

Serial 155
Private Hospitals and Nursing Homes Amendment Bill 2011
Mr Vatskalis

A Bill for an Act to amend the *Private Hospitals and Nursing Homes Act*, and
for related purposes

NORTHERN TERRITORY OF AUSTRALIA

PRIVATE HOSPITALS AND NURSING HOMES AMENDMENT ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to amend the *Private Hospitals and Nursing Homes Act*, and for related purposes

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Private Hospitals and Nursing Homes Amendment Act 2011*.

Part 2 Amendment of Private Hospitals and Nursing Homes Act

2 Act amended

This Part amends the *Private Hospitals and Nursing Homes Act*.

3 Long title amended

Long title

omit

and nursing homes

4 Section 1 amended

Section 1

omit

and Nursing Homes

5 Section 3 replaced

Section 3

repeal, insert

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.

6 Section 4 amended

- (1) Section 4

omit

, unless the contrary intention appears

- (2) Section 4, definitions ***manager, matron, nursing home, nursing institution, patient, private hospital*** and ***register***

omit

- (3) Section 4

insert (in alphabetical order)

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

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.

7 Sections 4A and 4B inserted

After section 4, in Part 1

insert

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.

8 Section 6 replaced

Section 6

repeal, insert

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.

9 Section 7 amended

- (1) Section 7(1)

omit, insert

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

- (2) Section 7(2)

omit

shall be deemed

insert

are taken

10 Section 10 amended

(1) Section 10(1)

omit, insert

(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) Section 10(2)

omit

Where

insert

If

11 Section 13 replaced

Section 13

*repeal, insert***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.

12 Sections 19 to 21 replaced

Sections 19, 20 and 21

*repeal, insert***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;
 - (c) 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.

13 Sections 23 and 24 replaced

Sections 23 and 24

repeal, insert

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.

14 Sections 25 and 26 replaced

Sections 25 and 26

repeal, insert

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.

15 Section 30 replaced

Section 30

repeal, insert

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.

16 Sections 33 to 36 replaced

Sections 33 to 36

repeal, insert

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.

17 Act further amended

Schedule 1 has effect.

Part 3 Amendment of other Acts

18 *Medical Services Act* amended

(1) This section amends the *Medical Services Act*.

(2) Section 4
repeal, insert

4 Application of Act

- (1) Subject to subsection (2), 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.
- (2) Section 11 applies in relation to a private hospital.
- (3) In this section:
private hospital, see section 4A of the *Private Hospitals Act*.

19 Other Acts amended

Schedule 2 has effect.

Part 4 Repeal of Act

20 Repeal

The *Private Hospitals and Nursing Homes Amendment Act 2002* (Act No. 58 of 2002) is repealed.

Schedule 1 Private Hospitals and Nursing Homes Act further amended

section 17

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part I, heading	whole heading	Part 1 Preliminary matters
Part II, heading	whole heading	Part 2 Licensing of private hospitals
section 5	or a nursing home	
section 8	section 6(1)(a) shall not be	section 6(1) is not
section 9(1)	or a nursing home shall	must
section 9(2)	or nursing home shall	must
section 9(3)	shall	must
section 9(3)(a) and (b)	or nursing home;	; and
section 9(3)(c)	matron of the private hospital or nursing home;	director of nursing of the private hospital; and
section 9(3)(d)	or nursing home	
section 9(3)(e)	or nursing home,	; and
section 9(3)	all words after paragraph (e)	(f) any other information the Chief Health Officer requires.
section 11	shall <i>(all references)</i>	must
section 12, heading	, &c.	or conditions

section 12	Where he shall	If the Chief Health Officer must
	the case may be	appropriate
section 15	shall	must
section 16(2)	Where	If
section 16(3)	Where shall be deemed	If are taken
section 17, heading	, &c.	or conditions
section 17	Where he shall	If the Chief Health Officer must
	, or the imposition of the conditions, as the case may be	or imposition of the conditions
Part III, heading	whole heading	Part 3 Management of private hospitals
section 18, heading	nursing institution	private hospital
section 18(1)	shall be deemed nursing institution	is taken private hospital
section 18(2)	19(2), upon shall	19(5), on must
section 18(3)	nursing institution	private hospital
section 18(4)	he had given him	the licensee gave the manager
section 22(1)	Where a nursing institution shall	If a private hospital must
section 22(2)	nursing institution he	private hospital the licensee

Part IV, heading	whole heading	Part 4 Control of private hospitals
section 27(2)	authorize him his	authorise the Chief Health Officer the person's
section 27(3)	all words from "a written" to "to him:"	the report and on the other information available to the Chief Health Officer:
section 27(3)(a), at the end		or
section 27(3)(b)	authorize	authorise
Part IV, Division 3 and section 28, heading	nursing institution	private hospital
section 28(1)	Where section 26(1)(a) he shall, unless he	If section 26(1), the Chief Health Officer must, unless the Chief Health Officer
	nursing institution <i>(all references)</i>	private hospital
section 28(2)	his shall be	are
Part V, heading	Part V	Part 5
section 29(2)	shall	must
section 29(2)(a), at the end		and
section 29(3)	shall	must
section 29(4)	the purposes of	
section 29(5)	shall	must
section 29(5)(a) and (b), at the end		or

section 29(5)(c)	his	it's
section 29(6)	Where where	If if
Part VI, heading	whole heading	Part 6 Miscellaneous matters
section 31(1)(a) and (b), at the end		or
section 31(2)	nursing institution	private hospital
section 32	Where he may, upon	If the Chief Health Officer may, on

Schedule 2 Other Acts amended

section 19

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Care and Protection of Children Act</i>		
section 13, definition <i>hospital</i> , paragraph (b)	whole paragraph	(b) a private hospital as defined in section 4A of the <i>Private Hospitals Act</i> .
<i>Poisons and Dangerous Drugs Act</i>		
section 6(1), definition <i>hospital</i>	whole definition	<i>hospital</i> means: (a) a hospital as defined in section 5 of the <i>Medical Services Act</i> , or (b) a private hospital as defined in section 4A of the <i>Private Hospitals Act</i> , or (c) a residential facility for which an approval is in force under the <i>Aged Care Act 1997</i> (Cth) for an approved provider to provide residential care to persons in the facility.
<i>Public Interest Disclosure Act</i>		
section 6(3), definition <i>nursing home</i>	whole definition	<i>nursing home</i> , see section 5 of the <i>Medical Services Act</i> .

section 6(3), definition *and Nursing Homes*
public hospital

Therapeutic Goods and Cosmetics Act

section 4(1) *(in alphabetical order)*
private hospital, see section 4A of the *Private Hospitals Act*.

section 4(1), definition whole definition
public institution

public institution
means:

- (a) a hospital as defined in section 5 of the *Medical Services Act*, or
- (b) a private hospital declared under section 7 to be a public institution.

section 7 nursing institution, within the meaning of the *Private Hospitals and Nursing Homes Act*,

private hospital

Tobacco Control Act

section 5, definition whole paragraph
shared accommodation, paragraph (a)

- (a) 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; or