

NORTHERN TERRITORY OF AUSTRALIA

HEALTH SERVICE ACT 2021

Act No. 10 of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 10 of 2021

An Act to provide for a framework for health services and for related purposes

[Assented to 20 May 2021]
[Introduced 24 March 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Health Service Act 2021*.

2 Commencement

This Act commences on 1 July 2021.

3 Purpose

The main purpose of this Act is to provide for a health system that provides high quality health services to persons in the Territory.

4 Principles

This Act recognises and gives effect to the following principles:

- (a) the Medicare principles as defined in the National Health Reform Agreement;
- (b) that the best interests of the users of health services should be the main consideration in all decisions and actions under this Act;

- (c) a commitment to ensuring access to safe, high-quality health services in the Territory;
- (d) a commitment to achieving health equity for Aboriginal people, including by:
 - (i) working with Aboriginal communities to design approaches tailored to their needs, recognising and enabling Aboriginal leadership and local decision-making processes; and
 - (ii) working with Aboriginal people to achieve cultural security in the health system by co-developing and co-delivering culturally safe and secure health services;
- (e) engagement with clinicians, consumers, community members and local primary healthcare organisations in planning, developing and delivering health services and, in particular, shaping local service delivery according to local needs;
- (f) an acknowledgement that private providers and community organisations play a significant role in delivering health services to the community and will continue to be partners with government to achieve coordinated, integrated health services.

5 Effect of purpose and principles

A person performing a function or exercising a power under this Act must:

- (a) have regard to sections 3 and 4; and
- (b) exercise the power or perform the function in a manner consistent with those sections.

6 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

7 Application of Criminal Code

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

Note for section 7

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 Interpretation

8 Definitions

In this Act:

acquittal of funding means the acquittal given under section 25(1).

advisory panel, see section 21.

Executive, see section 12.

Health Funding Act means the *National Health Funding Pool and Administration (National Uniform Legislation) Act 2012*.

health service, see section 9.

health support service means a service provided in aid or support of a health service, including a professional, a technical or an educational service.

National Health Reform Agreement, see section 3(1) of the Health Funding Act.

NT Regional Health Services, means the entity established by section 10.

Service Plan, see section 18.

System Manager, see section 15.

Note for section 8

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

9 Meaning of *health service*

- (1) A ***health service*** includes any of the following:
- (a) a service provided by or on behalf of a public hospital;
 - (b) a service, related to ensuring the health of a person, that is provided by:
 - (i) a health practitioner within the meaning of the Health Practitioner Regulation National Law (NT); or
 - (ii) a person who is a member of a class of persons prescribed by regulation;
 - (c) a paramedical service;
 - (d) a community health service;
 - (e) an environmental health service;
 - (f) the supply or fitting of any prosthesis or therapeutic device;
 - (g) any other service (including any service of a class, or description, prescribed by regulation) relating to the maintenance or improvement of the health, or the restoration to health, of persons, or the prevention of disease in, or injury to, persons.
- (2) Despite anything to the contrary in subsection (1), a regulation may prescribe that a service is not a health service for this Act.

Part 3 Health service

Division 1 NT Regional Health Services

10 Establishment of NT Regional Health Services

- (1) NT Regional Health Services is established.
- (2) NT Regional Health Services is the local hospital network for the purposes of the National Health Reform Agreement.
- (3) NT Regional Health Services forms part of the Agency and is not a separate legal entity.

11 Functions and powers of NT Regional Health Services

- (1) The main function of NT Regional Health Services is to provide the health services and health support services set out in the Service Plan to the standards, and within the budget, set out in the Service Plan.
- (2) Without limiting subsection (1), NT Regional Health Services has the following functions:
 - (a) to ensure health services and health support services are delivered in an efficient, effective and economical way;
 - (b) in delivering health services and health support services to meet the health needs of the community:
 - (i) to consult and collaborate with other providers of those services; and
 - (ii) to minimise service duplication and fragmentation;
 - (c) to develop local clinical and other governance arrangements and best practice guidelines or standards consistent with the requirements of the Service Plan;
 - (d) to provide training and education relevant to the provision of health services and health support services;
 - (e) to collect data on its performance and report to the System Manager on that performance, including its administration and financial performance;
 - (f) any other function conferred by this Act or any other Act.
- (3) NT Regional Health Services has the powers necessary to perform its functions.

Division 2 Executive

12 Appointment of persons to constitute Executive

- (1) The System Manager may appoint one or more public sector employees in the Agency to be a member or members of the Executive.
- (2) A person appointed to be a member of the Executive holds that office in conjunction with the person's employment as a public sector employee.

- (3) Termination of the appointment of a person as a member of the Executive has no effect on the person's employment as a public sector employee.

13 Role of Executive

The Executive is responsible to the System Manager for:

- (a) the administration and management of NT Regional Health Services; and
- (b) the performance and exercise by NT Regional Health Services of its functions and powers.

14 Functions of Executive

- (1) The functions of the Executive are as follows:
- (a) to administer and manage NT Regional Health Services;
 - (b) to perform the functions and exercise the powers of NT Regional Health Services;
 - (c) to ensure that the health services and health support services that NT Regional Health Services provides under the Service Plan meet the standards, and are within the budget, set out in the Service Plan;
 - (d) to manage and monitor, and report to the System Manager on, the administration and financial performance of NT Regional Health Services, as required by the System Manager;
 - (e) to monitor and report to the System Manager on the outcomes for persons provided with health services;
 - (f) any other function specified by the System Manager.
- (2) The Executive has the powers necessary to perform its functions.

Division 3 System Manager

15 CEO to be System Manager

The Chief Executive Officer of the Agency is the System Manager for this Act.

16 Functions and powers of System Manager

- (1) The System Manager has the following functions:
 - (a) planning for the delivery by NT Regional Health Services of health services and health support services, including planning for the provision of infrastructure;
 - (b) negotiating and entering into agreements in relation to the provision of health services, health support services and capital works with other parties, including the Commonwealth and non-government health providers;
 - (c) preparing and publishing an annual Service Plan;
 - (d) monitoring the delivery of health services by NT Regional Health Services in accordance with the Service Plan;
 - (e) collecting data on the performance of NT Regional Health Services and reporting on that performance to the Minister, the Commonwealth and the public;
 - (f) ensuring there are appropriate mechanisms for consultation between NT Regional Health Services and persons interested in the delivery of health services;
 - (g) establishing advisory panels as required;
 - (h) any other function conferred by this Act or another Act.
- (2) The System Manager has the powers necessary to perform the System Manager's functions.

17 Delegation

The System Manager may delegate any of the System Manager's functions or powers under this Act to a public sector employee who the System Manager is satisfied has the appropriate qualifications or experience for the delegation.

Division 4 Service plan

18 Service Plan

- (1) The System Manager must prepare, in consultation with the Executive, an annual Service Plan for NT Regional Health Services.
- (2) The Service Plan must be prepared by 30 June of each year and applies to the following financial year.

- (3) A Service Plan must include the following:
- (a) a list of the health services and health support services to be provided by NT Regional Health Services;
 - (b) the funding to be provided to NT Regional Health Services for the provision of health services and the way in which the funding is to be provided;
 - (c) the standards of patient care and health service delivery to be met by NT Regional Health Services;
 - (d) the performance standards, targets and measures for the delivery of health services and health support services by NT Regional Health Services;
 - (e) the performance data and other matters to be reported to the System Manager by NT Regional Health Services and the frequency of that reporting;
 - (f) a performance management process for NT Regional Health Services.
- (4) A Service Plan may include any other matter or provision the System Manager considers appropriate, including a provision that:
- (a) limits a function or power of NT Regional Health Services; or
 - (b) specifies how a function or power of NT Regional Health Services is to be performed or exercised.
- (5) A Service Plan cannot and must not purport to:
- (a) extend the powers of NT Regional Health Services, the System Manager or the Executive; or
 - (b) require NT Regional Health Services, the System Manager or the Executive to act in a manner inconsistent with this Act.

19 Variation of Service Plan

A Service Plan may be varied in writing by the System Manager after consultation with the Executive.

20 Service Plan to be publicly available

Within 14 days of making or varying a Service Plan, the System Manager must make the Service Plan or variation publicly available.

Division 5 Advisory panels

21 Establishment

- (1) The System Manager may establish any advisory panel that the System Manager considers appropriate.
- (2) An advisory panel is to consist of:
 - (a) the members appointed by the System Manager that the System Manager considers appropriate; and
 - (b) a chair appointed by the System Manager.
- (3) The function of an advisory panel is to give the System Manager or the Executive the advice the System Manager requests.
- (4) An advisory panel has the powers necessary to perform its function.

22 Membership

- (1) A member of an advisory panel:
 - (a) is appointed for the period the System Manager specifies; and
 - (b) may be removed from office by the System Manager by written notice given to the member; and
 - (c) may resign from the panel by written notice given to the System Manager.
- (2) Subject to subsection (1), the terms and conditions of office of a member of an advisory panel are as determined by the System Manager.

23 Meetings

- (1) A meeting of an advisory panel may be convened by the System Manager or by the chair of the advisory panel.
- (2) Subject to this Division, the procedure for the calling of, and for the conduct of business at, a meeting of an advisory panel is as determined by the advisory panel.

Part 4 Financial matters**24 Bank account**

- (1) Subject to section 27 of the *Financial Management Act 1995*, NT Regional Health Services must maintain a bank account with an ADI in the name of NT Regional Health Services.
- (2) All funding received under the Health Funding Act must be deposited into the bank account maintained under subsection (1).

25 Acquittal of funding

- (1) NT Regional Health Services must give the System Manager an annual acquittal of all funding received under the Health Funding Act.
- (2) The acquittal of funding must be given by 31 July of each year in relation to funding received during the previous financial year.
- (3) As soon as practicable after receiving the acquittal of funding, the System Manager must give a copy of it to the Auditor-General.

26 Audit of acquittal of funding

- (1) The Auditor-General must conduct an audit of the acquittal of funding after receiving it under section 25(3).
- (2) The Auditor-General must give a report on the audit of the acquittal of funding to the System Manager by 30 September.

Part 5 Other matters**27 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in:
 - (a) the exercise of a power or performance of a function under this Act; or
 - (b) giving information or a document to an advisory panel.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

28 Offence to disclose certain information

(1) A person commits an offence if:

- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
- (b) the information is confidential and the person is reckless in relation to that circumstance; and
- (c) the person intentionally engages in conduct; and
- (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
- (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for subsection (3)

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

(4) For, but without limiting, subsection (1)(b), information that identifies, or is likely to identify, a person who gives information or a document to an advisory panel, is confidential.

29 Annual report

- (1) The System Manager must give the Minister an annual report by 31 October of each year in relation to the financial year that ended on 30 June preceding that date.
- (2) The annual report must include the following:
 - (a) details of the operations and performance of NT Regional Health Services;
 - (b) the acquittal of funding and the report on the audit conducted by Auditor-General in relation to the acquittal of funding;
 - (c) any other information the System Manager considers appropriate or necessary of which to inform the Legislative Assembly in relation to the performance of NT Regional Health Services during the financial year.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

30 System Manager to report quarterly to Minister

The System Manager must report quarterly to the Minister about the performance of NT Regional Health Services against the requirements of the Service Plan.

31 Regulations

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

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

- (2) A regulation may:
 - (a) prescribe fees payable under this Act; and
 - (b) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

Part 6 Repeal and transitional provisions

Division 1 Definitions

32 Definitions

In this Part:

commencement means the commencement of section 33.

former Health Service means a Health Service established under section 17(1) of the repealed Act.

repealed Act means the *Health Services Act 2014* as in force immediately before the commencement.

Division 2 Repeal

33 Repeal

The *Health Services Act 2014* (Act No. 18 of 2014) is repealed.

Division 3 Transitional matters

34 Abolition of former Health Services

Each former Health Service is abolished.

35 Transfer of property, rights, liabilities and obligations and substitution of parties

- (1) On and from the commencement, all property, rights, liabilities and obligations of a former Health Service are taken to be the property, rights, liabilities and obligations of the Agency.
- (2) If a former Health Service is a party to any contract, agreement or arrangement immediately before the commencement, the Agency is substituted for the former Health Service as a party to that contract, agreement or arrangement.

36 Superseded references

Without limiting section 35, on and from the commencement, in any instrument, contract or document of any other kind:

- (a) a reference to the repealed Act or a provision of the repealed Act is taken to be a reference to this Act or the most equivalent provision of this Act (as the case requires); and

- (b) a reference to a former Health Service is taken to be a reference to the Agency.

37 Bank account

- (1) The Operating Account held in the name of the former Health Service known as the Top End Health Service immediately before the commencement is taken on and from the commencement to be the bank account of NT Regional Health Services under section 24.

- (2) In this section:

Operating Account, see section 3(1) of the *Financial Management Act 1995*.

38 Money held on trust

- (1) Within 14 days after the commencement, the System Manager must arrange to transfer any money a former Health Service held on trust immediately before the commencement to the Accountable Officer's Trust Account of the Agency.

- (2) In this section:

Accountable Officer's Trust Account, see section 7 of the *Financial Management Act 1995*.

39 Financial reporting and audit requirements

Despite the repeal of the repealed Act, any requirement of section 10 of the *Financial Management Act 1995* that applied to a former Health Service in relation to the financial year ending on 30 June 2021 continues to apply until that requirement has been completed in respect of that financial year.

40 Service Plan for 2021-2022 financial year

Despite section 18(2), the Service Plan for the financial year beginning on 1 July 2021 must be prepared by 1 September 2021.

41 Validity of things done under this Division

Nothing effected by, or done or suffered under, this Division (including any regulations made under section 42):

- (a) places any person in breach of contract or confidence or otherwise makes any person guilty of a civil wrong; or
- (b) places any person in breach of or constitutes a default under:
- (i) any law of the Territory; or

- (ii) any provision in any agreement, arrangement or understanding including, but not limited to, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
- (c) fulfils any condition that allows a person to exercise a right or remedy in respect of, or to terminate, any agreement or obligation; or
- (d) gives rise to any remedy for a party to a contract or an instrument or causes or permits the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
- (e) causes any contract or instrument to be void or otherwise unenforceable; or
- (f) frustrates any contract; or
- (g) releases any surety or other obligee wholly or in part from any obligation.

42 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
 - (a) because of the enactment of this Act; or
 - (b) to otherwise allow or facilitate the transition from the operation of the repealed Act to this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement.
- (3) Despite subsection (2), to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, is repealed 1 year after the commencement.

Part 7 Consequential amendments and repeal

Division 1 Correctional Services Act 2014

43 Act amended

This Division amends the *Correctional Services Act 2014*.

44 Section 88 amended (Health care generally to be in Public Health System)

- (1) Section 88, heading

omit

in Public Health System

insert

provided by NT Regional Health Services

- (2) Section 88(1), (2) and (3)

omit

the Public Health System

insert

NT Regional Health Services

- (3) Section 88(2)

omit

the System

insert

NT Regional Health Services

- (4) Section 88(4), definition **Public Health System**

omit, insert

NT Regional Health Services, see section 10 of the *Health Service Act 2021*.

Division 2 Medical Services Act 1982

45 Act amended

This Division amends the *Medical Services Act 1982*.

46 Section 8 amended (Delegation)

Section 8, after "another Act"

insert

(except the *Health Service Act 2021*)

Division 3 Motor Accidents (Compensation) Commission Act 2014

47 Act amended

This Division amends the *Motor Accidents (Compensation) Commission Act 2014*.

48 Section 18 amended (Reimbursement of cost of public health services)

(1) Section 18(3), definition **Public Health System**

omit

(2) Section 18(3)

insert

NT Regional Health Services, see section 10 of the *Health Service Act 2021*.

(3) Section 18(3), definition **public health services**

omit (all references)

the Public Health System

insert

NT Regional Health Services

**Division 4 National Health Funding Pool and Administration
(National Uniform Legislation) Act 2012**

49 Act amended

This Division amends the *National Health Funding Pool and Administration (National Uniform Legislation) Act 2012*.

50 Section 3 amended (Interpretation)

Section 3(1), definition *local hospital network*, at the end

insert

Note for definition local hospital network

See section 10(2) of the Health Service Act 2021.

Division 5 Repeal

51 Repeal of this Part

This Part is repealed on the day after it commences.