

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 11 of 1985

An Act to assist intellectually handicapped citizens in the least restrictive way to exercise their rights and carry out their responsibilities in society; to repeal The Backward Persons Act of 1938 and to amend the Public Trustee Act 1978-1981 in certain particulars; and for related purposes

[ASSENTED TO 25TH MARCH, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title and commencement. (1) This Act may be cited as the *Intellectually Handicapped Citizens Act 1985*.

(2) This section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(3) Except as provided by subsection (2), this Act shall commence on a day appointed by Proclamation.

2. Arrangement of Act. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-6);

PART II—INTELLECTUALLY HANDICAPPED CITIZENS COUNCIL OF QUEENSLAND (ss. 7-26);

Division I—Constitution, Membership and Functions of Council;

Division II—Meetings, Proceedings and Business of Council;

Division III—Officers and Employees of Council;

PART III—INTELLECTUALLY HANDICAPPED CITIZENS (ss. 27-34);

PART IV—VOLUNTEER FRIENDS PROGRAMME (ss. 35-38);

PART V—GENERAL PROVISIONS (ss. 39-49).

3. Repeal and amendments. (1) *The Backward Persons Act of 1938* is repealed.

(2) The *Public Trustee Act 1978-1981* is amended as and to the extent indicated in the Schedule.

That Act as so amended may be cited as the *Public Trustee Act 1978-1985*.

4. Interpretation. In this Act, save where a contrary intention appears—

“approved citizen” means an intellectually handicapped citizen who is receiving, or has been approved to receive, the special intervention provided for by this Act;

“Chairman” means the chairman of the Council or other member acting as chairman;

“citizen” means a person resident in Queensland who has attained the age of 18 years;

“co-ordinator” means the Co-ordinator of the Volunteer Friends Programme appointed under this Act;

“Council” means the Intellectually Handicapped Citizens Council of Queensland constituted under this Act;

- “Executive Officer” means the executive officer to the Council appointed under this Act;
- “financial year” means the period commencing on 1 July in any year and ending on 30 June in the next succeeding year;
- “functional competence” includes—
- (a) the competence to carry out the usual functions of daily living;
 - (b) the care and maintenance of oneself and one’s home environment;
 - (c) the ability to perform civic duties;
 - (d) the ability to enter into contracts; and
 - (e) the ability to make informed decisions concerning oneself;
- “Fund” means the trust fund established under section 39;
- “intellectually handicapped citizen” means a citizen who is limited in his functional competence by reason of intellectual impairment which is—
- (a) of a congenital or early childhood origin; or
 - (b) the result of illness, injury or organic deterioration;
- “Legal Friend” means a barrister-at-law or solicitor appointed as legal friend under this Act;
- “member” means a person occupying the office of member of the Council, including that of Chairman;
- “Minister” means the Minister for Health or other Minister of the Crown who, at the material time, is charged with the administration of this Act and includes a Minister of the Crown who is temporarily performing the duties of the Minister;
- “nearest relative” in relation to an intellectually handicapped citizen means the first of the following relatives who, in the order of priority specified, is reasonably available—
- (a) a spouse;
 - (b) a son or daughter, who has attained the age of 18 years;
 - (c) a parent;
 - (d) a grandparent;
 - (e) a brother or sister, who has attained the age of 18 years;
 - (f) any other relative who has attained the age of 18 years and who, in the opinion of the Council, has a proper interest in the welfare of the citizen;
- “Public Trustee” means The Public Trustee of Queensland constituted under the *Public Trustee Act 1978-1985*;
- “volunteer friend” means a citizen appointed as a volunteer friend under this Act.

5. Construction and application of Act. This Act shall be construed and applied so as to support and assist intellectually handicapped citizens

in participating in society in a positive way by providing a level of intervention which, in the least restrictive way, supports the individual and recognizes his rights, needs and abilities as well as the limitations that may place him at a disadvantage.

6. Administration of Act. This Act shall be administered by the Minister and, subject to the Minister, by the Council.

PART II—INTELLECTUALLY HANDICAPPED CITIZENS COUNCIL OF QUEENSLAND

Division I—Constitution, Membership and Functions of Council

7. Constitution of Council. (1) For the purposes of this Act there shall be established and thereafter constituted from time to time a body corporate under the name and style "Intellectually Handicapped Citizens Council of Queensland".

(2) The Council shall by the name and style conferred on it by subsection (1) have perpetual succession and a common seal and for the purposes of carrying out the objects and purposes of this Act shall be capable of—

- (a) suing and being sued;
- (b) compounding or proving in any court of competent jurisdiction all debts and sums of money due to it;
- (c) acquiring, holding and disposing of land and other property, and of granting and taking leases of land and other property;
- (d) doing and suffering all such other acts and things as bodies corporate may in law do and suffer.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Council affixed to a document and until the contrary is proved shall presume that it was duly affixed.

8. Composition of Council. (1) The Council shall consist of 5 members of whom one shall be chairman and one shall be deputy chairman, appointed by the Governor in Council by notification published in the Gazette.

(2) The members of the Council shall be persons who in the opinion of the Minister by reason of their qualifications or personal or professional experience have appropriate knowledge relating to intellectual handicap.

9. Term of appointment. (1) The term of appointment of a member shall commence on the date specified therefor in the notification of his appointment and, save in the case of an appointment made to fill a casual vacancy, shall be for 3 years:

Provided that the term of appointment of a member first appointed after the commencement of this Act may be for such less period as is specified in his notification of appointment.

(2) A member shall, if otherwise qualified, be eligible for reappointment as a member.

10. Casual vacancies. (1) Where a vacancy occurs in the office of a member during the currency of his term of office as such member the Governor in Council may, subject to section 8, appoint another person to fill that vacancy.

(2) A person appointed to fill a casual vacancy shall, subject to this Act, be appointed to hold office for the balance of his predecessor's term of office or until he sooner vacates that office and shall, if otherwise qualified, be eligible for reappointment as a member.

11. Vacation of office and disqualifications. (1) The office of a member shall become vacant if the member—

- (a) becomes bankrupt or compounds with his creditors, or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (b) resigns his office by writing under his hand addressed to the Minister—such resignation to be complete and take effect from the time it is received by the Minister or the operative date specified in the notice (whichever is the later);
- (c) is absent without prior leave granted by the Council from 3 consecutive meetings of the Council of which due notice has been given to him personally or in the ordinary course of post;
- (d) is convicted in Queensland of an indictable offence or, elsewhere than in Queensland is convicted in respect of an act or omission that if done or made in Queensland would have constituted an indictable offence;
- (e) is removed from office as a member by the Governor in Council.

(2) For the purpose of subsection (1) (c), the attendance of a member at the time and place appointed for an ordinary meeting shall be deemed to constitute presence at an ordinary meeting notwithstanding that by reason of the lack of a quorum a meeting is not actually held, and the Executive Officer shall enter in the minute book the names of all members who so attend.

(3) A person who—

- (a) has attained the age of 70 years;
- (b) is in the full-time paid employment of—
 - (i) a Department of the Government of Queensland; or
 - (ii) any other organization or body,
the principal function of which is the delivery of services relating to intellectual handicap,

shall not be appointed as a member of the Council.

12. Removal from office. The Governor in Council may at any time remove a member from office as member if—

- (a) he becomes incapable, in the opinion of the Governor in Council, of discharging the duties of his office;
- (b) he is, in the opinion of the Governor in Council, incompetent or unfit to hold office.

13. Committees. The Council may appoint persons to form an advisory committee or advisory committees to advise the Council on any matter within the scope of the Council's functions referred to the committee or to a particular committee by the Council.

A person may be a member of such a committee whether or not he is a member of the Council.

14. Fees and allowances. (1) Subject to subsection (2), members of the Council and members of the advisory committees shall be paid such fees and allowances as the Governor in Council determines.

(2) Fees or allowances shall not be paid by the Council to a member of the Council or of an advisory committee who is an officer of the Public Service of Queensland or who is a person permanently employed full-time by a Hospitals Board within the meaning of the *Hospitals Act* 1936-1984 or by any other statutory body for attendance at any meeting of the Council or committee held during ordinary office working hours of that officer or person.

(3) A member of the Council or an advisory committee shall be paid such out-of-pocket expenses necessarily incurred by him in attending meetings of the Council or committee or in connexion with the discharge by him of any functions or duties as are approved by the Council.

15. Holder of office not affected by restrictive employment provisions. A provision of any enactment requiring the holder of an office to devote the whole of his time to the duties of his office or prohibiting him from engaging in employment outside the duties of his office shall not operate to hinder his holding that office and also an appointment as member, Chairman or acting chairman or, subject to section 14 (2), his acceptance and retention of any fees, allowances or expenses payable under this Act.

16. Functions and duties of Council. (1) The Council shall—

- (a) consider each application made under section 27 and may—
 - (i) approve that the citizen the subject of the application be provided with the special intervention provided for by this Act or, as the case may be, that the special intervention being provided be reviewed;
 - (ii) refuse the application;

- (b) establish and maintain liaison with Government Departments and other organizations or bodies with regard to the well-being of intellectually handicapped citizens;
- (c) provide advice to the Minister in respect of matters concerning intellectually handicapped citizens when requested so to do or when the Council considers such advice should be provided;
- (d) assist and encourage efforts to improve the quality of life of intellectually handicapped citizens;
- (e) promote public information and understanding of intellectual handicap.

(2) Where pursuant to subsection (1) (a) (i) the Council approves an application it shall—

- (a) consider the individual circumstances of the citizen and decide the kind and extent of intervention that is required to be provided to him under this Act;
- (b) ascertain whether the citizen is competent in law to make informed decisions—
 - (i) by himself;
 - (ii) by himself with the support and assistance of a relative approved by the Council; or
 - (iii) by himself with the support and assistance of the Legal Friend,

in cases where his consent in writing is required in respect of matters of medical, dental or surgical or other professional treatment and care;

- (c) where the Council is of the opinion that the citizen is not competent in law to give consent in writing in the manner specified, and with respect to the matters referred to, in subparagraph (b)—
 - (i) authorize the Legal Friend;
 - (ii) order (where the Council considers that the circumstances of the citizen so require) that a barrister-at-law or solicitor nominated by a person entitled to be present at the proceedings be authorized,
to act on the citizen's behalf to the least extent required in a particular case in accordance with, in the case of the person referred to in provision (i), the provisions of section 26 or, in the case of a person referred to in provision (ii), the provisions of section 26 (3), (4) or (5);
- (d) give directions in respect of matters referred to in subparagraphs (b) and (c);
- (e) ascertain whether the citizen is in need of friendly personal support in his activities;
- (f) appoint, where the Council is of the opinion that the citizen is in need of the support referred to in subparagraph (e), a

- volunteer friend in accordance with section 37 to furnish that support;
- (g) notify the citizen, his nearest relative and any other persons specified in section 27 the result of the Council's decision regarding the application;
 - (h) recognize that the needs, capabilities and wishes of the citizen may change in time and shall review those needs, capabilities and wishes in accordance with section 28 and may terminate or vary the intervention being provided under this Act;
 - (i) consider the need to maintain the dignity and self respect of the citizen and act so as to impose the least restrictions possible on his dignity and self respect;
 - (j) give due consideration to the expressed wishes of the citizen and support him in his exercising as much control as possible over his own life;
 - (k) take into account the ethnic and cultural background of the citizen;
 - (l) take into account such special circumstances concerning the citizen as the Council thinks fit.
- (3) Where pursuant to subsection (1) (a) (ii) the Council refuses an application it shall notify the citizen the subject of the application, his nearest relative and any other persons specified in section 27 of the refusal.
- (4) Where the Council makes an order under subsection (2) (c) (ii)—
- (a) "Legal Friend" for the purposes of section 26 (3), (4) and (5) shall be read and construed as meaning the barrister-at-law or solicitor authorized in accordance with the order;
 - (b) the barrister-at-law or solicitor authorized in accordance with the order shall be subject to the control and direction of the Council and the Council may at any time revoke the order whereupon the authority of the barrister-at-law or solicitor to act on the citizen's behalf shall cease to have force or effect.

Division II—Meetings, Proceedings and Business of Council

17. Conduct of business. (1) Subject to this Act, the Council shall conduct its business and proceedings at meetings in such manner as it determines.

(2) Without limiting the provisions of subsection (1), the Council may adjourn the proceedings on consideration of applications in order to seek further information to support the application or for such other reason as it thinks fit.

The adjournment may be requested by any person entitled to be present at the proceedings including the members of the Council.

18. Quorum. The quorum of the Council shall consist of the Chairman and at least 2 other members, or in the absence of the Chairman the Deputy Chairman and at least 2 other members.

19. Meetings. (1) The first meeting of the Council first constituted shall be convened at a time and place appointed by the Minister.

(2) Meetings held after the first meeting shall be held at such times and places as the Council determines.

(3) The Chairman shall preside at every meeting of the Council at which he is present and in his absence the Deputy Chairman, if present, shall preside and where so presiding the Deputy Chairman shall have all the powers, authorities, functions and duties and immunities of the Chairman.

The Chairman shall have power to convene special meetings of the Council.

(4) A duly convened meeting of the Council at which a quorum and the Executive Officer are present shall be competent to transact any business of the Council and shall have and may exercise the powers and authorities conferred, and perform the functions and duties imposed, by this Act.

20. Conduct of affairs. The Council shall exercise or perform a power, authority, function or duty by a majority vote of its members present at the meeting and voting on the business in question.

A member who is present at a meeting and eligible to vote, but abstains from voting shall be taken to have voted for the negative.

The Chairman shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

The Chairman shall give effect to any resolution, minute or report that is passed or adopted by the Council.

21. Minutes. (1) The Executive Officer shall duly record and keep a record of the proceedings of each meeting of the Council.

(2) The minutes of each meeting of the Council shall be signed by the Chairman, after confirmation by the Council, at the meeting next succeeding the meeting in question.

22. Validity of proceedings. No act or proceeding of the Council shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done, taken or commenced—

- (a) there was a vacancy in the office of a member;
- (b) there was a defect in the appointment of a member;
- (c) a person not qualified or having ceased to be qualified may have acted as a member.

Division III—Officers and Employees of Council

23. Officers. (1) The Governor in Council may appoint an Executive Officer to the Council, a Co-ordinator of the Volunteer Friends Programme, a Legal Friend and such other professional and clerical officers as he thinks necessary for the purpose of exercising the powers and authorities and performing the functions and duties under this Act.

(2) Persons appointed pursuant to this section shall be appointed and hold their respective offices under, subject to and in accordance with the *Public Service Act 1922-1978*.

(3) An officer of the Public Service of Queensland may, in addition to the position he holds therein, be appointed an officer under this Act.

An officer under this Act may hold his appointment under this Act in conjunction with any other position in the Public Service.

24. Employees. The Council may, with the approval of the Minister, from time to time, employ such and so many employees as are necessary for the purposes of exercising the powers and authorities and performing the functions and duties under this Act.

Subject to any applicable award of an industrial court, tribunal or authority or any industrial agreement, persons employed pursuant to this section shall be paid such remuneration and shall be employed under such conditions of employment (including conditions as to leave entitlements) as are fixed by the Council with the approval of the Public Service Board.

25. Executive Officer. (1) Subject to the control and direction of the Council the Executive Officer shall—

- (a) carry out the decisions of the Council and inform the appropriate officers of the Council of any decision made by the Council under section 16;
- (b) exercise the powers and authorities and perform the functions and duties of the Council in the day-to-day administration of this Act;
- (c) carry out the administrative and secretarial work involved with the functions and duties of the Council;
- (d) ensure that the financial provisions of this Act are observed and for the purposes of the *Financial Administration and Audit Act 1977-1981* he shall be an accounting officer within the meaning of that Act;
- (e) perform such other functions and duties as the Council determines.

(2) (a) In any case where, in the opinion of the Executive Officer, the circumstances are such that the obtaining of the Council's approval under section 16 (1) (a) would cause unreasonable delay he may, without obtaining such approval, but with prior approval of the Chairman, direct the Legal Friend to act under section 26 on behalf of a citizen

who, in his opinion, is an intellectually handicapped citizen as if that citizen were an approved citizen.

(b) Where the Executive Officer gives a direction under paragraph (a) he shall as soon as possible thereafter make or cause an application to be made under section 27.

(c) The Executive Officer shall not delegate the authority given to him by paragraph (a).

26. Legal Friend. (1) Subject to the control and direction of the Council the Legal Friend—

- (a) may obtain for or provide to an approved citizen or his relative approved pursuant to section 16 (2) (b) (ii) or, if a relative has not been so approved, his nearest relative, information with respect to the citizen's legal rights and legal procedures and specialized services that are available to give the citizen assistance;
- (b) may instruct a solicitor to act for or on behalf of an approved citizen;
- (c) may liaise with Government Departments, and other organizations or bodies on behalf of an approved citizen;
- (d) shall perform such other functions or duties as may be prescribed or as the Council directs.

(2) In acting under subsection (1) on behalf of an approved citizen the Legal Friend shall endeavour to carry out the wishes of the citizen as he has expressed them to him or, where the citizen is unable to express his wishes the Legal Friend, shall act in such manner as he considers the citizen would wish to act if he were able to express his wishes.

(3) Subject to subsection (4), where the Council is of the opinion that an approved citizen is not competent in law to give consent in writing in such manner as is specified, and to such matters as are referred to, in section 16 (2) (b), the Legal Friend may on behalf of the citizen give such consent to—

- (a) any medical, dental or surgical or other professional treatment or care being carried out on the citizen for his benefit by a person professionally qualified to carry it out;
- (b) such other matters as the Council determines generally in respect of approved citizens by notification published in the Gazette.

Such consent may be given effect to and, if given effect to, shall have the same force and effect as if—

- (i) it had been freely given by the approved citizen; and
- (ii) he were of full legal capacity.

(4) Where a committee of the person of an approved citizen is appointed pursuant to the *Mental Health Services Act 1974-1984*, the

Legal Friend shall not act in accordance with subsection (3) without the prior consent of such committee.

(5) In giving consent under subsection (3) the Legal Friend shall—

- (a) take all reasonable steps to inform himself as fully as possible on matters requiring consent and the options available including, but without limiting the generality of this provision, consultation with—
 - (i) relatives or other persons who are providing ongoing care for the approved citizen;
 - (ii) appropriate professional persons;
 - (iii) relatives or other persons who appear to the Council to have a proper interest in the welfare of the approved citizen;
- (b) ensure that the approved citizen is similarly informed consistent with his ability to understand the information;
- (c) ensure, as far as possible, that the consent given is in respect of the least restrictive option available when the health, well being and any expressed wishes of the approved citizen are taken into consideration.

(6) (a) Subject to the control and direction of the Council the Legal Friend may from time to time by writing under his hand, either generally or particularly delegate all or any of his powers, authorities, functions and duties under this Act (except this power of delegation) to a barrister-at-law or solicitor.

(b) Every delegation under this subsection may be varied or revoked by the Legal Friend at any time, and no delegation shall prevent the exercise of any power or authority or the performance of any function or duty by the Legal Friend.

(c) Any power, authority, function or duty delegated by the Legal Friend may be exercised or performed by the delegate—

- (i) in accordance with the delegation; and
- (ii) if the exercise of the power or authority or the performance of the function or duty is dependent upon the opinion, belief or state of mind of the Legal Friend in relation to a matter, upon the opinion, belief or state of mind of the delegate in relation to that matter.

(7) The Legal Friend shall obtain for or provide to the Council advice when requested so to do.

PART III—INTELLECTUALLY HANDICAPPED CITIZENS

27. Applications for approvals and reviews. Where an intellectually handicapped citizen—

- (a) appears to be so severely limited in his functional competence that he has or is likely to have functional, personal or social needs that are unsatisfied and that are likely to remain

unsatisfied unless he receives the special intervention provided for by this Act;

(b) is an approved citizen,

then—

(c) in a case to which subparagraph (a) applies, an application for the provision of special intervention under this Act;

(d) in a case to which subparagraph (b) applies, an application for a review of the kind and extent of the special intervention being provided under this Act,

may be made to the Council by—

(i) the citizen on his own behalf;

(ii) a relative, who has attained the age of 18 years, of the citizen;

(iii) a member of the Police Force;

(iv) an officer of any court;

(v) an officer of the Council; or

(vi) any other person who has attained the age of 18 years who appears to the Council to have a proper interest in the welfare of the citizen.

28. Review. The Council shall review the kind and extent of intervention that is being provided under this Act to—

(a) every approved citizen, at least once in every 2 years at 2 yearly intervals;

(b) a particular approved citizen, as often as an application for such a review is made by a person specified in section 27.

29. Proceedings by Council on applications. (1) The Executive Officer shall cause to be given a notice of the time and place when and where the Council will consider an application for—

(a) approval in accordance with section 16 (1) (a);

(b) review in accordance with section 16 (2) (h),

to the following persons—

(i) the person who made the application;

(ii) where the application is made on behalf of a citizen, to that citizen;

(iii) the nearest relative of the citizen the subject of the application; and

(iv) any other person determined by the Council.

(2) Where an application for approval or review is made by a citizen on his own behalf, the citizen and his nearest relative or such other relative or representative of the citizen as the Council authorizes in a particular case shall be entitled to be present and to be heard at the proceedings on the consideration of the application.

(3) Where an application is made by a person specified in section 27 (ii), (iii) (iv), (v) or (vi), that person and the citizen the subject of the application and the citizen's nearest relative or such other relative or representative of the citizen as the Council authorizes in a particular case shall be entitled to be present and to be heard at the proceedings on the consideration of the application.

(4) For the purposes of subsections (2) and (3), "representative" includes a barrister-at-law or solicitor if the Council determines that legal representation is warranted.

The Council may make an order for such representation on its own motion or on the application of any person entitled to be present at the proceedings.

(5) Where in the opinion of the Council the citizen the subject of the application is unable by reason of the severity of his handicap to be present at the proceedings on the consideration of the application, the Council may cause a member or one of its officers to interview that citizen and furnish to the Council a report on the interview.

In a case to which this subsection applies, for the purposes of considering the application, the Council may authorize such persons (other than those already referred to in this section) to be present and to be heard as may assist the Council and support the interests of the citizen.

(6) A person, while a member or officer of the Council and after he ceases to be a member or officer of the Council shall preserve and aid in preserving confidentiality with regard to all matters that come to his knowledge in his official capacity under this Act and shall not communicate any such matter to any person except for the purpose of performing his functions and duties under this Act.

(7) Any person entitled to be present at the proceedings of the Council on the consideration of applications shall preserve and aid in preserving confidentiality with regard to all matters that come to his knowledge during the proceedings.

(8) With respect to any application under section 27 or inquiry to or by the Council under this Act, the Council may admit, and proceed and recommend upon, such information or evidence as it thinks fit, whether the same is such as the law would require or admit in other cases or not.

30. Executive Officer to place information before Council. Where an application made pursuant to section 27 is being considered by the Council the Executive Officer shall ensure that all information furnished to him by the person making the application or by a relative of, or by any other person having a proper interest in the welfare of, the citizen the subject of the application and such other relevant information (including any objection to the application) as are in the possession of

the Executive Officer are placed before the Council which information shall be taken into consideration by the Council.

31. Information supplied to Council. (1) When requested so to do by the Executive Officer any person, organization or body shall supply to the Council information in his or its possession relating to the functional competence of a citizen the subject of an application made under section 27.

(2) The supply of information pursuant to subsection (1) when made in good faith shall not render the person supplying the information liable in any way in law or answerable on any account in respect thereof.

(3) A person who supplies information under subsection (1) or section 30 that is false or misleading in any material particular or malicious, commits an offence against this Act.

32. Public Trustee to manage estates of certain approved citizens. (1) Where the Council is of the opinion that an approved citizen—

- (a) is subject to, or liable to be subjected to, undue influence in respect of his estate, or any part thereof, or the disposition thereof; or
- (b) is otherwise in a position that renders it desirable in his interests or the interests of his dependents that his property should be protected,

the Executive Officer shall notify the Public Trustee to that effect in the prescribed form.

(2) The Public Trustee, upon receipt of the notification referred to in subsection (1) shall, unless he or some other person is already committee or manager of the estate of the approved citizen pursuant to the *Mental Health Services Act 1974-1984*, without further or other authority than this section, be the manager of his estate and shall have the same powers and authorities with respect to such estate as he has under the provisions of Part VI of the *Public Trustee Act 1978-1985* with respect to the estate of an Incapacitated Person.

(3) If the Public Trustee is of the opinion that adequate arrangements for the management of the estate of an approved citizen exist and that it is unnecessary for him to undertake the management of such estate, he shall give notice in writing accordingly to the Executive Officer and thereupon he shall cease to be the manager of such estate.

(4) If at any time the Council determines that the estate of an approved citizen, of whose estate the Public Trustee has ceased to be manager pursuant to the provisions of subsection (3) should be placed under the management of the Public Trustee because, in the opinion of the Council, the arrangements for the management of his estate are not then adequate, the Executive Officer shall give notice to the Public Trustee in the prescribed form and, thereupon, the provisions of subsection (2) shall again apply.

33. Solicitor not to act. (1) Where the Public Trustee or some other person is or becomes committee or manager of the estate of an approved citizen pursuant to the *Mental Health Services Act* 1974-1984 or Part VI of the *Public Trustee Act* 1978-1985, and the Legal Friend has instructed a solicitor to act for or on behalf of the citizen the solicitor shall not do any act or continue or institute any proceedings in relation to his property without the consent of the Public Trustee or, as the case may be, that other person.

(2) For the purposes of subsection (1), "proceedings" and "property" have respectively the meanings ascribed to those terms by section 6 of the *Public Trustee Act* 1978-1985.

34. Cessation of management. Where pursuant to section 32, authority is conferred upon the Public Trustee to manage the estate of an approved citizen that authority shall cease to have force or effect—

- (a) upon the making of an order by the Supreme Court to that effect;
- (b) upon the making of an order by the Supreme Court that reverses the Council's approval that the citizen be provided with the special intervention provided for by this Act;
- (c) subject to subparagraph (d), after the expiration of 6 months from the date of receipt by the Public Trustee of notification from the Executive Officer of the Council's decision terminating the special intervention being provided under this Act to the citizen;
- (d) in the case where an appeal is duly instituted against the Council's decision terminating the special intervention being provided under this Act to the citizen, upon the making by the Supreme Court of an order upholding the decision of the Council;
- (e) where the Public Trustee or some other person becomes a committee or manager of the estate of the citizen pursuant to the *Mental Health Services Act* 1974-1984 or Division 2 of Part VI of the *Public Trustee Act* 1978-1985;
- (f) upon receipt by the Public Trustee of notice in writing that the citizen has died; or
- (g) after the expiration of 14 days from the date of receipt by the Public Trustee of notification from the Executive Officer of the Council's decision that the citizen is capable of managing his estate.

PART IV—VOLUNTEER FRIENDS PROGRAMME

35. Establishment of Volunteer Friends Programme. There shall be established a programme to be known as the Volunteer Friends Programme by means of which an approved citizen may be provided with friendly personal support in his activities.

36. Co-ordinator of Volunteer Friends Programme. The co-ordinator shall, subject to the control and direction of the Council—

- (a) administer matters concerning volunteer friends;
- (b) recruit volunteer friends;
- (c) induct and provide training courses for, and orientate volunteer friends;
- (d) liaise with the Legal Friend and with persons, organizations and bodies concerned with intellectually handicapped citizens;
- (e) provide advice to the Council with respect to the Volunteer Friends Programme;
- (f) perform such other functions and duties as are determined by the Council;
- (g) report to the Council with respect to functions and duties specified in subparagraphs (a) to (f) (both inclusive).

37. Appointment of volunteer friends. (1) Where in considering the individual circumstances of an approved citizen, the Council is of the opinion that he is without the particular personal support usually provided by family and friends, the Council shall appoint a volunteer friend to provide friendly personal support in his activities.

(2) An approved citizen may nominate a person to be appointed as his volunteer friend.

A nomination under this subsection shall be subject to the approval of the Council and where a person so nominated is not approved, a second nomination may be submitted in its stead.

Where the Council has not appointed a volunteer friend and the approved citizen has not nominated a person as his volunteer friend or the Council has refused to approve a person so nominated, the co-ordinator may nominate a person to be appointed as such volunteer friend and the Council may appoint as volunteer friend the person so nominated by the co-ordinator.

(3) A volunteer friend shall not be entitled to any remuneration in respect of his appointment.

(4) In acting as a volunteer friend to an approved citizen the volunteer friend shall endeavour to carry out the wishes of the citizen as he has expressed them to him or, where he is unable to express his wishes, the volunteer friend shall act with regard to the social and personal interests of the citizen in such manner as he considers he would wish to act if he were able to express his wishes.

(5) A volunteer friend shall not assume the role of a professional counsellor, therapist or other practitioner and any advice given in good faith to an approved citizen by a volunteer friend shall not render the volunteer friend liable in any way in law or answerable on any account in respect thereof.

38. Termination of appointment of volunteer friend. (1) The appointment of a person as a volunteer friend may be terminated—

- (a) by that person, by writing signed by him furnished to the Council;
- (b) by the Council, by writing signed by the Executive officer in that behalf furnished to the volunteer friend.

(2) (a) A request to terminate the appointment of a person as a volunteer friend of an approved citizen may be made to the Council by—

- (i) the citizen;
- (ii) a relative of the citizen;
- (iii) the co-ordinator;
- (iv) any other person who appears to the Council to have a proper interest in the welfare of the citizen.

(b) The Council shall consider each request made under paragraph (a) and shall adjudicate thereon.

PART V—GENERAL PROVISIONS

39. The Intellectually Handicapped Citizens Council of Queensland Trust Fund. (1) For the purposes of this Act there shall be a trust fund kept at the Treasury known as “The Intellectually Handicapped Citizens Council of Queensland Trust Fund”.

(2) For the purposes of defraying the charges and expenses connected with the carrying on, management and control of the Council there shall be paid into the Fund out of Consolidated Revenue such amount as may be appropriated by Parliament from time to time for the purpose.

(3) There shall also be paid into the Fund all moneys received by the Council from any source for the purposes of the Council.

(4) The Fund shall be applied by the Council in and for the purposes of this Act and in and towards the payment of all expenses necessarily incurred in carrying this Act into execution and in doing and performing any acts, matters or things that the Council is by this Act empowered or required to do or perform.

40. Gifts, devises and bequests. (1) Subject to subsection (2), any gift, devise or bequest of real or personal property may be made by any person to the Council for the benefit or purposes of the Council, and the Council may accept such gift, devise or bequest and carry out and perform any conditions or purposes related to the gift, devise or bequest.

(2) Where any gift, devise or bequest made to the Council is for a particular purpose of the Council or subject to any trusts it shall not be accepted by the Council without the prior approval of the Minister.

(3) Nothing in this Act or any other Act shall be construed to restrict, in relation to moneys acquired by the Council by way of gift,

devise or bequest, the powers of investment conferred on the Council by an instrument under which it has acquired those moneys.

(4) Notwithstanding the provisions of any other Act or law, any instrument, agreement or contract executed or decree or order made whereby any property is transferred to the Council shall be exempt from stamp duty.

(5) The acceptance by the Council, or the acceptance by the Council with the prior approval of the Minister, as the case may be, of any gift, devise or bequest shall be a complete discharge to the person paying, conveying or transferring it and that person shall not be obliged or concerned to see to the application of it.

(6) For the purposes of the application of the rule of law concerning perpetuities to any gift to the Council it is declared that the purposes of the Council are charitable purposes.

(7) Where property has been invested by or is held by the Council in accordance with the directions of a donor, settlor or testator, the Council may from time to time, with the approval of the Minister upon advice of the Treasurer, vary and transpose such investments for or into other investments similarly so directed or into moneys for credit to the Fund.

(8) Every security or safe custody acknowledgement or other document evidencing title issued in respect of any investment shall be held by the Council and recorded in its register of investments.

41. Requirements in respect of property given, devised or bequeathed and financial provisions generally. (1) For the purposes of the *Financial Administration and Audit Act 1977-1981* the permanent head of the Department of Health shall be the accountable officer in respect of moneys paid into or out of the Fund.

(2) Separate records and accounts may, and, where so directed by a donor, settlor or testator, shall be kept in respect of all property the subject of a gift, devise or bequest under section 40 or any moneys derived therefrom.

(3) All property given, devised or bequeathed to the Council and accepted by it in accordance with the provisions of section 40—

(a) shall be applied by the Council in and for the particular purpose directed by the donor, settlor or testator, and, in the absence of such direction (subject to the approval of the Minister) in and for any purpose determined by resolution of the Council;

(b) shall be known as and applied under such name or title as the donor, settlor or testator directs or, in the absence of such direction, may be known and applied under such name or title as the Council determines.

(4) Moneys accepted by the Council under section 40 or derived from property accepted under that section shall, pending the application

by the Council in and for the purpose directed or approved and during any period during which the moneys are required to be invested under the trust relating to the same, be invested in the Fund.

(5) The interest or other income received from time to time in respect of any investment to which section 40 applies and the interest (if any) allowed by the Treasurer on such moneys as are standing at credit in the Fund in pursuance of subsection (4), shall form part of the property to be applied by the Council for the purpose directed or approved.

42. Council's power to hold inquiry. In considering an application under section 16 the Council may conduct an inquiry and for that purpose shall have all the powers, authorities, protection and jurisdiction of a Commission of Inquiry under *The Commissions of Inquiry Acts, 1950 to 1954*, save such as are by those Acts confined to a Judge of the Supreme Court.

The provisions of those Acts shall apply and have effect in all respects as if they were enacted in this Act and in terms made applicable to the Council, the inquiry and the subject matter of the inquiry as if the matter were one into which a Commission constituted by the Council was appointed to make an inquiry under those Acts.

43. Appeals. (1) Any intellectually handicapped citizen, approved citizen or other person who is aggrieved by a decision under section 16 to provide, terminate, vary or refuse intervention under this Act may appeal therefrom to a Judge of the Supreme Court who shall have jurisdiction to hear and determine the appeal.

(2) An appeal by an intellectually handicapped citizen or approved citizen pursuant to subsection (1) may be brought on his behalf by the Legal Friend and for the purpose of the conduct of the appeal his appointment as Legal Friend shall continue until its conclusion, notwithstanding that such appointment would otherwise be determined following the decision out of which the appeal arose.

(3) An appeal shall be by way of hearing *de novo* and shall be instituted within 6 months after the notification of the decision to provide, terminate, vary or refuse intervention is given to the intellectually handicapped citizen, approved citizen or, as the case may be, person aggrieved and no later or, where the citizen or person aggrieved has not been given such notification, within 6 months, and no later, after the date on which the decision first came to his notice, whichever is the later date.

(4) The appellant—

- (a) shall file a notice of appeal in the appropriate registry of the Supreme Court;
- (b) shall comply with all rules of court made with respect to the appeal;
- (c) shall serve a copy of the notice of appeal—
 - (i) on the Executive Officer;

- (ii) where the person aggrieved is an intellectually handicapped citizen or approved citizen and the Public Trustee or some other person is a committee or manager of his estate, on the Public Trustee or, as the case may be, that other person;

no later than 21 days after it is filed.

(5) Until rules of court are made regulating the practice and procedure of the Supreme Court, for the purpose of giving full effect to this section, or in so far as rules of court do not extend, a Judge of the Supreme Court may give directions with respect to practice and procedure on the appeal, and in relation to the appeal such directions shall have the full force and effect of rules of court.

(6) The proceedings on appeal under this section shall be deemed to be a proceeding before the Supreme Court.

(7) Where the Judge on an appeal under this section considers that the appeal is likely to raise matters of special knowledge and skill the Minister may upon a request by the Judge, appoint a panel of not more than 3 persons who in the opinion of the Minister possess the necessary qualifications to assist the Judge.

An assessor appointed and acting as assessor under this subsection may advise the Judge on any matter relevant to the appeal and the Judge may give such weight as he thinks fit to such advice but all questions of law and fact shall be determined by the Judge alone.

An assessor shall be paid such fees and expenses as the Governor in Council determines.

44. Access to certain intellectually handicapped citizens. (1) The Legal Friend or the volunteer friend of an approved citizen, with the consent of the occupier or person in charge of premises in which that citizen is at the material time, may enter those premises for the purpose of performing his functions and duties under this Act.

(2) Where the occupier or person in charge of premises in which an approved citizen is at any material time refuses to allow the Legal Friend to enter those premises for a purpose specified in subsection (1) the Council may call upon that occupier or person in charge to show cause before the Council why such entry should not be allowed.

(3) Where the Council believes on reasonable grounds that an intellectually handicapped citizen the subject of an application under this Act or an approved citizen is in premises and the occupier or person in charge of those premises refuses to allow an officer of the Council or other person authorized by the Council to enter those premises for the purpose of ascertaining whether the citizen is in those premises and, if so, of interviewing him, the Council may call upon that occupier or person in charge to show cause before the Council why such entry should not be allowed.

(4) Subsections (2) and (3) apply only in cases where the Council believes on reasonable grounds that the welfare of an intellectually handicapped citizen or an approved citizen is not at immediate risk.

(5) Where—

- (a) the occupier or person in charge of premises to which subsection (2) or (3) refers, after being called upon so to do, fails to show sufficient cause why entry should not be allowed to those premises; or
- (b) the Executive Officer believes on reasonable grounds that the welfare of an intellectually handicapped citizen or approved citizen present or believed on reasonable grounds to be present in those premises is at immediate risk,

the Executive Officer, with the prior approval of the Chairman or a member, may make application to a justice for a warrant to enter those premises.

(6) Where, upon application under subsection (5), the justice is satisfied upon the complaint on oath of the Executive Officer that—

- (a) there are reasonable grounds for believing that there is in the premises an intellectually handicapped citizen or approved citizen; and

(b) a warrant is reasonably required to allow—

- (i) the Legal Friend to enter the premises for the purpose of exercising therein his powers and authorities and performing his functions and duties under this Act; or
- (ii) officers of the Council or other persons authorized by the Council to enter the premises and therein interview the citizen,

the justice may issue his warrant in the prescribed form authorizing the member of the Police Force named in the warrant with such assistance as he thinks necessary to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant specifies, at any time, by force if necessary and to take with him the Legal Friend and such other persons as are necessary.

(7) In executing a warrant issued under this section the member of the Police Force by whom it is executed shall be accompanied by the Legal Friend and may be accompanied by such other persons as the member thinks fit.

(8) A warrant issued under subsection (5) shall specify a date after which the warrant ceases to have effect.

(9) A person shall not without reasonable cause, obstruct or hinder a person acting under the authority of a warrant issued under subsection (5).

(10) A person who supplies information under subsection (3) or (5) (b) that is false or misleading in any material particular or malicious, commits an offence against this Act.

45. Offences generally and penalty. A person who—

(a) contravenes or fails to comply with a provision of this Act;

(b)—

(i) fails to do that which he is directed or required to do; or

(ii) does that which he is forbidden to do,

by a person acting under the authority of this Act,

commits an offence against this Act.

Penalty: \$2 000.

46. Proceedings for offences. (1) A prosecution for an offence against this Act shall be taken by way of summary proceedings under the *Justices Act 1886-1982* within 12 months after the offence is committed or within 12 months after the commission of the offence first came to the knowledge of the complainant, whichever period is the later to expire.

(2) In any proceedings for an offence against this Act any complaint under the *Justices Act 1886-1982* may be made only by a person authorized in writing in that behalf by the Minister or the Council either generally or in a particular case.

(3) The authority of a person to make a complaint referred to in subsection (2) shall be presumed until the contrary is proved.

(4) Notwithstanding this Act or any other Act or law in a proceeding on a complaint under this Act, the Court may make an order on any matter within its jurisdiction though no application or complaint is made in respect of that matter.

(5) Penalties recovered in respect of offences against this Act shall be paid into the Fund.

47. Protection against liability. (1) Any act, matter, thing, recommendation or decision done or made by—

(a) the Minister;

(b) a member of the Council;

(c) an officer of the Council;

(d) any officer or other person acting with the authority of a person specified in subparagraph (a), (b) or (c),

for the purpose of carrying out or giving effect to this Act or done or made in good faith and purporting to be for the purposes of this Act shall not subject them or any of them or the Crown to any action, liability, claim or demand.

(2) Any cost or expense reasonably incurred by a person acting or purporting to act in a manner referred to in subsection (1) shall be deemed to be a cost or an expense authorized by or under this Act.

48. Regulations. The Governor in Council may make regulations not inconsistent with this Act providing with respect to—

- (a) all matters that are required or permitted by this Act to be prescribed;
- (b) all matters that in his opinion are necessary or convenient to be prescribed for the proper administration of this Act;
- (c) all matters that in his opinion are necessary or convenient to be prescribed to achieve the objects and purposes of this Act;
- (d) fees, charges, allowances, costs and expenses payable under or for the purposes of this Act and the matters and things in respect of which they are payable.

49. Annual Report. (1) As soon as is practicable after the expiration of its financial year the Council shall furnish to the Minister a report on its operations throughout that year.

(2) The report shall include such statements of accounts and other financial and relevant information as the Minister directs.

(3) The Minister shall lay the report of the Council before the Legislative Assembly within 14 sitting days from the day on which he receives the report.

SCHEDULE [s. 3 (2)]

AMENDMENTS OF THE PUBLIC TRUSTEE ACT 1978-1981

Provision Amended	Amendment
Section 64	<p>(a) in the definition “estate under management”, insert after the words “Division 4” the words “or pursuant to the <i>Intellectually Handicapped Citizens Act 1985</i>”;</p> <p>(b) in the definition “Incapacitated Person”, insert after the words “Division 4” the words “or pursuant to the <i>Intellectually Handicapped Citizens Act 1985</i>”.</p>
Section 85	<p>Insert after the words “<i>Mental Health Services Act 1974-1984</i>” the words “or to section 34 of the <i>Intellectually Handicapped Citizens Act 1985</i>”.</p>