

NORTHERN TERRITORY OF AUSTRALIA

MEDICAL SERVICES ACT 1982

As in force at 31 May 2019

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 31 May 2019

MEDICAL SERVICES ACT 1982

**An Act relating to the provision and administration of medical services
and for other purposes**

Part I Preliminary

1 Short title

This Act may be cited as the *Medical Services Act 1982*.

2 Commencement

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

3 Repeal and savings

- (1) The Acts listed in Schedule 1 are repealed.
- (2) All instruments of a legislative or administrative character made under any of the enactments repealed by this Act and in force immediately prior to the commencement of this Act shall, so far as is not inconsistent with this Act, continue in force as if made under this Act.

4 Application of Act

- (1) This Act does not apply in relation to:
 - (a) a private hospital; or
 - (b) a residential facility for which an approval is in force under the *Aged Care Act 1997* (Cth) for an approved provider to provide residential care to persons in the facility.
- (3) In this section:

private hospital, see section 4A of the *Private Hospitals Act 1981*.

4A Effect of National Health Agreement

The Minister must ensure, as far as possible, that the Medicare principles in the National Health Agreement are complied with in administering this Act and in the provision of medical services by the Territory or in hospitals in the Territory.

5 Definitions

In this Act:

acting in an official capacity, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

attendant means a person authorised by the CEO to accompany a person who is travelling inside or outside the Territory before or after receiving medical treatment.

authorised officer means a person appointed to be an authorised officer under section 15A(1).

CEO means the Chief Executive Officer.

declared premises means premises declared under section 6(2).

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

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession.

dependant, in relation to a person, means:

- (a) a spouse or de facto partner of the person who is wholly or partly dependent on that person for financial support; or
- (b) a child of the person who is wholly or partly dependent on that person for financial support.

hospital means premises declared under section 6(2) to be a hospital.

medical service means:

- (a) a service for maintaining, improving, restoring or managing people's health and wellbeing; and

- (b) the supply of any goods or services in relation to a service mentioned in paragraph (a).

*Examples for definition **medical service**, paragraph (b)*

Appliances and home modifications, prostheses, pharmaceuticals, aeromedical and other transport services, blood management services and administrative support services.

National Health Agreement means:

- (a) the National Health Reform Agreement as defined in section 3(1) of the *National Health Funding Pool and Administration (National Uniform Legislation) Act 2012*; or
- (b) any agreement that replaces or supersedes that agreement.

nursing home means premises declared under section 6(2) to be a nursing home.

patient includes both in-patients who are admitted to a hospital or nursing home and out-patients who receive medical services at a hospital or outlying clinic but who are not admitted to a hospital or nursing home.

private dentist or **private medical practitioner** means a dentist or medical practitioner who is not a salaried dentist or medical practitioner.

private nurse means a person who:

- (a) is registered under the Health Practitioner Regulation National Law to practise in the nursing profession (other than as a student); and
- (b) is not a public sector employee.

salaried, in relation to a dentist or medical practitioner, means a dentist or medical practitioner who is carrying out duties as a public sector employee.

vehicle, see section 5(1) of the *Motor Vehicles Act 1949*.

visiting dentist or **visiting medical practitioner** means a private dentist or private medical practitioner approved under section 17(1) by the CEO.

Note for section 5

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5A Application of Criminal Code

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

Note for section 5A

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 II Provision of medical services**6 Powers of Minister**

- (1) The Minister may arrange for the provision of medical services in accordance with section 4A as the Minister considers appropriate.
- (2) The Minister may, by *Gazette* notice, declare premises to be any of the following:
 - (a) a hospital;
 - (b) a nursing home;
 - (c) an urban health centre;
 - (d) any other health centre as specified in the notice.
- (3) The Minister may, by *Gazette* notice, determine fees and charges for medical services provided under this Act.
- (4) Without limiting subsection (3), the Minister may:
 - (a) determine that no fee or charge is payable, or that a particular fee or charge is payable:
 - (i) for a medical service provided to a particular type of patient; or
 - (ii) for a medical service provided at a particular place; and
 - (b) adopt by reference any fees or charges (as in force at a particular time or as in force from time to time) fixed or determined by a Commonwealth authority or body.

7 Powers and duties of CEO

- (1) The CEO is responsible for the management of all hospitals, nursing homes and medical services that are provided by the Territory.
- (2) The CEO may do any of the following:
 - (a) appoint a person to be the person in charge of a hospital or nursing home provided by the Territory;
 - (b) recover, subject to the provisions of this Act, from persons receiving them, the cost of medical services;
 - (c) authorise persons to recover fees and charges for medical services provided by, or on behalf of, the Territory;
 - (d) institute proceedings against any person who contravenes this Act or the Regulations.

8 Delegation

The CEO may delegate any of the CEO's powers and functions under this or another Act to a person, other than the power under section 19 to make by-laws.

9 Transport of patients inside and outside the Territory

- (1) The CEO may make such provision as the CEO thinks fit for the transport, whether by ambulance or otherwise:
 - (a) of a person for whom the provision of a medical service is necessary; and
 - (b) of a person for whom a medical service has been provided.
- (2) If, following receipt of a report made by a salaried medical practitioner, the CEO is of the opinion that it is necessary that a medical service be provided outside the Territory to a person, the CEO may authorise:
 - (a) the transport of that person from a specified place in the Territory to a specified place outside the Territory for the purpose of that person being provided with that medical service; and
 - (b) the return transport of that person after the medical service has been provided.

- (3) If the CEO is of the opinion that it is necessary that a person for whom transport is provided under subsection (1) or whose transport has been authorised under subsection (2) be under the care of an attendant, the CEO may authorise the transport, including the return transport, of the attendant at the expense of the Territory.
- (4) If transportation of a person is provided or authorised under this section, the Territory is not liable for an injury or aggravation of an injury to the person or the person's attendant directly attributable to the transportation, except if the attendant is a public sector employee carrying out the employee's duties in respect of the employee's employment.

Part III Recovery of fees and charges

12 Fees and charges recoverable as debt except in certain cases

- (1) A fee or charge payable or an expense recoverable under this Act for medical services provided or expenses incurred may be recovered as a debt due to the Territory.
- (2) The CEO may exempt from the obligation to make a payment mentioned in subsection (1) a person included in a class of persons designated by the Minister.

13 Recovery of fees and charges

- (1) Subject to this section, a fee or charge payable under this Act for a medical service is payable by the person who receives the medical service.
- (2) If a person who receives medical services is a dependant of someone else, the other person is liable for payment of the fees or charges in respect of those medical services.
- (3) If an infant who receives medical services is not a dependant of a person, the infant and the infant's parent or guardian are jointly and severally liable for payment of the fees or charges.
- (4) Subject to subsection (5), if a fee or charge, or part of a fee or charge, payable under this Act remains unpaid after the expiration of 2 months after the date upon which it became due and payable, there is added to the amount of the fee or charge in arrears:
 - (a) on the day following the expiration of the period of 2 months from the date on which the fee or charge became due and payable – 5% of the fee or charge or part of the fee or charge in arrears; and

- (b) on the expiration of each period of 2 months from that day – a further 5% of the amount in arrears (including the amount of any previous addition to the fee or charge in arrears).
- (5) The Regulations may prescribe a variation in the rate of the additional amounts referred to in subsection (4).

14 Burial expenses

- (1) Subject to subsection (2), where the Territory incurs expense in connection with the burial of the body of a person, the Territory may recover the amount of that expense as though the burial were a medical service received by that person.
- (2) Where the Territory incurs expense in connection with the burial of the body of a still-born child, the Territory may recover the amount of that expense as though the burial were a medical service received by the woman who gave birth to the still-born child.

15 Remission or postponement of fees and charges

- (1) The Minister may remit or postpone the payment of the whole or part of a fee or charge payable to or an expense recoverable by the Territory under this Act.
- (2) The CEO may remit or postpone the payment of the whole or part of a fee or charge payable, or an expense recoverable under this Act, including an additional amount payable because of section 13(4), up to such amount as may from time to time be determined by the Minister.

Part IIIA Administrative matters

15A Authorised officers

- (1) The CEO may appoint a person to be an authorised officer for this Act.
- (2) An authorised officer has the powers necessary to perform the officer's functions under this Act, the Regulations and By-laws.

15B Identity card

- (1) The CEO must give an authorised officer an identity card stating the person's name and that the person is an authorised officer.
- (2) The identity card must:
 - (a) show a recent photograph of the authorised officer; and

- (b) show the card's date of issue; and
 - (c) be signed by the officer.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

15C Return of identity card

- (1) A person who ceases to be an authorised officer must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty: 20 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 person has a reasonable excuse.

15D Obstruction of authorised officer

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and
 - (b) the other person is an authorised officer; and
 - (c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(b).

- (3) In this section:

obstruct includes hinder and resist.

15E Misleading information

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person; and
 - (b) the other person is an authorised officer; and
 - (c) the information is misleading and the person has knowledge of that circumstance; and

- (d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if:

- (a) the person intentionally gives a document to another person; and
- (b) the other person is an authorised officer; and
- (c) the document contains misleading information and the person has knowledge of that circumstance; and
- (d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).

- (4) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the authorised officer's attention; and
- (b) to the extent to which the person can reasonably do so – gives the authorised officer the information necessary to remedy the misleading aspect of the document.

- (5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

Part IV Miscellaneous

16 Person in charge of hospital

- (1) The person in charge of a hospital or nursing home is responsible:
- (a) for the supervision of all medical services in the hospital or nursing home in such a manner as to ensure the maintenance of good, safe medical care for all patients of the hospital or nursing home; and

- (b) for the maintenance of good order and conduct by staff and patients of, and visitors to, the hospital or nursing home; and
 - (c) to the CEO, for the administration of the finances and personnel of the hospital or nursing home and the security of all staff, patients and property.
- (2) The person in charge of a hospital or nursing home may issue such instructions applicable to staff and patients of, and visitors to, the hospital or nursing home as may be necessary to secure the maintenance of good order and conduct in the hospital or nursing home and its grounds.
 - (3) All persons in a hospital or nursing home or its grounds are subject to the control of the person in charge of the hospital or nursing home.
 - (4) The owner, within the meaning of the *Motor Vehicles Act 1949*, of a vehicle shall, at all times when the vehicle is in the grounds of a hospital or nursing home, ensure that the vehicle is not used in contravention of this Act and shall, for the purposes of this Act and the Regulations, be deemed to have control of the vehicle.

17 Use of facilities by private practitioners

- (1) The CEO may approve, with or without conditions, a private dentist or a private medical practitioner as a visiting dentist or a visiting medical practitioner in respect of declared premises.
- (2) Subject to any conditions imposed by the CEO when giving the CEO's approval under subsection (1), a visiting dentist may, at the declared premises in respect of which the dentist has been approved, provide dental treatment for patients.
- (3) Subject to any conditions imposed by the CEO when giving the CEO's approval under subsection (1), a visiting medical practitioner may, at the declared premises in respect of which the practitioner has been approved, admit patients and provide medical treatment for those patients.
- (4) A patient admitted by a visiting medical practitioner is subject to the care and control of the person in charge of a hospital or nursing home but the visiting medical practitioner is directly responsible for the treatment of that patient.

- (5) The CEO may also approve any of the following persons to attend on a patient in declared premises and subsections (8) and (10) apply to the person as if the person were a visiting medical practitioner:
- (a) a health practitioner as defined in section 5 of the Health Practitioner Regulation National Law, other than an individual who practises in the dental, medical, nursing, midwifery or pharmacy professions;
 - (b) a dietitian, masseur, naturopath, social worker, speech pathologist, audiologist or audiometrist;
 - (c) a person who provides pathology services.
- (6) The person in charge of a hospital or nursing home may approve a private nurse to attend upon a patient in the hospital or nursing home and such private nurse shall, when on the premises, be subject to the instructions of the person in charge of the hospital or nursing home.
- (7) Nursing staff providing nursing services to a patient admitted to a hospital or nursing home by a visiting medical practitioner are subject to the general direction of the person in charge of the hospital or nursing home.
- (8) A visiting dentist or a visiting medical practitioner using the facilities at the declared premises in respect of which the dentist or practitioner has been approved:
- (a) may be charged for the use of those facilities at rates determined by the Minister; and
 - (b) is, as regards the use of those facilities, subject to the instructions of the person in charge of the declared premises.
- (9) A visiting dentist or a visiting medical practitioner using the facilities of declared premises shall maintain medical records in accordance with the standards imposed by the person in charge of the declared premises.
- (10) The CEO may suspend or withdraw the approval given by the CEO to a visiting dentist or visiting medical practitioner under subsection (1) or given by the person in charge of a hospital or nursing home to a private nurse under subsection (6), if the visiting dentist, visiting medical practitioner or private nurse fails to comply with the instructions of the person in charge of the declared premises.

18 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular for or in relation to:

- (a) exempting certain persons or classes of persons, either wholly or partly, from liability for fees and charges;
- (b) regulating the admission of patients into and discharge from hospitals or nursing homes;
- (c) regulating the accommodation and maintenance in hospitals or nursing homes of persons who are patients of a private dentist or a private medical practitioner;
- (d) maintaining discipline, decency and cleanliness by and among persons in declared premises;
- (e) prescribing the duties and regulating the conduct of persons employed in declared premises;
- (f) regulating the general care, management, control and supervision of declared premises;
- (g) prohibiting the introduction of specified articles into declared premises;
- (h) maintaining order in declared premises and in their grounds;
- (j) prohibiting smoking in declared premises except in such places as are specially designated by the person in charge of the hospital or nursing home;
- (k) regulating and prohibiting the parking of vehicles in the grounds of declared premises;
- (m) regulating the speed limits of vehicles using roadways in the grounds of declared premises; and
- (n) prescribing penalties not exceeding 8 penalty units for offences against the Regulations.

19 By-laws

- (1) The CEO may make by-laws, not inconsistent with this Act or any other law of the Territory, for any of the following matters in relation to declared premises:
 - (a) the regulation of traffic;
 - (b) the regulation of parking;
 - (c) general conduct of persons;
 - (d) prescribing a fine not exceeding 20 penalty units for an offence against the by-laws;
 - (e) providing for offences against the by-laws to be strict liability offences, but not with a penalty exceeding 10 penalty units.
- (2) In addition, by-laws may provide that, if an offence is committed in relation to a vehicle and the name of the person alleged to have committed the offence is not ascertained at the time the alleged offence occurs, the owner of the vehicle at the time the offence occurs is taken to have committed the offence, whether or not the owner in fact committed the offence.
- (3) The CEO may, by *Gazette* notice, declare that by-laws made under this section apply to, and in relation to, declared premises specified in the notice.
- (4) The by-laws apply to, and in relation to, the specified declared premises on and from the date specified in the notice.

20 Validation of charges for medical services

- (1) Any charge for medical services determined or purported to be determined under this Act before the commencement, that would have been valid had it been determined after the commencement, is taken to be and to have always been valid.
- (2) Any charge mentioned in subsection (1) recovered or purported to be recovered before the commencement is taken to be, and to have always been, validly recovered.
- (3) In this section:

commencement means the commencement of the *Medical Services Amendment Act 2019*.

Schedule 1 Ordinances and Acts repealed

section 3

Hospitals and Medical Services Ordinance 1953

Hospitals and Medical Services Ordinance 1957

Hospitals and Medical Services Ordinance 1962

Hospitals and Medical Services Ordinance 1964

Hospitals and Medical Services Ordinance 1965

Hospitals and Medical Services Ordinance (No. 2) 1965

Hospitals and Medical Services Ordinance 1970

Hospitals and Medical Services Ordinance 1975

Hospitals and Medical Services Ordinance 1976

Hospitals and Medical Services Act 1978

Hospitals and Medical Services Act 1979

Hospitals and Medical Services Amendment Act 1981

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***Medical Services Act 1982 (Act No. 75, 1982)***

Assent date 17 December 1982
 Commenced 4 February 1983 (*Gaz G5*, 4 February 1983, p 1)

Statute Law Revision Act 1988 (Act No. 66, 1988)

Assent date 22 December 1988
 Commenced 22 December 1988

Dental (Consequential Amendments) Act 1991 (Act No. 75, 1991)

Assent date 10 December 1991
 Commenced 31 January 1992 (*Gaz S7*, 31 January 1992)

De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)

Assent date 24 December 1991
 Commenced 1 January 1992 (s 2)

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 29 June 1993)

Medical Services Amendment Act 1993 (Act No. 80, 1993)

Assent date 13 December 1993
 Commenced 13 December 1993

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz G11*, 17 March 2004, p 8)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date 14 December 2005
Commenced 14 December 2005

Medical Services Amendment Act 2006 (Act No. 33, 2006)

Assent date 3 November 2006
Commenced 20 December 2006 (s 2, s 2 *Criminal Reform Amendment Act (No. 2) 2006* (Act No. 34, 2006) and Gaz G51
20 December 2006, p 2)

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

Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011 (Act No. 28, 2011)

Assent date 31 August 2011
Commenced 21 September 2011 (Gaz G38, 21 September 2011, p 4)

Health Services Act 2014 (Act No. 18, 2014)

Assent date 2 June 2014
Commenced 1 July 2014 (Gaz S42, 24 June 2014)

Medical Services Legislation Amendment Act 2017 (Act No. 3, 2017)

Assent date 10 March 2017
Commenced 10 August 2017 (Gaz S58, 10 August 2017, p 1)

Statute Law Revision Act 2017 (Act No. 4, 2017)

Assent date 10 March 2017
Commenced 12 April 2017 (Gaz G15, 12 April 2017, p 3)

Termination of Pregnancy Law Reform Act 2017 (Act No. 7, 2017)

Assent date 24 April 2017
Commenced 1 July 2017 (Gaz S38, 28 June 2017)

Statute Law Revision Act 2018 (Act No. 10, 2018)

Assent date 23 May 2018
Commenced 20 June 2018 (Gaz S41, 20 June 2018)

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)

Medical Services Amendment Act 2019 (Act No. 17, 2019)

Assent date 30 May 2019
Commenced 31 May 2019 (s 2)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 5, 9 and 16.

4 LIST OF AMENDMENTS

s 3	amd No. 4, 2017, s 34
s 4	amd No. 33, 2006, s 4 sub No. 16, 2011, s 18
s 4A	ins No. 17, 2019, s 4
s 5	amd No. 75, 1991, s 3; No. 82, 1991, s 9; No. 28, 1993, s 3; No. 1, 2004, s 62; No. 44, 2005, s 22; No. 18, 2010, s 89; No. 4, 2017, s 34; No. 3, 2017, s 4; No. 28, 2018, s 25; No. 17, 2019, s 5
s 5A	ins No. 3, 2017, s 5
s 6	amd No. 80, 1993, s 2; No. 4, 2017, s 34 sub No. 17, 2019, s 6
s 7	amd No. 4, 2017, s 34
s 8	amd No. 18, 2014, s 97; No. 4, 2017, s 34; No. 3, 2017, s 6
s 9	amd No. 66, 1988, s 6; No. 28, 1993, s 3; No. 4, 2017, s 34; No. 17, 2019, s 7
s 10	amd No. 4, 2017, s 34 rep No. 17, 2019, s 8
s 11	rep No. 66, 1988, s 6 ins No. 33, 2006, s 5 rep No. 7, 2017, s 22
s 12	amd No. 4, 2017, s 34
s 13	amd No. 17, 2019, s 13
s 14	amd No. 17, 2019, s 9
s 15	amd No. 4, 2017, s 34; No. 17, 2019, s 13
ptIIIA	ins No. 3, 2017, s 7
ss 15A – 15E	ins No. 3, 2017, s 7
s 16	amd No. 4, 2017, s 34
s 17	amd No. 4, 2017, s 34; No. 17, 2019, s 10
s 18	amd No. 28, 2011, s 4; No. 17, 2019, s 13
s 19	ins No. 3, 2017, s 8 amd No. 10, 2018, s 6
s 20	ins No. 17, 2019, s 11
sch 2	ins No. 80, 1993, s 3 rep No. 17, 2019, s 12