

## (2) CAPACITY TO OWN AND TO DEAL WITH LAND: MINORS

Hinde McMorland & Sim Land Law in New Zealand

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### (2) CAPACITY TO OWN AND TO DEAL WITH LAND: MINORS

#### 19.002 Who is a minor?

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The Age of Majority Act 1970 provides that “[f]or all the purposes of the law of New Zealand a person shall attain full age on attaining the age of 20 years.”<sup>1</sup> Under this age a person is a minor. That Act goes on to recognise that its definition of age of majority (and conversely the age of minority) can be altered by other legislation.<sup>2</sup> There are a number of Acts that do so.<sup>3</sup> Of these, the Act having the most general application is the [Contract and Commercial Law Act 2017](#). It provides that for contractual transactions coming within its coverage, “minor means a person who has not attained the age of 18 years; and a person is of full age if he or she has attained the age of 18 years”.<sup>4</sup> In a similar vein the [Property Law Act 2007](#) provides that a person who is 18 years old or older may execute a deed, appoint an attorney to do any act or thing that he or she could do, and accept appointment or act as an attorney, as if they were 20 years old.<sup>5</sup> Against this background of uncertainty, the [Land Transfer Act 2017](#) adopts the definition of minor used in the [Age of Majority Act 1970](#).<sup>6</sup>

A person reaches an age, for example 20 years of age, at the commencement of the day that is the relevant anniversary of the date of his or her birth.<sup>7</sup>

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1 [Age of Majority Act 1970, s 4\(1\)](#).

2 [Age of Majority Act 1970, s 4\(2\)–\(3\)](#).

3 See, for example, the [Land Act 1948, s 70](#).

4 [Contract and Commercial Law Act 2017, s 85](#); cf [Minors’ Contracts Act 1969, s 2](#).

5 [Property Law Act 2007, s 22](#).

6 [Land Transfer Act 2017, s 5](#).

7 [Age of Majority Act 1970, s 5](#).

#### 19.003 Minors as registered owners of interests in land: general principles

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At common law, a minor could hold an estate or interest in land and deal with it.<sup>1</sup> Continuing the position under the [Land Transfer Act 1952](#), the [Land Transfer Act 2017](#) does not prevent a minor from being registered as the owner of an estate or interest in land.

As was the position under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) (with regard to computer registers),<sup>2</sup> [s 11](#) of the [Land Transfer Act 2017](#) specifies that a record of title “must comprise” “any status”, such as minority, “affecting the legal capacity of the registered owner ... notified to the Register under this Act or any other enactment”. When this is done, the effect is to bring to the notice of any person proposing to deal with the land, that he or she is dealing with a person with restrictions upon their legal

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**capacity** and the Registrar will not register a dealing affecting the title,<sup>3</sup> except on production of an order of the Court approving the transaction under [s 98](#) of the Contract and Commercial Law Act 2017 (the CCLA).<sup>4</sup>

If the fact of the minority of a registered owner is not noted on the record of title and a person, acting without fraud, acquires a registered interest from the minor, he or she would, apart from the possible application of the CCLA appear to obtain an indefeasible title.<sup>5</sup> That Act appears to contemplate that a court can set aside a registered interest.<sup>6</sup> As was the position under the Minors' Contracts Act 1969, the CCLA provides that property means *inter alia* "**land**" 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".<sup>7</sup> Similarly the CCLA expressly empowers the Court to make vesting orders or to direct property to be transferred or assigned. The powers of the Court to cancel contracts **and to** order restitution of property can be construed as overriding the indefeasibility provisions of the [Land Transfer Act 2017](#).

Under the [Land Transfer Act 1952](#), s 178(d) provided that where a minor was registered as the proprietor of **land**, a person suffering loss or damage by the registration of any instrument executed by the minor had no claim for compensation under the Act unless the fact of the minority was disclosed on the instrument by virtue of which that person was registered as proprietor. If, however, the minority was not disclosed on the register, and the transaction was subsequently cancelled or modified by the Court under the CCLA, jurisdiction appeared to exist for the Court to provide for appropriate compensation or refund of money to be made by the minor under that Act. Since the coming into operation of the [Land Transfer Act 2017](#) the position under the CCLA remains. It may be that compensation under the [Land Transfer Act 2017](#) is also available where [ss 58](#) and [59](#) apply. Continuing the approach recommended by the Law Commission, there is no equivalent of s 178(d) in [s 61](#) of the 2017 Act, which creates exceptions where compensation is not payable. The Law Commission was of the opinion that it was "inappropriate for the Register to determine whether people have **capacity to deal with land** independently of ... other legislative frameworks",<sup>8</sup> such as the CCLA. The draft Bill proposed by the Law Commission contained both the [s 11](#) stipulation (that a record of title "must comprise" "any status affecting the legal **capacity** of the registered owner ... notified to the Register under this Act or any other enactment") and a clause in substance similar to [s 61](#). Against this background the Law Commission noted that there is no requirement "to state notice of status on the title", with the consequence that "there should be no exception to compensation. If loss falls within the grounds [recognised by the Act] a person should be entitled to compensation regardless of whether the dealing involved a person under a legal disability".<sup>9</sup>

The Registrar may enter a caveat for the protection of a registered proprietor who is a minor.<sup>10</sup>

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1 See, for example, *Blackburn v Blackburn* (1907) 26 NZLR 1163 [CB](#).

2 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), ss 8, 10 and 12.

3 See [\[8.019\]](#), *Re Griffen Dec'd, Flynn and Griffen v District Land Registrar* (1898) 1 GLR 101 [CB](#).

4 Cf Minors' Contracts Act 1969, s 9.

5 This was held to be the case in *Percy v Youngman* [1941] VLR 275 [CB](#), though the contrary was held in *Coras v Webb* [1942] St R Qd 66 [CB](#) and see (1942) 18 NZLJ 157. Since the decision in *Frazer v Walker* [1967] 1 AC 569 [CB](#), [1967] NZLR 1069 [CB](#), [1967] 1 All ER 649 (PC) it seems clear that a person taking, without fraud, a transfer or other registered dealing from a minor would, on general principles (and apart from the possible effect of the [Contract and Commercial Law Act 2017](#)), take indefeasibly. For an example, see *Horvath v Commonwealth Bank of Australia* [1999] 1 VR 643 [CB](#) (CA).

6 See, generally, see [9.057]–[9.061].

7 Contract and Commercial Law Act 2017, [s 85](#) definition of "property"; cf Minors' Contracts Act 1969, s 2.

8 NZLC "A New [Land Transfer Act](#)", (Report No 116, 2010) at 88.

9 NZLC "A New [Land Transfer Act](#)", (Report No 116, 2010) at 88.

10 [Land Transfer Act 2017](#), s 149(1)(a); cf [Land Transfer Act 1952](#), s 211(d).

## 19.004 Minors as registered owners of interests in land: application of the Protection of Personal and Property Rights Act 1988

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The Protection of Personal and Property Rights Act 1988 (“PPPRA”) applies with respect to the exercise of property rights when a person “lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property”.<sup>1</sup> The [Children’s and Young People’s Well-being Act 1989](#)<sup>2</sup> extends the jurisdiction of the Family Court under the PPPRA to appoint a manager or make a Property order to the situation where a child or young person is subject to a guardianship or custody order.<sup>3</sup> For the purposes of the 1989 Act a “child” is defined as “a person under the age of 14 years”,<sup>4</sup> while a “young person” is “a boy or girl over the age of 14 years” and, depending upon the context, is “under the age of” either 17 years or 18 years.<sup>5</sup> The rights and powers of a manager with respect to land are considered below.<sup>6</sup> Should a manager be appointed or a Property order be made, the child or young person is “deemed to lack the competence to manage his or her own affairs in relation to his or her property”.<sup>7</sup> The position where a person subject to a Property order exercises the manager’s powers is also considered below.<sup>8</sup>

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1 Protection of Personal and Property Rights Act 1988, s 25, see generally [\[19.010\]–\[19.012\]](#).

2 This Act is also known as the Oranga Tamariki Act 1989, [s 1](#).

3 [Oranga Tamariki Act 1989/ Children’s and Young People’s Well-being Act 1989, ss 361, 392](#).

4 [Oranga Tamariki Act 1989/ Children’s and Young People’s Well-being Act 1989, s 2](#) (as amended by Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s 7(2)).

5 [Children, Young Persons, and Their Families \(Oranga Tamariki\) Legislation Act 2017, s 2](#) (as amended by Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s 7(4)).

6 See [\[19.011\]](#).

7 [Oranga Tamariki Act 1989/ Children’s and Young People’s Well-being Act 1989, ss 361, 392](#).

8 See [\[19.012\]](#).

## 19.005 Transactions relating to Crown land

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As a general rule, any person aged 17 or older may become a purchaser, lessee, or licensee of Crown land under the Land Act 1948.<sup>1</sup> Any minor who holds any land by virtue of any lease, licence, or other form of tenure under the Land Act 1948 is deemed for the purposes of that Act to be of full age. A minor holding Crown land under these provisions is also deemed to be of full age for the purposes of the [Fencing Act 1978](#).<sup>2</sup>

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1 An exception is where the [Protection of Personal and Property Rights Act 1988](#) applies; see [\[19.010\]–\[19.012\]](#).

2 See, generally, the Land Act 1948, s 70.

## 19.006 The general ability of minors to contract

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The position of a minor with regard to contractual transactions involving land is the same as his or her position under other contracts. Typically<sup>1</sup> these are governed by the Contract and Commercial Law Act 2017 (the CCLA), which replaced the Minors’ Contracts Act 1969.<sup>2</sup> The Minors’ Contracts Act had the effect of being a code, replacing the rules of common law and equity relating to the contractual capacity of minors.<sup>3</sup> In turn the CCLA is a

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revision Act that is not intended to change the effect of the law, except as it expressly provides.<sup>4</sup> For the purposes of the CCLA Act, a minor “means a person who has not attained the age of 18 years”; conversely “a person is of full age if he or she has attained the age of 18 years”.<sup>5</sup>

Despite the general application of the CCLA with respect to contracts, the Property (Relationships) Act 1976 makes special provision for “contracting-out” agreements entered into under Part 6 of that Act. The reason for this is that the Act appears to adopt the approach of the [Age of Majority Act 1970](#), so that a minor is a person who has not attained the age of 20 years. In any event the Property (Relationships) Act 1976 provides that a contracting out agreement entered into by a person who has attained the age of 18 years is as valid and effectual as if the person were of full age; so too is every instrument executed by a person over 18 years for the purpose of giving effect to any such agreement.<sup>6</sup>

The [Residential Tenancies Act 1986](#) also makes special provision for tenancy agreements entered into by a person who has attained the age of 18 years.<sup>7</sup>

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- 1 An exception is where the [Protection of Personal and Property Rights Act 1988](#) applies, see [19.004], and [\[19.010\]–\[19.013\]](#).
  - 2 This is discussed fully in *Burrows, Finn & Todd on the Law of Contract in New Zealand* 6th ed, 2018 (Finn, Todd and Barber). LexisNexis NZ Limited. See [14.1.2].
  - 3 Minors’ Contracts Act 1969, s 15.
  - 4 Contract and Commercial Law Act 2017, [s 4](#).
  - 5 Contract and Commercial Law Act 2017, [s 85](#) definition of “minor”; cf Minors’ Contracts Act 1969, s 2.
  - 6 Property (Relationships) Act 1976, s 21(1).
  - 7 [Residential Tenancies Act 1986, s 14](#).

### 19.007 Contract and Commercial Law Act 2017: Contracts of persons under the age 18

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As a general rule, and continuing the approach of the Minors’ Contracts Act 1969, the [Contract and Commercial Law Act 2017](#) creates a rebuttable presumption that a contract entered into by a person who is yet to attain the age of 18 years is unenforceable against that person,<sup>1</sup> but otherwise the contract has effect as if the person were of full age.<sup>2</sup>

Upon application to it, the court is authorised to inquire into the fairness and reasonableness of the contract at the time it was entered into. If the court finds that the contract was fair and reasonable at that time, it may enforce the contract against the minor or declare that the contract is binding on him or her in whole or in part. Alternatively, the court may make an order entitling the other party or parties to the contract to cancel it on such conditions as the court thinks fit, and may also make orders as to compensation or restitution of property.<sup>3</sup> Should the court find that the contract was not fair and reasonable at the time it was made, it has the discretion to cancel the contract or make an order entitling the minor to cancel on such conditions as the court thinks appropriate. Additionally, the court has the power to order compensation or restitution of property.<sup>4</sup>

The Property (Relationships) Act 1976 also makes special provision for a minor who is younger than 18 years, and is not and has not been married or in a civil union. If such a person enters into a “contracting-out” agreement under Part 6 of the Property (Relationships) Act 1976, the agreement is not valid without the approval of the Court,<sup>5</sup> which may be given upon application by the minor before or after the agreement has been signed by the parties.<sup>6</sup>

A tenancy agreement entered into by a minor who is or has been married under the age of 18 years is governed by [s 14](#) of the [Residential Tenancies Act 1986](#).

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- 1 There are exceptions for insurance contracts entered into pursuant to [s 66B](#) of the [Life Insurance Act 1908](#) and for contracts of service. In essence, if the minor has obtained the age of 16 years an insurance contract is presumptively enforceable. A contract for service entered into by a minor is presumptively enforceable. See [Minors' Contracts Act 1969, s 5](#); [Contract and Commercial Law Act 2017, ss 92–94](#).
- 2 [Contract and Commercial Law Act 2017, s 86](#); cf [Minors' Contracts Act 1969, s 6\(1\)](#).
- 3 [Contract and Commercial Law Act 2017, ss 87–88](#); cf [Minors' Contracts Act 1969, s 6\(2\)\(a\)](#).
- 4 [Contract and Commercial Law Act 2017, ss 89](#) and [95](#); cf [Minors' Contracts Act 1969, ss 6\(2\)\(b\)](#) and 7.
- 5 See the [Property \(Relationships\) Act 1976, s 22](#), as to the Courts that have jurisdiction.
- 6 [Property \(Relationships\) Act 1976, s 21\(2\)](#) and (3).

### 19.008 Approved contracts

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Rather than assuming the risk that a contract with a person under the age of 18 years may be unenforceable under the [Contract and Commercial Law Act 2017](#), the other party may, prior to the creation of the contract, apply to the District Court for an order approving the terms of the contract. If a minor enters into a contract that has been pre-approved by a District Court, the contract has effect as if the minor were of full age.<sup>1</sup> An application to the court for approval of the proposed contract may be made by the minor personally, a guardian of the minor, or any other person who will be a party to the proposed contract. The court may in its discretion refer any such application to a guardian of the minor or to a solicitor nominated by the court, or to Public Trust or the Māori Trustee, or to any other person. If such a reference is made, the person to whom the application is referred may file a report setting out the results of their consideration and examination of the application, and making such recommendations as they think proper.

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- 1 [Contract and Commercial Law Act 2017, s 98](#); cf [Minors' Contracts Act 1969, s 9](#). When the consent of the Court is given to a transaction involving [land](#), the approval is in practice usually endorsed on the document to be presented for registration.