

NORTHERN TERRITORY OF AUSTRALIA

PRIVATE HOSPITALS AND NURSING HOMES ACT

As in force at 1 July 2010

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 July 2010. Any amendments that commence after that date are not included.

PRIVATE HOSPITALS AND NURSING HOMES ACT

An Act to regulate private hospitals and nursing homes, and for related purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Private Hospitals and Nursing Homes Act*.

2 Commencement

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

3 Application

This Act does not apply to or in relation to an institution conducted for or on behalf of the Territory.

4 Definitions

In this Act, unless the contrary intention appears:

approved means approved by the Chief Health Officer.

Chief Health Officer means the Chief Health Officer appointed under the *Public Health Act*.

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

manager means the person who has the care and control, and is responsible for the day-to-day running, of a nursing institution.

matron means a registered nurse in charge of nursing services in a nursing institution.

nursing home means premises that are fitted, furnished or staffed for the purposes of providing accommodation and nursing care for patients who, by reason of infirmity or illness, disease, incapacity or disability, have a continuing need for nursing care and in which patients of that kind are received and lodged exclusively for the purpose of providing them with accommodation and nursing care.

nursing institution means a private hospital or nursing home.

patient means a person received into and lodged in a nursing institution.

private hospital means premises that are fitted, furnished or staffed for the accommodation of persons for medical or surgical treatment for fee or reward.

register means the register of patients required to be kept under section 21.

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

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

Part II Licensing of private hospitals and nursing homes

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 or a nursing home on premises specified in the licence.

6 Offence to conduct nursing institution unless licensed

- (1) Subject to subsection (2) and section 22(2), a person shall not conduct a nursing institution unless:
 - (a) he holds a licence in respect of the nursing institution; and

- (b) he conducts that nursing institution in accordance with the conditions, if any, to which that licence is subject.

Penalty: \$50,000 and \$1,000 for each day during which the offence continues.

- (2) A person who, immediately before the commencement of this Act, conducted a nursing institution and who applies for a licence within one month after the commencement of this Act may continue to conduct that nursing institution without a licence so to do until the determination of that application by him for that licence.

7 Body corporate as licensee

- (1) A body corporate shall not hold a licence unless it is:
- (a) incorporated; or
 - (b) registered as a foreign company,
- under a law of the Territory.
- (2) For the purposes of section 18(3) and (4), the directors and officers of a body corporate shall be deemed 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)(a) shall not be 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 or a nursing home shall 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 or nursing home shall 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) shall include particulars of:
- (a) the buildings and facilities to be used by or available to the applicant for the purposes of the private hospital or nursing home;
 - (b) the name of the person proposed to be the manager of the private hospital or nursing home;

- (c) the name of the person proposed to be the matron of the private hospital or nursing home;
- (d) the nursing qualifications that will be required of staff to be employed for the purpose of caring for patients in the private hospital or nursing home; and
- (e) the maximum number of patients to be accommodated in the private hospital or nursing home,

and such other information as the Chief Health Officer requires.

10 Determination of application

- (1) Subject to this section, the Chief Health Officer may determine an application made under section 9 by
 - (a) granting a licence or the renewal of a licence to conduct:
 - (i) a private hospital; or
 - (ii) a nursing home; or
 - (b) refusing to grant a licence or the renewal of a licence.
- (2) Where 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 shall be in the approved form and shall set out the conditions, if any, to which it is subject.

12 Notice to be given of refusal, &c.

Where the Chief Health Officer refuses to grant a licence or grants a licence subject to conditions, he shall serve on the applicant a written notice setting out the reasons for the refusal, or the imposition of the conditions, as the case may be.

13 Duration and renewal of licence

- (1) A licence shall take effect on and from the date upon which it is granted and shall, subject to this Act, continue in force for the period specified in the licence.
- (2) Where the Chief Health Officer renews a licence, the licence as renewed shall continue in force for the period specified in the licence commencing from the date on which, but for the renewal, the licence 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 shall 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) Where 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) Where the transfer of a licence is approved under subsection (1) subject to conditions, the conditions imposed shall be deemed to be conditions to which the licence is subject.

17 Notice to be given of refusal, &c.

Where the Chief Health Officer refuses to approve under section 16 the transfer of a licence, or approves the transfer subject to conditions, he shall serve on the applicants a written notice setting out the reasons for the refusal, or the imposition of the conditions, as the case may be.

Part III Management of nursing institutions**18 Manager of nursing institution**

- (1) A notice that may be given under this Act to a licensee shall be deemed to be given to the licensee if it is given to the manager of the nursing institution in respect of which the licence is granted.
- (2) Subject to section 19(2), upon the grant of a licence to an applicant, the name of the manager nominated by the applicant shall, 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 nursing institution.
- (4) It is a defence to a prosecution for an offence referred to in subsection (3) if the licensee proves that he had given such directions to the manager and had exercised such supervision over him as was reasonably necessary to ensure that the manager did not commit an offence against this Act.

19 Replacement of manager or matron

- (1) Where the manager or matron of a nursing institution:
 - (a) dies, retires, resigns or is dismissed; or
 - (b) is or is expected to be absent from the Territory from his duties as manager or matron for a period in excess of 7 days,the licensee shall appoint an approved person to fill the vacancy, or to act as the manager or matron during that absence, as the case may be.
- (2) Where a manager of a nursing institution dies, retires, resigns or is dismissed, the name of the manager appointed under subsection (1) shall be endorsed on the licence in place of the name of the first-mentioned manager, and the licensee shall return his licence to the Chief Health Officer so that it can be endorsed accordingly.

20 Duties of manager

The manager of a nursing institution shall, in respect of the nursing institution:

- (a) maintain a register in the approved form;
- (b) keep in the approved form a record of drug purchases and the use made of drugs purchased;
- (c) report to the Chief Health Officer all births and deaths that occur in the nursing institution;
- (d) ensure a registered nurse is on duty at all times;
- (e) be responsible for the day-to-day management of the nursing institution; and
- (f) carry out such other duties as are prescribed.

21 Register of patients to be kept

Every licensee shall cause to be kept on the premises in respect of which he is licensed a register of patients which shall contain particulars of:

- (a) the name, age and address of each patient and the date of reception of the patient into the nursing institution;
- (b) the name of the medical practitioner, if any, attending each patient;
- (c) the drugs, if any, being administered to each patient; and
- (d) the date each patient leaves the nursing institution or, in the event of the death of a patient, the date thereof,

and such other particulars as are prescribed.

22 Changes in conditions of licence

- (1) Where a nursing institution is conducted otherwise than in accordance with the conditions to which the licence is subject, the licensee shall, 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 nursing institution otherwise than in accordance with the conditions to which the licence is subject until he is served with a notice under section 26.

Part IV Control of nursing institutions

Division 1 Inspection

23 Inspection of nursing institution

- (1) The Chief Health Officer shall cause each nursing institution to be inspected not less than once a year.
- (2) The Chief Health Officer may, in writing, authorize a person to enter a nursing institution at any reasonable time for the purpose of inspecting that nursing institution.
- (3) A person authorized under subsection (2) may inspect:
 - (a) the register;

(b) the premises; and

(c) the equipment,

of the nursing institution and such other things as are specified in an authorization under that subsection.

- (4) A person authorized under subsection (2) to inspect a nursing institution shall, as soon as practicable after concluding an inspection, give to the Chief Health Officer a written report on the inspection.

24 Actions that may be taken by Chief Health Officer following inspection

Following an inspection of a nursing institution under section 23, the Chief Health Officer may, on the basis of a report given to him under that section, serve a written notice on the licensee requiring him to make:

(a) such repairs, alterations, additions or improvements to the premises or equipment; or

(b) changes in the management,

of the nursing institution as are specified, and within the time specified, in the notice.

Division 2 Surrender, revocation or variation of licence

25 Surrender of licence

- (1) A licensee may surrender his licence by delivering it to the Chief Health Officer with the request that he accept its surrender.

- (2) Notwithstanding the surrender under subsection (1) of a licence, the person who held the licence shall remain liable for:

(a) an act or omission done, caused, permitted or made by him;
and

(b) all liabilities incurred by him under this Act,

while he held the licence.

26 Grounds for revoking or varying licence

(1) Subject to this section, the Chief Health Officer may, by a written notice served on a licensee:

- (a) revoke a licence; or
- (b) vary the conditions of a licence,

where:

- (c) the licensee, within the time specified in a notice under section 24, fails to comply with the notice;
- (d) in the opinion of the Chief Health Officer, the nursing institution is not adequately equipped or is managed in such a manner as to render its closure in the public interest;
- (e) the manager of the nursing institution:
 - (i) dies, retires, resigns or is dismissed; or
 - (ii) has been absent from the Territory or from his duties as manager for a period exceeding 7 days,

without the licensee having appointed, in accordance with section 19(1), a person to fill the vacancy, or to act as manager, as the case may be;

- (f) the nursing institution ceases, in the opinion of the Chief Health Officer, to be conducted as a private hospital or nursing home, as the case may be;
- (g) an application under section 22(1) is received;
- (h) an inquiry into a complaint made under section 27 has been completed; or
- (j) the licensee:
 - (i) has been found guilty of an offence against this Act, the Health Practitioner Regulation National Law, or the *Health Practitioners Act* or an Act repealed by that Act;
 - (ii) has been found guilty of an indictable offence against a law of the Commonwealth, a State or the Territory;
 - (iii) refuses to allow an inspection of the nursing institution in accordance with this Act; or

(iv) fails to comply with the conditions under which the licence was granted.

- (2) Where the Chief Health Officer revokes a licence under subsection (1)(a), or varies the conditions of a licence under subsection (1)(b), he shall serve on the former licensee or licensee, as the case may be, a written notice setting out his reasons for the revocation, or the imposition of the conditions.

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), authorize a person to conduct an inquiry into the complaint and to give him a written report on his findings in respect of the complaint.
- (3) The Chief Health Officer may, on the basis of a written report given to him under subsection (2) and on the basis of such other information available to him:
- (a) dismiss a complaint;
 - (b) authorize a person to conduct a further inquiry under this section; or
 - (c) take action under section 26.

Division 3 Closure of nursing institution

28 Powers of Chief Health Officer to close down nursing institution

- (1) Where the Chief Health Officer revokes a licence under section 26(1)(a) he shall, unless he immediately grants another licence in respect of the nursing institution, close down the nursing institution and arrange for the transfer of patients from that nursing institution to a government institution or other licensed nursing institution.
- (2) The expenses incurred by the Chief Health Officer in exercising his powers under subsection (1) shall be recoverable as a debt due and payable to the Territory by the person whose licence has been revoked.

Part V 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) shall:
 - (a) be in writing;
 - (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 shall 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 the purposes of 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 shall determine an appeal under subsection (1) by:
 - (a) confirming the decision of the Chief Health Officer;
 - (b) varying the decision of the Chief Health Officer in such manner as it thinks fit;
 - (c) substituting his own decision for the decision of the Chief Health Officer; or
 - (d) disallowing the decision of the Chief Health Officer.
- (6) Where the Local Court determines an appeal made under subsection (5), the determination takes effect on the date specified in the determination or, where no date is so specified, on the date of the determination.

Part VI Miscellaneous**30 Delegation**

- (1) The Chief Health Officer may, by instrument in writing, delegate to a person all or any of his powers and functions under this Act except this power of delegation.
- (2) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the Chief Health Officer.

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;
 - (b) the renewal of a licence;
 - (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 nursing institution to which a licence relates and to the period for which the licence is granted.

32 Duplicate licence

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

33 Rendering up licence

A person who has:

- (a) had his licence revoked under this Act; or
- (b) failed to renew his licence under section 9(2),
shall, not later than 7 days:
 - (c) after receipt of a notice revoking his licence; or
 - (d) after the expiry of the licence,

deliver the revoked or expired licence to the Chief Health Officer or send it to him by prepaid certified post.

34 Service

A document required by this Act to be served on a person may be served on him:

- (a) personally;
- (b) by posting it to him at his last-known place of residence or business; or
- (c) by leaving it at his last-known place of residence or business with a person apparently over the age of 16 years who apparently lives or is employed there, as the case may be.

35 Offences and penalties

- (1) A person shall not contravene or fail to comply with a provision of this Act or the Regulations.
- (2) A person who contravenes or fails to comply with a provision of this Act or the Regulations for which a penalty is not provided by a provision of this Act or the Regulations other than this section, is punishable upon a finding of guilt by a fine of \$1,000 or imprisonment for 6 months.
- (3) No prosecution for an offence against this Act shall be commenced unless approved.

35A Regulatory offences

An offence of contravening or failing to comply with section 19, 20(a), (b) or (c), 21, 22(1), or 33 is a regulatory offence.

36 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may provide for:
 - (a) the minimum qualifications required of nursing staff employed in nursing institutions;
 - (b) the duties of nursing staff employed in nursing institutions;

- (c) the ratio required of nursing staff to patients in nursing institutions;
- (d) the minimum standards of accommodation required for patients in nursing institutions;
- (e) the imposition of penalties for an offence against the Regulations; and
- (f) the procedures to be followed at hearings of appeals under section 29 and the rights, powers and duties of appellants and other persons appearing before or in relation to the hearing of appeals under that section.

ENDNOTES
1 KEY

Key to abbreviations

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

2 LIST OF LEGISLATION***Private Hospitals and Nursing Homes Act 1981 (Act No. 40, 1981)***

Assent date	8 April 1981
Commenced	1 July 1981 (<i>Gaz S7</i> , 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 <i>Criminal Code Act 1983</i> (Act No. 47, 1983), <i>Gaz G46</i> , 18 November 1983, p 11 and <i>Gaz G8</i> , 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 <i>Small Claims Amendment Act 1988</i> (Act No. 43, 1988), <i>Gaz G17</i> , 3 May 1989, p 2, s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and <i>Gaz G49</i> , 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 <i>Medical Act 1995</i> (Act No. 7, 1995) and <i>Gaz S21</i> , 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 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz S15</i> , 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 (<i>Gaz G17</i> , 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)

3 LIST OF AMENDMENTS

s 4 amd No. 17, 1997, s 17; No. 44, 2005, s 22; No. 18, 2010, s 76
 s 5 amd No. 17, 1997, s 17
 s 8 amd No. 17, 1996, s 6
 ss 9 – 10 amd No. 17, 1997, s 17
 ss 12 – 13 amd No. 17, 1997, s 17
 ss 15 – 17 amd No. 17, 1997, s 17
 s 19 amd No. 17, 1997, s 17
 s 20 amd No. 17, 1997, s 17; No. 44, 2005, s 22; No. 18, 2010, s 77
 ss 22 – 25 amd No. 17, 1997, s 17
 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
 ss 27 –28 amd No. 17, 1997, s 17
 s 29 amd No. 14, 1989, s 7; No. 17, 1997, s 17
 s 30 amd No. 17, 1997, s 17
 ss 32 – 33 amd No. 17, 1997, s 17
 s 35 amd No. 17, 1996, s 6
 s 35A ins No. 68, 1983, s 27