

INTELLECTUALLY HANDICAPPED CITIZENS ACT AMENDMENT ACT

No. 33 of 1989

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Queensland



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ELIZABETHAE SECUNDAE REGINAE

No. 33 of 1989

An Act to amend the Intellectually Handicapped Citizens Act 1985-1988 and the Public Trustee Act 1978-1988 each in certain particulars

[ASSENTED TO 28TH APRIL, 1989]

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:—

1. Short title. This Act may be cited as the *Intellectually Handicapped Citizens Act Amendment Act 1989*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a day appointed by Proclamation.

3. Principal Act and citation as amended. (1) In this Act the *Intellectually Handicapped Citizens Act 1985-1988* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Intellectually Disabled Citizens Act 1985-1989*.

4. Amendment of long title. The long title to the Principal Act is amended by omitting the word "**handicapped**" and substituting the word "**disabled**".

5. Amendment of s. 1. Short title and commencement. Section 1 (1) of the Principal Act is amended by omitting the word "*Handicapped*" and substituting the word "*Disabled*".

6. Amendment of s. 2. Arrangement of Act. Section 2 of the Principal Act is amended by—

(a) omitting the word "HANDICAPPED" where twice occurring and substituting the word "DISABLED" in each case;

(b) omitting the expression "7-26" and substituting the expression "7-22";

(c) omitting the heading "*Division III—Officers and Employees of Council*;" and substituting the following heading:—

"PART IIA—LEGAL FRIEND (s. 26);"

(d) omitting the expression "39-49" and substituting the expression "42-49".

7. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by—

(a) omitting the definition "approved citizen" and substituting the following definition:—

" "assisted citizen" means an intellectually disabled citizen who is receiving, or has been approved to receive, the special assistance provided for by this Act;"

(b) inserting after the definition "Chairman" the following definition:—

“ “chief executive” means the chief executive of the Department;”;

(c) omitting the definitions “co-ordinator”, “Executive Officer”, “financial year” and “Fund”;

(d) in the definition “Council” omitting the word “Handicapped” and substituting the word “Disabled”;

(e) inserting after the definition “Council” the following definition:—

“ “Department” means the department of government of Queensland responsible for the administration of this Act;”;

(f) in the definition “intellectually handicapped citizen” omitting the word “handicapped” and substituting the word “disabled”;

(g) omitting the definition “Legal Friend” and substituting the following definition:—

“ “Legal Friend” means a barrister-at-law or solicitor appointed pursuant to the *Public Service Management and Employment Act 1988* to be the legal friend for the purposes of this Act;”;

(h) in the definition “member” omitting the words “, including that of Chairman”;

(i) omitting the definition “Minister” and substituting the following definition:—

“ “Minister” includes a Minister of the Crown who is temporarily performing the duties of the Minister;”;

(j) in the definition “nearest relative”—

(i) omitting the word “handicapped” and substituting the word “disabled”;

(ii) omitting the word “welfare” and substituting the word “well-being”;

(k) inserting after the definition “nearest relative” the following definitions:—

“ “panel” means a panel constituted under section 13A (2);

“panel member” means a person appointed under section 13 (1) to be a member of a panel;”.

8. Amendment of s. 5. Construction and application of Act. Section 5 of the Principal Act is amended by omitting the words “handicapped” and “intervention” and substituting, respectively, the word “disabled” and the word “assistance”.

9. Amendment of s. 6. Administration of Act. Section 6 of the Principal Act is amended by omitting the words “and, subject to the Minister, by the Council”.

10. Repeal of and new ss. 7 and 8. The Principal Act is amended by repealing sections 7 and 8 and substituting the following sections:—

“7. Constitution of Council. The Intellectually Handicapped Citizens Council of Queensland constituted prior to the commencement of this section is hereby preserved, continued in existence and constituted under and for the purposes of this Act as a body unincorporate under the name “Intellectually Disabled Citizens Council of Queensland”.

8. Composition of Council. (1) The Council shall consist of 7 members or such greater number of members as the Governor in Council from time to time may determine.

Members shall be appointed by the Governor in Council by notification published in the Gazette.

(2) Each person who, immediately before the commencement of this section, was a member of the Intellectually Handicapped Citizens Council of Queensland shall continue to be a member of the Intellectually Disabled Citizens Council of Queensland and, subject to this Act, shall continue in that office until the expiration of his term of appointment.

(3) Members 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 disability.

(4) A person who—

(a) has attained the age of 70 years;

(b) is in the paid employment of—

(i) the Department;

or

(ii) any other organization or body, the principal function of which is the delivery of services relating to intellectual disability,

shall not be appointed as a member.

(5) The Governor in Council by notification published in the Gazette may appoint a member to be Chairman.

(6) The Governor in Council by notification published in the Gazette may appoint a member to act as Chairman during the absence, incapacity or unavailability of the Chairman.

Any such appointment may be for a definite or indefinite period (however expressed in the notification of appointment) and may be revoked by the Governor in Council at any time.

For so long as an appointee acts as Chairman he shall have the functions and duties and may exercise the powers of the Chairman.”

11. Repeal of and new s. 9. Term of appointment. The Principal Act is amended by repealing section 9 and substituting the following section:—

“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 shall be for a period not exceeding 3 years.

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

12. Amendment of s. 10. Casual vacancies. Section 10 (2) of the Principal Act is amended by omitting the words “or until he sooner vacates that office and shall, if otherwise qualified, be eligible for reappointment as a member”.

13. Amendment of s. 11. Vacation of office and disqualifications. Section 11 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section omitting the words “and disqualifications”;

(b) in subsection (1) (c) omitting the words “personally or in the ordinary course of post”;

(c) adding at the end of subsection (1) the following expression and paragraphs:—

“;

(f) attains the age of 70 years;

(g) becomes employed in the paid employment of—

(i) the Department;

or

(ii) any other organization or body, the principal function of which is the delivery of services relating to intellectual disability”;

(d) in subsection (2), omitting the words “Executive Officer shall enter” and substituting the words “Chairman shall cause to be entered”.

(e) omitting subsection (3).

14. Repeal of s. 13 and new ss. 13 and 13A. The Principal Act is amended by repealing section 13 and substituting the following sections:—

“13. Panel members. (1) The Minister, from time to time, may appoint such number of persons throughout Queensland as he thinks fit as panel members for the purpose of assisting the Council in considering applications made under section 27 and carrying out reviews pursuant to section 28.

(2) Persons appointed pursuant to subsection (1) 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 disability.

(3) A panel member may be appointed for such term (not exceeding 3 years) and upon such conditions as the Minister thinks fit and may be reappointed from time to time for such term (not exceeding 3 years) and upon such conditions as the Minister thinks fit.

The terms and conditions of appointment or reappointment of panel members may vary one from the other.

(4) The Minister, by writing addressed to a panel member, may revoke that person's appointment as panel member at any time.

(5) The Chairman, with the approval of the Minister, shall arrange for panel members to receive such training as the Minister considers necessary to enable panel members to perform their functions and carry out their duties under this Act.

(6) A panel member while carrying out the duties of such a member shall be deemed to be a worker within the meaning of the *Workers' Compensation Act 1916-1988* employed by the chief executive and the provisions of that Act shall apply accordingly.

13A. Allocation of duties to panels. (1) Where the Council receives an application made under section 27 or proposes to carry out a review pursuant to section 28 the Chairman may determine that the application or review be allocated to a panel in a place which, in the opinion of the Chairman, is convenient to the citizen named in the application or the subject of the review.

(2) If the Chairman makes a determination under subsection (1), he shall constitute as a panel 3 persons who may be members of the Council or panel members or a combination of both, one of whom shall be appointed by the Chairman to be convenor of that panel.

It is the duty of—

(a) the Chairman, to ensure, as far as is possible, that a panel constituted under this subsection does not comprise among its members a person—

(i) who, as a paid employee of the Department or a paid employee of any other organization or body the principal function of which is the delivery of services relating to intellectual disability, is providing services to the citizen named in the application or the subject of the review allocated to the panel;

or

(ii) who is a relative of the citizen named in the application or the subject of the review allocated to the panel or is a person who has a personal

interest in that citizen or in the outcome of the proceedings;

- (b) each member of a panel constituted under this subsection, to notify the Chairman forthwith if he is a person to whom subparagraph (a) (i) or (ii) refers.

(3) The panel shall consider such information as is placed before it by the Chairman or by persons entitled pursuant to section 29 to be present during proceedings and shall furnish within such time, if any, as is specified by the Chairman a report and recommendations to the Chairman for consideration by the Council.

(4) An appointment as convenor of a panel subsists only until such time as the panel furnishes its report and recommendations to the Chairman.

(5) The constitution of a panel under subsection (2) shall not prevent the Council from exercising any power or authority or performing any function or duty under this Act in relation to the consideration of an application made under section 27 or the carrying out of a review pursuant to section 28.”.

15. Amendment of s. 14. Fees and allowances. Section 14 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “and members of the advisory committees”;

(b) in subsection (2), omitting the words—

(i) “by the Council”;

(ii) “or of an advisory committee”;

(iii) “or committee”;

(c) omitting subsection (3) and substituting the following subsection:—

“(3) A member or panel member shall be paid such out-of-pocket expenses as are approved by the chief executive and that are necessarily incurred by him as such member or panel member in connexion with the performance by him of any functions or duties under this Act.”.

16. Amendment of s. 15. Holder of office not affected by restrictive employment provisions. Section 15 of the Principal Act is amended by omitting the words “, Chairman or acting chairman” and substituting the words “or panel member”.

17. Repeal of and new s. 16. Functions and duties of Council. The Principal Act is amended by repealing section 16 and substituting the following section:—

“**16. Functions and duties of Council.** The Council shall—

- (a) consider each application made under section 27 and perform such other functions and duties as are imposed on it under this Act;
- (b) liaise with Government Departments and other organizations or bodies for the purpose of considering an application made under section 27 or carrying out a review pursuant to section 28;
- (c) provide advice to the Minister in respect of matters concerning the operations of the Council when requested so to do by the Minister or when the Council thinks fit.”

18. Amendment of s. 17. Conduct of business. Section 17 (2) of the Principal Act is amended by—

- (a) inserting after the words “consideration of applications” the words “made under section 27 or on reviews carried out pursuant to section 28”;
- (b) omitting the words “to support the application”.

19. Repeal of and new s. 18. Quorum. The Principal Act is amended by repealing section 18 and substituting the following section:—

“**18. Quorum.** The quorum of the Council shall consist of at least half the number of members for the time being constituting the Council.”

20. Repeal of and new s. 19. Meetings. The Principal Act is amended by repealing section 19 and substituting the following section:—

“**19. Meetings.** (1) Meetings of the Council shall be held at such times and places as the Chairman determines.

(2) The Chairman shall preside at every meeting of the Council at which he is present.

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

(3) If the Chairman and the member appointed under section 8 (6) to act as Chairman are both absent from a meeting of the Council the members present at the meeting may appoint one of those members to act as Chairman for the purpose of conducting the meeting.”

21. Amendment of s. 21. Minutes. Section 21 (1) of the Principal Act is amended by omitting the words “Executive Officer shall duly record and keep” and substituting the words “Chairman shall cause to be kept”.

22. Repeal of Division III of Part II and new Part IIA. The Principal Act is amended by repealing all sections comprising Division III of Part II and the heading to that Division and substituting the following heading and section:—

“PART IIA—LEGAL FRIEND

26. Legal Friend. (1) Subject to the direction of the Minister, the Legal Friend—

- (a) may obtain for or provide to an assisted citizen or his relative approved under this Act 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, where the Legal Friend is satisfied that an assisted citizen cannot effectively instruct a solicitor, instruct a solicitor to act for or on behalf of the citizen;
- (c) may liaise with Government Departments and other organizations or bodies on behalf of an assisted citizen;
- (d) shall perform such other functions or duties as may be prescribed.

(2) In acting under subsection (1) on behalf of an assisted 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 under this Act authorizes the Legal Friend to act on behalf of an assisted citizen, the Legal Friend may on behalf of the citizen give consent to any medical, dental or surgical or other professional treatment or care being carried out on or provided to the citizen for his benefit by a person professionally qualified to carry it out or provide it.

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 assisted citizen;
- and

(ii) he were of full legal capacity.

(4) Where a committee of the person of an assisted citizen is appointed pursuant to the *Mental Health Services Act 1974-1987*, 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 consult with relatives of the assisted citizen who are providing ongoing care

-
- for the citizen and give due consideration to any views expressed by the relatives;
- (b) take all reasonable steps to inform himself as fully as possible on matters requiring consent and the options available and for that purpose shall consult with—
 - (i) persons who are providing ongoing care for the assisted citizen;
 - (ii) appropriate professional persons;
 - (iii) relatives of the assisted citizen or other persons who appear to the Legal Friend to have a proper interest in the well-being of the assisted citizen;
 - (c) ensure that the assisted citizen is informed as fully as possible on matters requiring consent and the options available, consistent with his ability to understand the information;
 - (d) 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 assisted citizen are taken into consideration.
- (6) The supplying of information by any person to the Legal Friend pursuant to subsection (5) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of that person.
- (7) (a) Subject to any direction by the Minister to the contrary, 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 under this Act by the Legal Friend.
- (c) Any power, authority, function or duty delegated by the Legal Friend may be exercised or performed by the delegate in accordance with the delegation.
- (d) Where a delegation under this subsection involves the expenditure of money the delegation shall not be given unless the prior approval of the chief executive is obtained for that expenditure.
- (8) The Legal Friend shall obtain for or provide to the Council advice when requested so to do.
- (9) (a) In any case where, in the opinion of the Legal Friend, the circumstances are such that the obtaining of the Council's approval under section 31A would cause unreasonable delay he

may, without obtaining such approval but with the prior approval of the Chairman, act under this section on behalf of a citizen who, in his opinion, is an intellectually disabled citizen as if that citizen were an assisted citizen and the Legal Friend had been authorized pursuant to section 31A (4) to act on that citizen's behalf.

(b) Where the Legal Friend acts in accordance with the authority given by paragraph (a)—

(i) he shall as soon as possible thereafter make or cause to be made an application under section 27;

and

(ii) he may, in giving consent referred to in subsection (3), only give consent to such essential medical, dental or surgical or other professional treatment or care as is necessary to alleviate or prevent the citizen being subject to significant illness or suffering or to preserve the life of the citizen.

(10) The Legal Friend shall not be accountable in the discharge of his duties under this Act to the Council or the chief executive.

(11) For the purposes of subsections (3), (4) and (5), Legal Friend includes a barrister-at-law or solicitor authorized by the Council under this Act to act on behalf of an assisted citizen.”.

23. Repeal of and new s. 27. Applications for approvals and reviews.

The Principal Act is amended by repealing section 27 and substituting the following section:—

“**27. Applications for approvals and reviews.** (1) An intellectually disabled citizen may make an application to the Council for the provision to him of special assistance under this Act.

(2) Where an intellectually disabled citizen appears to—

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

(b) a member of the Police Force;

(c) the Legal Friend;

(d) any other officer of the Department authorized in that behalf by the chief executive;

(e) any other person, who has attained the age of 18 years, who satisfies the Council that he has a proper interest in the well-being of the citizen,

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 assistance provided for by this Act, the relative, member, Legal Friend, other officer or other person may make an application to the Council for the provision to the citizen of special assistance under this Act.

(3) An application may be made to the Council for a review of the kind and extent of special assistance being provided to an assisted citizen under this Act by—

- (a) the citizen;
- (b) a relative, who has attained the age of 18 years, of the citizen;
- or
- (c) any other person, who has attained the age of 18 years, who satisfies the Council that he has a proper interest in the well-being of the citizen.

(4) Where—

- (a) a member of the Police Force;
- (b) the Legal Friend;
- or
- (c) any other officer of the Department authorized in that behalf by the chief executive,

considers that it is in the interests of the well-being of an assisted citizen that the kind and extent of special assistance being provided under this Act to the citizen be reviewed and an application has not been made under subsection (3) the member, Legal Friend or other officer may make an application to the Council for such a review.

(5) Where a person referred to in subsection (2) (e) or (3) (c) makes an application under this section and fails to satisfy the Council that he has a proper interest in the well-being of the citizen named in the application, the Council, without proceeding to consider the application, shall refuse the application.”

24. Repeal of and new s. 28. Review. The Principal Act is amended by repealing section 28 and substituting the following section:—

“**28. Review.** The Council shall review the kind and extent of special assistance that is being provided under this Act to every assisted citizen, at least once in the first 5 years after the date the citizen commences to receive the special assistance and thereafter at least once in every 5 years after the date the last review in respect of the citizen was carried out under this section or section 27.”

25. Repeal of and new ss. 29 and 30. The Principal Act is amended by repealing sections 29 and 30 and substituting the following sections:—

“**29. Notice of proceedings, etc.** (1) The Council shall cause not less than 7 days’ notice to be given to the persons entitled to receive notice under subsection (2) or such less notice as is agreed between the Chairman and those persons of the time when and the place where—

- (a) an application made under section 27 will be considered;

or

(b) a review pursuant to section 28 will be carried out.

(2) A notice under subsection (1) shall be given—

(a) if the proceedings relate to an application made under section 27 (1) or (2), to—

(i) the citizen named in the application;

(ii) the applicant, if the applicant is not the citizen;

(iii) the nearest relative of the citizen;

and

(iv) any other relative or other person, who has attained the age of 18 years, who appears to the Chairman from information contained in the application to have exhibited a continuing interest in the well-being of the citizen;

(b) if the proceedings relate to an application made under section 27 (3) or (4), to—

(i) the assisted citizen named in the application;

(ii) the applicant, if the applicant is not the citizen;

(iii) the nearest relative of the citizen;

and

(iv) any other relative or other person, who has attained the age of 18 years, who appears to the Chairman from information contained in the application to have exhibited a continuing interest in the well-being of the citizen;

(c) if the proceedings relate to a review carried out pursuant to section 28, to—

(i) the assisted citizen the subject of the review;

(ii) the nearest relative of the citizen;

and

(iii) any other relative or other person, who has attained the age of 18 years, who appears to the Chairman to have exhibited a continuing interest in the well-being of the citizen.

(3) (a) A person to whom a notice of proceedings is given under this section is entitled to be present and to be heard, in person, at the proceedings.

(b) The citizen named in the application or the subject of a review is entitled, with the leave of the Chairman or, as the case may be, convenor of a panel to be legally represented at the proceedings.

(c) A relative (other than a relative who is given a notice under subsection (2)) or representative of the citizen named in the application or the subject of a review as the Chairman or,

as the case may be, convenor of a panel authorizes shall be entitled to be present and to be heard, in person, at the proceedings.

(4) Leave shall not be given under subsection (3) (b) unless the Chairman or, as the case may be, convenor of a panel, in a particular case, considers that there are circumstances that warrant leave being given.

(5) Subsections (1), (2), (3) and (4) do not apply to a consideration by the Council of a report and recommendations of proceedings conducted by a panel pursuant to section 13A.

30. Proceedings on applications and reviews. (1) Proceedings on an application made under section 27 or a review carried out pursuant to section 28 shall be conducted in accordance with this Act, so far as it so provides, or, where this Act does not so provide or does not sufficiently so provide, in accordance with directions given by the Chairman either generally or in a particular case.

(2) Where in the opinion of the Chairman or, as the case may be, the convenor of a panel the citizen to whom proceedings referred to in subsection (1) relate is unable by reason of the severity of his disability to be present at those proceedings or otherwise fails to attend at those proceedings the Chairman or the convenor, as the case may be—

(a) may, in a case where the Council or, as the case may be, panel has received a report on the circumstances of the citizen from a person who has interviewed the citizen;

or

(b) shall, in a case where the Council or, as the case may be, panel has not received such a report,

cause a member of the Council or, as the case may be, panel or some other person authorized in that behalf by the Council or, as the case may be, panel to interview the citizen and furnish to the Council or panel a report on the circumstances of the citizen.

(3) A person authorized under subsection (2) to interview a citizen may be authorized to be present and to be heard at the proceedings referred to in subsection (1).

(4) With respect to any proceedings referred to in subsection (1) the Council or a panel shall not be bound by any rules or practice as to evidence and may inform itself on any matter in such manner as it thinks fit.”

26. Amendment of s. 31. Information supplied to Council. Section 31 of the Principal Act is amended by—

(a) omitting subsections (1) and (2) and substituting the following subsections:—

“(1) When requested so to do by the Chairman or convenor of a panel any person, organization or body shall supply to the

Council or, as the case may be, panel information in his or its possession relating to the functional competence of a citizen named in an application made under section 27 or the subject of a review carried out pursuant to section 28.

(2) The supplying of information pursuant to subsection (1) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person supplying the information.”;

(b) in subsection (3), omitting the words “or section 30 that” and substituting the words “knowing that it”.

27. New s. 31A. Consideration of applications, etc. The Principal Act is amended by inserting after section 31 the following section:—

“31A. Consideration of applications, etc. (1) In considering any application made under section 27 in respect of any intellectually disabled citizen or carrying out any review pursuant to section 28, the Council shall determine whether or not, in the opinion of the Council, the citizen named in the application or the subject of the review is so severely limited in his functional competence by reason of intellectual impairment that the special assistance provided for under this Act should be provided to the citizen or, as the case may be, should continue to be provided.

(2) If, after considering the matters referred to in subsection (1) and the report and recommendations of any proceedings before a panel—

(a) the Council is satisfied—

(i) that sufficient support and assistance is being provided to the citizen by relatives of the citizen;
or

(ii) that the special assistance provided for under this Act is not necessary,

the Council shall refuse the application or, as the case may be, terminate the assistance being provided under this Act to the citizen;

or

(b) the Council is satisfied that the special assistance provided for under this Act should be provided or, as the case may be, should continue to be provided, the Council shall approve the application or, as the case may be, approve the continuation of the provision of special assistance under this Act.

(3) Where the Council approves the provision or, as the case may be, the continuation of the provision of special assistance under this Act, the Council shall—

(a) consider the individual circumstances of the citizen;

(b) ascertain whether, in the opinion of the Council, the

- citizen is competent in law to make informed decisions—
- (i) by himself;
 - (ii) by himself with the support and assistance of a relative of the citizen;
 - (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 or care;
- (c) ascertain whether the citizen in his activities is in need of friendly personal support of a kind usually provided by family and friends;
 - (d) consider the need to maintain the dignity and self respect of the citizen with a view to imposing the least restrictions possible on his dignity and self respect;
 - (e) give due consideration to the expressed wishes of the citizen with a view to supporting him in exercising as much control as possible over his own life;
 - (f) recognize that the needs, capabilities and wishes of the citizen may change in time;
 - (g) take into account the indigenous or ethnic background and cultural background of the citizen;
 - (h) take into account such special circumstances concerning the citizen as the Council thinks fit.
- (4) After considering the matters specified in subsection (3) the Council—
- (a) may, if it is of the opinion that the citizen is competent in law as provided in subsection (3) (b)—
 - (i) approve of support and assistance being provided to the citizen by a relative of the citizen approved by the Council for the purpose of section 26 (1) (a);
 - or
 - (ii) approve of support and assistance being provided to the citizen by the Legal Friend;
 - (b) may, if it is of the opinion that the citizen is not competent in law as provided in subsection (3) (b)—
 - (i) authorize the Legal Friend;
 - or
 - (ii) where the Council considers that the circumstances of the citizen so require, authorize a barrister-at-law or solicitor nominated by a person entitled pursuant to section 29 to be present at the proceedings;

to act on the citizen's behalf to the least extent required in accordance with, in the case of the Legal Friend, the provisions of section 26 or, in the case of a barrister-at-law or solicitor referred to in subparagraph (ii), the provisions of section 26 (3), (4) or (5);

- (c) may, if it is of the opinion that the citizen is in need of friendly personal support in his activities, determine that a volunteer friend be appointed to furnish that support to the citizen;
- (d) may, if the citizen is already being provided with special assistance under this Act—
 - (i) continue the kind and extent of assistance being provided to the citizen;
 - or
 - (ii) vary the kind and extent of assistance being provided to the citizen,
as the circumstances may require.

(5) Where the Council gives an authorization under subsection (4) (b) (ii) the barrister-at-law or solicitor authorized shall be subject to the supervision of the Legal Friend and the Council may at any time on the application of the Legal Friend revoke the authorization whereupon the authority of the barrister-at-law or solicitor to act on the citizen's behalf shall cease to have force or effect.

(6) The Council shall notify the citizen, his nearest relative and any other persons entitled pursuant to section 29 to be present at proceedings, of its decision on the application or, as the case may be, review.”

28. Amendment of s. 32. Public Trustee to manage estates of certain approved citizens. Section 32 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section omitting the word “**approved**” and substituting the word “**assisted**”;

(b) omitting the word “approved” wherever occurring and substituting the word “assisted” in each case;

(c) in subsection (1), omitting the words “Executive Officer shall notify” and substituting the words “Council shall cause notice to be given to”;

(d) inserting after subsection (1) the following subsection:—

“(1A) (a) In any case where, in the opinion of the Legal Friend, a citizen is an intellectually disabled citizen and is—

(a) 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) otherwise in a position that renders it desirable in his interests or the interests of his dependants that his property should be protected,

and the circumstances are such that the obtaining of the Council's approval under section 31A would cause unreasonable delay he may, without obtaining such approval, but with the prior approval of the Chairman, notify the Public Trustee to that effect in the prescribed form.

(b) Where the Legal Friend acts under this subsection he shall as soon as possible thereafter make, or cause to be made, an application under section 27 which application shall be dealt with by the Council as expeditiously as possible and in any case the Council or a panel shall commence consideration of the application within 28 days from the date of receipt of the application by the Council.

(c) The term "assisted citizen" hereinafter in this section includes a citizen referred to in paragraph (a).";

(e) in subsection (2), inserting after the expression "(1)" the expression "or (1A)";

(f) in subsection (3), omitting the words "Executive Officer" and substituting the word "Chairman";

(g) in subsection (4), omitting the words "Executive Officer shall give notice" and substituting the words "Council shall cause notice to be given".

29. Amendment of s. 33. Solicitor not to act. Section 33 (1) of the Principal Act is amended by omitting the word "approved" and substituting the word "assisted".

30. Amendment of s. 34. Cessation of management. Section 34 of the Principal Act is amended by—

(a) omitting the word "approved" and substituting the word "assisted";

(b) in paragraphs (b), (c) and (d) omitting the word "intervention" and substituting the word "assistance" in each case;

(c) in paragraph (c), omitting the words "Executive Officer" and substituting the word "Council";

(d) omitting paragraph (g) and substituting the following paragraph:—

“(g) after the expiration of 14 days from the date of receipt by the Public Trustee of notification from the Council—

- (i) of the Council's decision that the citizen is capable of managing his estate;

or

- (ii) that the Council is satisfied that adequate alternative arrangements for the management of the citizen's estate exist.”.

31. Amendment of s. 35. Establishment of Volunteer Friends Programme. Section 35 of the Principal Act is amended by—

(a) omitting the words “There shall be established” and substituting the words “The chief executive shall establish”;

(b) omitting the word “approved” and substituting the word “assisted”.

32. Repeal of s. 36. Co-ordinator of Volunteer Friends Programme. The Principal Act is amended by repealing section 36.

33. Amendment of s. 37. Appointment of volunteer friends. Section 37 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where the Council determines that a volunteer friend be appointed to furnish support to an assisted citizen the chief executive for that purpose shall endeavour to appoint a volunteer friend to provide friendly personal support to the citizen in his activities.”;

(b) in subsection (2),

(i) in the first paragraph, omitting the word “approved” and substituting the word “assisted”;

(ii) in the second paragraph, omitting the word “Council” and substituting the words “chief executive”;

(iii) omitting the third paragraph;

(c) in subsections (4) and (5) omitting the word “approved” and substituting the word “assisted” in each case.

34. Amendment of s. 38. Termination of appointment of volunteer friend. Section 38 of the Principal Act is amended by—

(a) in subsection (1),

(i) in paragraph (a), omitting the word “Council” and substituting the words “chief executive”;

(ii) omitting paragraph (b) and substituting the following paragraph:—

“(b) by the chief executive by notice in writing given to the volunteer friend.”;

(b) omitting subsection (2) and substituting the following subsection:—

“(2) (a) A request to terminate the appointment of a person as a volunteer friend of an assisted citizen may be made to the chief executive by—

- (i) the citizen;
- (ii) a relative of the citizen;
- (iii) any other person who appears to the chief executive to have a proper interest in the well-being of the citizen.

(b) The chief executive shall consider each request made under paragraph (a) and if he considers that the appointment should be terminated, shall terminate the appointment.”

35. Repeal of ss. 39-41. The Principal Act is amended by repealing sections 39, 40 and 41.

36. Repeal of and new s. 42. Council’s power to hold inquiry. The Principal Act is amended by repealing section 42 and substituting the following section:—

“**42. Confidentiality.** (1) A person whilst he is a member, panel member or an officer of the Department or any other person carrying out any official duties under this Act and after he ceases to be such member, panel member or officer or ceases to carry out those duties 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.

(2) Any person entitled to be present at any proceedings under this Act shall preserve and aid in preserving confidentiality with regard to all matters that come to his knowledge during the proceedings.”

37. Amendment of s. 43. Appeals. Section 43 of the Principal Act is amended by—

(a) omitting the words “handicapped”, “approved” and “intervention” wherever occurring and substituting, respectively, the word “disabled”, “assisted” and “assistance” in each case;

(b) in subsection (1), omitting the expression “16” and substituting the expression “31A”;

(c) in subsection (4) (c) (i) omitting the words “Executive Officer” and substituting the word “Chairman”;

(d) in subsection (7), in the first paragraph, omitting the word “persons” and substituting the word “assessors”.

38. Amendment of s. 44. Access to certain intellectually handicapped citizens. Section 44 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section omitting the word “**handicapped**” and substituting the word “**disabled**”;

(b) omitting subsections (1), (2), (3), (4), (5) and (6) and substituting the following subsections:—

“(1) With the consent of the occupier or person in charge of premises in which an assisted citizen is at the material time—

- (a) the Legal Friend;
 - (b) a barrister-at-law or solicitor authorized under section 31A (4) (b) in respect of that citizen;
- or
- (c) the volunteer friend of the citizen,

may enter those premises, at any time, for the purpose of performing his functions and duties under this Act.

(2) Where the occupier or person in charge referred to in subsection (1) refuses to allow a person referred to in subsection (1) (a) or (b) to enter the premises in question, the Legal Friend may call upon the occupier or person in charge to show cause to the Legal Friend why such entry should not be allowed.

(3) Where the Legal Friend believes on reasonable grounds that an intellectually disabled citizen, or an assisted citizen, who is the subject of an application made under section 27 or a review being carried out pursuant to section 28 is in premises and the occupier or person in charge of those premises refuses to allow a person referred to in section 30 (2) to enter those premises for the purpose of ascertaining whether the citizen is in those premises and, if so, of interviewing him, the Legal Friend may call upon that occupier or person in charge to show cause to the Legal Friend why such entry should not be allowed.

(4) Subsections (2) and (3) apply only in cases where the Legal Friend believes on reasonable grounds that the well-being of an intellectually disabled citizen or an assisted 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 Legal Friend believes on reasonable grounds that the well-being of an intellectually disabled citizen or an assisted citizen present or believed on reasonable grounds to be present in those premises is at immediate risk,

the Legal Friend 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 Legal Friend that—

(a) there are reasonable grounds for believing that there is in the premises an intellectually disabled citizen or an assisted citizen;

and

(b) a warrant is reasonably required to allow—

(i) the Legal Friend or a person referred to in subsection (1) (b) to enter the premises for the purposes of exercising therein his powers and authorities and performing his functions and duties under this Act;

or

(ii) a person referred to in section 30 (2) 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.”;

(c) in subsection (7), inserting after the words “Legal Friend” the words “or, as the case may be, a person referred to in subsection (1) (b) or (6) (b) (ii)”.

39. Amendment of s. 45. Offences generally and penalty. Section 45 of the Principal Act is amended by omitting the expression “\$2 000” and substituting the expression “40 penalty units”.

40. Amendment of s. 46. Proceedings for offences. Section 46 of the Principal Act is amended by—

(a) in subsection (2) omitting the words “or the Council”;

(b) omitting subsection (5).

41. Repeal of and new s. 47. Protection against liability. The Principal Act is amended by repealing section 47 and substituting the following section:—

“**47. Notices, etc.** A notice, direction or notification required by this Act to be served on or given to any person shall be taken to have been duly served or given if it is—

(a) personally served on or given to the person to whom it is directed or to a person authorized by the person to whom it is directed, either generally or in a

- particular case, to accept service of documents on his behalf;
- (b) left at the place of residence or business of the person to whom it is directed last known to the person serving or giving it;
 - (c) sent by post to the place of residence or business of the person to whom it is directed last known to the person serving or giving it.”.

42. Amendment of s. 49. Annual Report. Section 49 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “the expiration of its financial” and substituting the words “30 June in each”;

(b) in subsection (2), omitting the words “statements of accounts and other financial and”.

43. Amendment to headings of Parts II and III. The headings to Parts II and III of the Principal Act are amended by omitting the word “HANDICAPPED” and substituting the word “DISABLED” in each case.

44. Provisions re The Intellectually Handicapped Citizens Council of Queensland Trust Fund. On and from the commencement of section 35 of this Act the trust fund kept at the Treasury known as “The Intellectually Handicapped Citizens Council of Queensland Trust Fund” shall cease to exist and any moneys standing to the credit of that fund on that commencement shall be paid to Consolidated Revenue.

45. Amendment of Public Trustee Act. (1) The *Public Trustee Act 1978-1988* as amended by this section may be cited as the *Public Trustee Act 1978-1989*.

(2) The *Public Trustee Act 1978-1988* is amended by—

(a) in section 64 omitting the word “*Handicapped*” where twice occurring and substituting the word “*Disabled*” in each case;

(b) in section 85 omitting the word “*Handicapped*” and substituting the word “*Disabled*”.