

Dear [REDACTED]

DECISION ON YOUR ACCESS APPLICATION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (FOI Act), received by ACT Health Directorate (ACTHD) received by the ACT Health Directorate (ACTHD) on **Friday 23 June 2023**.

This application requested access to:

- 1) *Any records or documents produced or held by CHS between 20th December 2022 and 23rd June 2023 in relation to both Calvary Public Hospital Bruce and the Government Procurement Act 2001 (ACT), including but not limited to:*
 - a. *Correspondence between, or documents produced or held by officers of CHS in relation to effects of the Government Procurement Act 2001 (ACT) on the proposed acquisition of Calvary Public Hospital Bruce;*
 - b. *Correspondence between officers of CHS and Calvary Public Hospital Bruce or the Little Company of Mary Health Care Limited in relation to effects of the Government Procurement Act 2001 (ACT) on the proposed acquisition of Calvary Public Hospital Bruce; and*
 - c. *Correspondence including email, SMS and electronic messenger correspondence involving one or more of Rachel Stephen-Smith, David Peffer, Elizabeth Loper and Cathie O'Neill in relation to effects of the Government Procurement Act 2001 (ACT) on the proposed acquisition of Calvary Public Hospital Bruce.*

- 2) *Any records or documents produced or held by CHS between 20th December 2022 and 23rd June 2023 in relation to both Calvary Public Hospital Bruce and the Secure Local Jobs Code 2020 including but not limited to:*
 - a. *Correspondence between, or documents produced or held by officers of CHS in relation to effects of the Secure Local Jobs Code 2020 on the proposed acquisition of Calvary Public Hospital Bruce;*
 - b. *Correspondence between officers of CHS and Calvary Public Hospital Bruce or the Little Company of Mary Health Care Limited in relation to effects of the Secure Local Jobs Code 2020 on the proposed acquisition of Calvary Public Hospital Bruce; and*
 - c. *Correspondence including email, SMS and electronic messenger correspondence involving one or more of Rachel Stephen-Smith, David Peffer, Elizabeth Loper and Cathie O'Neill in relation to effects of the Secure Local Jobs Code 2020 on the proposed acquisition of Calvary Public Hospital Bruce.*

I am an Information Officer appointed by the Director-General of ACT Health Directorate (ACTHD) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. ACTHD was required to provide a decision on your access application by **Friday 04 August 2023**.

I have identified **15 documents** holding the information within scope of your access application. These are outlined in the schedule of documents included at Attachment A to this decision letter.

Decisions on access

I have decided to:

- grant full access to one documents; and
- grant partial access to 14 documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment B to this letter.

In reaching my access decision, I have taken the following into account:

- The FOI Act;
- The contents of the documents that fall within the scope of your request;
- The views of relevant third parties; and
- The *Human Rights Act 2004*.

Full Access

I have decided to grant full access to the information in scope of your application within one document at reference 10.

Partial Access

I have decided to grant partial access to the information in scope of your application within 14 documents.

Documents at references 1, 3, 6-7 and 11-12 are partially comprised of information classified as information subject to legal professional privilege information, and under Schedule 1.2, it is taken to be contrary to the public interest to release. Schedule 1.2 information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. These documents are also partially comprised of information classified as Cabinet information, and under Schedule 1.6 (1) Cabinet Information, it is taken to be contrary to the public interest to release. Schedule 1.6 (1)(d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

Document at reference 2 is partially comprised of personal information such as email addresses and phone numbers of non-government employees and mobile numbers of ACT-Government employees in accordance with Schedule 2, 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*. This document contains partial information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

Documents at references 4 and 8-9 are partially comprised of information classified as legal professional privilege information under Schedules 1.2.

Documents at references 13 and 15 are partially comprised of information classified as legal professional privilege information under Schedules 1.2 and personal information under Schedule 2, 2.2 (a)(ii) privacy. These documents contain partial information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

Document at reference 14 is partially comprised of information classified as legal professional privilege information and cabinet information under Schedules 1.2 and 1.6. This document also contains information that would be contrary to the public interest in accordance with Schedule 2, 2.2 (a)(ii) privacy. This document contains partial information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

Public Interest Factors Favouring Disclosure

The following factors were considered relevant in favour of the disclosure of the documents:

- Schedule 2, 2.1 (a)(i) promote open discussion of public affairs and enhance the government's accountability;
- Schedule 2, 2.1 (a)(ii) contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2, 2.1 (a)(iv) ensure effective oversight of expenditure of public funds; and
- Schedule 2, 2.1 (a)(viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

Public Interest Factors Favouring Non-Disclosure

The following factors were considered relevant in favour of the non-disclosure of the documents:

- Schedule 2, 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*.

On balance, the factors favouring disclosure did not outweigh the factors favouring non-disclosure as the release of the redacted information would or could reasonably be expected to prejudice the privacy of individuals. Therefore, I determined the information identified is contrary to the public interest and I have decided not to disclose this information.

Charges

Processing charges are not applicable to this request.

Disclosure Log

Under section 28 of the FOI Act, ACTHD maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you will be published in the disclosure log not less than three days but not more than 10 days after the date of this decision. Your personal contact details will not be published.

<https://www.health.act.gov.au/about-our-health-system/freedom-information/disclosure-log>.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in ACT Health's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Via email: ACTFOI@ombudsman.gov.au

Website: ombudsman.act.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Further assistance

Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on (02) 5124 9831 or email HealthFOI@act.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liz Lopa', written in a cursive style.

Liz Lopa
Deputy Director-General
Infrastructure and Engagement
ACT Health Directorate


03 August 2023

FREEDOM OF INFORMATION SCHEDULE OF DOCUMENTS

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided to you will be released to the public through the ACT Government's Open Access Scheme. The Open Access release status column of the table below indicates what documents are intended for release online through open access.

Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the contact officer immediately.

Information about what is published on open access is available online at: <http://www.health.act.gov.au/public-information/consumers/freedom-information>

| APPLICANT NAME | WHAT ARE THE PARAMETERS OF THE REQUEST | FILE NUMBER |
|---|---|--------------------------------|
|  | <p>1) Any records or documents produced or held by CHS between 20th December 2022 and 23rd June 2023 in relation to both Calvary Public Hospital Bruce and the Government Procurement Act 2001 (ACT), including but not limited to:</p> <ul style="list-style-type: none"> a. Correspondence between, or documents produced or held by officers of CHS in relation to effects of the Government Procurement Act 2001 (ACT) on the proposed acquisition of Calvary Public Hospital Bruce; b. Correspondence between officers of CHS and Calvary Public Hospital Bruce or the Little Company of Mary Health Care Limited in relation to effects of the Government Procurement Act 2001 (ACT) on the proposed acquisition of Calvary Public Hospital Bruce; and c. Correspondence including email, SMS and electronic messenger correspondence involving one or more of Rachel Stephen-Smith, David Peffer, Elizabeth Loper and Cathie O'Neill in relation to effects of the Government Procurement Act 2001 (ACT) on the proposed acquisition of Calvary Public Hospital Bruce. <p>2) Any records or documents produced or held by CHS between 20th December 2022 and 23rd June 2023 in relation to both Calvary Public Hospital Bruce and the Secure Local Jobs Code 2020 including but not limited to:</p> | <p>ACTHDFOI22-23.57</p> |

| | | |
|--|---|--|
| | <p>a. Correspondence between, or documents produced or held by officers of CHS in relation to effects of the Secure Local Jobs Code 2020 on the proposed acquisition of Calvary Public Hospital Bruce;</p> <p>b. Correspondence between officers of CHS and Calvary Public Hospital Bruce or the Little Company of Mary Health Care Limited in relation to effects of the Secure Local Jobs Code 2020 on the proposed acquisition of Calvary Public Hospital Bruce; and</p> <p>c. Correspondence including email, SMS and electronic messenger correspondence involving one or more of Rachel Stephen-Smith, David Peffer, Elizabeth Loper and Cathie O'Neill in relation to effects of the Secure Local Jobs Code 2020 on the proposed acquisition of Calvary Public Hospital Bruce.</p> | |
|--|---|--|

| Ref Number | Page Number | Description | Date | Status Decision | Factor | Open Access release status |
|------------|-------------|---|-------------|-----------------|---|----------------------------|
| 1. | 1 – 71 | Email and attachments – [J2023-346] Health Infrastructure Enabling Regulation 2023 | 25 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet Out of scope information | YES |
| 2. | 72 – 73 | Email – For Liz Review: Procurement Follow up | 25 May 2023 | Partial Release | Schedule 2, 2.2(a)(ii) Privacy Out of scope information | YES |
| 3. | 74 – 85 | Email and attachment – For Advice: Health Infrastructure Enabling Bill 2023 AMENDMENTS | 26 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet Out of scope information | YES |
| 4. | 86 – 87 | Email – RE: For Advice: Health Infrastructure Enabling Bill 2023 AMENDMENTS | 26 May 2023 | Partial Release | Schedule 1.2 Legal | YES |
| 5. | 88 – 97 | Email and attachment – RE: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS | 26 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet Out of scope information | YES |

| | | | | | | |
|----------------------------------|-----------|---|-------------|-----------------|---|-----|
| 6. | 98 – 110 | Email and attachment – RE: Disapplication of GPA alternative amendments | 26 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet Out of scope information | YES |
| 7. | 111 – 123 | Email and attachment – Fwd: Disapplication of GPA alternative amendments | 26 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet Out of scope information | YES |
| 8. | 124 – 127 | Email: RE: Disapplication of GPA alternative amendments | 26 May 2023 | Partial Release | Schedule 1.2 Legal | YES |
| 9. | 128 – 131 | Email: RE: Disapplication of GPA alternative amendments | 26 May 2023 | Partial Release | Schedule 1.2 Legal | YES |
| 10. | 132 – 134 | Email – RE: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS | 26 May 2023 | Full Release | Out of scope information | YES |
| 11. | 135 – 195 | Email and attachments – RE: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS | 26 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet Out of scope information | YES |
| 12. | 196 – 204 | Email and attachment – [J2023-530] Health Infrastructure Enabling Bill 2023-AssAm-G (D05 clean) | 27 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 1.6 Cabinet | YES |
| 13. | 205 – 206 | Email – Fwd: Health Infrastructure Enabling Bill – initial comments on procurement act | 29 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 2, 2.2(a)(ii) Privacy | YES |
| 14. | 207 – 216 | Email and attachment – For advice: Procurement amendment Health Infrastructure Enabling Bill – initial comments on procurement act amendments | 30 May 2023 | Partial Release | Schedule 1.2 Legal, Schedule 1.6 Cabinet and Schedule 2, 2.2(a)(ii) Privacy Out of scope information | YES |
| 15. | 217 – 219 | Email – RE: For advice: Procurement amendment Health Infrastructure Enabling Bill – initial comments on procurement act amendments | 30 May 2023 | Partial Release | Schedule 1.2 Legal and Schedule 2, 2.2(a)(ii) Privacy | YES |
| Total Number of Documents | | | | | | |
| 15 | | | | | | |

From: Kennedy, Lyndall
Sent: Thursday, 25 May 2023 10:56 AM
To: Sweetman, Rebecca (Health)
Cc: West, Alice (Health); Bladin, Caitlin (Health); Lopa, Liz (Health); Kimber, Bianca; West, Alice (Health); Oliver, Stephanie (Health)
Subject: [J2023-346] Health Infrastructure Enabling Regulation 2023
Attachments: J2023-346-Comp-D09-D10A.PDF; J2023-530-Health Infrastructure Enabling Bill 2023-AssAm-G-D02.PDF; 2023.05.24 - Note with ACTGS comments (PCO comments).docx

OFFICIAL: Sensitive

Hi Rebecca

As requested, attached is a comparison document of the current draft of the regulation against the version tabled in the Assembly. Please note that I am waiting on further input from GSO about matters relevant to the compensation provisions so there will be more changes to the regulation.

I attach D04 of the Assembly amendments – that version reflects GSO comments received yesterday. It doesn't include an additional amendment that Caitlin just flagged with me about disapplying the Government Procurement Act for other immediate procurements after acquisition day.

I attach for your information GSO/KWM comments received yesterday with my highlighted queries. Those highlighted matters are likely to result in further changes to the regulation.

I understand that you are writing the ES for the Assembly amendments. If you'd like, I can direct you to a recent example on the legislation register.

Regards
Lyndall

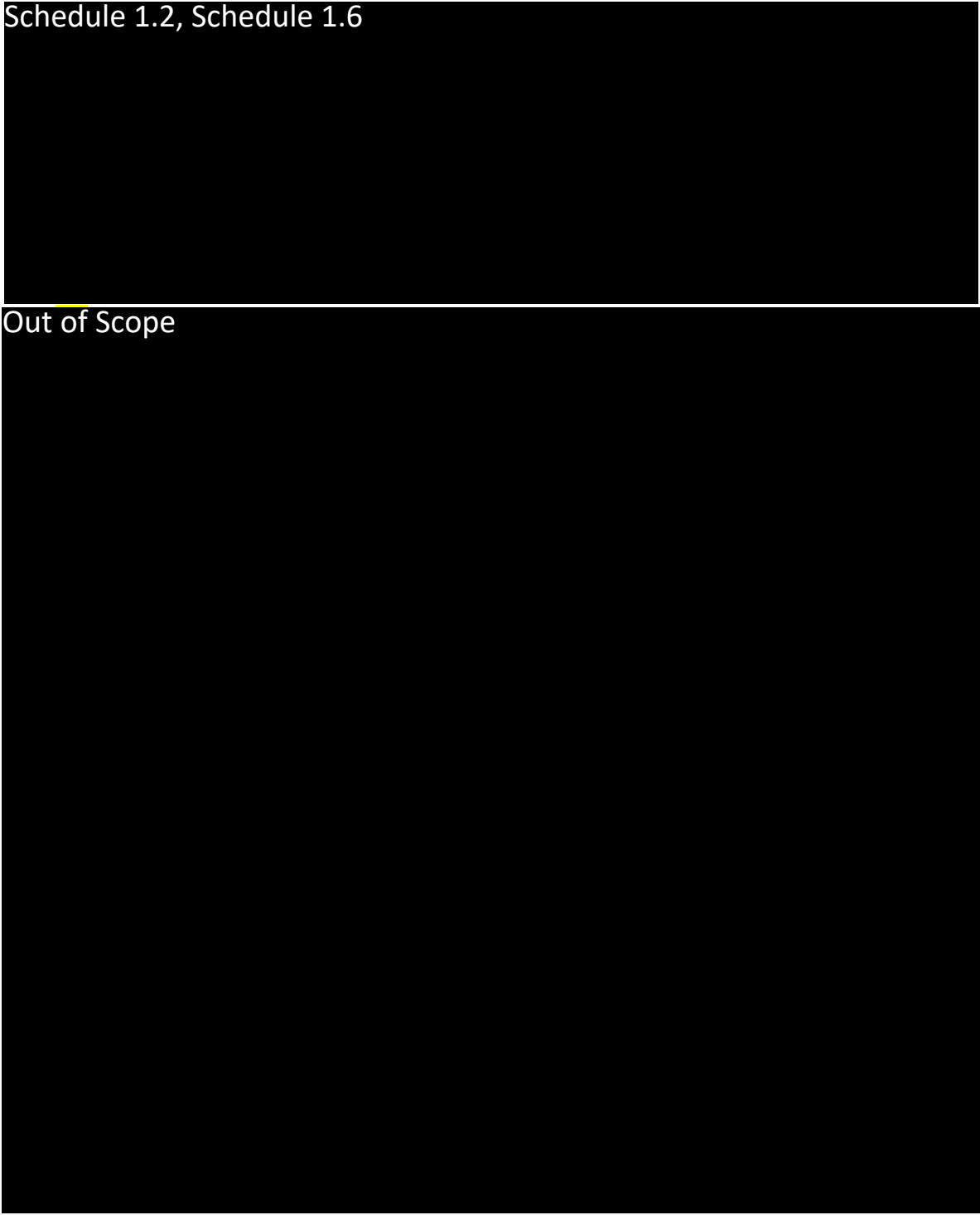
Lyndall Kennedy | **ACT Parliamentary Counsel's Office**
Justice and Community Safety Directorate | **ACT Government**
Phone 02 6207 7534
Level 3 Nara Centre, 3 Constitution Avenue, Canberra City, ACT 2601 | GPO Box 158 Canberra ACT 2601
| www.legislation.act.gov.au



I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

OFFICIAL: Sensitive

Schedule 1.2, Schedule 1.6



Out of Scope

OFFICIAL: Sensitive

OFFICIAL: Sensitive

19

Dictionary, proposed new definition of *public health service*

Page 34, line 19—

insert

public health service—

- (a) means a public health service provided by public hospital employees at places other than the public hospital; but
- (b) unless a regulation otherwise provides, does not include a service provided by public hospital employees in the palliative care facility known as Clare Holland House.

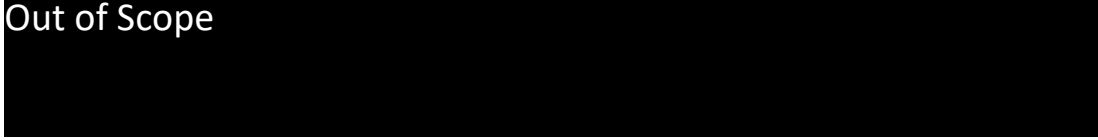
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Schedule 1.2, Schedule 1.6

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OFFICIAL: Sensitive

From: Bladin, Caitlin (Health)
Sent: Thursday, 25 May 2023 11:53 AM
To: Lopa, Liz (Health)
Cc: ACT Health, Northside Hospital Project
Subject: For Liz Review: Procurement Follow up

Importance: High

OFFICIAL: Sensitive

Liz – you happy for me to send this? Propose to also provide to Kristin and Cathie.

Thanks,

CB

Dear Bettina

Thank you for your time today, we really appreciate your advice.

I wanted to clarify our next steps.

Out of Scope



Operational Transition Procurement Requirements

Key to the operational transition of services from Calvary to Canberra Health Services is the uninterrupted provision of goods and services.

Currently the Health Infrastructure Enabling Bill and Regulation allow for the disapplication of the Government Procurement Act for the novation of contracts.

We discussed that novation may be too narrow to achieve the Territory's objectives which may require a range of different contractual solutions, including:

- A new contract to the same supplier for the same goods and services; or
- An extension or resizing of existing CHS contracts to cover any gaps or requirements; or
- Other options required to ensure continuity of service provision.

We agreed that while it would be appropriate to disapply the Government Procurement Act to assist in meeting this operational need, a fit for purpose process should be developed to protect the Territory's interest in relation to value for money, secure local jobs, ethical suppliers and other pertinent procurement principles.

PCO advise that to support this we can prescribe this in regulation and the process itself can become an instrument for transparency sake.

Again, we will work with Sanaz Mirzabegian to discuss and develop an appropriate approach to ensuring ongoing good governance in procurement and supply as it relates to the Northside Hospital Transition.

Thanks again for your time.

Sincerely

Caitlin Bladin

A/g Executive Branch Manager | Strategic Infrastructure Planning

Phone 02 6205 4393 | Mobil Schedule 2.2(a)(ii) caitlin.bladin@act.gov.au

Infrastructure, Communication and Engagement Division | ACT Health Directorate

4 Bowes Street, Phillip | Ngunnawal Country | www.health.act.gov.au

(pronouns she/her)

[Contact me on Teams!](#)

Meeting preferences: Monday – Thursday



ACT Health



Canberra Health Services

Northside Hospital Project Transition Team

From: Bladin, Caitlin (Health)
Sent: Friday, 26 May 2023 9:48 AM
To: Garrisson, Peter
Cc: Pilley, Catherine; Leece, Kristin; Lopa, Liz (Health); Oliver, Stephanie (Health)
Subject: For Advice: Health Infrastructure Enabling Bill 2023 AMENDMENTS
Attachments: J2023-530-Health Infrastructure Enabling Bill 2023-AssAm-G-D03.PDF

Importance: High

OFFICIAL: Sensitive

Dear Peter

Schedule 1.2




Happy to discuss.

Sincerely

OFFICIAL: Sensitive

Out of Scope



19

Dictionary, definition of *operation*

Page 34, line 8—

omit the definition, substitute

operation, of the public hospital, includes a public health service.

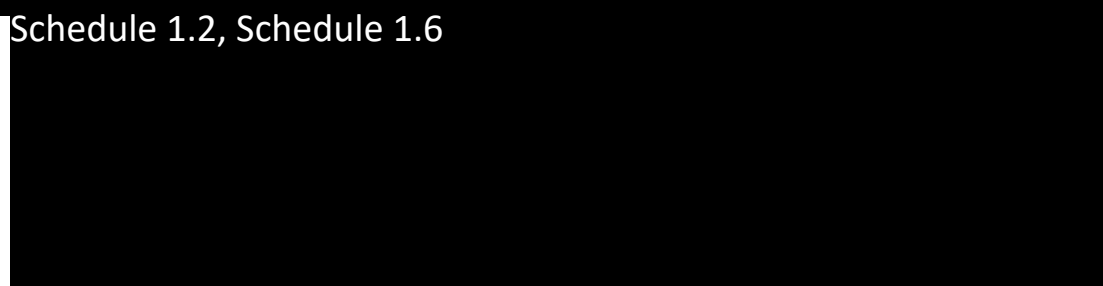
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Out of Scope



Schedule 1.2, Schedule 1.6



OFFICIAL: Sensitive

OFFICIAL: Sensitive

substitute

necessary for or ancillary to the operation of the public hospital or a public health service

3 This amendment now also corrects the conjunction before ancillary.

Out of Scope



OFFICIAL: Sensitive

From: Garrison, Peter
Sent: Friday, 26 May 2023 10:23 AM
To: Bladin, Caitlin (Health)
Cc: Pilley, Catherine; Leece, Kristin; Lopa, Liz (Health); Oliver, Stephanie (Health)
Subject: RE: For Advice: Health Infrastructure Enabling Bill 2023 AMENDMENTS

OFFICIAL: Sensitive

ACT SOLICITOR-GENERAL
(see confidentiality notice below)

Schedule 1.2

Regards

Peter Garrison AM SC | Solicitor-General for the Australian Capital Territory
Ph:02 620 70654 | Fax:02 620 70630 | DX 5602 Canberra | PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

Ref:

This e-mail, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Sent: Friday, 26 May 2023 10:13 AM
To: Garrison, Peter <Peter.Garrison@act.gov.au>
Cc: Pilley, Catherine <Catherine.Pilley@act.gov.au>; Leece, Kristin <Kristin.Leece@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>; Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>
Subject: RE: For Advice: Health Infrastructure Enabling Bill 2023 AMENDMENTS

OFFICIAL: Sensitive

Hi Peter

Sorry further to this, and after a back and forth -

I think Lyndall and I have agreed a slightly modified way forward, I'll provide the updated amendments to the Bill.

Thank you.


Sincerely
Caitlin

From: Bladin, Caitlin (Health)
Sent: Friday, 26 May 2023 9:48 AM
To: Garrison, Peter <Peter.Garrison@act.gov.au>
Cc: Pilley, Catherine <Catherine.Pilley@act.gov.au>; Leece, Kristin <Kristin.Leece@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>; Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>
Subject: For Advice: Health Infrastructure Enabling Bill 2023 AMENDMENTS
Importance: High

OFFICIAL: Sensitive

Dear Peter

Schedule 1.2



Happy to discuss.

Sincerely

Caitlin

From: O'Neill, Cathie (Health)
Sent: Friday, 26 May 2023 11:11 AM
To: Bladin, Caitlin (Health); Lopa, Liz (Health)
Cc: Oliver, Stephanie (Health); Sweetman, Rebecca (Health); ACT Health, Northside Hospital Project; West, Alice (Health); Stewart, KateE (Health)
Subject: RE: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS
Attachments: Att B- Summary of amendments to the Bill.docx

OFFICIAL: Sensitive

Thanks Caitlin and for setting it out in an easily digestible format

A couple of minor comments in the attached

Cathie

From: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Sent: Thursday, 25 May 2023 9:45 PM
To: O'Neill, Cathie (Health) <Cathie.O'Neill@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
Cc: Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>; Sweetman, Rebecca (Health) <Rebecca.Sweetman@act.gov.au>; ACT Health, Northside Hospital Project <NorthsideHospitalProject@act.gov.au>; West, Alice (Health) <Alice.West@act.gov.au>; Stewart, KateE (Health) <KateE.Stewart@act.gov.au>
Subject: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS
Importance: High

OFFICIAL: Sensitive

Dear Cathie and Liz

For your information, comment and direction please see attached the proposed assembly amendments to be moved by the Minister for Health on the Bill.

To assist your commentary on the amendments the Team has pulled together the table, attached. It goes through the amendments, outlines our position, those amendments we are seeking a decision/advice/direction on and also provides an explanation for the amendment. I am also attaching the relevant version of the Bill for ease of reference.

The amendments requiring most significant attention are:

Out of Scope

- 3 – broader disapplication of Government Procurement Act. Please note further commentary on this below.

Out of Scope

Further commentary on the procurement act issue:

- As has been previously discussed with the ACTHD, the *Government Procurement Act 2001* is disapplied by s 6(1)(b) to “anything done under this act”. Any activity undertaken under the Act will therefore not be something to which the *Government Procurement Act 2001* applies. These include the assignment or novation of contract (and potentially renegotiation of the same, if provided for by regulation - see s14(2)(c)(ii)) pursuant to the process set out in the Health Infrastructure Enabling Act, once passed (the **Act**). Once nominated contracts have been assigned or novated consistent with the Act (and potentially been the subject of renegotiation) future dealings with those contracts may be the subject of the *Government Procurement Act 2001*. In addition, any new contracts

referable to the operation of the public hospital moving forward will be subject to the operation of the *Government Procurement Act 2001*.

- ACTHD has further considered the operational needs associated with contract requirements and discussed these with the Chair of the Procurement Board. Based on this we have requested the drafting of an additional amendment to disapply the procurement act so that in instances where the contracts can not be novated and a new contract is required, or a change of scope to an existing contract is required the GPA is not applied. This is to ensure this process can be undertaken quickly. ACTHD are further discussions on what the appropriate process to ensure the policy intent behind the GPA especially ethical suppliers and value for money can be met.
- I understand Lyndall has gone back to Peter on this and he is comfortable with it.

We need to agree the amendments (at least in principle) to progress to the Minister and CM to be agreed and lodged with the Clerk of the Assembly by Tuesday 12 noon to ensure debate can be done on the amended Bill.

Out of Scope

I understand that Liz will also speak with Minister on these matters tomorrow.

But for your earliest advice to allow us to finalise one of the packages we are preparing for next week.

Thanks and happy to discuss.

Sincerely

Caitlin

From: Kennedy, Lyndall <Lyndall.Kennedy@act.gov.au>

Sent: Thursday, 25 May 2023 4:09 PM

To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>

Cc: Lopa, Liz (Health) <Liz.Lopa@act.gov.au>; Sweetman, Rebecca (Health) <Rebecca.Sweetman@act.gov.au>; Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>; West, Alice (Health) <Alice.West@act.gov.au>; Kimber, Bianca <Bianca.Kimber@act.gov.au>

Subject: [J2023-530] Health Infrastructure Enabling Bill 2023-AssAm-G (D03)

OFFICIAL: Sensitive

Hello Caitlin

Attached is the next draft of the Assembly amendments. Can you please review and let me know by cob tomorrow if any further changes are required?

Regards
Lyndall

Lyndall Kennedy | **ACT Parliamentary Counsel's Office**

Justice and Community Safety Directorate | **ACT Government**

Phone 02 6207 7534

Level 3 Nara Centre, 3 Constitution Avenue, Canberra City, ACT 2601 | GPO Box 158 Canberra ACT 2601

| www.legislation.act.gov.au



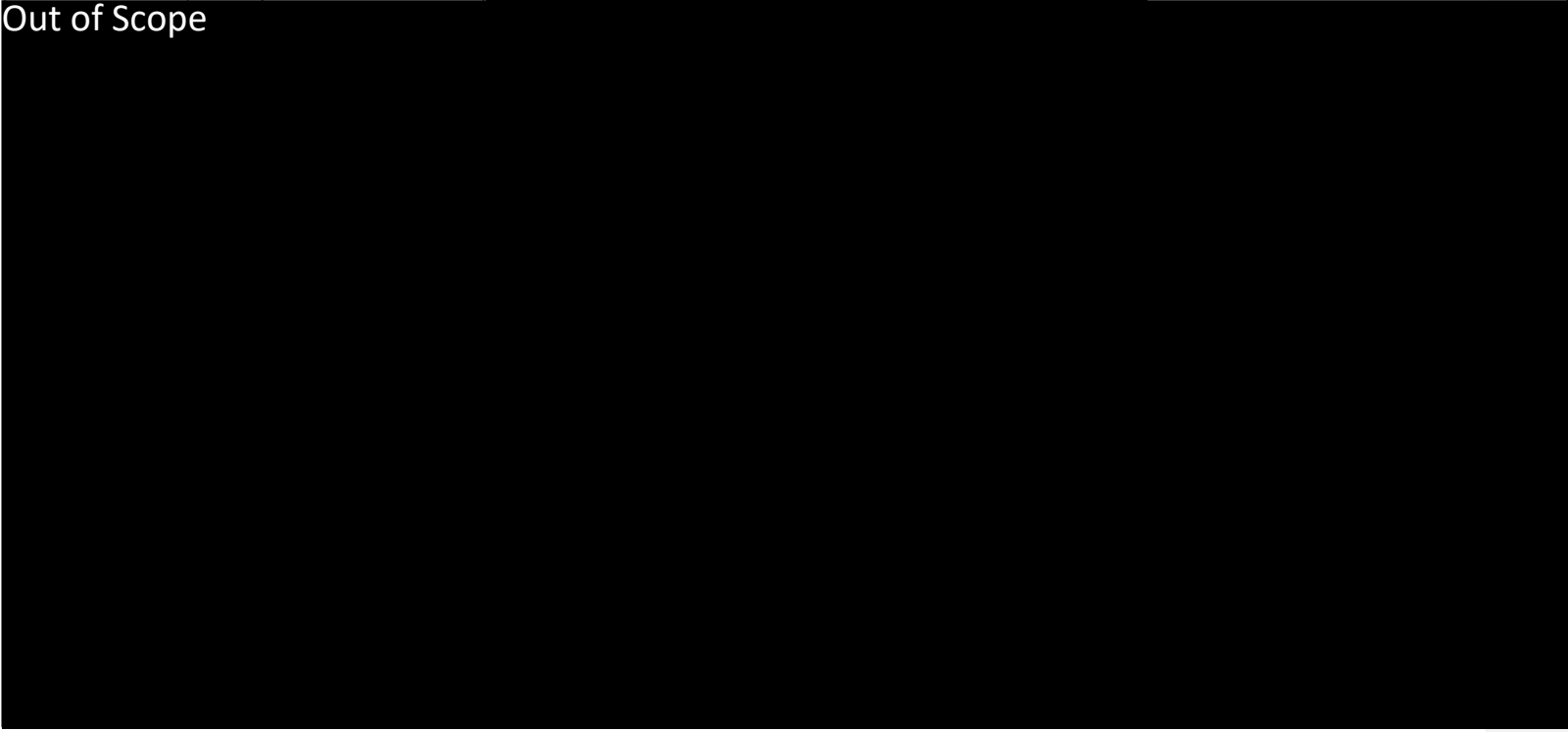
I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

AMMENDMENTS TO THE LEGISLATION

| Status | | Section | Change | Explanation |
|--|---|---|----------------------------|-------------|
| Out of Scope | | | | |
| For <u>advice</u> , decision and advice on timeline | 3 | Proposed new clause 6 (5) and (6) Page 4, line 17 | Schedule 1.2, Schedule 1.6 | |

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|--|--|--|----------------------------|--|
| | | | Schedule 1.2, Schedule 1.6 | |
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Out of Scope



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Out of Scope

paragraph (a) (v)
Page 35, line 14

Out of Scope

Dictionary,
definition of *public
hospital contract*,
paragraph (a) Page
35, line 4

Out of Scope

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From: Garrison, Peter
Sent: Friday, 26 May 2023 12:20 PM
To: Bladin, Caitlin (Health)
Cc: Pilley, Catherine; Lopa, Liz (Health); Deasey, Michael
Subject: RE: Disapplication of GPA alternative amendments
Attachments: J2023-530-Health Infrastructure Enabling Bill 2023-AssAm-G-D03.PDF

OFFICIAL: Sensitive - Legal Privilege

ACT SOLICITOR-GENERAL
(see confidentiality notice below)

Dear Caitlin

Schedule 1.2



Schedule 1.2

I would be happy to discuss further.

Regards

Peter Garrisson AM SC | Solicitor-General for the Australian Capital Territory
Ph:02 620 70654 | Fax:02 620 70630 | DX 5602 Canberra | PO Box 260 Civic Square ACT 2608
www.actqs.act.gov.au

Ref: 639451

This e-mail, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Sent: Friday, 26 May 2023 11:10 AM
To: Garrisson, Peter <Peter.Garrisson@act.gov.au>; Deasey, Michael <Michael.Deasey@act.gov.au>
Cc: Pilley, Catherine <Catherine.Pilley@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
Subject: FW: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive

Hi Peter

Following my email Lyndall has identified other options for the disapplication of the GPA

We would appreciate GSO's on the best way to achieve the outcome that is being sought.

Thank you again, and happy to discuss.

Sincerely

Caitlin

From: Kennedy, Lyndall <Lyndall.Kennedy@act.gov.au>
Sent: Friday, 26 May 2023 10:54 AM
To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Cc: Kimber, Bianca <Bianca.Kimber@act.gov.au>
Subject: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive

Hello Caitlin

Schedule 1.2

Schedule 1.2

Lyndall Kennedy | **ACT Parliamentary Counsel's Office**

Justice and Community Safety Directorate | **ACT Government**

Phone 02 6207 7534

Level 3 Nara Centre, 3 Constitution Avenue, Canberra City, ACT 2601 | GPO Box 158 Canberra ACT 2601

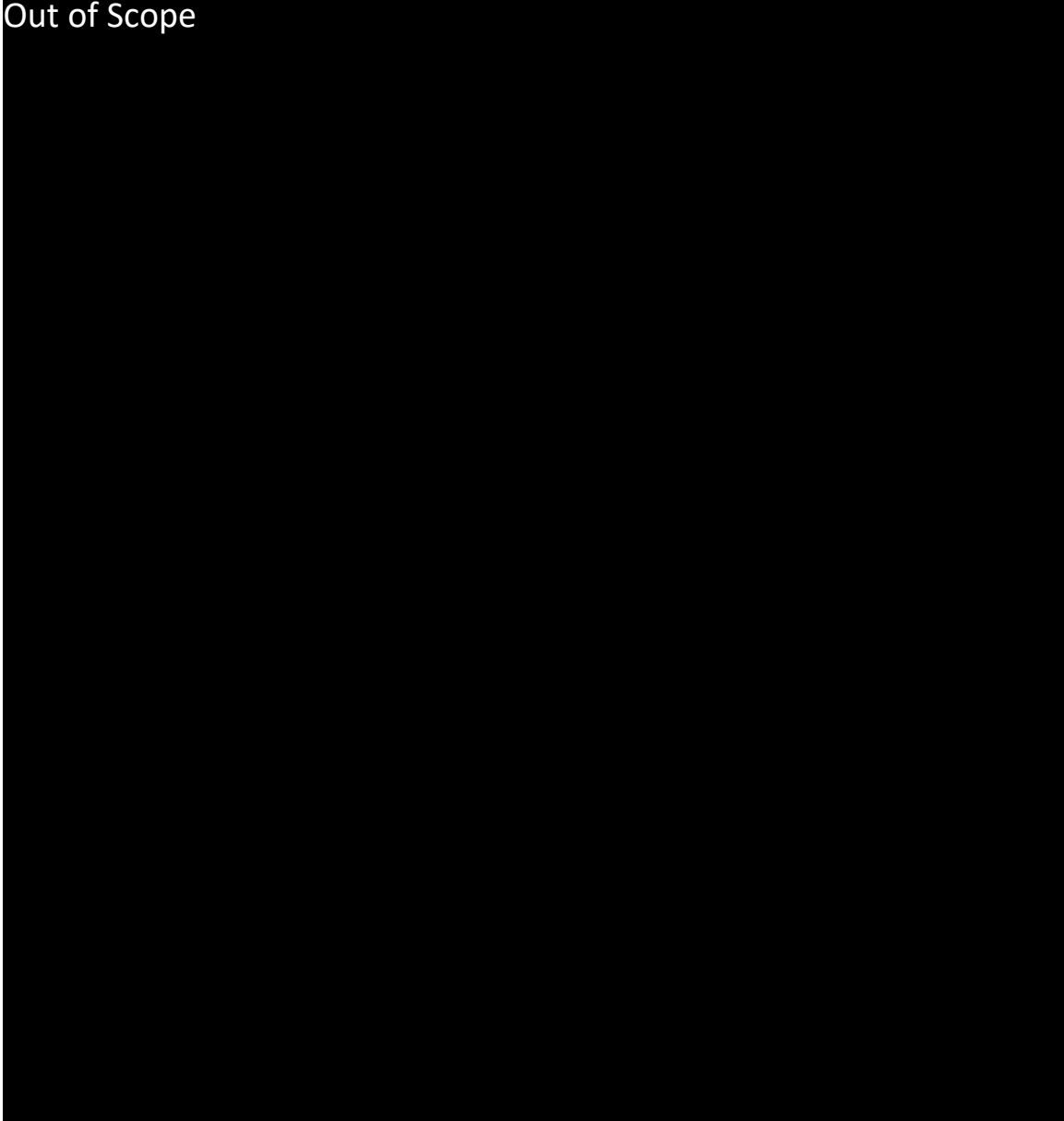
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OFFICIAL: Sensitive

Out of Scope



23

Dictionary, definition of *public hospital contract*, paragraph (a)

Page 35, line 13—

omit

necessary for and ancillary to the operation of the public hospital

OFFICIAL: Sensitive

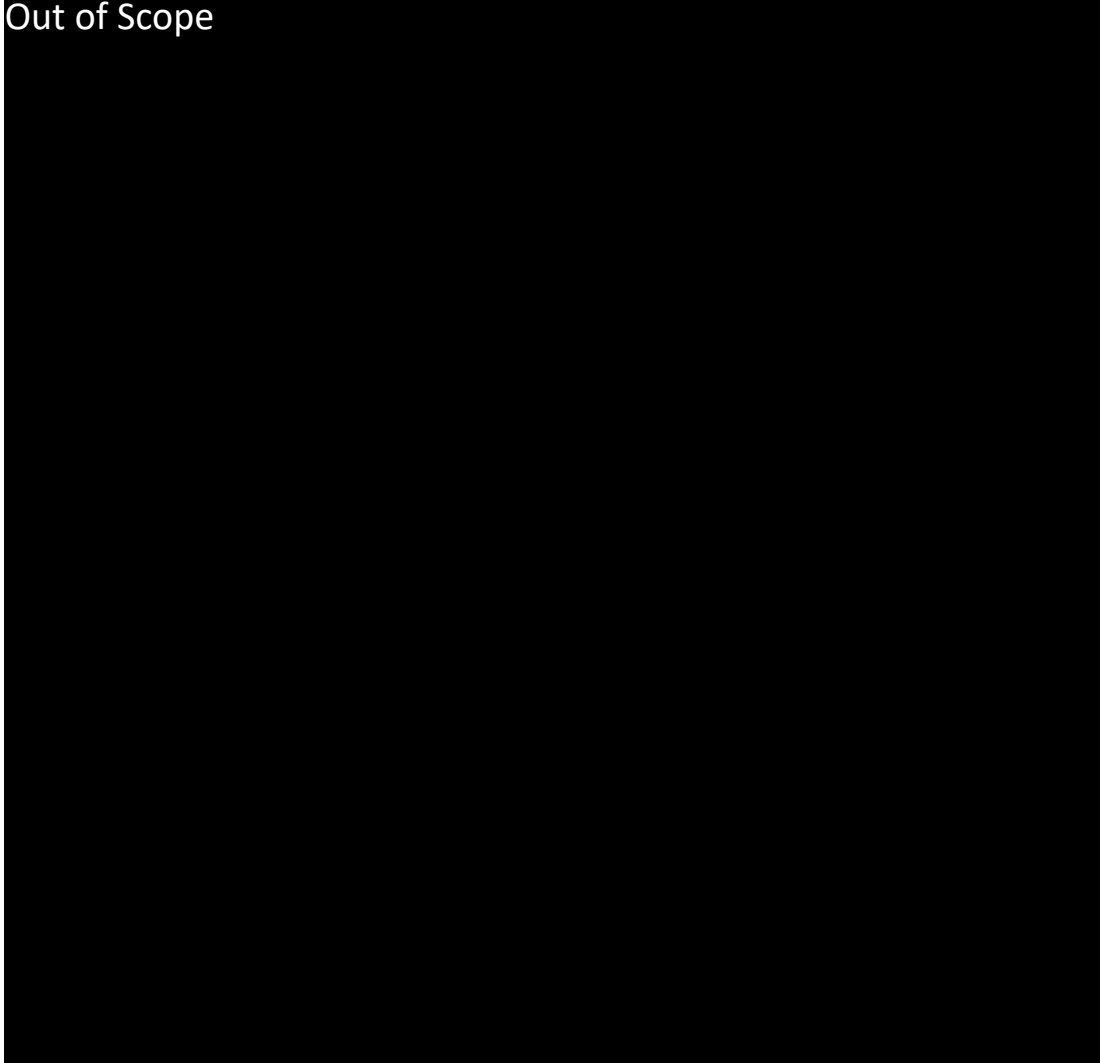
OFFICIAL: Sensitive

substitute

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3 This amendment now also corrects the conjunction before ancillary.

Out of Scope



OFFICIAL: Sensitive

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Schedule 1.2

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Subject: RE: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive - Legal Privilege

ACT SOLICITOR-GENERAL
(see confidentiality notice below)

Dear Caitlin

Schedule 1.2



Schedule 1.2

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OFFICIAL: Sensitive

Out of Scope



19
Dictionary, definition of *operation*
Page 34, line 8—

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operation, of the public hospital, includes a public health service.

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Out of Scope



Schedule 1.2, Schedule 1.6

OFFICIAL: Sensitive


OFFICIAL: Sensitive

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Out of Scope



OFFICIAL: Sensitive

From: Kennedy, Lyndall
Sent: Friday, 26 May 2023 12:28 PM
To: Bladin, Caitlin (Health)
Subject: RE: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive - Legal Privilege

Will do.

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Subject: RE: Disapplication of GPA alternative amendments

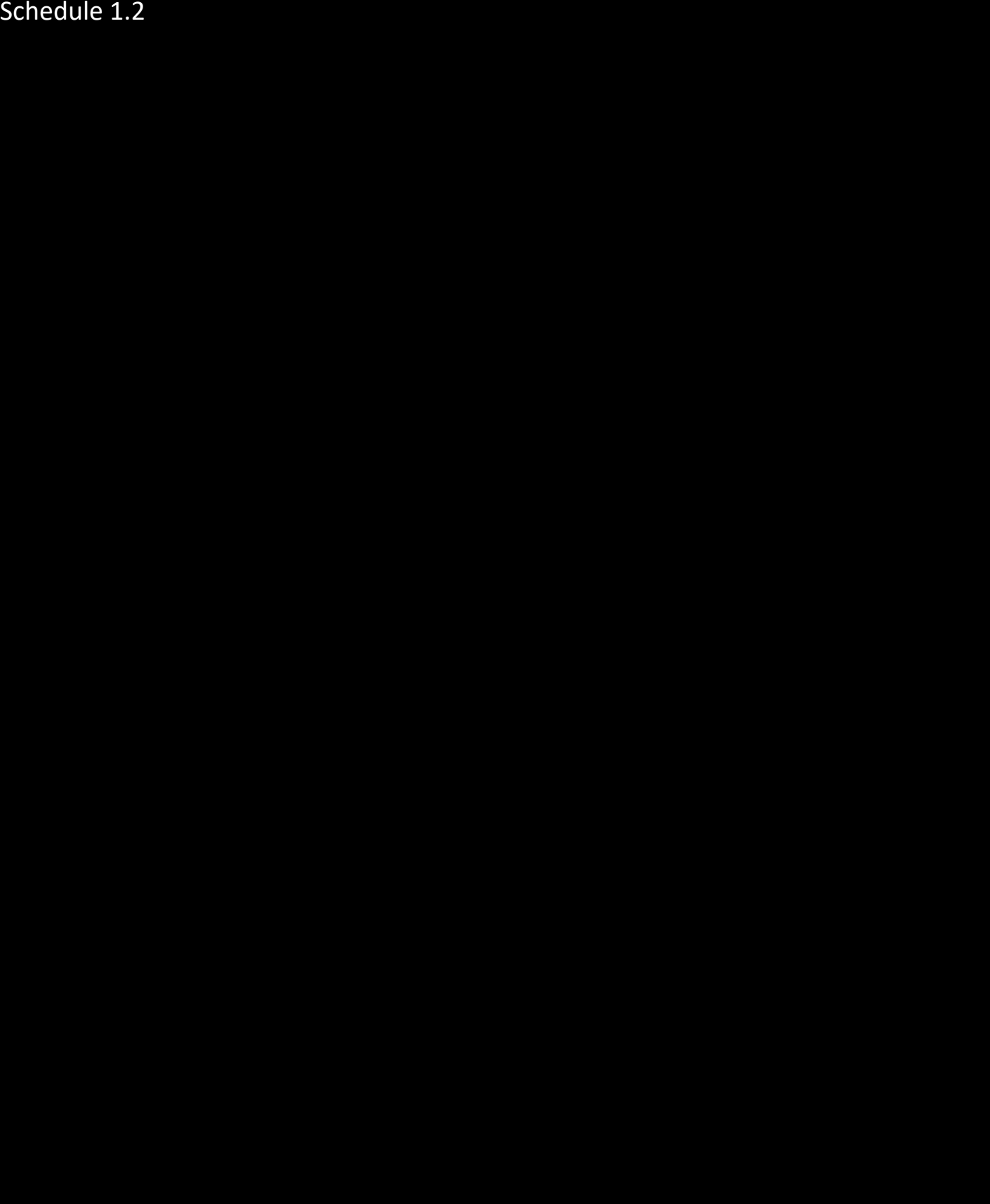
OFFICIAL: Sensitive - Legal Privilege

ACT SOLICITOR-GENERAL
(see confidentiality notice below)

Dear Caitlin

Schedule 1.2

Schedule 1.2



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From: Bladin, Caitlin (Health)
Sent: Friday, 26 May 2023 1:05 PM
To: Garrisson, Peter
Cc: Pilley, Catherine; Lopa, Liz (Health); Deasey, Michael
Subject: RE: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive - Legal Privilege

Dear Peter

Thank you we appreciate your time, we will provide this advice to PCO.

Sincerely

Caitlin

From: Garrisson, Peter <Peter.Garrisson@act.gov.au>
Sent: Friday, 26 May 2023 12:20 PM
To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Cc: Pilley, Catherine <Catherine.Pilley@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>; Deasey, Michael <Michael.Deasey@act.gov.au>
Subject: RE: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive - Legal Privilege

ACT SOLICITOR-GENERAL
(see confidentiality notice below)

Dear Caitlin

Schedule 1.2



Schedule 1.2

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Sent: Friday, 26 May 2023 11:10 AM
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Cc: Pilley, Catherine <Catherine.Pilley@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
Subject: FW: Disapplication of GPA alternative amendments

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Cc: Kimber, Bianca <Bianca.Kimber@act.gov.au>

Subject: Disapplication of GPA alternative amendments

OFFICIAL: Sensitive

Hello Caitlin

Schedule 1.2



Lyndall

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Sent: Friday, 26 May 2023 1:17 PM
To: O'Neill, Cathie (Health); Lopa, Liz (Health)
Cc: Oliver, Stephanie (Health); Sweetman, Rebecca (Health); ACT Health, Northside Hospital Project; West, Alice (Health); Stewart, KateE (Health)
Subject: RE: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS

OFFICIAL: Sensitive

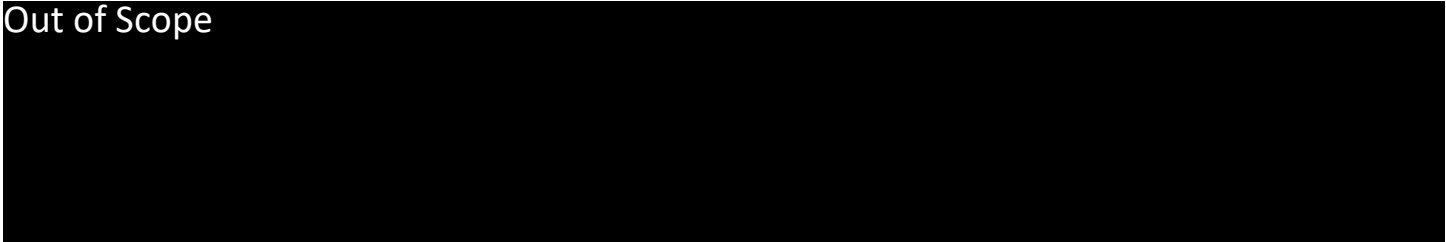
Thanks Cathie

Based on a conversation with Rebecca F and Lyndall we are approaching GPA timeline as:

Where the process is commenced within 6 months after acquisition day.

We are still working through the exact nature of that amendment, so it will look different in its final form, I'll update the table accordingly.

Out of Scope



Happy to discuss.

Sincerely

Caitlin

From: O'Neill, Cathie (Health) <Cathie.O'Neill@act.gov.au>
Sent: Friday, 26 May 2023 11:11 AM
To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
Cc: Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>; Sweetman, Rebecca (Health) <Rebecca.Sweetman@act.gov.au>; ACT Health, Northside Hospital Project <NorthsideHospitalProject@act.gov.au>; West, Alice (Health) <Alice.West@act.gov.au>; Stewart, KateE (Health) <KateE.Stewart@act.gov.au>
Subject: RE: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS

OFFICIAL: Sensitive

Thanks Caitlin and for setting it out in an easily digestible format

A couple of minor comments in the attached

Cathie

From: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Sent: Thursday, 25 May 2023 9:45 PM
To: O'Neill, Cathie (Health) <Cathie.O'Neill@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
Cc: Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>; Sweetman, Rebecca (Health) <Rebecca.Sweetman@act.gov.au>; ACT Health, Northside Hospital Project <NorthsideHospitalProject@act.gov.au>;

West, Alice (Health) <Alice.West@act.gov.au>; Stewart, KateE (Health) <KateE.Stewart@act.gov.au>

Subject: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS

Importance: High

OFFICIAL: Sensitive

Dear Cathie and Liz

For your information, comment and direction please see attached the proposed assembly amendments to be moved by the Minister for Health on the Bill.

To assist your commentary on the amendments the Team has pulled together the table, attached. It goes through the amendments, outlines our position, those amendments we are seeking a decision/advice/direction on and also provides an explanation for the amendment. I am also attaching the relevant version of the Bill for ease of reference.

The amendments requiring most significant attention are:

Out of Scope

- 3 – broader disapplication of Government Procurement Act. Please note further commentary on this below.

Out of Scope

Further commentary on the procurement act issue:

- As has been previously discussed with the ACTHD, the *Government Procurement Act 2001* is disapplied by s 6(1)(b) to “anything done under this act”. Any activity undertaken under the Act will therefore not be something to which the *Government Procurement Act 2001* applies. These include the assignment or novation of contract (and potentially renegotiation of the same, if provided for by regulation - see s14(2)(c)(ii)) pursuant to the process set out in the Health Infrastructure Enabling Act, once passed (the **Act**). Once nominated contracts have been assigned or novated consistent with the Act (and potentially been the subject of renegotiation) future dealings with those contracts may be the subject of the *Government Procurement Act 2001*. In addition, any new contracts referable to the operation of the public hospital moving forward will be subject to the operation of the *Government Procurement Act 2001*.
- ACTHD has further considered the operational needs associated with contract requirements and discussed these with the Chair of the Procurement Board. Based on this we have requested the drafting of an additional amendment to disapply the procurement act so that in instances where the contracts can not be novated and a new contract is required, or a change of scope to an existing contract is required the GPA is not applied. This is to ensure this process can be undertaken quickly. ACTHD are further discussions on what the appropriate process to ensure the policy intent behind the GPA especially ethical suppliers and value for money can be met.
- I understand Lyndall has gone back to Peter on this and he is comfortable with it.

We need to agree the amendments (at least in principle) to progress to the Minister and CM to be agreed and lodged with the Clerk of the Assembly by Tuesday 12 noon to ensure debate can be done on the amended Bill.

The only other possible amendment we might make now is any clarification on the commencement of the regulation – Cathie can you please advise when you want this to commence?

I understand that Liz will also speak with Minister on these matters tomorrow.

But for your earliest advice to allow us to finalise one of the packages we are preparing for next week.

Thanks and happy to discuss.

Sincerely

Caitlin

From: Kennedy, Lyndall <Lyndall.Kennedy@act.gov.au>
Sent: Thursday, 25 May 2023 4:09 PM
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Cc: Lopa, Liz (Health) <Liz.Lopa@act.gov.au>; Sweetman, Rebecca (Health) <Rebecca.Sweetman@act.gov.au>; Oliver, Stephanie (Health) <Stephanie.Oliver@act.gov.au>; West, Alice (Health) <Alice.West@act.gov.au>; Kimber, Bianca <Bianca.Kimber@act.gov.au>
Subject: [J2023-530] Health Infrastructure Enabling Bill 2023-AssAm-G (D03)

OFFICIAL: Sensitive

Hello Caitlin

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Sent: Friday, 26 May 2023 4:01 PM
To: Lopa, Liz (Health)
Subject: FW: For Urgent DDG Action: Health Infrastructure Enabling Bill 2023 AMENDMENTS
Attachments: J2023-530-Health Infrastructure Enabling Bill 2023-AssAm-G-D03.PDF; Att 9 - J2022-748-Health Infrastructure Enabling Bill 2023-D13 Final copy - presented May 11.PDF; Att B- Summary of amendments to the Bill.docx

Importance: High

OFFICIAL: Sensitive

For your discussion with the Minister, please note we are still refining the amendment related to the Government procurement act in consultation with GSO, and we are ensuring a lack of disruption to the services at CHH.

Happy to discuss.

CB

From: Bladin, Caitlin (Health)
Sent: Thursday, 25 May 2023 9:45 PM
To: O'Neill, Cathie (Health) <Cathie.O'Neill@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
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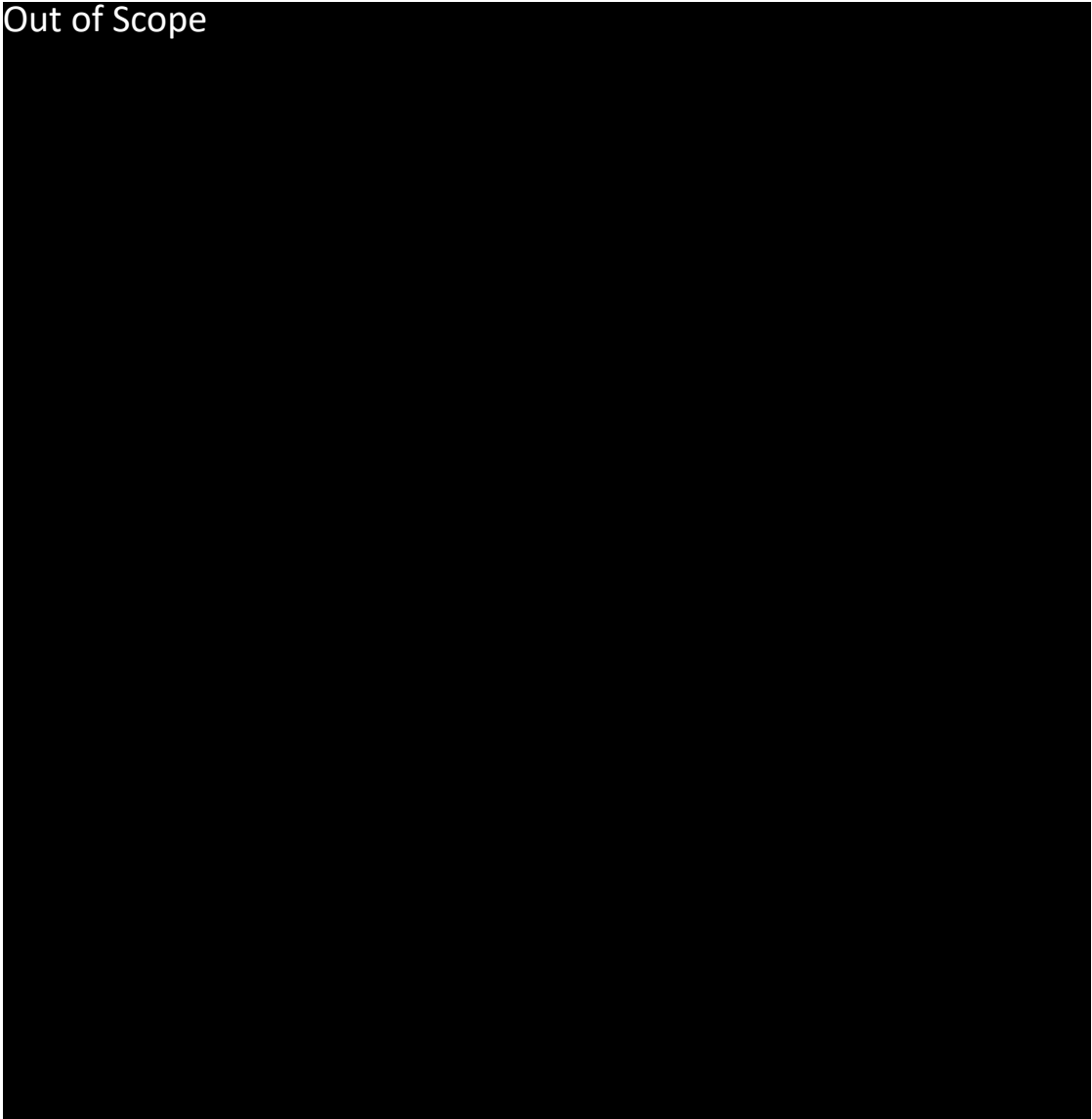
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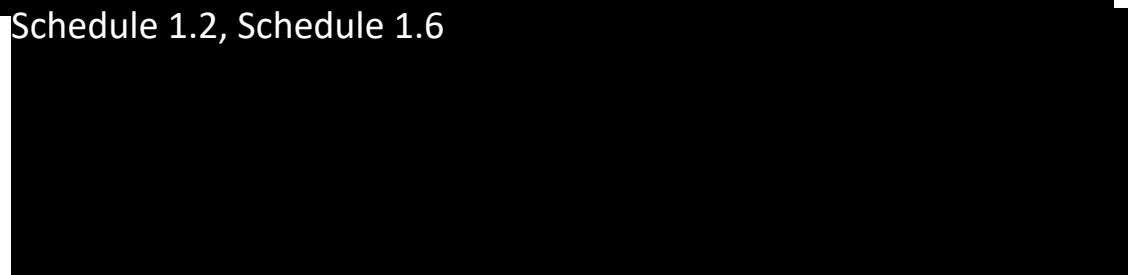
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OFFICIAL: Sensitive

Out of Scope



Schedule 1.2, Schedule 1.6



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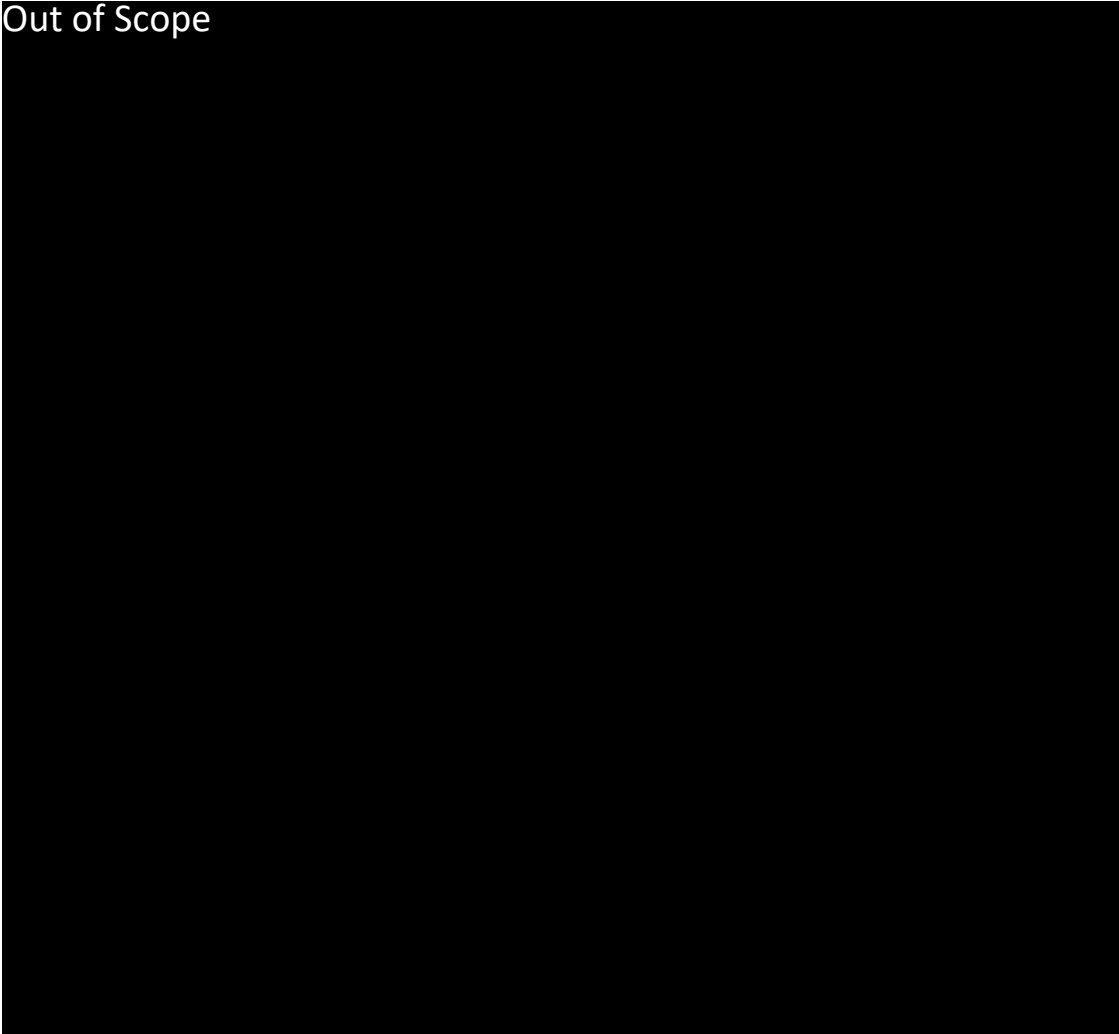
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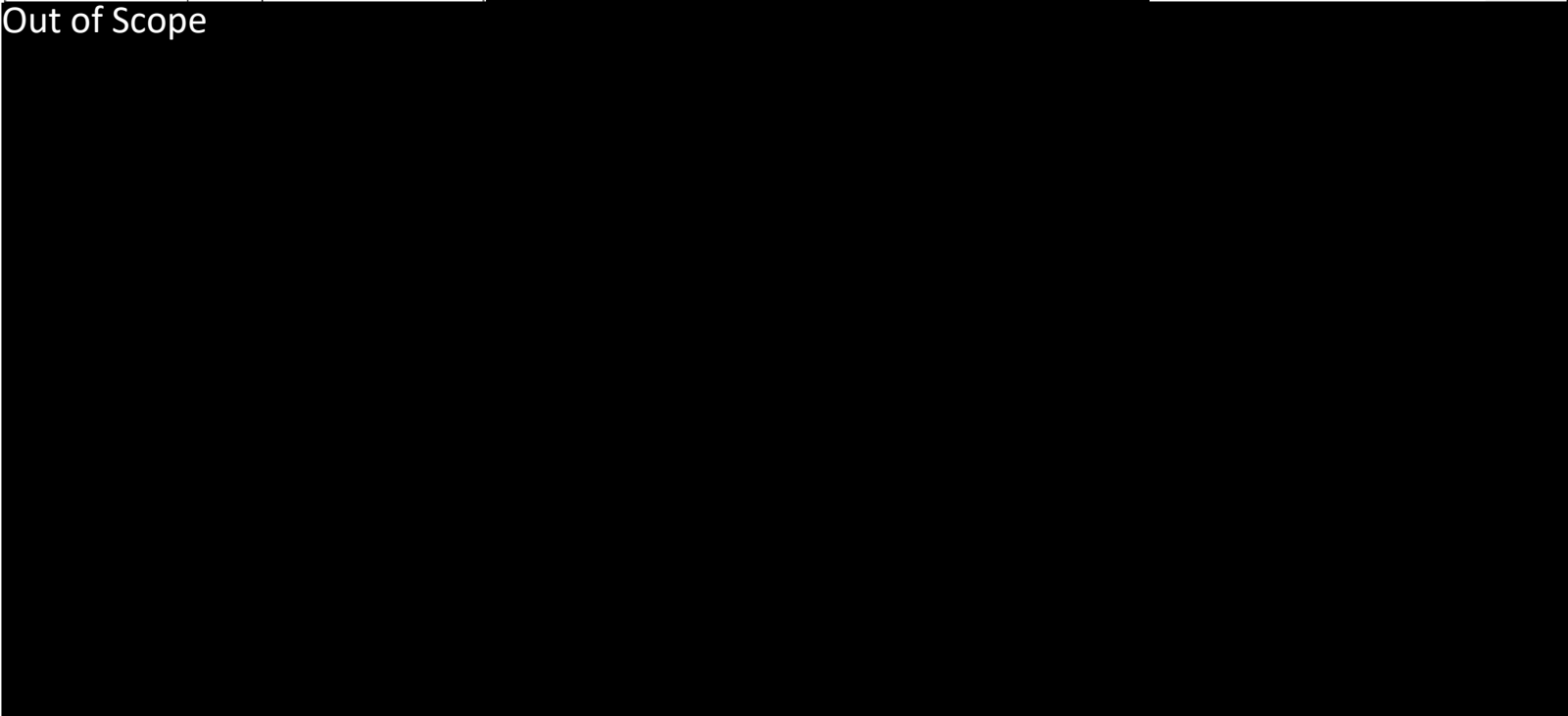
AMMENDMENTS TO THE LEGISLATION

| Status | | Section | Change | Explanation |
|----------------------------|--|---------|--------|-------------|
| Out of Scope | | | | |
| Schedule 1.2, Schedule 1.6 | | | | |

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| | | | Schedule 1.2, Schedule 1.6 | |
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Out of Scope



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Out of Scope

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paragraph (a) (v)
Page 35, line 14

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Dictionary,
definition of *public
hospital contract*,
paragraph (a) Page
35, line 4

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From: Kennedy, Lyndall
Sent: Saturday, 27 May 2023 5:02 PM
To: Bladin, Caitlin (Health)
Subject: [J2023-530] Health Infrastructure Enabling Bill 2023-AssAm-G (D05 clean)
Attachments: J2023-530-Health Infrastructure Enabling Bill 2023-AssAm-G-D05 Clean Copy.PDF

OFFICIAL: Sensitive

Hello again

Here is the clean copy. Enjoy!

Lyndall

Lyndall Kennedy | **ACT Parliamentary Counsel's Office**
Justice and Community Safety Directorate | **ACT Government**
Phone 02 6207 7534
Level 3 Nara Centre, 3 Constitution Avenue, Canberra City, ACT 2601 | GPO Box 158 Canberra ACT 2601
| www.legislation.act.gov.au



I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

From: Bladin, Caitlin (Health)
Sent: Monday, 29 May 2023 8:21 PM
To: Lopa, Liz (Health)
Subject: Fwd: Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]

OFFICIAL: Sensitive

For information

From: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Sent: Monday, May 29, 2023 7:32:30 PM
To: Kennedy, Lyndall <Lyndall.Kennedy@act.gov.au>
Cc: Leece, Kristin <Kristin.Leece@act.gov.au>
Subject: Fwd: Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]

OFFICIAL: Sensitive

Hi Lyndall

Just received these comments, I'm not too sure how this impacts our proposed changes and if we need to address anything urgently before the proposed amendments are provided to the Clerk tomorrow at midday.

Happy to chat.

Sincerely

Caitlin

From: [redacted] Schedule 2.2(a)(ii)
Sent: Monday, May 29, 2023 7:10:32 PM
To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Cc: Leece, Kristin <Kristin.Leece@act.gov.au>; [redacted] Schedule 2.2(a)(ii); Finkelstein, Rebecca
Schedule 2.2(a)(ii)
Subject: Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]

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Hi Caitlin

Schedule 1.2


[redacted]

Schedule 1.2



Kind regards

Schedule 2.2(a)(ii)



Level 27, Collins Arch, 447 Collins Street, Melbourne VIC 3000
kwm.com

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See kwm.com for more information.

From: Bladin, Caitlin (Health)
Sent: Tuesday, 30 May 2023 8:01 AM
To: Garrisson, Peter
Cc: Leece, Kristin; Lopa, Liz (Health)
Subject: For advice: Procurement amendment Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]
Attachments: J2023-530-Health Infrastructure Enabling Bill 2023-AssAm-G-D05 Clean Copy.PDF
Importance: High

OFFICIAL: Sensitive

Hi Peter

Schedule 1.2

Sincerely

Caitlin

From: [redacted] Schedule 2.2(a)(ii)
Sent: Monday, 29 May 2023 7:11 PM
To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Cc: Leece, Kristin <Kristin.Leece@act.gov.au>, [redacted] Schedule 2.2(a)(ii), Finkelstein, Rebecca
Schedule 2.2(a)(ii)
Subject: Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]

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Hi Caitlin


Schedule 1.2

Schedule 1.2



Kind regards

Schedule 2.2(a)(ii)

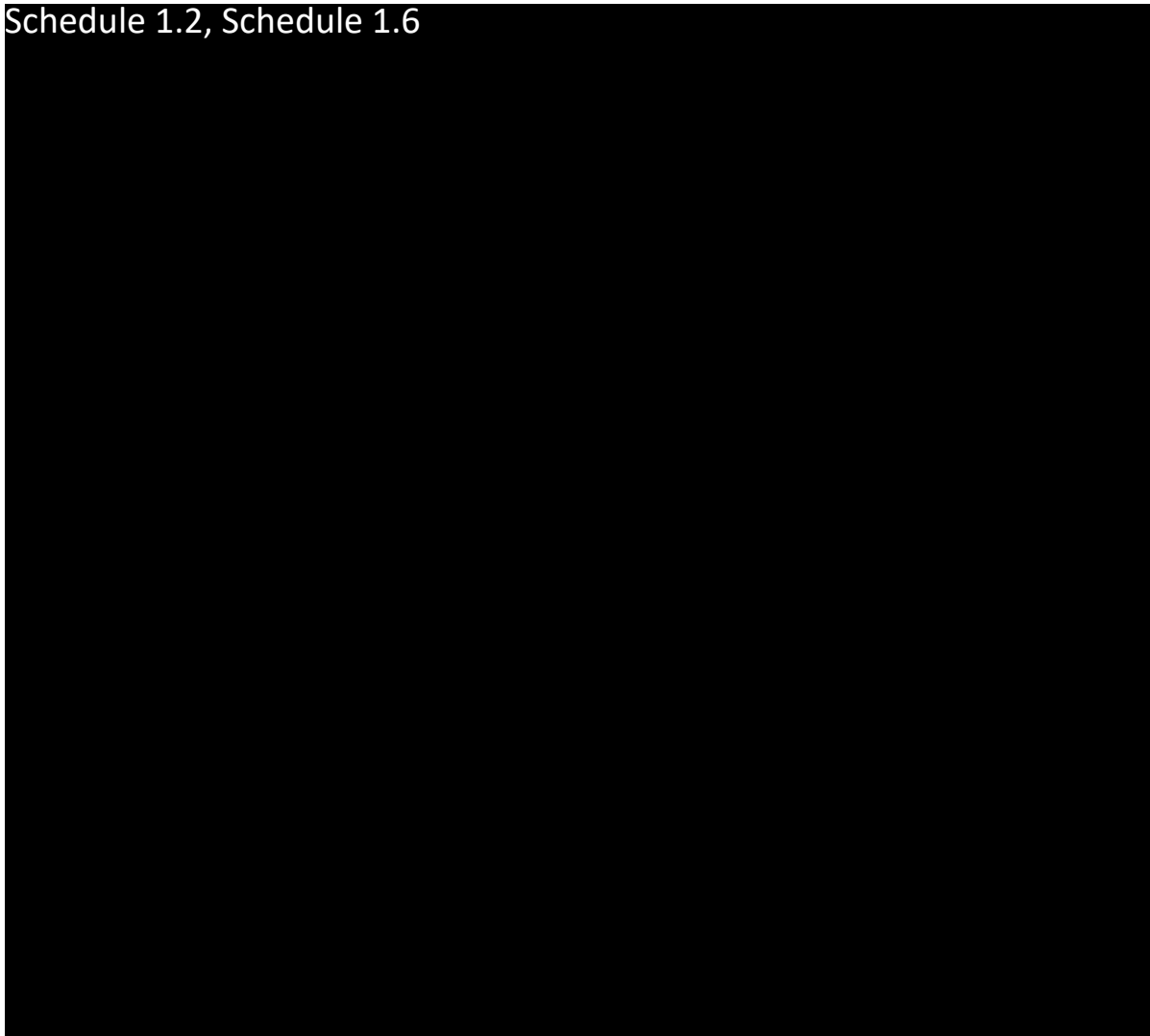


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Schedule 1.2, Schedule 1.6



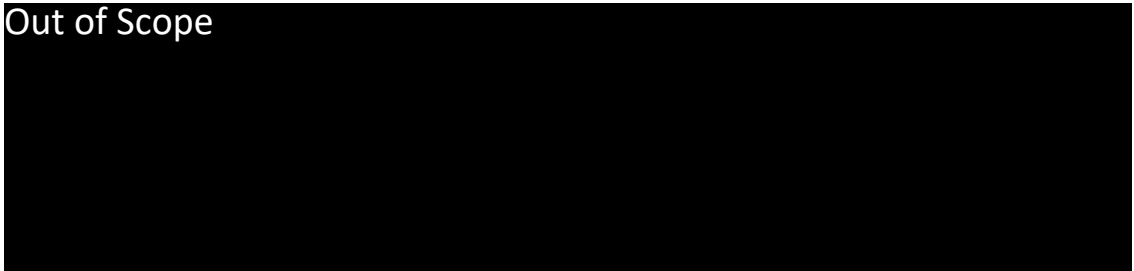
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19

Dictionary, definition of *interest*, paragraph (b) (iii)
Page 33, line 20—

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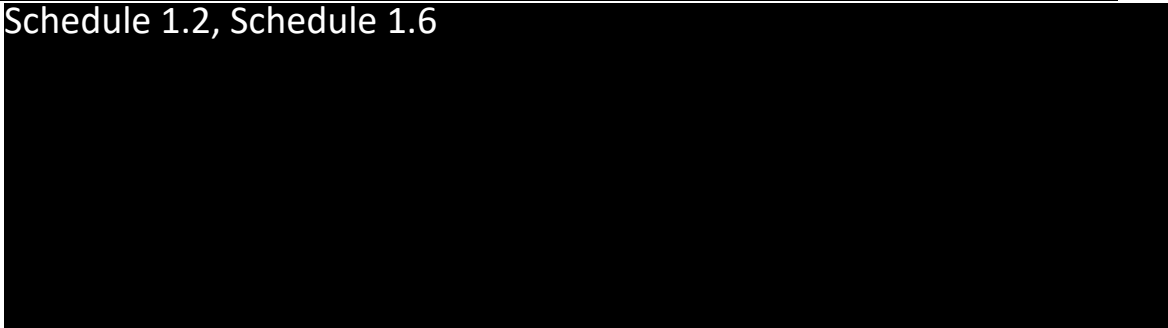
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Schedule 1.2, Schedule 1.6

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OFFICIAL: Sensitive

From: Garrison, Peter
Sent: Tuesday, 30 May 2023 8:13 AM
To: Bladin, Caitlin (Health)
Cc: Leece, Kristin; Lopa, Liz (Health); Deasey, Michael
Subject: RE: For advice: Procurement amendment Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]

OFFICIAL: Sensitive

ACT SOLICITOR-GENERAL
 (see confidentiality notice below)

Dear Caitlin

Thank you for this. Kristin is back. We will look at KWM's comments and get back to you.

Regards

Peter Garrison AM SC | Solicitor-General for the Australian Capital Territory
 Ph:02 620 70654 | Fax:02 620 70630 | DX 5602 Canberra | PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

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From: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Sent: Tuesday, 30 May 2023 8:01 AM
To: Garrison, Peter <Peter.Garrison@act.gov.au>
Cc: Leece, Kristin <Kristin.Leece@act.gov.au>; Lopa, Liz (Health) <Liz.Lopa@act.gov.au>
Subject: For advice: Procurement amendment Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]
Importance: High

OFFICIAL: Sensitive

Hi Peter

Schedule 1.2

Sincerely

Caitlin

From: [Redacted] Schedule 2.2(a)(ii)
Sent: Monday, 29 May 2023 7:11 PM
To: Bladin, Caitlin (Health) <Caitlin.Bladin@act.gov.au>
Cc: Leece, Kristin <Kristin.Leece@act.gov.au> [Redacted] Schedule 2.2(a)(ii) Finkelstein, Rebecca
 [Redacted] Schedule 2.2(a)(ii)

Subject: Health Infrastructure Enabling Bill - initial comments on procurement act amendments [KWM-DOCUMENTS.FID4467345]

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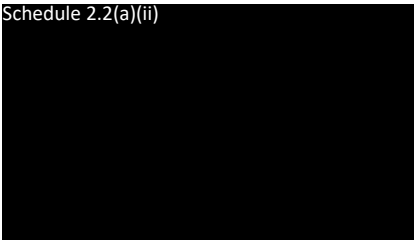
Hi Caitlin

Schedule 1.2



Kind regards

Schedule 2.2(a)(ii)



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