *clause 5* applies) entered into by a minor who has not attained the age of 18 years shall be unenforceable against the minor but otherwise shall have effect as if the minor were of full age.

Subclause (2) confers certain powers on the Court which will enable it to ameliorate the difficulties that would arise from the strict application of *subclause (1)*. In particular the Court will be able to enforce a contract against the minor if it is satisfied that the contract was a fair and reasonable one at the time when the contract was entered into.

Subclause (3) sets out certain criteria to be observed by the Court in the exercise of the powers conferred on it by *subclause (2)*.

Subclause (4) provides that this clause is not to apply to certain contracts in respect of which specific provision is made in this Bill.

Subclause (5) provides that nothing in this clause shall limit or affect section 20 of the Trustee Act 1956.

Clause 7 empowers the Court to grant relief by way of compensation or restitution of property in certain cases.

Clause 8 contains procedural provisions which are to apply in respect of applications to the Court under *clause 5* or *clause 6*.

Clause 9 re-enacts, with some amendments, section 12A of the Infants Act 1908. The clause provides that a contract entered into by a minor with the approval of a Magistrate's Court shall have effect as if the minor were of full age. The main change is that, in addition to the minor and his guardian, any person who will be a party to the proposed contract may apply to the Court for its approval of the contract.

Miscellaneous Provisions

Clause 10 provides that notwithstanding that by reason of any provision of the Act or of any order made pursuant to any provision of the Act, any contract is unenforceable against a minor, no contract of guarantee or indemnity whereby any person has undertaken to accept liability in the event of the failure of the minor to carry out his obligations under his contract shall thereby be or become unenforceable against that person.

Clause 11 deals with the settlement of claims for money or damages made by or on behalf of any minor. The clause replaces section 35 of the Statutes Amendment Act 1945 and section 66 of the Public Trust Office Act 1957 (so far as it relates to claims by minors).

Clause 12 provides for the variation of orders made under *clause 11* in so far as they relate to the payment, investment, or application of money held on trust or the income therefrom.

Clause 13 deals with the jurisdiction of a Magistrate's Court to exercise any of the powers conferred by *clauses 5 to 7* of the Bill.

Clause 14: Subclause (1) provides that the provisions of the Act shall have effect in place of the rules of the common law and of equity relating to the contractual capacity of minors and to the effect, validity, avoidance, repudiation, and ratification of contracts entered into by minors.

Subclause (2) sets out that the Act shall apply only to contracts made, compromises and settlements agreed to, and discharges and receipts given, after the commencement of the Act.

Subclause (3) makes it clear that nothing in the Act shall limit or affect any provision of any enactment whereby a contract is made binding on a minor.

Subclause (4) provides that nothing in the Act shall limit or affect the rule of law whereby a minor is not liable in tort for procuring a contract by means of a fraudulent representation as to his own age or any other matter, but the Court shall take any such representations into account in deciding whether to exercise its powers under subsection (2) of section 5 or subsection (2) of section 6 or section 7 of the Act.

Clause 15 provides that nothing in this Act shall entitle—

- (a) A trustee to pay money or deliver property to a minor otherwise than in accordance with the terms of the trust:
- (b) A minor to enter into an agreement whereby a trust is extinguished or the terms of a trust are varied.

Clause 16 amends the Life Insurance Act 1908 by substituting a new section for section 75 of that Act. The new section authorises minors of or over the age of 16 years to insure their own lives. It also authorises any such minor to deal with any policy effected on his own life and owned by him. The old section conferred similar powers on minors of or over the age of 15 years and it required the consent of the Public Trustee to any dealing with a policy. That consent is no longer required but the exercise of the powers conferred by the new section are subject to possible review by the Court under *clause 5(2)* of this Bill.

Clause 17 makes a number of consequential amendments.

Clause 18: Subclause (1) repeals Part II of the Infants Act 1908 and a number of other enactments.

Subclause (2) revokes rule 59 of the Magistrates' Courts Rules 1948.

Hon. Mr Hanan

MINORS' CONTRACTS

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A BILL INTITULED

An Act to restate and reform the law relating to minors' contracts

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. Short Title and commencement—(1) This Act may be cited as the Minors' Contracts Act 1969.

(2) This Act shall come into force on the first day of
10 January, nineteen hundred and seventy.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Court” means the Supreme Court or a Magistrate’s Court that has jurisdiction under section 13 of this Act:

“Property” means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property.

(2) In sections 5, 6, 9, 10, and 11 of this Act the term minor does not include a minor who is or has been married.

3. Act to bind the Crown—This Act shall bind the Crown.

Contractual Capacity of Minors

4. Married minors—(1) A minor who is or has been married shall have the same contractual capacity as if he were of full age.

(2) Subject to section 15 of this Act, any compromise or settlement of a claim agreed to, and any discharge or receipt given for any purpose, by any such minor shall have effect as if the minor were of full age.

5. Contracts of minors of or over the age of eighteen years, certain contracts concerning life insurance, and contracts of service—(1) Subject to the provisions of this section, every contract which is—

(a) Entered into by a minor who has attained the age of eighteen years; or

(b) Entered into pursuant to section 75 of the Life Insurance Act 1908; or

(c) A contract of service entered into by a minor; shall have effect as if the minor were of full age.

(2) If the Court is satisfied in respect of any contract to which subsection (1) of this section applies that, at the time the contract was entered into,—

(a) The consideration for a minor’s promise or act was so inadequate as to be unconscionable; or

(b) Any provision of any such contract imposing an obligation on any party thereto who was a minor was harsh or oppressive,

5 it may, in the course of any proceedings or on application made for the purpose, cancel the contract, or decline to enforce the contract against the minor, or declare that the contract is unenforceable against the minor, whether in whole or in part, and in any case may make such order as to compensation or restitution of property under section 7 of this
10 Act as it thinks just.

(3) For the purposes of subsection (2) of this section, the Court may receive evidence of commercial practice in contracts of the same kind.

(4) Nothing in subsection (2) of this section shall apply
15 to—

(a) Any contract of apprenticeship to which the Apprentices Act 1948 applies; or

(b) Any indenture of apprenticeship to which section 29 of the Shipping and Seamen Act 1952 applies; or

20 (c) Any indenture of apprenticeship entered into under section 10A of the New Zealand Army Act 1950, section 22A of the Post Office Act 1959, section 83B of the Government Railways Act 1949, section 175B of the Coal Mines Act 1925, or section 70 of the State Services Act 1962.

(5) Nothing in this section shall apply to—

(a) Any contract approved by a Magistrate's Court pursuant to section 9 of this Act; or

30 (b) The compromise or settlement of any claim for money or damages made by or on behalf of any minor (whether alone or in conjunction with any other person).

6. Contracts of minors below the age of eighteen years—

35 (1) Subject to the provisions of this section, every contract (other than a contract to which paragraph (b) or paragraph (c) of subsection (1) of section 5 of this Act applies) entered into by a minor who has not attained the age of eighteen years shall be unenforceable against the minor but otherwise shall have effect as if the minor were of full age.

(2) If the Court is satisfied that any contract to which subsection (1) of this section applies was, at the time the contract was entered into, a fair and reasonable one, it may, in its discretion in the course of any proceedings or on application made for the purpose, enforce the contract against the minor, or declare that the contract is binding on the minor, whether in whole or in part, and in any case may make such order entitling the other party or parties to the contract, on such conditions as the Court thinks just, to cancel the contract and may make such order as to compensation or restitution of property under section 7 of this Act as it thinks just. 5 10

(3) In exercising its discretion under subsection (2) of this section the Court shall have regard to—

(a) The circumstances surrounding the making of the contract: 15

(b) The subject-matter and nature of the contract:

(c) In the case of a contract relating to property, the nature and the value of the property:

(d) The age and the means (if any) of the minor:

(e) All other relevant circumstances. 20

(4) Nothing in this section shall apply to—

(a) Any contract approved by a Magistrate's Court pursuant to section 9 of this Act; or

(b) The compromise or settlement of any claim for money or damages made by or on behalf of any minor (whether alone or in conjunction with any other person). 25

(5) Nothing in this section shall limit or affect section 20 of the Trustee Act 1956.

7. Compensation or restitution—(1) Where the Court exercises any of the powers conferred on it by subsection (2) of section 5 of this Act or on any application under subsection (2) of section 6 of this Act (whether or not it exercises any of the powers conferred on it by that subsection), the Court may grant to— 35

(a) Any party to the contract; or

(b) A guarantor or indemnifier under a contract of guarantee or indemnity relating to a contract to which subsection (1) of section 5 or subsection (1) of section 6 of this Act applies; or 40

(c) Any person claiming through or under or on behalf of any such party, guarantor, or indemnifier, such relief by way of compensation or restitution of property as the Court in its discretion thinks just.

5 (2) The Court may by any order made pursuant to subsection (1) of this section vest the whole or any part of any property that was the subject of, or the whole or any part of the consideration for, the contract in any party to the proceedings or may direct any such party to transfer or assign
10 any such property to any other party to the proceedings.

8. Applications under section 5 or section 6 of this Act—

(1) An application under subsection (2) of section 5 or subsection (2) of section 6 of this Act may be made by—

15 (a) Any person to whom the Court may grant relief pursuant to section 7 of this Act; or

(b) Any other person where it is material for that person to know whether the Court will exercise the powers granted to it by the subsection.

(2) Any order made under subsection (2) of section 5 or subsection (2) of section 6 or pursuant to section 7 of this Act, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

**9. Minor may enter into contract with approval of
25 Magistrate's Court—**(1) Every contract entered into by a minor shall have effect as if the minor were of full age if, before the contract is entered into by the minor, it is approved under this section by a Magistrate's Court.

(2) An application to a Magistrate's Court under this
30 section may be made—

(a) By the minor or any other person who will be a party to the proposed contract; or

(b) By a guardian of the minor.

(3) The Court may, in its discretion, refer any such application to a guardian of the minor, or, where the Court deems
35 it necessary for the purposes of the application, to a solicitor nominated by the Court, or to the Public Trustee or Maori Trustee, or to any other person, and may make such order as it thinks fit for the payment of the reasonable costs and
40 expenses of any person to whom the application is so referred.

(4) Any person to whom any such application is referred under subsection (3) of this section 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. 5

Cf. 1908, No. 86, s. 12A; 1951, No. 81, s. 14 10

Miscellaneous Provisions

10. Guarantees and indemnities—Notwithstanding that by reason of any provision of this Act or of any order made pursuant to any provision of this Act, any contract is unenforceable against a minor, no contract of guarantee or indemnity whereby any person has undertaken to accept liability in the event of the failure of the minor to carry out his obligations under his contract shall thereby be or become unenforceable against that person. 15

11. Settlement of claims by minors—(1) Where any money or damages are claimed by or on behalf of a minor (whether alone or in conjunction with any other person) then— 20

- (a) If the claim is not the subject of proceedings before any Court in New Zealand, an agreement whereby the minor agrees to compromise or settle the claim shall be binding on him if it is in writing and approved by a Court of competent jurisdiction; and 25
- (b) If the claim has not been the subject of an agreement approved under paragraph (a) of this subsection, and has become the subject of proceedings before any Court in New Zealand, no settlement, compromise, or payment and no acceptance of money paid into Court, whenever entered into or made, shall so far as it relates to that minor's claim be valid without the approval of the Court. 30 35

(2) An application for the approval of the Court under subsection (1) of this section may be made by or on behalf of the minor or any other party to the agreement or proceedings.

(3) The Court, in its discretion, may refuse any application for its approval under subsection (1) of this section or may grant its approval either unconditionally or upon or subject to such conditions and directions as it thinks fit, whether as to the terms of the agreement or of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the money paid, or to be paid or otherwise.

(4) Without limiting subsection (3) of this section, where the Court directs that the whole or any part of the money to which the minor is entitled under the agreement, compromise, or the settlement shall be held on trust for the minor under this subsection by the Public Trustee or any other person then, except so far as the Court directs any immediate payment therefrom or otherwise orders, and subject to any directions or conditions given or imposed by the Court—

(a) The amount shall be invested and held by the trustee upon trust—

(i) To make such payment (if any) to the minor out of the income and capital of the amount as the Court may specify; and

(ii) To apply the income and capital of the amount or so much thereof as the trustee from time to time thinks fit for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of the minor:

(b) The minor shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts:

(c) The interest of the minor in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(5) Upon any minor attaining the age of twenty-one years or marrying under that age while any amount is held on trust for his benefit under subsection (4) of this section, the balance of that amount and of the income therefrom remaining in the hands of the trustee shall be paid to the minor except in so far as the Court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection;

Provided that where the trustee has made an application or received notice that an application has been made to the Court for such an order he shall not make any payment under this subsection until the application has been disposed of.

(6) Where the trustee appointed by an order under this section is the Public Trustee subsection (3) of section 66 of the Public Trust Office Act 1957 shall apply in respect of all money paid to him pursuant to the order as if it were money paid to him pursuant to the said section 66. 5

(7) For the purposes of this section the expression "Court of competent jurisdiction" means a Court in which proceedings could be taken to enforce the claim or, in the case of a claim that could not be the subject of proceedings in New Zealand, a Court in which proceedings could be taken to enforce a similar claim in New Zealand. 10 15

(8) Nothing in this section shall limit or affect—

(a) The Deaths by Accidents Compensation Act 1952; or

(b) Section 50 of the Magistrates' Courts Act 1947; or

(c) The Workers' Compensation Act 1956.

Cf. 1945, No. 40, s. 35; 1957, No. 36, s. 66 20

12. Variation of certain orders made under section 11—

(1) The Court may at any time vary any order made by it under section 11 of this Act or under section 35 of the Statutes Amendment Act 1945 or in respect of a minor under section 66 of the Public Trust Office Act 1957, whether or not the order has been varied under this section, in so far as the order relates to the payment, investment, or application of money held on trust or the income therefrom. 25

(2) Any order under this section may be made by the Court of its own motion or on an application made by: 30

(a) The minor; or

(b) The trustee; or

(c) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application. 35

13. Jurisdiction of Magistrates' Courts—(1) A Magistrate's Court shall have jurisdiction to exercise any of the powers conferred by any of the provisions of sections 5 to 7 of this Act in any case where—

(a) The occasion for the exercise of the power arises in the course of any civil proceedings (other than an application made for the purposes of subsection (2) of section 5 or subsection (2) of section 6 of this

5 Act) properly before the Court; or

(b) The value of the consideration for promise or act of any minor under the contract is not more than \$2,000; or

10 (c) The parties agree, in accordance with section 37 of the Magistrates' Courts Act 1947, that a Magistrate's Court shall have jurisdiction to hear and determine the application.

(2) For the purposes of section 43 of the Magistrates' Courts Act 1947, an application made to a Magistrate's
15 Court pursuant to subsection (2) of section 5 or subsection (2) of section 6 of this Act shall be deemed to be an action.

14. Act to be a code—(1) The provisions of this Act shall have effect in place of the rules of the common law and of equity relating to the contractual capacity of minors
20 and to the effect, validity, avoidance, repudiation, and ratification of contracts entered into by minors.

(2) This Act shall apply only to contracts made, compromises and settlements agreed to, and discharges and receipts given, after the commencement of this Act.

25 (3) Nothing in this Act shall limit or affect any provision of any other enactment whereby a contract is made binding on a minor and nothing in section 5 or section 6 of this Act shall apply to any such contract.

(4) Nothing in this Act shall limit or affect the rule of law
30 whereby a minor is not liable in tort for procuring a contract by means of fraudulent representations as to his own age or any other matter, but the Court shall take any such representations into account in deciding whether to exercise any of its powers under subsection (2) of section 5 or subsection (2) of section 6 or section 7 of this Act.
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15. Trusts not affected—Nothing in this Act shall entitle—

(a) A trustee to pay money or deliver property to a minor otherwise than in accordance with the terms of the trust:

40 (b) A minor to enter into an agreement whereby a trust is extinguished or the terms of a trust are varied.

16. Insurances by minors and dealings by minors with policies—(1) The Life Insurance Act 1908 is hereby amended by repealing section 75 (as substituted by section 3 (1) of the Life Insurance Amendment Act 1958), and substituting the following section:

“75. (1) Subject to subsection (2) of section 5 of the Minors' Contracts Act 1969, a minor of or over the age of sixteen years may do, execute, suffer, and perform all acts, deeds, matters, and things necessary or proper for the purpose of effecting a policy on his own life.

“(2) A minor of or over the age of sixteen years may—

“(a) Surrender any policy effected on his own life and owned by him:

“(b) Give discharges for the money payable under any such policy:

“(c) Dispose of any such policy by will in accordance with the provisions of section 6 of the Wills Amendment Act 1955 or section 2 of the Wills Amendment Act 1969:

“(d) Dispose of any such policy or interest therein or deal with the same in any manner authorised by this Act:

“Provided that subsection (2) of section 5 of the Minors' Contracts Act 1969 shall apply to the surrender or discharge of any such policy by any such minor and to every contract entered into by any such minor in relation to any such policy.

“(3) So far as concerns the company issuing any policy, and so far as concerns any person claiming under any disposition of a policy made bona fide and for valuable consideration, it shall be conclusively presumed that the person who effected or disposed of the same was, at the time when he so effected the same or so disposed thereof, of or over the age of sixteen years:

“Provided that this presumption shall not apply where the company issuing the policy, or the person claiming as aforesaid, had at the time of the issue or disposition as aforesaid actual knowledge that the person purporting to effect or dispose of the policy was under the age above-mentioned.

“(4) Nothing in this section shall limit or affect the provisions of section 4 of the Minors' Contracts Act 1969 (which confers full contractual capacity on married minors).”

(2) Section 3 of the Life Insurance Amendment Act 1958 is hereby consequentially amended by repealing subsections (1) and (2).

5 **17. Consequential amendments**—The enactments specified in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

18. Repeals and revocation—(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) Rule 59 of the Magistrates' Courts Rules 1948 is
10 hereby revoked.

Section 17FIRST SCHEDULE

ENACTMENTS AMENDED

Enactment Amended	Amendment
1908, No. 168—The Sale of Goods Act 1908 (1957 Reprint, Vol. 13, p. 615)	By omitting from the proviso to subsection (1) of section 4 the words “an infant or minor, or to”.
1947, No. 16—The Magistrates' Courts Act 1947 (1957 Reprint, Vol. 8, p. 647)	By omitting from subsection (2) of section 4 the words “such infant or minor or other”, and substituting the word “the”.
1947, No. 16—The Magistrates' Courts Act 1947 (1957 Reprint, Vol. 8, p. 647)	By inserting in subsection (2) of section 50, after the word “minor”, the words “who is or has been married or is”.
1952, No. 51—The Property Law Act 1952 (1957 Reprint, Vol. 12, p. 136)	By omitting from subsection (1) of section 133 the words “upon or”.
1952, No. 51—The Property Law Act 1952 (1957 Reprint, Vol. 12, p. 136)	By repealing subsection (5) of section 133.
1957, No. 36—The Public Trust Office Act 1957 (1957 Reprint, Vol. 12, p. 387)	By omitting from the heading above section 66 the words “ <i>Infants and</i> ”.
1957, No. 36—The Public Trust Office Act 1957 (1957 Reprint, Vol. 12, p. 387)	By omitting from subsection (1) of section 66 the words “full age or”.

Section 18SECOND SCHEDULE

ENACTMENTS REPEALED

- 1908, No. 86—The Infants Act 1908: Part II.
(1957 Reprint, Vol. 6, pp. 587, 595)
- 1945, No. 40—The Statutes Amendment Act 1945: Section 35.
(1957 Reprint, Vol. 6, pp. 597, 614.)
- 1948, No. 78—The Finance Act (No. 2) 1948: Section 59.
(1957 Reprint, Vol. 13, pp. 248, 266.)
- 1951, No. 81—The Statutes Amendment Act 1951: Section 14.
(1957 Reprint, Vol. 6, pp. 596, 615.)