

# NORTHERN TERRITORY OF AUSTRALIA

## MEDICAL SERVICES ACT

As in force at 20 June 2018

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 June 2018

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## MEDICAL SERVICES ACT

**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*.

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- (1) The Acts listed in Schedule 1 are repealed.
- (2) All instruments of a legislative or administrative character made under any of the enactments repealed by this Act and in force immediately prior to the commencement of this Act shall, so far as is not inconsistent with this Act, continue in force as if made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

## 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 the subject of a declaration under section 6(2)(a).

**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) the spouse or de facto partner of the person if he or she 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.

**health practitioner** means a person engaged in the provision of a medical service referred to in paragraphs (c), (d), (e), (k) or (m) of the definition of medical services.

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

**medical services** includes:

- (a) attendances by salaried dentists or salaried medical practitioners;
- (b) all forms of medical and dental diagnosis, advice, treatment and operation;

- (c) diagnosis, investigation and treatment by use of technological means including radiation, electro-magnetic and other electrical techniques, radioactive substances, ultra sound, audiometry, clinical and other laboratory techniques;
- (d) pathology services;
- (e) speech therapy, audiology, occupational therapy, physiotherapy, psychology, chiropody, optometry, orthoptist and other paramedical services including social worker services;
- (f) nursing services;
- (g) accommodation, maintenance and treatment in a hospital or nursing home;
- (h) treatment as an out-patient of a hospital either in the hospital or at an outlying clinic;
- (j) treatment as a patient at a community health centre;
- (k) chiropractic services;
- (m) natural therapy services;
- (n) the provision and repair of surgical footwear, prostheses, surgical aids and appliances, including home dialysis equipment and aids to daily living for the disabled;
- (p) the provision of drugs and dressings;
- (q) the collection of human blood and blood products;
- (r) the burial or cremation of stillborn infants and the disposal of human tissue; and
- (s) the reservation of medical practitioners' or dentists' time for appointments.

**nursing home** means premises which have been:

- (a) approved as a nursing home by the Permanent Head of the Commonwealth Department of Health under section 40AA of the *National Health Act 1953* of the Commonwealth; and
- (b) 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 and midwifery profession as a nurse (other than as a student); and
- (b) is not employed full-time by the Territory.

**salaried dentist** or **salaried medical practitioner** means, as the case may be:

- (a) a dentist or medical practitioner who is employed on a full-time basis by the Territory; or
- (b) a dentist or medical practitioner who is retained by the Territory to provide a service, but only during the period the dentist or medical practitioner is so employed.

**vehicle** means a vehicle within the meaning of the *Motor Vehicles Act*.

**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 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, as the Minister thinks fit but subject to subsection (3), arrange for the provision of medical services.
- (2) The Minister may, by notice in the *Gazette*:
  - (a) declare premises to be:
    - (i) a hospital;
    - (ii) a nursing home;
    - (iii) an urban health centre; or
    - (iv) such other centre as the Minister determines and specifies in the notice; or
  - (b) determine the charges to be made for medical services provided under this Act, which charges may vary according to whether or not the services:
    - (i) are provided at declared premises;
    - (ii) are received by a person who:
      - (A) is an eligible pensioner within the meaning of section 3(1) of the *Health Insurance Act 1973* of the Commonwealth;
      - (B) has been declared under section 5B, 5D or 5E of that Act to be a disadvantaged person;
      - (C) is insured in respect of such charges; or
      - (D) is an alien; or
    - (iii) have been provided by, or at the request of, a private dentist or private medical practitioner.
- (3) In administering this Act, and in the provision of medical services generally by the Territory by or in hospitals in the Territory, the Minister shall ensure, as far as possible, that the Medicare principles and commitments specified in Clause 3.1 of an agreement between the Commonwealth and the Territory entitled an "Agreement between the Commonwealth of Australia and the Northern Territory in relation to the Provision of Public Hospital Services and Other Health Services from 1 July 1993 to

30 June 1998 under Section 24 of the *Health Insurance Act 1973* (Cth)" dated 8 February 1993 (Clauses 1 to 3 of which are set out in Schedule 2 to this Act), or that agreement as from time to time amended, are observed and complied with.

## **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 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.
- (5) If the transport of a person or of a person and an attendant is provided or authorised under this section, and the medical service for which the transport is provided or authorised is a service for which the consent of the person or of a person authorised by law to give such a consent has been given, or an operation that may be performed under the *Emergency Medical Operations Act*, the transport so authorised is taken to be part of the medical service.

## **10 Costs payable in certain circumstances**

If the transport of a person or of a person and an attendant is carried out as authorised under section 9, that person or, if that person is a dependant, the person upon whom that person is dependent, is liable:

- (a) if the person is entitled under a contract of insurance or another law in force in the Territory to recover an amount not less than the cost of the transport – to reimburse to the Territory an amount equal to the cost of the transport; or
- (b) if the person is entitled so to recover an amount that is less than that cost – to pay to the Territory the amount so recovered.

## **Part III Recovery of charges**

### **12 Charges, &c., recoverable as debt except in certain cases**

- (1) A charge payable or an expense recoverable under this Act for services rendered 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 charges**

- (1) Subject to this section, a charge payable under this Act for a medical service is payable by the person who receives the medical service.
- (2) Subject to subsection (3), if a person who receives medical services is a dependant, the person upon whom the person is dependent is liable for payment of the charges in respect of those medical services.
- (3) If a person who receives medical services is an infant who is not a dependant, the infant and the infant's parent or guardian, as the case may be, are jointly and severally liable for payment of the charges.
- (4) Subject to subsection (5), where a charge or part of a charge payable under this Act remains unpaid after the expiration of 2 months after the date upon which it became due and payable, there shall be added to the amount of the charge in arrears:
  - (a) on the day following the expiration of the period of 2 months from the date on which the charge became due and payable – 5% of the charge or part of the 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 charge in arrears).
- (5) The Regulations may prescribe a variation in the rate of the additional amounts referred to in subsection (4)(a) and (b).

### **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.

- (3) Where the Territory incurs expense in connection with the disposal of a foetus, the Territory may recover the amount of that expense as though that disposal were a medical service received by the woman from whom the foetus was taken.

**15 Remission or postponement of charges**

- (1) The Minister may remit or postpone the payment of the whole or part of a 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 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

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- (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*, 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 approve a health practitioner to attend upon a patient in declared premises, and subsections (8) and (10) apply to a person so approved as if the practitioner were a visiting medical practitioner.
- (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 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;

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- (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.



**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*

## Schedule 2 Clauses 1 to 3 of Agreement

section 6(3)

### 1. Interpretation

1.1 In this Agreement, unless the contrary intention appears:

**accident and emergency patient** means an eligible person who receives, without a formal prior arrangement, hospital services from a recognised hospital otherwise than as an in-patient.

**admission** means the process by which a hospital records the commencement of treatment and/or care and accommodation of a patient. The minimum criteria which must be met before a patient can be admitted is that the patient receives one of the following services:

- (a) day only surgical and diagnostic services as specified in Bands 1A, 1B, 2, 3 and 4 of the Health Insurance Basic Table as defined in subsection 4(1) of the *National Health Act 1953* (Cth); or
- (b) type C professional attention procedures as specified in the Health Insurance Basic Table as defined in subsection 4(1) of the National Health Act with accompanying certification from a medical practitioner that an admission was necessary on the grounds of the medical condition of the patient or other special circumstances that relate to the patient (for example, remote location or no-one at home to care for the patient); or
- (c) the patient is new-born and:
  - (i) is the second or subsequent live born infant of a multiple birth, and the mother is currently an overnight stay patient; or
  - (ii) requires treatment which can only be provided in an intensive care facility in a hospital, being a facility approved by the Commonwealth Minister for the purpose of the provision of special care; or
  - (iii) remains in the hospital without its mother; or
- (d) the patient is expected to require hospitalisation for a minimum of one night.

**aftercare** means all post-operative services provided by a recognised hospital following a specific episode of treatment in that hospital.

**Agreement** means this document including Schedules A to J inclusive.

**AIDS** means the condition defined in the "Centre of Disease Control Revised Surveillance Case Definition 1987" as published in the "Morbidity and Mortality Weekly Report" volume 36, No. 15 of 14 August 1987.

**AIDS patient** means a person diagnosed as having AIDS and resident in a respective State on 1 November of each grant year.

**base hospital funding grant formula** means the formula set out in Schedule C.

**bed day** means a day or part of a day that a patient is admitted to receive hospital treatment, and where that patient remains in receipt of hospital treatment, the day upon which the patient was admitted to hospital and the day upon which the patient was discharged from hospital will together, for the purpose of this Agreement, be deemed to be one bed day.

**Commitments** has the same meaning as it has in subsection 23E(1) of the Act.

**Commonwealth Department** means the Commonwealth Department that administers matters dealt with in Part 3 of the Act and this Agreement.

**Commonwealth Minister** has the same meaning as the term **Commonwealth Minister for health** has in subsection 27(4) of the Act.

**compensable patient** means an eligible person who is an in-patient, out-patient or accident and emergency patient, of a hospital and who is entitled under a law that is or was in force in a State or States other than Veterans' Affairs Legislation to the payment of, or who has been paid compensation for, damages or other benefits (including a payment in settlement of a claim for compensation, damages or other benefits) in respect of the injury, illness or disease for which he or she is receiving hospital services, provided, however, that the order under subsection 6(2) of the Act dated 11 January 1984 remains in force.

**day patient** otherwise known as a **same day patient** means a patient who is admitted and discharged on the same day including patients who die, transfer or leave of their own accord on their first day in hospital.

**eligible person** has the same meaning as it has in subsection 3(1) of the Act.

**grant year** means any of the financial years commencing on 1 July for which this Agreement is or is deemed to have been in force.

**hospital** has the same meaning as it has in subsection 3(1) of the Act and includes a day hospital facility approved under section 4 of the *National Health Act 1953* (Cth).

**hospital service** has the same meaning as it has in subsection 23E(1) of the Act.

**ineligible person** means any person who is not an eligible person.

**in-patient** means a **patient** as defined in subsection 3(1) of the Act who is admitted to a hospital for the purposes of receiving hospital treatment.

**Medicare Principles** has the same meaning as it has in subsection 23E(1) of the Act.

**nursing home type patient** has the same meaning as it has in subsection 3(1) of the Act (the 35 day rule), provided, however, that the order made pursuant to subsection 6(2) of the Act dated 11 January 1984 remains in force.

**official data** means such data provided or produced under this Agreement by the Commonwealth or the State for the purposes of determining financial assistance in accordance with clause 6.

**other health services** otherwise known as **other nominated health services** means services for the treatment of AIDS patients, day surgery services, post-acute care services, palliative care services, and other services that may be agreed upon from time to time between the Commonwealth Minister and the State Minister.

**out-patient** means a person who receives treatment but is not admitted under an arrangement with a recognised hospital.

**private nursing home type patient** means a nursing home type patient in a recognised hospital, who has elected to be treated by a medical practitioner of his or her own choice and to be responsible for paying charges of the type referred to in subclause 10.2 and the professional charges raised by any medical practitioner treating him

or her.

**private patient** means a person who elects to be treated in a recognised hospital as an in-patient or as a day patient by a medical practitioner of his or her own choice and to be responsible for paying the charges of the type referred to in subclause 10.2, the professional charges raised by any medical or dental practitioner treating him or her and the charges for any other services agreed between the Commonwealth Minister and the State Minister.

**public hospital service** has the same meaning as it has in subsection 23E(1) of the Act.

**public patient** means an eligible person who on admission to a recognised hospital or as soon as possible thereafter, elects to be treated as a public patient and in respect of whom the recognised hospital provides comprehensive care including all necessary medical, nursing and diagnostic services and, if they are available at the recognised hospital, dental and paramedical services, by means of its own staff or by other agreed arrangements provided these services are provided without charge to the eligible person.

**recognised hospital** means a hospital listed in Schedule A as amended from time to time by written agreement between the Commonwealth Minister and the State Minister.

**Secretary** means the Secretary or Chief Executive Officer (whatever the title of his or her office) of the Commonwealth Department and includes any person from time to time who may be exercising the functions of the Secretary.

**State Minister** has the same meaning as the term **State Minister for health** has in subsection 27(4) of the Act.

**States** means every State of the Commonwealth of Australia and includes the Northern Territory and the Australian Capital Territory.

substantial reduction in the amount of non-base hospital funding **payable** means a reduction of 5 per cent in relation to the provision of any financial assistance by the Commonwealth under paragraphs 5.1(b) to (e) inclusive but excludes reductions that occur through the operation of a formula or provision specified in a schedule to this Agreement or through the operation of subclause 5.7.

**the Act** means the *Health Insurance Act 1973* (Cth) on and after 1 July 1993.

***the State's Department of Health*** means the State Department that administers matters dealt with in Part 3 of the Act and this Agreement.

***Veterans' Affairs Legislation*** means the legislation administered from time to time by the Minister for veterans' Affairs or the Repatriation Commission or successors thereto, however described.

1.2 In this Agreement, unless the contrary intention appears:

- (a) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of this Agreement;
- (c) a reference to a schedule is a reference to a schedule of this Agreement;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) words in the singular number include the plural and vice versa;
- (f) words importing a gender include all other genders;
- (g) all references to amounts of money are references to those amounts in Australian currency; and
- (h) a reference to a day, a week or a month means a calendar day, a calendar week or a calendar month respectively provided that where the last day of any period prescribed for the doing of any action falls on a day that is not a working day, the action may be done on the first working day following that day.

## 2. Term of Agreement

2.1 This Agreement will commence on 1 July 1993 and will remain in force, unless terminated at an earlier date, until 30 June 1998.

## 3. Medicare Principles & Commitments

*Explanatory Note:*

*The Medicare Principles focus on the provision of public hospital services to eligible persons, but operate in an environment where eligible persons have the right to choose private health care in public and private hospitals supported by private health insurance.*

3.1 It is a condition of a grant of financial assistance under this Agreement that the State, in providing public hospital services, agrees to give effect to the Medicare Principles and to undertake the Commitments which are as follows:

### **Choices of services**

**Principle 1: Eligible persons must be given the choice to receive public hospital services free of charge as public patients.**

Explanatory Note 1: Hospital services include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards.

Explanatory Note 2: At the time of admission to a hospital, or as soon as practicable after that, an eligible person will be required to elect or confirm whether he or she wishes to be treated as a public or private patient.

Explanatory Note 3: Public hospital services do not include those services for which charges may be made as set out in subclause 10.4.

### **Universality of services**

**Principle 2: Access to public hospital services is to be on the basis of clinical need.**

Explanatory Note 1: None of the following factors are to be a determinant of an eligible person's priority for receiving hospital services:

whether or not an eligible person has health insurance;

an eligible person's financial status or place of residence;

whether or not an eligible person intends to elect or elects to be treated as a public or private patient.

Explanatory Note 2: This principle applies equally to waiting times for elective surgery.

Explanatory Note 3: The phrase ***waiting times*** means waiting times for access to elective surgery from a hospital waiting or booking list.

### **Equity in service provision**

**Principle 3:** **To the maximum practicable extent, a State will ensure the provision of public hospital services equitably to all eligible persons, regardless of their geographical location.**

Explanatory Note 1: This principle does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need.

Explanatory Note 2: In rural and remote areas, a State should ensure provision of reasonable public access to a basic range of hospital services which are in accord with clinical practices.

Explanatory Note 3: To the extent practicable, hospital services should be available at all recognised hospitals, however, where this is not possible, the State accepts responsibility for referring or transferring the eligible person to where the necessary hospital services are available.

### **Information about service provision**

**Commitment 1:** **The Commonwealth and a State must make available information on the public hospital services eligible persons can expect to receive as public patients.**

Explanatory Note 1: The joint Commonwealth/State development of a Public Patients' Hospital Charter will be a vehicle for the public dissemination of this information.

Explanatory Note 2: The Public Patients' Hospital Charter will set out the public hospital services available to public patients.

### **Efficiency and quality in service provision**

**Commitment 2:** **The Commonwealth and the States are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery.**



Explanatory Note: This includes a commitment to quality improvement, outcome measurement, management efficiency and effort to integrate the delivery of hospital and other health and community services.

- 3.2 The State agrees to adopt the Medicare Principles and Commitments by enacting legislation establishing the Medicare Principles and Commitments as guidelines that will govern the delivery of public hospital services to eligible persons in the State by 1 January 1994 or, where that is not possible, to make reasonable efforts to adopt the Medicare Principles and Commitments by enacting legislation by that date. In this context, reasonable efforts to adopt the Medicare Principles and Commitments means the introduction of a Bill the aim of which is to establish the Medicare Principles and Commitments as guidelines that will govern the delivery of public hospital services to eligible persons in the State, and the pursuit of its passage.

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**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)

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**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)

### 3 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 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
s 5A	ins No. 3, 2017, s 5
s 6	amd No. 80, 1993, s 2; No. 4, 2017, s 34
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

## ENDNOTES

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s 9	amd No. 66, 1988, s 6; No. 28, 1993, s 3; No. 4, 2017, s 34
s 10	amd No. 4, 2017, s 34
s 11	rep No. 66, 1988, s 6 ins No. 33, 2006, s 5 rep No. 7, 2017, s 22
ss 12 – 13	amd No. 4, 2017, s 34
s 15	amd No. 4, 2017, s 34
ptIIIA	ins No. 3, 2017, s 7
ss 15A – 15E	ins No. 3, 2017, s 7
ss 16 – 17	amd No. 4, 2017, s 34
s 18	amd No. 28, 2011, s 4
s 19	ins No. 3, 2017, s 8 amd No. 10, 2018, s 6
sch 2	ins No. 80, 1993, s 3