

2 GEO. VI. No. 30, 1938. *Backward Persons Act.*

### INSANITY.

- (1) *Backward Persons Act of 1938* .. .. 2 *Geo. VI. No. 30*  
 (2) *Mental Hygiene Act of 1938* .. .. 2 *Geo. VI. No. 21*

## An Act to Make Provision for the Education and Care, Treatment, and Control of Backward Persons.

2 GEO. VI.  
No. 30.  
THE  
BACKWARD  
PERSONS  
ACT  
OF 1938.

[ASSENTED TO 1ST DECEMBER, 1938.]

**B**E it enacted by the King'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.

PART I.—  
PRELIMINARY.

1. This Act may be cited as "*The Backward Persons Act of 1938*," and shall except as otherwise provided come into operation on a date to be proclaimed by the Governor in Council by Proclamation in the *Gazette*. Such date shall hereafter be referred to as the commencement of this Act. .

Short title  
and  
commence-  
ment.

2. This Act is divided into Parts as follows:—

Parts of  
Act.

PART I.—PRELIMINARY (ss. 1-3) ;

PART II.—SURVEY BOARD (s. 4) ;

PART III.—ADMINISTRATION (ss. 5-7) ;

PART IV.—PSYCHIATRIC CLINICS (s. 8) ;

PART V.—SPECIAL PROVISIONS RELATING TO CHILDREN (s. 9) ;

PART VI.—BACKWARD PERSONS INSTITUTIONS—

*Division I.—Backward Persons Institutions* (ss. 10-18),

*Division II.—Private Licensed Institutions* (s. 19),

*Division III.—Licenses for the Care, Treatment, or Control of a Single Patient* (s. 20),

*Division IV.—Provision as to the Detention of Backward Persons otherwise than in Accordance with this Act* (s. 21) ;

PART VII.—BACKWARD PERSONS INSTITUTIONS FOR CRIMINAL BACKWARD PERSONS (s. 22) ;

PART VIII.—APPLICATION OF CERTAIN PROVISIONS OF "THE MENTAL HYGIENE ACT OF 1938" (s. 23).

3. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:—
- Interpretation. “Backward person”—Any person, other than a mentally sick person as defined in \**“The Mental Hygiene Act of 1938,”* the development of whose mind has been arrested or is incomplete, whether such arrested or incomplete state was innate or induced after birth by disease, injury, or other cause, and who on account of such arrested or incomplete development is incapable of adapting himself to the normal environment of his fellows in such a way as to maintain existence independently of care, treatment, or control;
- Backward person. “Backward persons institution”—A backward persons institution established under this Act;
- Backward persons institution. “Child”—Means a person under the age of eighteen years;
- Child. “Court”—The Supreme Court or any judge thereof;
- Court. “Director-General of Health and Medical Services”—The Director-General of Health and Medical Services appointed under †*“The Health Act of 1937”* and in office for the time being: the term where necessary includes the Deputy Director-General of Health and Medical Services appointed under †*“The Health Act of 1937”* and in office for the time being;
- Director-General of Health and Medical Services. “Director of Mental Hygiene”—The Director of Mental Hygiene appointed under \**“The Mental Hygiene Act of 1938”*;
- Director of Mental Hygiene. “Director of Psychiatry”—The Director of Psychiatry appointed under this Act;
- Director of Psychiatry. “Government medical officer”—The medical officer appointed by the Governor in Council for any city, town, or place;
- Government medical officer. “Guardian”—In relation to a person under the age of eighteen years, this expression includes any person having charge of the person under the age of eighteen years;
- Guardian.

\* 2 Geo. VI. No. 21, *post*, page 17038.† 1 Geo. VI. No. 31, *supra*, page 16597.

1938.

*Backward Persons Act.*

- “Hospital”—A hospital to which Part III. or Part IV. of \**“The Hospitals Act of 1936”* applies; Hospital.
- “Licensed private institution”—An institution licensed under this Act for the reception and detention of backward persons; Licensed private institution.
- “Medical certificate”—A certificate signed by a medical practitioner in pursuance of this Act; Medical certificate.
- “Medical practitioner”—A person registered in Queensland as a medical practitioner under any Act providing for the registration of medical practitioners; Medical practitioner.
- “Minister”—The Secretary for Health and Home Affairs or other Minister of the Crown for the time being charged with the administration of this Act; Minister.
- “Patient”—A backward person receiving education, care, treatment, or control in terms of this Act; Patient.
- “Prescribed”—Prescribed by this Act; Prescribed.
- “Psychiatric clinic” or “clinic” — The psychiatric clinic established under this Act or any branch of such clinic; Psychiatric clinic or clinic.
- “Public Curator”—The Public Curator appointed under the provisions of †*“The Public Curator Acts, 1915 to 1938”*: the term where necessary includes a Deputy Public Curator; Public Curator.
- “Regulations”—Regulations made by the Governor in Council under the authority of this Act; Regulations.
- “Superintendent”—The superintendent of a backward persons institution and includes a medical superintendent or deputy medical superintendent; Superintendent.
- “Survey Board”—The Survey Board constituted under this Act; Survey Board.
- “This Act”—This Act and all Proclamations, Orders in Council, Rules of Court, and regulations thereunder. This Act.

\* 1 Geo. VI. No. 4, *supra*, page 15782.† 6 Geo. V. No. 14 and amending Acts, *supra*, pages 7056 *et seq.*

## PART II.—SURVEY BOARD.

Constitution  
of  
Backward  
Persons  
Survey  
Board.

4. (1.) On and after the passing of this Act, a Survey Board shall be constituted under the name of "The Backward Persons Survey Board" (hereinafter referred to as the "Survey Board"), for the purpose of making a survey of backward persons in the State, and upon the completion of such survey to classify such persons, and to submit a report to the Minister and to embody in such report recommendations with regard to the classifications of backward persons, and the measures and the classes of institutions and/or schools which may be deemed to be required to provide for the education and/or care, treatment, or control of such persons.

Members.

(2.) The Board shall be constituted as follows :—

- (i.) The Director-General of Health and Medical Services, who shall be chairman ;
- (ii.) The Director of Education ; and
- (iii.) The Director of Mental Hygiene.

Board to be  
commission  
under  
Official  
Inquiries  
Evidence  
Acts.

(3.) For the purposes of making such survey, the Survey Board shall have and may exercise all the powers, authorities, protection, and jurisdiction of a commission under \*"*The Official Inquiries Evidence Acts, 1910 to 1929.*"

(4.) This section shall come into force on the passing of this Act.

## PART III.—ADMINISTRATION.

*Power to Make Regulations for the Administration of this Act.*

Regulations.

5. (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency.

\* 1 Geo. V. No. 26 and amending Act, *supra*, pages 748 *et seq.*

1938.

*Backward Persons Act.*

Without limiting the generality of the foregoing provisions, such regulations may provide for—

- (i.) Regulating the form and mode of proceeding in all cases under this Act, other than those prescribed by section sixty-two of \**"The Mental Hygiene Act of 1938"* as applied and extended, *mutatis mutandis*, to this Act by section twenty-three of this Act ;
- (ii.) Prescribing the duties of the Public Curator in connection with the management of the estates of backward persons ;
- (iii.) Prescribing the forms required by this Act and such other forms as may be necessary and convenient for the administration of this Act :  

Provided that when any forms are prescribed, forms to the like effect may be used and shall be sufficient ;
- (iv.) Prescribing the keeping and/or form of any books, records, registers, or other documents or the furnishing of any reports or statistics as may be necessary or convenient for the administration of this Act, and the persons responsible for the keeping or furnishing of same ;
- (v.) Fixing the fees payable for medical certificates by persons requiring to exercise rights and privileges under this Act ;
- (vi.) Prescribing the fees payable for medical certificates required in the administration of this Act, and the recovery of such fees from persons responsible under this Act ;
- (vii.) Prescribing charges for the care, treatment, and control of patients received into backward persons institutions established by the Governor in Council under this Act ;
- (viii.) Providing for the general administration of backward persons institutions established by the Governor in Council under this Act ;
- (ix.) Prescribing the duties, responsibilities, obligations, and liabilities of officers, nurses, and other employees in respect of the care,

\* 2 Geo. VI. No. 21, *post*, page 17038.

treatment, and control of patients in backward persons institutions established by the Governor in Council under this Act ;

- (x.) Prescribing the classification of backward persons ;
- (xi.) Prescribing fees for, and provisions and conditions as to the licensing by the Director-General of Health and Medical Services of private licensed institutions under this Act ;
- (xii.) Prescribing provisions and conditions for—
  - (a) The custody, control, maintenance, education, employment, placing out, and apprenticing of backward persons,
  - (b) The visitation of backward persons,
  - (c) The wages and rewards of such persons,
  - (d) Records to be kept and reports to be made by the person having the custody of the backward person,
  - (e) The form and contents of agreements, appointments, apprenticeship articles, authorities, complaints, licenses, notices, orders, summonses, and all other instruments and documents, and the mode of executing, serving, or delivering the same, and
  - (f) All other matters required for carrying this subclause into effect ;
- (xiii.) All matters required or permitted by this Act to be prescribed ;
- (xiv.) Generally for carrying this Act into effect.

The regulations may provide a penalty not exceeding twenty pounds for any breach thereof.

Such regulations may be made on the passing of this Act.

Effect of  
regulations  
and  
Orders in  
Council.

(2.) All regulations and Orders in Council made or purporting to be made under this Act shall, upon publication in the *Gazette*, be of the same effect as if they were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

1938.

*Backward Persons Act.*PART III.—  
ADMINIS-  
TRATION.

All such regulations and Orders in Council shall be laid before Parliament within fourteen days after the publication thereof if Parliament is then sitting; or, if not, then within fourteen days after the commencement of the next session thereof.

If the Legislative Assembly passes a resolution disallowing any such Order in Council or regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such Order in Council or regulation has been laid before it, such Order in Council or regulation shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime, and without prejudice to the power to make any further or other Order in Council or regulation.

For the purpose of this section, the term "sitting days" shall mean days on which the House actually sits for the despatch of business.

*Administration Officers.*

6. (1.) The Director-General of Health and Medical Services shall have the general administration of this Act under the direction of the Minister. General administration of Act.

(2.) The Director-General of Health and Medical Services shall as soon as practicable at the termination of each year make a report in writing to the Minister concerning the administration of this Act, and such report shall forthwith be laid before Parliament if it be then sitting; and if not then sitting, within fourteen days after the commencement of the next session thereof. Annual report.

(3.) (i.) The Director-General of Health and Medical Services may make or cause to be made such inspections, investigations, and inquiries as he thinks fit in relation to any matters concerning the administration of this Act, and shall make or cause to be made such inspections, investigations, and inquiries as are directed by the Minister or by this Act. Inquiries.

(ii.) When any inspection, investigation, or inquiry is made by the Director-General of Health and Medical Services he shall for the purposes of making such inspection, investigation, or inquiry have and may exercise all the powers, authorities, protection, and

jurisdiction of a commission under\* "*The Official Inquiries Evidence Acts, 1910 to 1929,*" and may enter and inspect any building, premises, or place the entry or inspection whereof appears to him requisite for the purposes of such inspection, investigation, or inquiry.

(iii.) When any inspection, investigation, or inquiry is directed to be made by the Minister or the Director-General of Health and Medical Services, the person directed to make the same shall for the purposes of making such inspection, investigation, or inquiry have and may exercise all the powers, authorities, and jurisdiction given the Director-General of Health and Medical Services in this subsection.

(iv.) Where the Minister has directed an inspection, investigation, or inquiry the Director-General of Health and Medical Services shall as soon as possible furnish a full report of such inspection, investigation, or inquiry to the Minister.

(v.) The person so directed by the Director-General of Health and Medical Services to make any inspection, investigation, or inquiry shall as soon as practicable furnish a full report of such inspection, investigation, or inquiry to the Director-General of Health and Medical Services.

Orders.

(4.) The Director-General of Health and Medical Services may grant permission to any person to visit any patient in a backward persons institution; and such permission may be granted subject to such conditions as the Director-General of Health and Medical Services deems necessary.

Nature of  
duties of  
Director of  
Mental  
Hygiene.

7. (1.) The Director of Mental Hygiene shall, subject to the Director-General of Health and Medical Services, be charged with the administration of this Act, and shall be responsible for the direction and supervision of every backward persons institution, and shall exercise and perform such duties, authorities, powers, and obligations as are expressly imposed or conferred upon him by this Act.

Inspections  
and  
investiga-  
tions.

(2.) The Director of Mental Hygiene shall from time to time visit and inspect every backward persons institution established under this Act and every private licensed institution with or without previous notice and at any time of day or night as he thinks fit.

\* 1 Geo. V. No. 26 and amending Act, *supra*, pages 748 *et seq.*



1938.

*Backward Persons Act.*PART III.—  
ADMINIS-  
TRATION.

He may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations, and inquiries as are directed by the Minister or the Director-General of Health and Medical Services with respect to the care, treatment, or control of backward persons in any backward persons institution or the management of any such backward persons institution, or with respect to backward persons under care, treatment, or control as single patients, or concerning the care and treatment of backward persons in any private licensed institution or with respect to the management of any such private licensed institution.

(3.) For the purpose of making any inspection, investigation, or inquiry referred to in the last subsection, the Director of Mental Hygiene shall have and may exercise all the powers, authorities, protection, and jurisdiction of a commission under \**"The Official Inquiries Evidence Acts, 1910 to 1929,"* and may enter and inspect any building, premises, or place the entry and inspection whereof appears to him requisite for the purposes of such inspection, investigation, or inquiry.

Director to  
be a  
commission  
under  
Official  
Inquiries  
Evidence  
Acts.

(4.) (i.) When the Minister has directed any inspection, investigation, or inquiry to be made by the Director of Mental Hygiene, the Director of Mental Hygiene shall as soon as possible furnish a full report of such inspection, investigation, or inquiry to the Minister.

Report of  
investiga-  
tion.

(ii.) When the Director-General of Health and Medical Services has directed any inspection, investigation, or inquiry to be made by the Director of Mental Hygiene, the Director of Mental Hygiene shall as soon as possible furnish a full report of such inspection, investigation, or inquiry to the Director-General of Health and Medical Services.

#### PART IV.—PSYCHIATRIC CLINICS.

PART IV.—  
PSYCHIATRIC  
CLINICS.

8. (1.) The Governor in Council may from time to time by Order in Council establish a psychiatric clinic for the purpose of investigating all matters relating to backward persons and the instruction of teachers in

Establish-  
ment of  
psychiatric  
clinic.

\* 1 Geo. VI. No. 26 and amending Act, *supra*, pages 748 *et seq.*

special schools or special classes for backward persons, and for such other purposes as the Director-General of Health and Medical Services may from time to time direct.

(2.) The Governor in Council may appoint a Director of Psychiatry and such assistants and other officers and employees as may be deemed necessary.

(3.) The Director of Psychiatry shall, subject to the Director of Mental Hygiene, have the control and management of the clinic, and shall exercise and perform the duties, authorities, obligations, and powers expressly imposed or conferred upon him by this Act.

## PART V.—SPECIAL PROVISIONS RELATING TO CHILDREN.

Notification  
to Director  
of Mental  
Hygiene.

9. (1.) Every person being the parent or guardian of a backward child over the age of six years, or the teacher in charge of any school, or the person in charge of any child welfare clinic, or the person in charge of any religious, charitable, or benevolent or other institution under whose notice or care any such backward child over the age of six years comes, shall notify such fact in the prescribed form to the Director of Mental Hygiene:

Provided that should it become apparent and confirmed for a period of one year before the child reaches the age of six years that such child is a backward child, then such notification shall be made immediately after the period of one year prescribed above.

Particulars  
in  
notification.

(2.) Such person shall in the notification specify the provision made for the education and/or care, treatment, and control of the child to whom the notification relates or the provision proposed to be made for the education and/or care, treatment, or control of such child.

Examination  
of child.

(3.) The Director of Mental Hygiene may cause the child to whom the notification relates to be examined or other investigation to be made as to the mental development of such child and as to the suitability of any arrangements made or proposed to be made for the education and/or care, treatment, or control of such child.

1938.

*Backward Persons Act.*PART V.—  
SPECIAL  
PROVISIONS  
RELATING TO  
CHILDREN.

(4.) If it appears to the Director of Mental Hygiene from such examination or investigation that the child to whom the notification relates is backward and that it is desirable that such child should be received into a backward persons institution for education and/or care, treatment, or control, the Director of Mental Hygiene shall make a recommendation to this effect in the prescribed form to the Director-General of Health and Medical Services:

Powers of  
Director of  
Mental  
Hygiene.

Provided that before the Director of Mental Hygiene makes such a recommendation such child must be examined by either the Director of Mental Hygiene and the Director of Psychiatry, or any two medical practitioners nominated by the Director of Mental Hygiene, one of whom may be either the Director of Mental Hygiene or the Director of Psychiatry. Such medical practitioners shall certify that such child should be received into a backward persons institution for education, and/or care, treatment, or control, and the certificates shall be in the prescribed form:

Provided further, that the recommendation of the Director of Mental Hygiene shall include a medical certificate (which may be given by both or either of the medical practitioners examining such child) as to the opinion formed after a psychiatric examination of such child.

(5.) The Director-General of Health and Medical Services may make an order for such child to be received into an institution established for the education and/or care, treatment, and control of backward persons. Any order so made shall be sufficient authority to the superintendent to receive the child to whom the order relates accordingly.

Orders of  
Director-  
General of  
Health and  
Medical  
Services.

## PART VI.—BACKWARD PERSONS INSTITUTIONS.

PART VI.—  
BACKWARD  
PERSONS  
INSTITUTIONS.*Division I.—Backward Persons Institutions.**Division I.—  
Backward  
Persons  
Institutions.*

10. The Governor in Council may from time to time by Order in Council establish institutions for the education and/or care, treatment, and control of backward persons:

Establish-  
ment of  
institutions.

Provided that, on and after the passing of this Act, the present premises known as the Jubilee Sanatorium at Dalby shall become a backward persons institution under the name of "The Dalby Training Farm" for

the purpose of the education and care, treatment, or control of backward persons, and all the provisions of this Act shall apply and extend to such institution accordingly although such provisions have not been proclaimed to come into operation by the Governor in Council by Proclamation in the *Gazette*.

Moreover the provisions of Parts V. to XII., both inclusive, of \**The Mental Hygiene Act of 1938*," as read and construed with and, *mutatis mutandis*, applied and extended with respect to this Act by section twenty-three hereof shall with respect to the Dalby Training Farm come, and be deemed to come, into force on the passing of this Act.

*Private Accommodation.*

Private  
accommoda-  
tion.

11. (1.) Private accommodation for the care, treatment, and control of backward persons may be provided at any backward persons institution. All the provisions of this Act shall apply to such private accommodation, which shall be deemed to be a part of the backward persons institution, and all persons admitted thereto shall be subject to the provisions of the Act respecting the care, treatment, and control of backward persons in backward persons institutions.

Powers of  
Director.

(2.) The Director of Mental Hygiene and the superintendent of the backward persons institution in which private accommodation has been provided shall with respect thereto exercise and perform the duties, authorities, obligations, and powers imposed or conferred upon them by this Act.

Admissions.

(3.) Any person admitted to the private accommodation in any backward persons institution may be visited by his private medical practitioner, who may consult with the superintendent of such backward persons institution concerning the care, treatment, and control of such person.

*Officers.*

Appoint-  
ment of  
medical  
superin-  
tendent.

12. (1.) The Governor in Council may for each backward persons institution appoint a superintendent who may be a medical practitioner and, if he deems it necessary, may appoint a deputy superintendent. Where the superintendent is not a medical practitioner the Governor in Council may appoint a visiting medical officer.

1938.

*Backward Persons Act.*PART VI.—  
BACKWARD  
PERSONS  
INSTITUTIONS.

(2.) The Governor in Council may for any backward persons institution appoint such medical officers and officers as he deems necessary.

Division I.—  
Backward  
Persons  
Institutions.Appoint-  
ment of  
medical  
officers.

(3.) The Minister may appoint such number of nurses and other employees as may from time to time be approved.

Appoint-  
ment of  
nurses and  
other  
employees.

(4.) The superintendent of every backward persons institution shall, subject to the Director of Mental Hygiene, have the control and management thereof and be responsible for the education and/or care, treatment, and control of the backward persons received therein, and shall exercise and perform the duties, authorities, obligations, and powers expressly imposed or conferred upon him by this Act :

Duties and  
respon-  
sibilities of  
medical  
superin-  
tendent.

Provided that in the case of a superintendent who is not a medical practitioner the duties, authorities, obligations, and powers concerning the treatment of patients shall, subject to the Director of Mental Hygiene, be exercised and performed by the visiting medical officer.

*Records.*

**13.** The superintendent of every backward persons institution shall keep or cause to be kept such registers, books, and records as may be prescribed, and enter or cause to be entered in such registers, books, and records such particulars as are prescribed and at the times and in the manner prescribed :

Records.

Provided that when the entries in any register or book refer to the mental or bodily condition of a patient, the visiting medical officer, where the superintendent is not a medical practitioner, or the medical officer for the time being in charge of such patient, shall be responsible for the due making of entries.

*Production of Records.*

**14.** (1.) The superintendent of every backward persons institution shall produce to an official visitor or official visitors—

Production  
of records.

(a) A list of all the patients then in the backward persons institution, distinguishing males

from females, and patients as voluntary, temporary, or certified, and specifying such as are deemed curable ;

- (b) The several registers and books required by this Act to be kept ;
- (c) Such orders and other documents relating to such of the patients as the official visitor or visitors requires to be produced to them ; and
- (d) All letters written by patients which, pursuant to section sixteen of this Act, have not been forwarded.

(2.) He shall give full and true answers to the best of his knowledge to all questions which the official visitor or visitors ask in reference to the patients in the backward persons institution.

#### *Notices.*

Superintendent to give to Director of Mental Hygiene a statement showing under which section of this Act the patient was admitted.

**15.** (1.) Within forty-eight hours after the reception of a patient into a backward persons institution the superintendent shall in the prescribed form send to the Director of Mental Hygiene a notice of the reception together with a statement showing under which section of this Act the patient was received.

(2.) Within seven days after the reception of a patient the superintendent or, where the superintendent is not a medical practitioner, the visiting medical officer, shall in the prescribed form send to the Director of Mental Hygiene a statement as to the mental and bodily condition of the patient.

Notices of discharge, transfer, &c.

(3.) Within twenty-four hours after the discharge, transfer, absence on leave, cancellation of leave, return from leave, escape, or return from escape of any patient, the superintendent shall in the prescribed form send a written notice thereof to the Director of Mental Hygiene.

Notice as to death and cause of death of patient to be sent to Director of Mental Hygiene.

(4.) (i.) In case of the death of any patient in a backward persons institution the superintendent or, where the superintendent is not a medical practitioner, the visiting medical officer, shall (in addition to any notice respecting the death required by any law in force relating to the registration of deaths) in the prescribed form send

1938.

*Backward Persons Act.*PART VI.—  
BACKWARD  
PERSONS  
INSTITUTIONS.

to the Director of Mental Hygiene, within twenty-four hours after the death, a notice of the death and apparent cause of death, and the names of all persons present at the death.

Division I.—  
Backward  
Persons  
Institutions.

(ii.) The superintendent shall forthwith send to the nearest known relative or friend notice of the death of any patient.

Notice to  
relatives,  
&c., and  
Public  
Curator.

(iii.) Should the death of any patient be caused by accident, suicide, or homicide, or where the cause of death is unknown, the superintendent shall forthwith notify the coroner.

(iv.) The superintendent shall, within twenty-four hours of the death of any patient, notify the Public Curator in the prescribed form.

16. (1.) The superintendent shall immediately send or cause to be sent unopened every letter written by a patient in any backward persons institution or by a single patient and addressed to any Minister of the Crown, judge of the Supreme Court, or to the Director-General of Health and Medical Services, or to the Director of Mental Hygiene, or to an official visitor.

Letters  
written by  
patients to  
Minister of  
Crown, &c.,  
to be  
forwarded  
unopened.

(2.) The superintendent shall send or cause to be sent every letter written by a patient to whom it is addressed unless he prohibits the forwarding of such letter by a memorandum to that effect under his hand on the letter, in which case he shall lay the letter before the official visitor or official visitors next thereafter visiting the backward persons institution, or he may before such visit forward the letter by post to an official visitor, and in either case the official visitor shall deal with and dispose of the letter as he thinks fit.

Superin-  
tendent may  
detaim  
certain  
letters and  
submit to  
official  
visitor.

(3.) Any officer or servant employed in any backward persons institution who is requested by a patient to forward any letter, or who has in his possession any letter written by a patient, shall immediately deliver the same unopened to the superintendent of such backward persons institution.

*Official Visitors.*

17. The Governor in Council may for every backward persons institution appoint two or more official visitors, one at least of whom shall be a medical

Official  
visitors.

practitioner, and the other or others barristers-at-law, solicitors, or police magistrates or persons who have at any time been qualified to hold appointments as police magistrates.

The official visitors or one of them shall visit the backward persons institution to which they are appointed once at least every month, and shall make special visits concerning the administration of this Act or particular matters concerning such administration at such times as the Minister or the Director-General of Health and Medical Services may direct. Such visits may be made without previous notice and at such hours of the day or night as the official visitor or official visitors making same thinks or think fit, or as may be directed by the Minister or the Director-General of Health and Medical Services.

A report shall be transmitted to the Director of Mental Hygiene immediately after each visit by the official visitor or visitors who made such visit, and such report may deal with any matter concerning the administration of this Act.

Where the Minister directs the official visitors or one or more of them to make a visit to any backward persons institution, the report shall be made direct to the Minister immediately after such visit, and such report shall deal with the matter or matters specified in the direction of the Minister.

Where the Director-General of Health and Medical Services directs the official visitors or one or more of them to make a visit to any backward persons institution, the report shall be made direct to the Director-General of Health and Medical Services immediately after such visit, and such report shall deal with the matter or matters specified in the direction of the Director-General of Health and Medical Services.

An official visitor may be appointed for two or more backward persons institutions.

The official visitor or visitors shall examine and sign all registers, books, and records required to be laid before him or them in terms of this Act.



1938.

*Backward Persons Act.*PART VI.—  
BACKWARD  
PERSONS  
INSTITUTIONS.

The official visitor or visitors shall on every visit enter in the official visitors' book the fact of his or their visit, with such observations as he or they thinks or think fit.

*Division I.—  
Backward  
Persons  
Institutions.*

18. (1.) The official visitor or visitors visiting any backward persons institution may require the superintendent to show him or them every part of such backward persons institution and every patient detained therein.

Power to  
official  
visitor to  
see every  
part of  
institution  
and persons  
therein.

(2.) The official visitor or visitors visiting any backward persons institution may require by summons in the prescribed form any person to appear before him or them to testify on oath the truth touching any of the matters respecting which such official visitor or visitors is or are by this Act authorised to inquire.

Power to  
official  
visitor to  
summon  
witnesses.

And every person who, having had his reasonable expenses paid or tendered to him at the time of service of such summons, does not appear pursuant to such summons, or does not assign some reasonable excuse for not so appearing, or who appears and after tender of such reasonable expenses refuses to be sworn or examined, shall for every such neglect or refusal be liable to a penalty not exceeding ten pounds.

Penalty.

And such official visitor or visitors may also examine on oath any person appearing as a witness or present at the time of any such inquiry touching any of the matters aforesaid, although no such summons as aforesaid has been served upon him.

Also to  
examine  
persons not  
summoned.*Division II.—Private Licensed Institutions.**Division II.—  
Private  
Licensed  
Institutions.*

19. (1.) On payment of such fee as may be prescribed, and subject to the provisions hereinafter contained and to such other provisions and conditions as may be prescribed, the Director-General of Health and Medical Services may grant to any person (or to two or more persons jointly) a license to keep a private institution for the reception and detention under this Act of backward persons.

Director-  
General  
may license  
private  
institutions  
for  
detention of  
backward  
persons.

(2.) Every such license shall specify the class or classes of backward persons that may be received in the institution, and also the number of backward persons of each sex that may be there detained at any one time ;

Particulars  
of license.

*Division II.—  
Private  
Licensed  
Institutions.*

and the Director-General of Health and Medical Services may by endorsement under his hand on the license, amend any such license with respect to the class and number of backward persons that may be received and detained as aforesaid.

Revocation  
of license  
upon notice.

(3.) Any such license may be at any time revoked by the Director-General of Health and Medical Services by writing under his hand; but notice under the hand of the Director-General of Health and Medical Services of the intention so to revoke a license shall be given to the licensee or to the superintendent of the institution to which the license relates, or left thereat, not less than twenty-eight clear days before the revocation.

Application  
for license.

(4.) The person or persons desiring to obtain such a license shall make application therefor in writing to the Director-General of Health and Medical Services in the prescribed form, setting forth such particulars as may be prescribed.

*Division III.—  
Licenses for the  
Care,  
Treatment, or  
Control of a  
Single Patient.  
Licenses for  
reception of  
single  
patient.**Division III.—Licenses for the Care, Treatment, or  
Control of a Single Patient.*

20. (1.) The Director-General of Health and Medical Services may upon such terms and conditions as he thinks fit, grant to any person a license for the care, treatment, or control of a backward person, named in such license as a single patient.

Such license shall prescribe that the person named therein as a single patient shall be regularly visited by a medical practitioner, who shall be required to forward such certificates at such intervals as to the mental and bodily condition of the patient as the Director-General of Health and Medical Services deems necessary.

(2.) The Director-General of Health and Medical Services may at any time revoke such license, and in such case shall take such steps under this Act as he deems fit for the care, treatment, or control of such patient.

(3.) The person who is licensed to care for, treat, or control such patient shall send the same notices and statements of absence on leave, cancellation of leave, return from leave, death, escape, and return after escape as are in this Act required to be sent by a superintendent.

1938.

*Backward Persons Act.*PART VI.—  
BACKWARD  
PERSONS  
INSTITUTIONS.*Division IV.—Provision as to the Detention of Backward Persons otherwise than in Accordance with this Act.**Division IV.—  
Provision as to  
the Detention of  
Backward  
Persons  
otherwise than  
in Accordance  
with this Act.*

21. (1.) If the occupier or inmate of any premises keeps or detains a backward person therein, although he is a relative of such occupier or inmate, beyond the period of one year after it has become apparent and confirmed that such person is a backward person, and during any part of such period such backward person has required coercion or restraint, such occupier or inmate shall notify such keeping or detention to the Director-General of Health and Medical Services, and if it is desired by such occupier or inmate that such person should remain under private care, a statement of the reasons why such person may be permitted to continue to remain under same.

Duty of  
occupier  
to notify  
detention of  
backward  
person.

(2.) If a medical practitioner is attending such backward person he shall also notify such keeping or detention to the Director-General of Health and Medical Services, and shall at the same time forward a written certificate to the Director-General of Health and Medical Services setting forth the condition of the person so kept or detained.

(3.) The Director-General of Health and Medical Services may thereupon make or cause to be made such inquiry in the matter as he deems necessary.

(4.) If upon such inquiry it appears that such person is backward, and that the circumstances are such as to render the removal of such person to a backward persons institution necessary or expedient, the Director-General of Health and Medical Services may order the removal of such person accordingly, and the order of the Director-General of Health and Medical Services under his hand shall be sufficient authority to the superintendent to receive such backward person accordingly.

Removal  
after  
inquiry.

(5.) No person shall receive to board or lodge in any house or premises, or take the care, treatment, or control of any backward person except for the purpose of the temporary custody of such person during his removal for care, treatment, or control under this Act :

PART VI.—  
BACKWARD  
PERSONS  
INSTITUTIONS.

*Backward Persons Act.* 2 GEO. VI. No. 30,

*Division IV.—  
Provision as to  
the Detention of  
Backward  
Persons  
otherwise than  
in Accordance  
with this Act.*

Provided this subsection shall not apply to any person who has not undertaken the care, treatment, or control of any such person for reward or remuneration, or to a committee or person appointed by the court or otherwise authorised by this Act, or to the licensee of a private institution licensed under this Act.

PART VII.—  
BACKWARD  
PERSONS  
INSTITUTIONS  
FOR CRIMINAL  
BACKWARD  
PERSONS.

PART VII.—BACKWARD PERSONS INSTITUTIONS FOR  
CRIMINAL BACKWARD PERSONS.

Backward  
persons  
institutions  
for criminal  
backward  
persons.

22. (1.) The Governor in Council may from time to time by Order in Council establish a backward persons institution for the care, treatment, and control of criminal backward persons at any prison or other place, and may by the same Order in Council or in any further or other Order in Council or Orders in Council prescribe such conditions as are deemed necessary for the care, treatment, and control of such criminal backward persons in such backward persons institution. Such backward persons institution shall be deemed to be a "backward persons institution" under this Act.

(2.) When a backward persons institution for the care, treatment, and control of criminal backward persons has been established in accordance with this section, then any person committed to a backward persons institution in terms of Part VII. of \**"The Mental Hygiene Act of 1938"* as applied and extended, *mutatis mutandis*, to this Act by section twenty-three of this Act, shall be committed to a backward persons institution established under this section.

(3.) Where a backward person has been received into a backward persons institution as a certified patient in terms of Part VI. of \**"The Mental Hygiene Act of 1938"* as applied and extended, *mutatis mutandis*, to this Act by section twenty-three of this Act, and such person has had a criminal record, and in the opinion of the Director of Mental Hygiene should be under care, treatment, and control in a backward persons institution established under this section, the Director of Mental Hygiene may transfer such person accordingly, and may at any time transfer such person back to any other backward persons institution.

\* 2 Geo. VI. No. 21, *infra*, page 17038.

1938.

*Backward Persons Act.*PART VIII.—APPLICATION OF CERTAIN PROVISIONS OF  
\*“THE MENTAL HYGIENE ACT OF 1938.”

23. (1.) The provisions of the undermentioned Parts of \**The Mental Hygiene Act of 1938*, namely:—

Application  
of certain  
provisions  
of "*The  
Mental  
Hygiene Act  
of 1938.*"

Part V.—Provisions Relating to the Making and Amending of Medical Certificates;

Part VI.—Patients;

Part VII.—Mentally Sick Persons under Detention for Offences, &c.;

Part VIII.—Administration of Estates of Mentally Sick Persons;

Part IX.—Indemnifying Persons in respect of Acts Done in Good Faith in Pursuance of this Act;

Part X.—Offences;

Part XI.—Special Provisions Relating to Persons Residing and Orders and Declarations Made Elsewhere than in Queensland;

Part XII.—Miscellaneous,

shall be read and construed with, and shall, *mutatis mutandis*, apply and extend with respect to this Act, and to the intent that such provisions shall be and be deemed to form part of this Act:

And to the further intent that for the purposes of so reading, construing, applying, and extending such provisions, but without limiting the generality of this section, the term "mental hospital" when used in any such provision shall be read and construed as meaning a backward persons institution under this Act; the term "private mental hospital" when used in any such provision shall be read and construed as meaning a licensed private institution under this Act; the term "superintendent" when used in any such provision shall be read and construed as meaning a superintendent under this Act; and the term "mentally sick person" or "patient" when used in any such provision shall be read and construed as meaning a backward person or a patient under this Act:

And further to the intent that the words "this Act," where such words occur in any such provision shall be and be deemed to refer to †*The Backward Persons Act of 1938.*"

\* 2 Geo. VI. No. 21, *infra*, page 17038.

† This Act.

PART VIII.—  
APPLICATION  
OF CERTAIN  
PROVISIONS  
OF "THE  
MENTAL  
HYGIENE  
ACT OF  
1938."

*Mental Hygiene Act.*

2 GEO. VI. No. 21,

General  
construction  
of "The  
*Criminal  
Code*" and  
other Acts,  
&c.

(2.) Where in \*"*The Criminal Code*" or in any other Act or law or rule reference is made to the expression "a person of unsound mind" or to an "insane person" or to "a person not of sound mind" or to "a lunatic" or such like terms or expressions, such terms or expressions shall for the purposes of applying, reading, or construing this Act and \*"*The Criminal Code*" or such other Act or law or rule be and be deemed to be a reference to a backward person as defined in this Act, and this Act and \*"*The Criminal Code*" or such other Act or law or rule shall be applied, read, and construed accordingly.

2 GEO. VI.  
No. 21.  
THE  
MENTAL  
HYGIENE  
ACT OF 1938.

**An Act to Consolidate and Amend the Law relating to the Care, Treatment, and Control of Mentally Sick Persons.**

[ASSENTED TO 24TH NOVEMBER, 1938.]

**B**E it enacted by the King'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.

PART I.—PRELIMINARY.

Short title  
and  
commence-  
ment.

1. (1.) This Act may be cited as "*The Mental Hygiene Act of 1938*" and, subject as otherwise provided, shall come into operation on a date to be proclaimed by the Governor in Council by Proclamation published in the *Gazette*. Such date shall hereafter be referred to as the commencement of this Act.

Repeal of  
existing  
Acts.

(2.) †"*The Insanity Act of 1884*" and ‡"*The Insanity Act Amendment Act of 1935*" are, subject as is herein otherwise provided, repealed. The said Acts are herein collectively referred to as the repealed Acts :

Savings.

Provided as follows, but without prejudice to any of the provisions of §"*The Acts Shortening Acts*"—

(a) No proceedings or acts or things done or contracts made under the repealed Acts before

\* 63 Vic. No. 9, Schedule I., and amending Acts, *supra*, pages 344 *et seq.*

† 48 Vic. No. 8, *supra*, page 1003.

‡ 26 Geo. V. No. 34, *supra*, page 15445.

§ 31 Vic. No. 6 and amending Acts, *supra*, pages 15 *et seq.*