**NORTHERN TERRITORY OF AUSTRALIA**

**PRIVATE HOSPITALS ACT**

As in force at 1 December 2018

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**NORTHERN TERRITORY OF AUSTRALIA**

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As in force at 1 December 2018

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# PRIVATE HOSPITALS ACT

**An Act to regulate private hospitals, and for related purposes**

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Private Hospitals Act*.

### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

### 3 Object of Act

(1) The object of this Act is to protect the health and welfare of people receiving medical or surgical treatment in private hospitals.

(2) To achieve the object, this Act:

(a) requires persons to hold licences to conduct private hospitals; and

(b) provides for the management and inspection of private hospitals.

### 4 Definitions

In this Act:

***approved*** means approved by the Chief Health Officer.

***director of nursing*** means a registered nurse in charge of nursing services in a private hospital.

***licence*** means a licence, or the renewal of a licence, granted under section 10.

***licensee*** means the holder of a licence.

***manager***, of a private hospital, means the person responsible for the day-to-day management of the hospital.

***patient*** means a person who receives medical or surgical treatment in a private hospital.

***private hospital***, see section 4A.

***registered nurse*** means a person registered under the Health Practitioner Regulation National Law:

(a) to practise in the nursing profession (other than as a student); and

(b) in the registered nurses division of that profession.

## 4A Meaning of *private hospital*

(1) A ***private hospital*** is premises that are fitted, furnished or staffed for the accommodation of persons for medical or surgical treatment for fee or reward.

(2) A ***private hospital*** includes premises for providing prescribed medical or surgical treatment for fee or reward.

(3) A hospital conducted by the Territory is not a private hospital.

(4) In this section:

***prescribed medical or surgical treatment*** means medical or surgical treatment involving high risk procedures prescribed by regulation.

## 4B Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4B*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

# Part 2 Licensing of private hospitals

## Division 1 General

### 5 Chief Health Officer may grant licences

Subject to this Act, the Chief Health Officer may grant a licence to a person to conduct a private hospital on premises specified in the licence.

### 6 Offences relating to conduct of private hospital

(1) A person must not conduct a private hospital unless the person is a licensee for the hospital.

Fault element: The person intentionally conducts the hospital.

Maximum penalty: 430 penalty units.

(2) A licensee must not engage in conduct that results in a contravention of a condition of the licence held by the licensee.

Fault elements:

The licensee:

(a) intentionally engages in the conduct; and

(b) is reckless as to whether the conduct would result in a contravention of a condition of the licence.

Maximum penalty: 430 penalty units.

(3) Subsection (2) does not apply if, in relation to the conduct, the licensee:

(a) has given notice under section 22(1); and

(b) has not been served a notice under section 26(1)(e).

(4) If a court finds a person guilty of an offence against subsection (1) or (2), it may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 8 penalty units for each day during which the offence continues after the day the offence is committed.

### 7 Body corporate as licensee

(1) A body corporate can hold a licence only if it is a corporation as defined in the Corporations Act 2001.

(2) For the purposes of section 18(3) and (4), the directors and officers of a body corporate are taken to be the licensee.

### 8 Certain persons not eligible to apply for licence

A person who is found guilty of an offence against section 6(1) is not eligible to apply for a licence within 5 years after the date of that finding of guilt.

### 9 Application for licence

(1) An application for a licence to conduct a private hospital must be made in the approved form to the Chief Health Officer.

(2) Unless otherwise approved, an application for the renewal of a licence to conduct a private hospital must be made to the Chief Health Officer in the approved form not less than 28 days before the expiry of the licence.

(3) An application under subsection (1) must include particulars of:

(a) the buildings and facilities to be used by or available to the applicant for the purposes of the private hospital; and

(b) the name of the person proposed to be the manager of the private hospital; and

(c) the name of the person proposed to be director of nursing of the private hospital; and

(d) the nursing qualifications that will be required of staff to be employed for the purpose of caring for patients in the private hospital; and

(e) the maximum number of patients to be accommodated in the private hospital; and

(f) any other information the Chief Health Officer requires.

### 10 Determination of application

(1) In deciding an application made under section 9, the Chief Health Officer must:

(a) grant or renew a licence to conduct a private hospital; or

(b) refuse to grant or renew a licence to conduct a private hospital.

(2) If a licence is granted under subsection (1) it may be granted unconditionally or subject to such conditions as the Chief Health Officer thinks fit.

### 11 Form of licence

Subject to section 18(2), a licence must be in the approved form and must set out the conditions, if any, to which it is subject.

### 12 Notice to be given of refusal or conditions

If the Chief Health Officer refuses to grant a licence or grants a licence subject to conditions, the Chief Health Officer must serve on the applicant a written notice setting out the reasons for the refusal, or the imposition of the conditions, as appropriate.

### 13 Duration and renewal of licence

(1) A licence takes effect on the day it is granted and continues in force for the period specified in it.

(2) If the Chief Health Officer renews a licence, the renewed licence continues in force for the period specified in it from the day after it would have expired.

## Division 2 Transfer of licence

### 14 Transfer of licence

(1) Subject to this Act, a licence may be transferred from the licensee to another person.

(2) A transfer of a licence does not take effect until it is approved by a written notice served on the applicants.

### 15 Application for transfer of licence

An application for the transfer of a licence must be made in the approved form to the Chief Health Officer jointly by the licensee and the proposed transferee.

### 16 Determination of application for transfer of licence

(1) Subject to this section, upon receiving an application under section 15, the Chief Health Officer may approve, or refuse to approve, a transfer of a licence.

(2) If the transfer of a licence is approved under subsection (1), that approval may be given unconditionally or subject to such conditions as the Chief Health Officer thinks fit.

(3) If the transfer of a licence is approved under subsection (1) subject to conditions, the conditions imposed are taken to be conditions to which the licence is subject.

### 17 Notice to be given of refusal or conditions

If the Chief Health Officer refuses to approve under section 16 the transfer of a licence, or approves the transfer subject to conditions, the Chief Health Officer must serve on the applicants a written notice setting out the reasons for the refusal or imposition of the conditions.

## Part 3 Management of private hospitals

### 18 Manager of private hospital

(1) A notice that may be given under this Act to a licensee is taken to be given to the licensee if it is given to the manager of the private hospital in respect of which the licence is granted.

(2) Subject to section 19(5), on the grant of a licence to an applicant, the name of the manager nominated by the applicant must, in addition to the name of the applicant, be endorsed on the licence.

(3) A licensee is liable, and may be prosecuted, for an offence committed against this Act by the manager of a private hospital.

(4) It is a defence to a prosecution for an offence referred to in subsection (3) if the licensee proves that the licensee gave such directions to the manager and had exercised such supervision over the manager as was reasonably necessary to ensure that the manager did not commit an offence against this Act.

### 19 Replacement or acting appointment of manager or director of nursing

(1) If the manager or director of nursing of a private hospital is unable to perform the duties of the position for a continuous period of more than 7 days, the licensee of the hospital may appoint an approved person to act in the position during the period.

(2) If the manager or director of nursing of a private hospital vacates the position, the licensee of the hospital must appoint an approved person to fill the vacancy.

Maximum penalty: 100 penalty units.

(3) However, the licensee of the hospital does not commit an offence against subsection (2) if the licensee appoints an approved person to act as the manager pending an appointment under the subsection.

(4) If a person is appointed to fill the vacancy of the position of manager, the licensee must return the licence to the Chief Health Officer within 14 days after the appointment.

Maximum penalty: 20 penalty units.

(5) On receipt of the licence, the Chief Health Officer must endorse on the licence the name of the person in place of the name of the person who vacated the position.

(6) An offence against subsection (2) or (4) is an offence of strict liability.

(7) It is a defence to a prosecution for an offence against subsection (2) or (4) if the defendant establishes a reasonable excuse.

**20 Manager's responsibilities**

(1) The manager of a private hospital commits an offence if the manager fails:

(a) to keep at the private hospital a register of patients containing the particulars mentioned in subsection (4); or

(b) to keep at the private hospital a record in the approved form of drug purchases and the use made of the drugs; or

(c) to ensure a registered nurse is on duty at the hospital at all times.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(4) The register of patients must contain the following particulars for each patient in the hospital:

(a) the patient's name, age and address;

(b) the date of reception of the patient into the private hospital;

(c) the name of the medical practitioner attending the patient;

(ca) the drugs administered to the patient;

(d) the date the patient leaves the private hospital or dies;

(e) if the patient gives birth to a child at the hospital:

(i) the date of the birth; and

(ii) the sex of the child; and

(iii) whether the child was born alive or still-born;

(f) other particulars prescribed by regulation.

**21 Chief Health Officer may require report of births and deaths**

(1) The Chief Health Officer may, by written notice, require the licensee of a private hospital to give the Chief Health Officer a report in the approved form of each birth and death occurring at the hospital for the period stated in the notice.

(2) The licensee must comply with the notice within 10 days after it is given.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

**22 Changes in conditions of licence**

(1) If a private hospital is conducted otherwise than in accordance with the conditions to which the licence is subject, the licensee must, within 14 days after it being so conducted, by a written notice served on the Chief Health Officer, inform the Chief Health Officer and apply for a variation of those conditions.

(2) A licensee who complies with subsection (1) may continue to conduct the private hospital otherwise than in accordance with the conditions to which the licence is subject until the licensee is served with a notice under section 26.

# Part 4 Control of private hospitals

## Division 1 Inspection

### 23 Inspection of private hospital

(1) The Chief Health Officer must ensure each private hospital is inspected not less than once a year.

(2) The Chief Health Officer may, in writing, authorise a person to enter a private hospital at any reasonable time to inspect the hospital.

(3) The person authorised may inspect:

(a) the register of patients mentioned in section 20(1)(a); and

(b) premises and equipment of the hospital; and

(c) anything else specified in the authorisation.

(4) The person authorised must, as soon as practicable after concluding an inspection, give the Chief Health Officer a written report on the inspection.

### 24 Chief Health Officer's action following inspection

After an inspection of a private hospital under section 23, the Chief Health Officer may, by written notice given to the licensee of the hospital, require any of the following to be carried out at the time and in the way specified in the notice:

(a) repairs, alterations, additions or improvements to the premises or equipment of the hospital, or anything else inspected under the authorisation;

(b) changes in the management of the hospital.

## Division 2 Surrender, revocation or variation of licence

### 25 Surrender of licence

(1) A licensee may surrender the licensee's licence by written notice given to the Chief Health Officer.

(2) The surrender takes effect on:

(a) the day the notice is given to the Chief Health Officer; or

(b) if a later day of effect is stated in the notice – the later day.

(3) The person who held the licence must return the licence to the Chief Health Officer within 14 days after the day the surrender takes effect.

Maximum penalty: 20 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

**26 Revocation or variation of licence**

(1) The Chief Health Officer may, by written notice given to a licensee, revoke the licence, or vary the conditions of the licence, held by the licensee if:

(a) a manager is not appointed as provided by section 19(2) and (3); or

(b) an application is made under section 22(1); or

(c) the licensee fails to comply with a notice under section 24 within the time specified in it; or

(d) section 27(3)(c) applies because of a report on an inquiry into a complaint; or

(e) the Chief Health Officer is satisfied the private hospital:

(i) is not adequately equipped or is managed in a way that requires its closure; or

(ii) is no longer being conducted; or

(f) the licensee:

(i) refuses to allow an inspection of the private hospital in accordance with Part 4, Division 1; or

(ii) fails to comply with a condition of the licence; or

(iii) is found guilty of an offence against, this Act, the Health Practitioner Regulation National Law or the *Health Practitioners Act*; or

(iv) is found guilty of an indictable offence, whether in the Territory or elsewhere.

(2) If the Chief Health Officer revokes a licence or varies the conditions of a licence under subsection (1), the Chief Health Officer must give the licensee, or the person who held the licence, a written notice specifying the Chief Health Officer's reasons for doing so.

### 27 Complaints

(1) A person may, by notice in writing to the Chief Health Officer, make a complaint against a licensee.

(2) The Chief Health Officer may, on receiving a complaint under subsection (1), authorise a person to conduct an inquiry into the complaint and to give the Chief Health Officer a written report on the person's findings in respect of the complaint.

(3) The Chief Health Officer may, on the basis of the report and on the other information available to the Chief Health Officer:

(a) dismiss a complaint; or

(b) authorise a person to conduct a further inquiry under this section; or

(c) take action under section 26.

## Division 3 Closure of private hospital

### 28 Powers of Chief Health Officer to close down private hospital

(1) If the Chief Health Officer revokes a licence under section 26(1), the Chief Health Officer must, unless the Chief Health Officer immediately grants another licence in respect of the private hospital, close down the private hospital and arrange for the transfer of patients from that private hospital to a government institution or other licensed private hospital.

(2) The expenses incurred by the Chief Health Officer in exercising powers under subsection (1) are recoverable as a debt due and payable to the Territory by the person whose licence has been revoked.

# Part 5 Appeals

## 29 Appeals

(1) An applicant for a licence who is dissatisfied with a decision of the Chief Health Officer made under section 10, or a licensee who is dissatisfied with a decision of the Chief Health Officer made under section 16, 24, 26, 27 or 28 may appeal to the Local Court against that decision.

(2) An appeal made under subsection (1) must:

(a) be in writing; and

(b) set out or be accompanied by the relevant notice of the decision and reasons for the decision; and

(c) be made to the Local Court and a copy served on the Chief Health Officer within 28 days after the relevant notice of the decision appealed against was served on the appellant.

(3) The Local Court must conduct a hearing in the prescribed manner into the reasons for the Chief Health Officer having made the decision appealed against.

(4) Subject to and for subsection (3), the Local Court, in hearing an appeal made under subsection (1) has all the powers, duties and functions of the Chief Health Officer in relation to the matter the subject of the appeal.

(5) The Local Court must determine an appeal under subsection (1) by:

(a) confirming the decision of the Chief Health Officer; or

(b) varying the decision of the Chief Health Officer in such manner as it thinks fit; or

(c) substituting it's own decision for the decision of the Chief Health Officer; or

(d) disallowing the decision of the Chief Health Officer.

(6) If the Local Court determines an appeal made under subsection (5), the determination takes effect on the date specified in the determination or, if no date is so specified, on the date of the determination.

# Part 6 Miscellaneous matters

## 30 Delegation

The Chief Health Officer may delegate any of the Chief Health Officer's powers and functions under this Act to a public sector employee.

## 31 Fees

(1) Subject to subsection (2), the Minister may determine the fees, if any, to be paid in respect of:

(a) an application for a licence; or

(b) the renewal of a licence; or

(c) the transfer of a licence; or

(d) the issue of a duplicate licence.

(2) A determination of a fee under subsection (1) may be calculated in accordance with the bed capacity of the private hospital to which a licence relates and to the period for which the licence is granted.

## 32 Duplicate licence

If the Chief Health Officer is satisfied that a licence issued under this Act has been destroyed, lost or stolen, the Chief Health Officer may, on application in the approved form by the licensee, issue to that licensee a duplicate licence.

## 33 Return of licence

(1) This section applies if:

(a) an application for the renewal of a licence is refused under section 10(1)(b); or

(b) a licence is revoked under section 26(1).

(2) The person who held the licence must return the licence to the Chief Health Officer within 7 days after its expiry or the person receives notice of its revocation.

Maximum penalty: 20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

## 34 Starting proceeding for offence

Proceedings for an offence against this Act may be started only by an approved person.

## 35 Regulations

(1) The Administrator may make regulations under this Act.

(2) A regulation may provide for the following:

(a) the minimum standards of accommodation required for patients in private hospitals;

(b) hearing of appeals under Part 5;

(c) provide for an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.

# ENDNOTES

## 1 KEY

Key to abbreviations

**amd = amended**
**app = appendix**
**bl = by-law**
**ch = Chapter**
**cl = clause**
**div = Division**
**exp = expires/expired**
**f = forms**
***Gaz* = *Gazette***
**hdg = heading**
**ins = inserted**
**lt = long title**
**nc = not commenced**
**od = order**
**om = omitted**
**pt = Part**
**r = regulation/rule**
**rem = remainder**
**renum = renumbered**
**rep = repealed**
**s = section**
**sch = Schedule**
**sdiv = Subdivision**
**SL = Subordinate Legislation**
**sub = substituted**

## 2 LIST OF LEGISLATION

***Private Hospitals and Nursing Homes Act 1981* (Act No. 40, 1981)**

| | |
|---|---|
| Assent date | 8 April 1981 |
| Commenced | 1 July 1981 (*Gaz* S7, 26 June 1981) |

***Criminal Law (Regulatory Offences) Act 1983* (Act No. 68, 1983)**

| | |
|---|---|
| Assent date | 28 November 1983 |
| Commenced | 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz* G46, 18 November 1983, p 11 and *Gaz* G8, 26 February 1986, p 5) |

***Local Court (Consequential Amendments) Act 1989* (Act No. 14, 1989)**

| | |
|---|---|
| Assent date | 5 June 1989 |
| Commenced | 1 January 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), *Gaz* G17, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz* G49, 12 December 1990, p 2) |

***Medical (Consequential Amendments) Act 1995* (Act No. 8, 1995)**

| | |
|---|---|
| Assent date | 10 April 1995 |
| Commenced | 1 June 1995 (s 2, s 2 *Medical Act 1995* (Act No. 7, 1995) and *Gaz* S21, 1 June 1995) |

***Sentencing (Consequential Amendments) Act 1996* (Act No. 17, 1996)**

| | |
|---|---|
| Assent date | 19 April 1996 |
| Commenced | 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996) |

***Statute Law Revision Act 1997* (Act No. 17, 1997)**

| | |
|---|---|
| Assent date | 11 April 1997 |
| Commenced | s 16: 10 December 1997; rem: 1 May 1997 (*Gaz* G17, 30 April 1997, p 2) |

***Statute Law Revision Act 2005*** **(Act No. 44, 2005)**
Assent date 14 December 2005
Commenced 14 December 2005

***Health Practitioner (National Uniform Legislation) Implementation Act 2010*** **(Act No. 18, 2010)**
Assent date 20 May 2010
Commenced 1 July 2010 (s 2)

***Private Hospitals and Private Nursing Homes Amendment Act 2011*** **(Act No. 16, 2011)**
Assent date 20 May 2011
Commenced 20 May 2011

***Statute Law Revision Act 2014*** **(Act No. 38, 2014)**
Assent date 13 November 2014
Commenced 13 November 2014

***Health Practitioner Regulation (National Uniform Legislation) and Other Legislation Amendment Act 2018*** **(Act No. 28, 2018)**
Assent date 30 November 2018
Commenced 1 December 2018 (s 2)

## 3 LIST OF AMENDMENTS

| | |
|---|---|
| lt | amd No. 16, 2011, s 3 |
| pt I hdg | amd No. 16, 2011, s 17 |
| s 1 | amd No. 16, 2011, s 4 |
| s 3 | sub No. 16, 2011, s 5 |
| s 4 | amd No. 17, 1997, s 17; No. 44, 2005, s 22; No. 18, 2010, s 76; No. 16, 2011, s 6; No. 38, 2014, s 2; No. 28, 2018, s 25 |
| ss 4A – 4B | ins No. 16, 2011, s 7 |
| pt II hdg | amd No. 16, 2011, s 17 |
| s 5 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| s 6 | sub No. 16, 2011, s 8 |
| s 7 | amd No. 16, 2011, s 9 |
| s 8 | amd No. 17, 1996, s 6; No. 16, 2011, s 17 |
| s 9 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| s 10 | amd No. 17, 1997, s 17; No. 16, 2011, s 10 |
| s 11 | amd No. 16, 2011, s 17 |
| s 12 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| s 13 | amd No. 17, 1997, s 17<br>sub No. 16, 2011, s 11 |
| ss 15 – 17 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| pt III hdg | amd No. 16, 2011, s 17 |
| s 18 | amd No. 16, 2011, s 17 |
| s 19 | amd No. 17, 1997, s 17<br>sub No. 16, 2011, s 12 |
| s 20 | amd No. 17, 1997, s 17; No. 44, 2005, s 22; No. 18, 2010, s 77<br>sub No. 16, 2011, s 12<br>amd No. 38, 2014, s 2 |
| s 21 | sub No. 16, 2011, s 12 |
| s 22 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| pt IV hdg | amd No. 16, 2011, s 17 |
| ss 23 – 24 | amd No. 17, 1997, s 17<br>sub No. 16, 2011, s 13 |
| s 25 | amd No. 17, 1997, s 17<br>sub No. 16, 2011, s 14 |

| | |
|---|---|
| s 26 | amd No. 8, 1995, s 4; No. 17, 1996, s 6 ; No. 17, 1997, s 17; No. 44, 2005, s 22; No. 18, 2010, s 78<br>sub No. 16, 2011, s 14 |
| s 27 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| pt IV | |
| div 3 hdg | amd No. 16, 2011, s 17 |
| s 28 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| pt V hdg | amd No. 16, 2011, s 17 |
| s 29 | amd No. 14, 1989, s 7; No. 17, 1997, s 17; No. 16, 2011, s 17 |
| pt VI hdg | amd No. 16, 2011, s 17 |
| s 30 | amd No. 17, 1997, s 17<br>sub No. 16, 2011, s 15 |
| s 31 | amd No. 16, 2011, s 17 |
| s 32 | amd No. 17, 1997, s 17; No. 16, 2011, s 17 |
| s 33 | amd No. 17, 1997, s 17<br>sub No. 16, 2011, s 16 |
| s 34 | sub No. 16, 2011, s 16 |
| s 35 | amd No. 17, 1996, s 6<br>sub No. 16, 2011, s 16 |
| s 35A | ins No. 68, 1983, s 27 |
| s 36 | rep No. 16, 2011, s 16 |