

Dear **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) on **Tuesday 27 June 2023**.

This application requested access to:

'I'm seeking any departmental advice or feasibility studies provided by the Northside Hospital Project Team within the ACT Health Directorate to Chief Minister Andrew Barr or Health Minister Rachel Stephens-Smith about the Calvary Public Hospital compulsory acquisition to build a new hospital in Canberra's north.'

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 **Tuesday 29 August 2023**.

I have identified five 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.

Additionally, information within scope of your application can be found in the below links to relevant earlier applications available on the ACTHD disclosure log in accordance with section 43 (1) A respondent may refuse to deal with an access application wholly or in part only if – (f) an earlier access application for the same government information –

- (i) was made in the 12 months before the application was made; and
- (ii) access to the information was refused; and
- (iii) the relevant public interest factors are materially the same as those considered in deciding the earlier application.

Two previous application responses can be found within the links below:

- [ACTHDFOI22-23.50](#)
 - [Part 1](#)
 - [Part 2](#)
- [ACTHDFOI22-23.53](#)

Decisions on access

I have decided to:

- grant full access to two documents; and
- grant partial access to three 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 two documents at references 1 and 2.

Partial Access

I have decided to grant partial access to three documents at references 3-5 that are partially comprised of personal information that being a mobile number of an ACT-Government employees 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 3 is 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 5 is also 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.

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*.

In undertaking the public interest test, on balance, I determine the information identified is contrary to the public interest and have decided the information redacted would not provide any additional government information pertinent to your request regarding the personal information. Therefore, I have determined the information identified is contrary to the public interest and would not advantage the public in disclosing 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



Liz Lopa

Deputy Director-General

Infrastructure and Engagement

ACT Health Directorate


28 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
	<i>'I'm seeking any departmental advice or feasibility studies provided by the Northside Hospital Project Team within the ACT Health Directorate to Chief Minister Andrew Barr or Health Minister Rachel Stephens-Smith about the Calvary Public Hospital compulsory acquisition to build a new hospital in Canberra's north.'</i>	ACTHDFOI22-23.58

Ref Number	Page Number	Description	Date	Status Decision	Factor	Open Access release status
1.	1 – 225	GBC23/278 Health Infrastructure Enabling Bill 2023 – Debate Pack	15 May 2023	Full Release		YES
2.	226 – 228	MIN23/486 Ministerial Brief – Meeting with the Archbishop for the Archdiocese of Canberra and Goulburn	30 May 2023	Full Release		YES
3.	229 – 231	MIN23/396 Caveat Brief – Northside Hospital Project – Briefing note	05 June 2023	Partial Release	Schedule 1.6 Cabinet and Schedule 2, 2.2(a)(ii) Privacy	YES
4.	232 – 233	MIN23/507 Caveat Brief – Northside Hospital Project – Briefing note	13 June 2023	Partial Release	Schedule 2, 2.2(a)(ii) Privacy	YES

5.	234 – 235	MIN23/508 Caveat Brief – Northside Hospital Project – Briefing note	19 June 2023	Partial Release	Schedule 1.2 Legal and Schedule 2, 2.2(a)(ii) Privacy	YES
Total Number of Documents						
5						

Health Infrastructure Enabling Bill 2023

Debate Pack

May 2023

#	DOCUMENT
1	Minister for Health Debate Speech (Clause by clause)
2	Amendments to the Bill
3	Supplementary Explanatory Statement
4	Scrutiny Report 29
5	Government response to Scrutiny Report 29
6	Draft Health Infrastructure Enabling Regulation 2023 for Tabling
7	QA- Health Infrastructure Enabling Bill 2023
8	<i>Health Infrastructure Enabling Bill 2023 – Presented 11 May 2023</i>
9	<i>Explanatory Statement – Presented 11 May 2023</i>
10	<i>Presentation Speech – Presented 11 May 2023</i>

2023

**Legislative Assembly for
the Australian Capital Territory**

Debate Speech

Health Infrastructure Enabling Bill 2023

**Rachel Stephen-Smith MLA
Minister for Health**

Health Infrastructure Enabling Bill 2023

1. The government presented the Health Infrastructure Enabling Bill 2023 to the Assembly on 11 May 2023.
2. As I have stated previously, this Bill provides Government with certainty over land tenure and operator, which is necessary to deliver a new hospital to meet the needs of our growing community.
3. This legislation will enable the ACT Government to acquire part of Block 1 Section 1 Division of Bruce to build a new public hospital and terminate the Calvary Network Agreement.
4. The Bill enables the transition of operations of the existing Calvary Public Hospital Bruce to Canberra Health Services – allowing the government to realise benefits of a single operator across our public health system as soon as possible. A single provider system will deliver efficiencies across the service including load sharing, easier transition of patients and improved mobility of staff.
5. Throughout the transition period, the government's focus will be on the wellbeing of staff and patients. I expect that Calvary will share this focus and assist in a smooth transition.
6. The government has made the decision of a short transition period between the Bill being debated and passed to provide certainty to staff and the community and eliminate the ambiguity of who their employer is or where their paycheck will come from. A short transition period also provides assurance to patients and carers in the community that there will be no interruption to services.
7. As I have stated previously, I know this may be an unsettling time for staff, however I want to assure Calvary staff that our aim is that staff will be able to keep doing their same job in their same team. We have provided sessions for staff to ensure they have the information they need throughout this time, and to alleviate uncertainty.

8. On 11 May 2023, this Assembly brought forward a motion to suspend the standing orders that would normally send a Bill to a Standing Committee to determine whether they would inquire, to ensure the time between introduction and passing of the legislation is minimised and a smooth handover can occur.
9. The Legislative Scrutiny Committee has undertaken a review of the Health Infrastructure Enabling Bill 2023 prior to being debated today.
10. I thank the Committee for its consideration of the Bill and in response the Government has made 1 amendment to the Bill. This amendment is to s 10 of the Bill is proposed to provide further clarity that a Regulation may provide for any acquisition of property.

PART 1 PRELIMINARY – Clauses 1 - 6

1 – Name of the Act

2 – Commencement

3 – Dictionary

4 – Notes

5 – Purposes of the Act

6 - Repeal and Consequential Amendments

Speaking notes:

Part 1 deals with formal matters of the Act, including commencement. These include the technical clauses defining the name and commencement dates of the act.

Clause 1 sets the name of the Act as the *Health Infrastructure Enabling Act 2023*, and Clause 2 enables the Act to commence on the day after its notification day. Commencement of the Act will progress a period of transition from Calvary to Canberra Health Services, as the operator of the public hospital. Schedule 2 will commence on the acquisition day (3 July 2023) as these consequential amendments are linked to the day Calvary ceases to operate the public hospital.

Commented [OS(1): To be updated once confirmed

Clause 3 states that the Dictionary at the end of the Act is part of the Act, while Clause 4 states that a note included in the Act is explanatory and does not form part of the Act.

Clause 5 sets out the purposes of the Act. The Act will:

- acquire that part of the land on which Calvary Public Hospital Bruce is situated (Block 1 Section 1 Division of Bruce), to construct a new northside public hospital;
- enable the transition of the operation of the public hospital to the Territory, including by terminating the Calvary Network Agreement;
- provide for the safe and orderly transition of Calvary Public Hospital Bruce employees, assets, and services to the Territory;
- ensure the continuity of and standards of provision for, public hospital services at the hospital both during and immediately following the transition;
- after transition, ensure that the Territory can manage its obligations and liabilities in relation to the public hospital effectively, including those liabilities arising in relation to the operation of the public hospital before the transition; and
- ensure that any interest acquired by the Territory under the Act is acquired on just terms.

Clause 6 states which Territory laws do not apply in relation to anything done under this Act.

PART 2 COMPULSORY ACQUISITION OF PUBLIC HOSPITAL LAND AND

ASSETS – Clauses 7 – 10

7 – Meaning of Acquisition Day

8 – Acquisition of Public Hospital Land

9 – Acquisition of Public Hospital Assets

10 – Acquisition must be on just terms

Speaking notes:

Clause 7 defines the **acquisition day** as 3 July 2023 (the default acquisition day). The acquisition day may, however, be an earlier or later day if notice is given by the Executive through notifiable instrument before 3 July 2023.

Clause 8 relates to the compulsory acquisition of part of the land by the Territory. The terms **hospital land**, **public hospital land**, and **private hospital land** are defined in the Dictionary to mean, respectively: “Block 1 Section 1 Division of Bruce”; “that part of [Block 1 Section 1 Division of Bruce] that is not private hospital land”; and “the land identified as the private hospital land in the draft deposited plan prepared under section 18”. The clause states that on acquisition day the **public hospital land** will vest in the Territory.

Clause 9 states that on acquisition day, the **public hospital assets** will vest in the Territory.

Clause 10 requires the Territory to provide just terms compensation to, amongst other persons, Calvary, for the acquisition of public hospital land and the termination of the CNA in accordance with the processes set out in the Act and the Regulation. It enables a Regulation to be made that sets out the mechanisms for how compensation claims are made and also deals with other matters relating to how compensation is worked out.

Clause 10 also provides a time limit for making compensation claims.

PART 3 ACQUISITION AND TRANSITION OF PUBLIC HOSPITAL

OPERATIONS – Clauses 11 – 13

11 – Territory may enter hospital land

12 - Calvary to provide information

13 – Calvary and Territory must cooperate to ensure safe and orderly transition

Speaking notes:

Clause 11 allows authorised persons to, at reasonable times and on the giving of reasonable written notice to Calvary before the acquisition day, enter and carry out activities on hospital land as needed, in preparation for the intended construction work and to transition the current hospital operations. This clause also obliges Calvary to allow authorised persons to enter and carry out activities on the hospital land, and to provide any assistance reasonably necessary for authorised persons to do so.

Clause 12 provides for Calvary to assist the Director-General through the provision of information to enable the acquisition to occur. It outlines the way a request must be made and responded to.

Clause 13 compels both the Territory and Calvary to act in good faith, cooperate and do all other things reasonably necessary to ensure both the safe and orderly transition of the operation of the public hospital to the Territory, and the continuity of and standards of provision for, public hospital services at the hospital. The public hospital is defined in the Dictionary to mean “the public hospital located on the hospital land known as Calvary Public Hospital Bruce”.

PART 4 WHAT HAPPENS ON OR AFTER ACQUISITION DAY

DIVISION 4.1 OPERATION OF PUBLIC HOSPITAL – Clauses 14 – 17

14 – Operation of Public Hospital

15 – Access to Hospital Land on and After Acquisition Day

16 – Territory may grant Calvary short-term licence to operate public hospital

17 – Continued access to historic records relating to public hospital

Speaking notes:

Clause 14 provides for the acquisition of part of Block 1 Section 1 Division of Bruce on acquisition day, via amendment to the current Crown Lease. This clause also provides for the termination of the CNA on acquisition day.

This clause requires Calvary to vacate the public hospital land on acquisition day so the Territory can, on that day, enter the land, and use all public hospital assets to continue the operations of the public hospital.

This clause enables a Regulation to be made that sets out various mechanisms for, amongst other things, transitioning Calvary Public Hospital Bruce employees, public hospital contracts, public patient records and employment records to the Territory.

Clause 15 grants Calvary a licence to enter the public hospital land and grants the Territory a licence to enter the private hospital land to allow both parties to comply with their obligations under this Act and ensure the continued operations of the public and private hospitals.

Clause 16 provides for the Territory to grant Calvary a short-term licence to operate the public hospital on and from the acquisition day, should a scenario arise where that is necessary for the continued operation of the public hospital and the continuity of and standards of provision for, public hospital services at the hospital.

Clause 17 states that the Director-General may request, at any time, historic information required by the Territory. It outlines the way this request will be made and responded to and provides for Calvary to ensure the safe storage of information.

DIVISION 4.2 AMENDMENT OF CROWN LEASE – Clauses 18 – 19

18 – Territory must prepare draft deposited plan

19 – Amendment of the Crown Lease

Speaking notes:

The terms of the Crown Lease are amended via the Act to reflect the acquisition of the public hospital land, with the Private Precinct Area identified on a new deposited plan to be referenced in the amended Crown Lease. New block boundaries will be confirmed via a survey with a deposited plan registered on the amended Crown Lease. This will continue Calvary's land tenure over the land on which their private facilities are situated.

Clause 18 requires the Territory to prepare a deposited plan outlining the Private Precinct Area. The deposited plan must align with the map provided at Schedule 1 to the Bill, and also include any other area in the hospital land as agreed between the Territory and Calvary.

This clause provides for an easement or right of way as appropriate to allow Calvary to access the land subject to the amended Crown Lease.

Clause 19 provides for the acquisition of the land for the public hospital by amending the Crown Lease over Block 1 Section 1 Division of Bruce to have it apply only to the land determined as the private hospital land. The Territory will retain the public hospital land as unleased Territory land for the time being.

The Crown Lease is amended on acquisition day. This clause requires the Territory to prepare an instrument for any easement or right of way noted in the draft deposited plan.

PART 5 MISCELLANEOUS – Clauses 20 – 28

20 – No repudiation of network agreements

21 – Performance of Calvary’s obligations

22 – Application of privacy legislation

23 – References to Director-General etc

24 – Supreme Court may order stay of proceedings under security

25 – Court order to enforce exercise of power

26 – Payments to be good discharge

27 – Execution of documents for or on behalf of the Territory

28 – Regulation-making power

Speaking notes:

Clause 20 limits what can be considered a repudiation or breach of the CNA or related public hospital agreements.

Clause 21 applies if Calvary fails to comply with a requirement, including because Calvary does not have, or cannot access the resources to do so.

Clause 22 provides that the transfer of information (public patient health records, or personal information of public hospital employees or other persons) from Calvary to the Territory, or the Territory receiving or keeping this information does not constitute a breach of territory privacy law.

Clause 23 defines references to Director-General in this Act to mean the Director-General of the administrative unit responsible for matters generally under the *Health Act 1993*.

This clause provides for the Director-General to delegate functions under the Act to the Director-General (or Chief Executive Officer) of Canberra Health Services or another public servant. This delegation power will enable the orderly transition of services.

Clause 24 describes what will happen if a person holding a security interest that is included in the acquisition is taking action against Calvary at the time.

Clause 25 describes the process if access of authorised persons is obstructed, or if Calvary otherwise does not comply with a request for access or information. The Director-General may apply to the Magistrates Court for police assistance, and an order requiring Calvary to comply.

Clause 26 states that payments made by the Territory are a discharge of the Territory's involvement. The Territory is not required to see the application of the money or the performance of any trust.

Clause 27 allows the planning and land authority to execute documents for the Territory's acquisition of land under the Act.

Clause 28 provides that regulations may be made for this Act.

PART 6 REPEAL AND CONSEQUENTIAL AMENDMENTS – Clauses 29 - 30

29 – Legislation repealed

30 – Legislation amended – Sch 2

Clause 29 outlines that on acquisition day, the Road Transport (Safety and Traffic Management) Parking Authority Declaration 2020 (No 6) (DI2020-62) will be repealed.

Clause 30 outlines the consequential amendments to the legislation.

Schedule 1 – Private Precinct area

Schedule 1 provides a map outlining the Private Precinct Area of Block 1 Section 1 Division of Bruce. Areas substantially approximating the Private Precinct Area will be retained by Calvary.

Schedule 2 – Consequential amendments

PART 2.1 HEALTH ACT 1993

[2.1] Section 50, definition of chief executive officer, Calvary

This item omits the definition of chief executive officer, Calvary. The item commences on the acquisition day.

[2.2] Section 66 (4)

This item omits “and the chief executive officer, Calvary (the executive officers)”. The item commences on the acquisition day.

[2.3] Section 66 (5) and examples

This item clarifies that if the Director-General is told about the withdrawal or amendment of the scope of clinical practice of a practitioner under this section, the Director-General must tell appropriate officers under their

authority or direction of the committee's decision so that proper effect can be given to the decision. The item commences on the acquisition day.

[2.4] Section 69 (6) (c)

This item omits section 69 (6) (c). The item commences on the acquisition day.

[2.5] Dictionary, definition of chief executive officer, Calvary

This item omits the definition of chief executive officer, Calvary. The item commences on the acquisition day.

PART 2.2 HEALTH INFRASTRUCTURE ENABLING BILL 2023

[2.6] Section 6 (1) (d)

This item substitutes the (d) Planning and Development Act 2007 (repealed); (da) the Planning Act 2023. The item commences on the day the Planning Act 2023, s 3 commences.

[2.7] Section 6 (2) and (3)

This item omits the Planning and Development Act 2007 and substitutes the Planning Act 2023. The item commences on the day the Planning Act 2023, s 3 commences.

**PART 2.3 MEDICINES, POISONS AND THERAPEUTIC GOODS
REGULATION 2008**

[2.8] Section 861A (5), definition of public employee

This item clarifies that a public employee includes a police officer. The item commences on the acquisition day.

PART 2.4 PUBLIC SECTOR MANAGEMENT ACT 1994

[2.9] Division 8.3

This item omits the obligations on Calvary for Calvary Public Hospital staff.
The item commences on the acquisition day.

OFFICIAL: Sensitive

This draft is supplied in confidence and should be
given appropriate protection.

DRAFT

(Prepared by Parliamentary Counsel's Office)

Australian Capital Territory Legislative Assembly

Health Infrastructure Enabling Bill 2023

Amendments to be moved by the Minister for Health

1

Clause 2 (1)
Page 2, line 5—

omit

the day after

2

Clause 5 (d)
Page 3, line 17—

omit

immediately

OFFICIAL: Sensitive

OFFICIAL: Sensitive

3

Proposed new clause 6 (5) and (6)

Page 4, line 17—

insert

- (5) The following provisions do not apply to a procurement of goods, services or works by a territory entity necessary for or ancillary to the operation of the public hospital in the 6-month period immediately after the acquisition day:
 - (a) the *Government Procurement Act 2001*—
 - (i) part 2A (Procurement activities) other than section 22A (1) and (2); and
 - (ii) part 2B (Secure local jobs code); and
 - (iii) any other provision prescribed by regulation;
 - (b) the *Government Procurement Regulation 2007*—
 - (i) part 2 (Government procurement—quotation and tender thresholds); and
 - (ii) part 3 (Procurement proposals); and
 - (iii) part 4 (Secure local jobs code); and
 - (iv) any other provision prescribed by regulation.
- (6) In this section:

territory entity—see the *Government Procurement Act 2001*, section 3.

4

Proposed new clause 10 (3) (aa)

Page 7, line 11—

before clause 10 (3) (a), insert

- (aa) how just terms for an interest acquired under this Act are provided;

OFFICIAL: Sensitive

OFFICIAL: Sensitive

5
Clause 10 (3) (a)
Page 7, line 12—

omit
under subsection (2)

6
Clause 11 (1) (d) (ii)
Page 9, line 24—

omit
immediately

7
Clause 11 (1) (d) (iii)
Page 9, line 28—

omit
immediately

8
Clause 11 (1) (d) (iv)
Page 10, line 3—

omit
immediately

9
Clause 12 (1)
Page 11, line 3—

before
information
insert
documents or other

OFFICIAL: Sensitive

OFFICIAL: Sensitive

10

Clause 13 (3) (c)

Page 15, line 1—

omit clause 13 (3) (c), substitute

- (c) ensure that any disruption to Calvary's operation of facilities on the private hospital land caused by the transition of the operation of the public hospital to the Territory is minimised to the extent reasonably practicable; and

11

Clause 14 (1) (a)

Page 16, line 7—

omit

section 18

substitute

section 19

12

Clause 17 heading

Page 19, line 5—

omit the heading, substitute

17

Continued access to records relating to public hospital

13

Clause 17 (1) (a)

Page 19, line 9—

omit

historical

substitute

documents and other

OFFICIAL: Sensitive

OFFICIAL: Sensitive

14

Clause 17 (1) (a) (i)

Page 19, line 11—

omit

existing or pending

substitute

past, current or future

15

Clause 25 (1) (b) (v)

Page 26, line 4—

omit

historical

16

Proposed new clause 28 (2)

Page 27, line 9—

insert

(2) A regulation may commence on its notification day.

17

Schedule 2, part 2.2

Proposed new amendment 2.7A

Page 31, line 11—

insert

[2.7A] Section 27

omit

planning and land authority

substitute

territory planning authority

OFFICIAL: Sensitive

OFFICIAL: Sensitive

18**Dictionary, note, proposed new dot point****Page 32, line 6—***insert*

- document

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

and

substitute

but

20**Dictionary, definition of *operation*****Page 34, line 8—***omit the definition, substitute****operation***, of the public hospital, includes a public health service.

21**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) does not include a thing excluded by regulation.

OFFICIAL: Sensitive

22

Dictionary, definition of *public hospital assets*, paragraph (a) (iii)

Page 34, line 27—

after

public hospital

insert

or a public health service

23

Dictionary, definition of *public hospital assets*, paragraph (a) (v)

Page 35, line 4—

after

public hospital

insert

or a public health service

24

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

Page 35, line 13—

omit

necessary for and ancillary to the operation of the public hospital

substitute

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

25

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

Page 35, line 20—

omit

other public health services

OFFICIAL: Sensitive

OFFICIAL: Sensitive

substitute

or a public health service

26

**Dictionary, definition of *public hospital employee*, paragraph (a) (iii)
Page 35, line 26—**

omit

27

**Dictionary, definition of *public hospital employee*, proposed new
paragraph (aa)
Page 35, line 26—**

insert

(aa) includes any other person prescribed by regulation; but

28

**Dictionary, definition of *public patient health records*
Page 36, line 11—**

after

public hospital

insert

or a public health service

OFFICIAL: Sensitive

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HEALTH INFRASTRUCTURE ENABLING BILL 2023

GOVERNMENT AMENDMENTS

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Rachel Stephen-Smith MLA
Minister for Health**

HEALTH INFRASTRUCTURE ENABLING BILL 2023

GOVERNMENT AMENDMENTS

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HEALTH INFRASTRUCTURE ENABLING BILL 2023

Government Amendments

Outline of Government Amendments

On 11 May 2023, the Health Infrastructure Enabling Bill 2023 (the Bill) as introduced into the Legislative Assembly. The Bill includes provision for the Territory to acquire the public hospital land from Calvary for the purpose of construction of a public hospital and enables the transition of the operation of the public hospital from Calvary to the Territory providing that any interests acquired under the Act are acquired on just terms.

This supplementary explanatory statement relates to the Government amendments to the Bill as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Government amendments and help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly. A more detailed explanation of the purposes and intended operation of the Bill are set out in the Explanatory Statement for the Bill.

The Government amendments to the Bill seek to further the purposes of the Bill, and Government Amendments 4 and 5 are responsive to comments from the Standing Committee on Justice and Community Safety, ACT Legislative Assembly, *Scrutiny Report 29* (10th Assembly, 26 May 2023).

Consistency with Human Rights

The preamble to the *Human Rights Act 2004* (ACT) states that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. This is further reflected in section 28 of the Human Rights Act with subsection (2) stating that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered.

An assessment of the rights engaged and potentially limited under the Bill is set out in the Explanatory Statement for the Bill.

Health Infrastructure Enabling Bill 2023

Detail

Government Amendment 1

Clause 2 (1)
Page 2, line 5—

This amendment omits the phrase “the day after” leaving the clause to mean the Act (other than schedule 2) will commence on the notification day.

Government Amendment 2

Clause 5 (d)
Page 3, line 17—

This amendment omits the word “immediately” from the clause. This provides clarity surrounding one of the purposes of the Act, which is not to be limited to only the period during and “immediately” after the transition.

Government Amendment 3

Proposed new clause 6 (5) and (6)
Page 4, line 17—

This amendment inserts a new clause 6(5) and (6) which disapplies the *Government Procurement Act 2001* and the *Government Procurement Regulations 2007* to the procurement of goods, services or works by a territory entity necessary for or ancillary to the operation of the public hospital for a period of 6 months after acquisition. This clause is intended to provide for continuity of service through the ability to quickly establish contracts necessary for or ancillary to the operation of the public hospital.

Government Amendment 4

Proposed new clause 10 (3) (aa)
Page 7, line 11—

This amendment inserts a new clause 10(3)(aa) which states that a regulation may provide for “how just terms for an interest acquired under this Act are provided”. This makes clear that a regulation may provide for the working out of just terms which under clause 10(1) the Territory must provide to a person from whom an interest is acquired under the Act.

Government Amendment 5

Clause 10 (3) (a)

Page 7, line 12—

The amendment omits “under subsection (2)” from clause 10(3)(a). This broadens what a regulation may provide for in relation working out compensation and avoids a potentially restrictive reading that a regulation under s 10(3)(a) may only provide for working out compensation for acquisitions under subsection (2).

Government Amendment 6

Clause 11 (1) (d) (ii)

Page 9, line 24—

This amendment omits the word “immediately” from the clause. This provides clarity that entry to the hospital for a purpose under the Act is for assessment of matters relevant to future operation and not just immediately after acquisition.

Government Amendment 7

Clause 11 (1) (d) (iii)

Page 9, line 28—

This amendment omits word immediately from the clause. This provides clarity that entry to the hospital for a purpose under the Act is for assessment of matters relevant to future operation and not just immediately after acquisition.

Government Amendment 8

Clause 11 (1) (d) (iv)

Page 10, line 3—

This amendment omits word immediately from the clause. This provides clarity that entry to the hospital for a purpose under the Act is for assessment of matters relevant to future operation and not just immediately after acquisition.

Government Amendment 9

Clause 12 (1)

Page 11, line 3—

This amendment inserts “documents or other” before “information” in clause 12(1) which provides that for the purpose of this Act, the director-general may request Calvary provide “documents or other” information about any of the things enumerated under clause 12.

Government Amendment 10

Clause 13 (3) (c)

Page 15, line 1—

This amendment replaces clause 13(3)(c) which broadly referred to minimising disruption to Calvary as a result of the public hospital transition. The proposed clause 13(3)(c) is more specific and provides that the Territory is to ensure that the impact of the public hospital transition on Calvary’s operation of facilities on the private land is minimised as far as reasonably practicable.

Government Amendment 11

Clause 14 (1) (a)

Page 16, line 7—

This is a minor and technical amendment to correct an error under clause 14(1)(a) which incorrectly references “section 18” instead of “section 19” the latter being the provision under which the Crown lease is amended.

Government Amendment 12

Clause 17 heading

Page 19, line 5—

This amendment omits the erroneous word “historical” from the heading of clause 17 which is a provision which should provide for continued access to records relating to the public hospital not limited to historical records.

Government Amendment 13

Clause 17 (1) (a)

Page 19, line 9—

This amendment omits the erroneous word “historical” from clause 17(1)(a) and substitutes documents and other as the director-general must have the power after acquisition to request that Calvary provide documents and other information outlined in that clause not limited to historical information.

Government Amendment 14

Clause 17 (1) (a) (i)

Page 19, line 11—

This amendment replaces the words “existing or pending” with the words “past, current or future” to ensure that the director-general may request information from Calvary on any investigations, proceeding, or remedy which relates to the operation of the public hospital prior to acquisition.

Government Amendment 15

Clause 25 (1) (b) (v)

Page 26, line 4—

This amendment omits the erroneous word “historical” from the clause.

This is a consequential amendment which results from the removal of “historical” from the heading of clause 17 as proposed by Government Amendment 12.

Government Amendment 16

Proposed new clause 28 (2)

Page 27, line 9

This clause inserts a new point at clause 28 being that a regulation may commence on notification day which enables the regulations to commence the day they are notified.

Government Amendment 17

Schedule 2, part 2.2

Proposed new amendment 2.7A

Page 31, line 11—

This amendment inserts 2.7A into sch 2, pt 2.2 to omit “planning and land authority” in clause 27 and replace it with “territory planning authority”. This provision would commence with section 3 (Dictionary) of the *Planning Act 2023*.

Government Amendment 18

Dictionary, note, proposed new dot point

Page 32, line 6—

This amendment inserts a new dot in the Dictionary of the Bill which refers the reader to the definition of “document” in the Legislation Act.

Government Amendment 19

Dictionary, definition of *interest*, paragraph (b) (iii)

Page 33, line 20—

This is a minor amendment to omit the word “and” and substitute it for the word “but” to correct a grammatical error in the meaning of the defined term “interest” under the Bill.

Government Amendment 20

Dictionary, definition of *operation*

Page 34, line 8—

This amendment omits the definition “operation” in the dictionary to the Bill and replaces it with a new definition of “operation” which states that operation of the public hospital includes provision of a public health service.

Government Amendment 21

Dictionary, proposed new definition of *public health service*

Page 34, line 19—

This amendment inserts a new definition “public health service” into the dictionary of the Bill which is relevant to the definition of operation in Government Amendment 20.

public health service—

- (a) means a public health service provided by public hospital employees at places other than the public hospital; but
- (b) does not include a thing excluded by regulation.

This amendment provides clarity as to the consideration of public health services delivered outside the public hospital itself.

Government Amendment 22

Dictionary, definition of *public hospital assets*, paragraph (a) (iii)

Page 34, line 27—

This amendment expands the definition of public hospital assets in paragraph (a)(iii) so that it not only includes motor vehicles used for the public hospital but also a public health service nominated by the Territory.

Government Amendment 23

Dictionary, definition of *public hospital assets*, paragraph (a) (v)

Page 35, line 4—

This amendment inserts “or a public health service” after “public hospital” in the definition of public hospital assets at paragraph (a)(v) to include any asset purchased for the public hospital “or a public health service” before the acquisition day.

Government Amendment 24

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

Page 35, line 13

This amendment omits part of paragraph (a) of the definition of public hospital contract and substitutes it “necessary for or ancillary to the operation of the public hospital or a public health service”. This amendment corrects a grammatical error in relation to “and/or” and further expands the definition to include contracts related to a “public health service”.

Government Amendment 25

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

Page 35, line 20—

This is a minor amendment following the inclusion of the definition of public health service at Government Amendment 20 which omits “other public health services” and substitutes it for “or a public health service”.

Government Amendment 26

Dictionary, definition of *public hospital employee*, paragraph (a) (iii)

Page 35, line 26—

This amendment omits paragraph (a) (iii) and substitutes it with:

(aa) includes any other person prescribed by regulation; but

The amendment corrects a grammatical error in the meaning of the defined term “public hospital employee” and effectively replacing the word “and” with “but”.

Government Amendment 27

Dictionary, definition of *public hospital employee*, proposed new paragraph (aa)

Page 35, line 26—

This inserts (aa) includes any other person prescribed by regulation.

Government Amendment 28

Dictionary, definition of *public patient health records*

Page 36, line 11

This amendment seeks to ensure outreach/offsite patient records are captured and inserts “or a public health service” after “public hospital”.



Legislative Assembly for the Australian Capital Territory

Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)

Scrutiny Report 29

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

Approved for publication

10th Assembly
May 2023

About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) on 2 December 2020.

The Committee is responsible for the following areas:

- (10) the Standing Committee on Justice and Community Safety is also to perform a legislative scrutiny role of bills and subordinate legislation by:
 - (a) considering whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
 - (i) unduly trespass on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny; and
 - (vi) consider whether any explanatory statement associated with legislation meets the technical or stylistic standards expected by the Assembly;
 - (b) reporting to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
 - (c) considering whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - (i) is in accord with the general objects of the Act under which it is made;
 - (ii) unduly trespasses on rights previously established by law;
 - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; and
 - (d) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Assembly;

You can read the full establishing resolution [on our website](#).

Committee members

Peter Cain MLA, Chair

Marisa Paterson MLA, Deputy Chair

Andrew Braddock MLA

Secretariat

Kate Mickelson, Acting Committee Secretary

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Role of Committee

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

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1. Bills

Bills—No Comment

Justice and Community Safety Legislation Amendment Bill 2023

1.1. This omnibus Bill amends various legislation, primarily in the Attorney-General's portfolio, including:

- a) *Court Procedures Act 2004* to change the title of the Principal Registrar and Chief Executive Officer of ACT Courts to the Chief Executive Officer of ACT Courts;
- b) *Crimes (Sentence Administration) Act 2005* and *Crimes (Sentencing) Act 2005* to allow detainees transferred from interstate who were sentenced to life imprisonment to have their non-parole period recognised and given effect to in the ACT. This will have a non-prejudicial retrospective effect to apply to current detainees;
- c) *Gaming Machine Act 2004* to extend by two years the time for licensees to redeem land, lease and planning, and development charge offsets under Part 2A; and
- d) *Land Titles (Unit Titles) Act 1970* to replace two references to the Magistrates Court with the correct references to the ACT Civil and Administrative Tribunal in relation to registering final building damage and administration orders.

Bills—Comment

Biosecurity Bill 2023

1.2. This Bill will repeal legislation and instruments relating to biosecurity, including the *Animal Diseases Act 2005*, the *Plant Diseases Act 2002* and the *Pest Plants and Animals Act 2005* and replace them with a single legislative framework to address inconsistencies and gaps, provide power to regulate biosecurity risks and respond to changing biosecurity risk-management needs.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the *Human Rights Act 2004* (HRA)

Right to privacy and reputation (section 12 HRA)

1.3. The Bill provides for powers of entry to premises, search, compelling the provision of information, inspection, and recording of oral responses. These include:

- a) An emergency declaration can be made by the Minister where they are satisfied that there is a likely biosecurity risk that may have a significant biosecurity impact. The

emergency declaration can authorise measures considered reasonably necessary to respond to the emergency, including restrictions on the use of premises, treatment measures, and installation of devices. This may include external treatment measures on individuals and visual inspections and movement of a person's hair. The declaration must not require any internal treatment measure or provision of samples or authorise surveillance within residential premises without consent of the occupier.

- b) Authorised persons will be able to issue biosecurity directions to a person regulating the person's conduct, to manage security risks or biosecurity impact, remedy a failure to comply or generally to enforce the Bill. As with emergency declarations, a biosecurity direction may provide for the use of premises, treatment measures on individuals, and installation of devices. This may include external treatment measures and visual inspections and movement of a person's hair, but must not require any internal treatment measure or provision of samples or authorise surveillance within residential premises without consent of the occupier.
 - c) An authorised person may enter premises for a variety of reasons, including if they suspect on reasonable grounds there is a biosecurity risk, or to investigate, monitor or enforce compliance with the Bill. Entry to part of the premises being used for residential purposes is only permitted with the occupier's consent, with a search warrant, or if the authorised person believes that the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary. An authorised person has various powers on entry, including inspection, taking or removing samples and taking images or recordings.
 - d) While exercising their powers of entry, or by written notice, an authorised person may require information be provided that is reasonably necessary to exercise a function under the Bill or to answer questions in relation to a matter under the Bill. Any information given orally may be recorded.
 - e) An authorised person, if they believe that a person may commit an offence against the Bill or can assist in the investigation of an offence against the Bill, can require the person to provide their name and home address and, within 24 hours, evidence supporting that identification information.
- 1.4. These various provisions may potentially limit the protection of privacy provided by section 12 of the HRA. The explanatory statement accompanying the Bill recognises these potential limits and sets out why they should be considered reasonable. Subject to the following comments the Committee refers that statement to the Assembly.
- 1.5. As discussed above, the Bill will allow an authorised person to enter residential premises without consent 'if the authorised person believes on reasonable grounds that the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary' (proposed paragraph 173(1)(g)). The Committee is concerned that it is not sufficiently clear what risks this provision is referring to. Paragraph 173(1)(a) refers to a biosecurity risk, which in turn is defined in section 13 as the risk of a biosecurity impact

happening. However, other paragraphs in subsection 173(1) refer to entry to enforce compliance with the Bill or to facilitate a biosecurity audit which are not dependent on the existence of a biosecurity risk. **The Committee therefore requests the Minister confirm that risk in this context refers to a biosecurity risk that requires access to the premises or provide further information on the types of risk that might lead to entry onto residential premises.**

- 1.6. The Committee notes that there are various other provisions of the Bill which may potentially limit the protection of privacy and reputation provided by section 12 of the HRA. Proposed section 224 authorises a certifier authority or auditor authority to disclose to the director-general any information obtained in exercising a function under the Act. Proposed section 223 authorises the director-general to disclose information they obtained under the Act to another entity where it is necessary for that entity to exercise a function relating to managing a biosecurity risk and disclosure to that entity is appropriate. Giving information about a biosecurity matter honestly and without recklessness to the director-general is not a breach of confidence (proposed section 226). There is also explicit provision for the court to order a person to publicise an offence they have been convicted of, and for the director-general to carry out that order if the person fails to do so (proposed section 211).
- 1.7. **The Committee requests further information from the Minister on why these potential limitations should be considered reasonable using the framework set out in section 28 of the HRA, and consideration be given to amending the explanatory statement to include that information.**

The Committee draws these matters to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Right to freedom of movement (section 13 HRA)

- 1.8. The Bill may also potentially limit the right to freedom of movement under section 13 of the HRA:
- a) Under proposed section 43, an emergency declaration can include measures which control entry or exit from stated premises or areas and use of roads, or require a person to be subject to a visual inspection or external treatment measure on entering or exiting stated premises.
 - b) A control declaration can include measures which regulate the use of premises or activities involving a biosecurity matter. Proposed section 56 prevents a control declaration from prohibiting, regulating, controlling or requiring the movement of a person, but might still impact on that movement.
 - c) A biosecurity direction issued by an authorised person may control entry to or exit from stated premises or areas or use of access roads, and by regulating activities or use of premises may also indirectly impact on the movement of persons.

- 1.9. Each of these potential limitations is recognised in the explanatory statement and a statement provided for why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.
- 1.10. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Right to liberty and security of person (section 18 HRA)

- 1.11. The Bill includes offences relating to managing biosecurity risks, including failing to comply with the general biosecurity duty, notification duties or an emergency declaration and dealing with prohibited biosecurity matter. Each of these include maximum penalties with a term of imprisonment that may be higher than that set out in the *ACT Guide to Framing Offences*. The explanatory statement accompanying the Bill recognises the potential for these offences to limit the right to liberty protected by section 18 of the HRA, and provides why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.
- 1.12. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Right to a fair trial (section 21 HRA)

- 1.13. The Committee is concerned that limitations on courts or tribunals issuing interim orders in relation to emergency declarations may limit the right to a fair trial under section 21 of the HRA. Under Part 3 of the Bill, where the Minister reasonably suspects a biosecurity risk is likely to happen that may have a significant biosecurity impact, the Minister may declare a biosecurity emergency. An emergency declaration can include a variety of emergency measures, including restricting movement of people, providing for external treatment and inspection of individuals, and providing for destruction of things. An authorised person can be authorised to enter premises and take action to rectify a failure to comply with an emergency declaration. It is also an offence to fail to comply with an emergency declaration.
- 1.14. Proposed section 50 provides:
- (1) A court or tribunal must not grant an interim injunction, make any other interim order or give any other interim relief having the effect of preventing, restricting, staying or deferring any emergency declaration or anything authorised or required to be done under an emergency declaration during the period the declaration has effect.
 - (2) However, subsection (1) does not prevent a court or tribunal from making a permanent injunction or other final order in any proceeding at any time.
- 1.15. The Committee recognises that proposed Part 14 of the Bill will make provision for the payment of compensation for the market value of animals, plants or property destroyed, or which would have been destroyed, in accordance with an emergency declaration. No compensation will be payable under that Part for any loss of profit, loss caused by breach

of contract, loss of production or any other consequential loss, though compensation may be payable under other causes of action. The Committee also recognises that there may be significant harm associated with delaying any response to biosecurity risks. However, it is not clear why this may not be appropriately reflected in the considerations taken into account by a court or tribunal before making any interim orders.

- 1.16. By removing the ability, particularly of a court, to issue an interim order protecting against the destruction of property or other action which may not be adequately compensated for or otherwise remedied through final orders, the Bill may limit the right to a fair trial in section 21 of the HRA. **The Committee requests information on why it was considered necessary to restrict the ability of courts and tribunal to make interim orders to protect emergency actions, and consideration be given to amending the explanatory statement to include this justification.**
- 1.17. The Bill provides for authorised persons to destroy something if they reasonably suspect it is, or carries, prohibited biosecurity matter, is a declared pest, infected or infested and cannot be treated, or authorised by emergency or control declarations. Proposed section 202 of the Bill provides that generally 24 hours written notice must be provided to the owner or person in charge of the thing before it is destroyed. There are a variety of circumstances in which 24 hours' notice is not required, including where the authorised person reasonably believes that the thing must be destroyed without delay to manage a biosecurity risk and it is not practicable to give notice, or delaying the destruction of an animal will cause the animal pain and suffering.
- 1.18. The provision will also excuse the lack of notice where 'the authorised person considers that, in the circumstances, the destruction must be carried out without delay or prior notice to the owner or person in charge'. It is not clear to the Committee why this exception is required, particularly to the extent it authorises destruction of property in circumstances unrelated to biosecurity risks that might arise if action is not taken immediately.
- 1.19. By providing for the destruction of property without prior notice and without adequate justification, the provision may limit procedural fairness rights, including those protected within the right to a fair trial under section 21 of the HRA. **The Committee therefore requests further information on why this exception to the provision of notice was considered necessary, and consideration be given to amending the explanatory statement accompanying the Bill to include this justification.**

The Committee draws these matters to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Rights in criminal proceedings (section 22 HRA)

Strict liability offences

- 1.20. The Bill includes 22 strict liability offences which may limit the right to be presumed innocent protected as a right in criminal proceeding in section 22 of the HRA. Several of

these offences include various defences or exceptions for which the evidential burden is placed on the defendant. These strict liability offences are recognised in the explanatory statement along with a statement on why they should be considered reasonable using the framework set out in section 28 of the HRA. That statement notes that strict liability offences are subject to the defence of a mistake of fact, and are limited to monetary penalties of 50 penalty units. Subject to the following comments the Committee refers that statement to the Assembly.

- 1.21. Proposed section 27 of the Bill creates a strict liability offence for failing to comply with a duty to notify a biosecurity event. A biosecurity event includes the presence of prohibited biosecurity matter in any part of the ACT. Prohibited biosecurity matter is declared by the Minister if they are satisfied the matter poses a significant biosecurity risk to any part of the ACT. A person who becomes aware or reasonably suspects that a biosecurity event is likely to happen has a duty to immediately notify the event in the way prescribed in regulations. The duty applies to owners of the premises, a carrier (such as an animal) or other thing that relates to the event, anyone who becomes aware of or suspects the biosecurity event in their professional capacity, or is a person prescribed in regulations.
- 1.22. Similarly, proposed section 31 of the Bill creates a strict liability offence of failing to comply with a duty to notify the presence of notifiable biosecurity matter. A Minister can declare notifiable biosecurity matter if satisfied that the matter poses a biosecurity risk. Owners, occupiers or possessors of premises, carriers or things, or persons who become aware of or suspect notifiable biosecurity matter in their professional capacity, or are a person prescribed in regulations, have a duty to immediately notify in the way prescribed in regulations.
- 1.23. Each of these strict liability offences may arise immediately upon the Minister declaring prohibited or notifiable biosecurity matter, where the owner, occupier or possessor of premises, carriers or related objects may be aware of the matter but not be aware that the matter has been declared by the Minister. Unlike for offences relating to dealing with biosecurity matter, defences including taking all reasonable precautions or having a reasonable excuse are not available. Declarations of prohibited and notifiable biosecurity matter will be notifiable instruments. However, the Committee remains concerned that the owner of premises or things may be subject to an offence of failing to notify the presence of matter which the owner is not aware poses any biosecurity risk.
- 1.24. The Committee notes that the Bill imposes a general biosecurity duty on persons who deal with biosecurity matter and who know, or reasonably ought to know, that the matter poses a biosecurity risk. The explanatory statement accompanying the Bill sets out the limited class of persons who are likely to be affected by this duty, including persons who deal with biosecurity matter in their professional capacity. In rural and peri-urban areas, information relating to biosecurity risks is readily available through established community networks, and community and volunteer groups are also informed about biosecurity risks. However, it is not clear to the Committee that these sources of information are sufficient to ensure that persons who may become subject to duties to immediately notify the

presence of declared biosecurity matter will in all cases be sufficiently informed of that duty.

- 1.25. The Committee also notes that the Bill includes provision for public notice of emergency declarations and control declarations, and the defences available for failing to comply with these declarations where the person was not made aware of the declarations, including through public notice.
- 1.26. **The Committee therefore requests further information on how information relating to declarations of prohibited and notifiable biosecurity matter will be communicated throughout the community to ensure that persons possibly subject to notification duties will be reasonably aware of their obligations under the Bill.**

Privilege against self-incrimination or exposure to a civil penalty

- 1.27. Proposed section 182 of the Bill abrogates the privilege against self-incrimination or exposure to a civil penalty in relation to being compelled to produce information or otherwise respond to questions by authorised persons when enforcing obligations under the Bill. This abrogation is subject to a limited use immunity, with any information or thing obtained, directly or indirectly, not being admissible in evidence other than in a proceeding for an offence arising out of the false or misleading nature of the information provided. A warning must also be given, including the effect of the abrogation of privilege, before any offence for refusing to provide information that may incriminate arises.
- 1.28. The privilege against self-incrimination and exposure to a penalty is also abrogated in relation to the duty to notify a biosecurity event in proposed section 27, and in relation to the duty to notify the presence of notifiable biosecurity matter in proposed section 31. Both of these sections provide that any information, document or thing obtained, directly or indirectly, in complying with the respective duties to notify is not admissible in civil or criminal proceedings other than an offence against the duty to notify itself or offences arising out of the false or misleading nature of the information, document or thing.
- 1.29. By requiring the provision of information which may tend to incriminate the person or expose the person to a penalty, the Bill may limit the right against self-incrimination included as a right in criminal proceedings under section 22 of the HRA, as well as the common law protection against exposure to a civil penalty. The limited use immunity and, under proposed section 182, availability of a warning may ameliorate any limitation of these rights. However, any abrogation should be recognised in the explanatory statement accompanying the Bill. **The Committee therefore asks that consideration be given to amending the explanatory statement to include recognition of the abrogation of the privileges and why any limitation of section 22 of the HRA should be considered reasonable using the framework in section 28 of the HRA.**

The Committee draws these matters to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Right to work and other work-related rights (section 27B)

- 1.30. As the explanatory statement accompanying the Bill recognises, the Bill includes provisions for ‘permit, authorisation, registration, identification and traceability schemes’. These provisions may impact people whose work and livelihoods require engaging in conduct that may be subject to these schemes, and hence limit the right to work set out in section 27B of the HRA.
- 1.31. The explanatory statement recognises these potential limitations of the right to work and sets out why they should be considered reasonable using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.
- 1.32. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Do any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny? – Committee Resolution of Appointment paragraph (10)(a)(v)

- 1.33. As set out above, the Bill will enable the Minister to make emergency declarations which authorise a variety of emergency measures. An emergency declaration is generally a notifiable instrument, but does not have to be notified to the extent it applies only to stated premises and the Minister considers notification would not be appropriate. Emergency declarations are limited to six months duration, but can be extended for further six month periods. An extension, like the original declaration, may not always be notified.
- 1.34. Proposed section 47 provides that an emergency declaration will prevail over a variety of other instruments made under the Bill, including regulations. The Committee is concerned with this ability of emergency declaration to override regulations without being subject to scrutiny by this Committee or the Assembly. The Committee recognises that emergency declarations may have to be made in circumstances requiring urgent action to be taken. It also recognises that public notification of biosecurity risks might impact an identified individual’s privacy and reputation and have other impacts that may not be adequately compensated. However, the use of the considerable authority conferred through the issue of emergency declarations should be subject to adequate scrutiny.
- 1.35. **The Committee therefore requests further information on why it is considered necessary to allow emergency declarations to override regulations. Consideration could also be given to providing for some form of reporting to the Assembly on the use of emergency declarations and other substantial powers under the Act not otherwise subject to direct scrutiny by the Assembly.**
- 1.36. The Bill will authorise the making of regulations which may ‘apply, adopt or incorporate an instrument as in force from time to time’. The Committee notes with approval that the notification requirements of section 47 of the *Legislation Act 2001* are not displaced and referenced in a note to the provision. However, no explanation is provided in the explanatory statement for why there might be a need to incorporate other instruments as

in force from time to time. **The Committee recommends that consideration be given to amending the explanatory statement to include such an explanation.**

- 1.37. The Bill will also authorise the creation of offences through regulations and fix maximum penalties of not more than 50 penalty units for the offences. The explanatory statement includes the following comment in the overview of the Bill:

In relation to the National Livestock Identification System (NLIS) it is proposed that provisions be included in a regulation under the Bill given the detailed nature of these provisions and the anticipated need for regular amendments as the national scheme evolves. The current NLIS provisions include offences with a maximum penalty of 50 penalty units and it is proposed to maintain the current penalties in the regulation.

- 1.38. **The Committee notes this explanation and refers it to the Assembly. The Committee recommends that consideration be given to including this in the clause note on the regulation-making power in proposed section 234.**

The Committee draws these matters to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Health Infrastructure Enabling Bill 2023

- 1.39. This Bill will allow the Territory to compulsorily acquire land and assets currently occupied by the Calvary Public Hospital Bruce for the purposes of building a new public hospital. The Bill will also terminate the existing agreement between the Territory and the hospital, and provide for the Territory to take over operation of the hospital.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the *Human Rights Act 2004* (HRA)

Right to privacy and reputation (section 12 HRA)

Right to work and other work-related rights (section 27B)

- 1.40. The Bill will enable the Territory to take over operating the current public hospital in Bruce operated by Calvary Health Care ACT Limited. This includes:
- a) allowing an authorised person to enter any operational or service delivery part of the hospital to do anything necessary for the purposes of the Act, while minimising any interference with Calvary's use of the land as much as reasonably practicable. Police may be authorised to enter under court order;
 - b) requiring Calvary to provide information including public patient health records, suppliers of goods and services, employment records and payroll information,

existing and pending investigations, proceedings or remedies arising under a law applying in the territory, and administrative records;

- c) any information, including public patient health records, provided by Calvary may be given to a Territory employee or contractor; and
- d) transfer or use of public patient health information and personal information of a public hospital employee or other person, including by the Territory when using the transferred information for a purpose of the Bill or keeping the information, does not constitute a breach of the *Health Records (Privacy and Access) Act 1997* or the *Information Privacy Act 2014*.

1.41. By authorising or requiring access to and transfer of personal information, including sensitive health information, employment information and potentially confidential information relating to investigations and complaints, the Bill may limit the protection of privacy and reputation provided by section 12 of the HRA.

1.42. The Bill may also affect the employment or contracts of workers currently engaged with the public hospital. Although it is intended that employees will be offered employment with the Territory in accordance with the *Public Sector Management Act 1994*, not all employees may be eligible under that Act or the operation of the Bill may otherwise have the consequence of ending the employment or contractual rights of existing workers. The Bill may therefore limit the right to work and other work-related rights under section 27B of the HRA.

1.43. The explanatory statement accompanying the Bill recognises these potential limitations and provides a brief statement for why they should be considered reasonable. Although not presented in the form set out in section 28 of the HRA, the statement provides the substance required of that section. The Committee refers that statement to the Assembly subject to the following comment.

1.44. Proposed section 22 of the Bill states that the required transfers of information under the Bill do not constitute a breach of territory privacy laws. Subsection 3 then states:

Nothing in the section limits any obligation Calvary, a related corporation or the Territory would otherwise have under a territory privacy law in relation to the use, disclosure and security of the transferred information.

1.45. It is not clear to the Committee what the scope of this subsection is intended to be. The explanatory statement, in discussing why any limitation by the Bill of the protection of privacy should be considered, states:

The Bill does not displace laws that regulate privacy of personal information and health records in the ACT. The Territory will take receipt of the information, store it securely and maintain the information in accordance with relevant Territory legislation, including the *Health Records (Privacy and Access) Act 1997*, *Territory Records Act 2002*, and *Information Privacy Act 2014*.

- 1.46. While the Bill would not seem to affect the operation of the Territory Records Act, it expressly provides that certain actions in relation to transferred information does not constitute a breach of the other privacy laws listed. The intention may be to retain privacy obligations over transferred information except to the extent necessary to give effect to the purposes of the Act, but it is not clear that this is what is achieved by section 22.
- 1.47. For example, as many of the obligations in the territory privacy laws are subject to authorisation in Territory legislation, the limitation of subsection 22(3) may be intended to limit what might otherwise be authorised under the Bill. However, it is unclear what subsection 22(2) adds in that case. Similarly, subsection 22(3) is expressed as limited to the use, disclosure and security of the transferred information. It is not clear whether the requirements in Principle 4.1, Schedule 1 of the Health Records (Privacy and Access) Act, which provide for records to be destroyed seven years after collection, are intended to apply given keeping the transferred information does not constitute a breach of territory privacy law under subsection 22(2).
- 1.48. **The Committee therefore seeks further information from the Minister on the intended operation of territory privacy laws after passage of the Bill.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated. Due to the potential significance of these matters, the Committee would welcome the opportunity to consider the Minister's response prior to debate.

Do any provisions of the Bill make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers? – Committee Resolution of Appointment paragraph (10)(a)(iii)

- 1.49. Proposed section 21 provides that where Calvary has an obligation under the Bill and fails to comply, including because they do not have access to required resources, then a related corporation of Calvary nominated by the Territory must comply with the requirement or ensure another related corporation does so. A related corporation is defined in the dictionary as 'a related body corporate, associate or related entity under the *Corporations Act 2001* (Cwlth)'. These obligations may include obligations to allow entry onto land and to view services and operations, to provide information, to cooperate to ensure the safe and orderly transition, to do all things necessary to ensure that transition and continued operation of the public hospital services, and to provide historical information relating to existing or pending investigations and employee rights and entitlements. The Bill will also require nominated related corporations to comply with a Magistrates Court order under proposed section 25.
- 1.50. Any nomination of a related corporation must be in writing, but there is no obligation that the nomination be notified on the legislation register or otherwise made public. There is also no requirement that a related body corporate be able to comply with the requirement

in question or is able to ensure that another related corporation does so. **The Committee therefore requests further information on the circumstances in which a related body corporate may be nominated as being subject to the requirements of the Act.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated. Due to the potential significance of these matters, the Committee would welcome the opportunity to consider the Minister's response prior to debate.

Do any provisions of the Bill inappropriately delegate legislative powers?— Committee Resolution of Appointment paragraph (10)(a)(iv)

Breadth of Regulations

- 1.51. Paragraph 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) ('Self-Government Act') provides that the Assembly has no power to make laws with respect to the acquisition of property otherwise than on just terms. Any acquisition of property under the Bill must therefore provide for the payment of just terms in order for the Bill to be valid. This is provided for in the Bill through section 10, which states that the Territory must provide just terms to a person from whom an interest is acquired under this Act. Interest is defined in the Bill for this purpose in terms sufficiently broad to likely encompass forms of property requiring just terms. However, an interest does not include an interest excluded by regulation.
- 1.52. Subsection 10(2) provides various examples of acquisitions where reasonable compensation is payable, including the acquisition of Calvary's interest or other security rights in the land or assets, or arising due to the termination of the agreement between Calvary and the Territory for the provision of public hospital services or any other contract, or any redundancy payments.
- 1.53. Subsection 10(3) then provides for regulations to provide for various matters, including how compensation under subsection (2) is to be worked out, how claims for compensation are made and dealt with, time limits from bringing a claim, what information is needed in making a claim, resolving disputes, how compensation is paid and other relevant matters.
- 1.54. The validity of the Bill is therefore largely dependent on the provision, in regulations, for the payment of just terms for any property interest acquired under the Bill. However, the Committee is concerned that some acquisitions of property may be excluded by regulations or not clearly provided for under the Bill, including:
 - a) Paragraph 10(3)(a) provides for regulations to provide for how compensation under subsection 10(2) is worked out. However, subsection 10(2) is expressed as not limiting the range of acquisitions under the Bill for which just terms is required. Regulations may therefore not extend to compensation for acquisitions not listed in subsection 10(2).

- b) Sections 8 and 9 provide for the acquisition of public hospital land and public hospital assets respectively. Any interest in land or assets that is 'divested, extinguished or diminished' because of the acquisitions effected under those sections is taken to have been acquired by the Territory under the Bill. However, subsection 4 of those sections states that a 'regulation may provide for an interest [which is taken to be acquired by the Territory under the Bill] ... to be dealt with in a different way'. This suggests that regulations may provide for interests to be dealt with other than by being taken to be an acquisition of property. Interests dealt with in this way may be excluded from the operation of section 10.

- 1.55. The Committee therefore requests further information from the Minister on how the Bill will apply to any acquisition which may require just terms under the Self-Government Act, even if that acquisition is not expressly included in the list in subsection 10(2) or not taken to be an acquisition of property under regulations. Consideration should be given to making it clear that any acquisition of property, as that term is used in the Self-Government Act, under the Bill requires the payment of just terms.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated. Due to the potential significance of these matters, the Committee would welcome the opportunity to consider the Minister's response prior to debate.

Henry VIII clauses

- 1.56. Proposed section 6 of the Bill provides for the application of other territory laws. Subsection 6(1) sets out various Acts which do not apply in relation to anything done under this Act, including the *Government Procurement Act 2001*, *Lands Acquisition Act 1994*, and *Planning and Development Act 2007*.
- 1.57. However, the Bill also provides (in proposed section 18) for the preparation of an amendment to the Crown lease governing the land which will remain or become a private hospital. Under proposed subsection 6(1) the Planning and Development Act will continue to apply on and from the acquisition day to that amended Crown lease, although the Bill will prevail to the extent of any inconsistency (subsection 6(3)).
- 1.58. Subsection 6(4) provides that a regulation may modify the operation of subsections (2) and (3). This means that it is possible to amend the extent to which the Planning and Development Act will apply to an amended Crown lease, and which legislation will prevail to the extent of any inconsistency.
- 1.59. By allowing for regulations to modify the operation of particular subsections of the Bill which in turn provide for the application of other territory legislation, the Bill includes a form of Henry VIII clause.
- 1.60. Proposed section 14 of the Bill will provide for the operation of the public hospital. It states that a regulation may provide for matters including the offer of employment and

employment of employees of the public hospital and 'the disapplication of provisions of the *Public Sector Management Act 1994*'. Again, this clause will enable regulations to modify the application of primary territory legislation.

- 1.61. There is no explanation in the explanatory statement for why clauses of this form are required to give effect to the purposes of the Bill. **The Committee therefore requests further information on why any modification of primary legislation enabled by these clauses can be considered necessary given the purposes of the Bill.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

- 1.62. This Bill will raise the minimum age of criminal responsibility (MACR) in the ACT in stages from 10 to 12 seven days after notification, and from 1 July 2025, except for children aged 12 and 13 years who commit certain named offences, to 14. Children under the MACR cannot be held criminally responsible. The Bill will also introduce various forms of alternative therapeutic pathways for children and young people, including Intensive Therapy Orders and Therapeutic Correction Orders.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the *Human Rights Act 2004* (HRA)

Right to protection from torture and cruel, inhuman or degrading treatment (section 10 HRA)

Right to protection of the family and children (section 11 HRA)

Right to privacy and reputation (section 12 HRA)

Right to freedom of movement (section 13 HRA)

Right to liberty and security of person (section 18 HRA)

- 1.63. The following potential limits on rights protected by the HRA are identified in the explanatory statement accompanying the Bill, including why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.

Therapeutic support panel

- 1.64. The Bill will amend the *Children and Young People Act 2008* (CYP Act) to establish a therapeutic support panel to assess the therapeutic needs and advise on appropriate treatment and support for children and young people who are referred to it. The panel will

also make recommendations for intensive therapy orders, assist with developing therapy plans and provide advice to the director-general.

- 1.65. The panel will have the power to request certain information sharing entities share safety and wellbeing information, produce a document or something else about a child or young person for the purposes of producing a therapy plan. The entity must comply with the request unless they do not have the requested information or have a reasonable excuse.
- 1.66. The panel may also receive referrals from a variety of entities – including police, education providers, health facilities and practitioners, court or tribunal officers – where the entity believes on reasonable grounds that the child or young person has a need for support services and is at risk of harming themselves or others.
- 1.67. The role of the panel will therefore involve the collection, use and sharing of personal information which may limit the protection of privacy provided by section 12 of the HRA.

Intensive Therapy Orders

- 1.68. The Bill will enable the Childrens Court to issue an intensive therapy order (ITO) for children over 10 years old. An ITO directs the child to undergo an assessment of their behaviour and needs and receive treatment according to a therapy plan to reduce the likelihood of the child engaging in harmful conduct in the future. An ITO may authorise the director-general to issue a direction that the child be confined under the care responsibility of the director-general as considered reasonably necessary as a last resort for the purpose of the assessment or treatment. The ITO may also include other conditions the court considers necessary to prevent the child from engaging in conduct which has a significant risk of significant harm to themselves or others or to ensure they undergo any necessary treatment.
- 1.69. Notice of an application by the director-general for an ITO must be provided to various people, including the child's parents or persons with care responsibilities, the chair of the therapeutic support panel, the public advocate, and, if the child or young person is an Aboriginal or Torres Strait Islander person—the Aboriginal and Torres Strait Islander children and young people commissioner. These persons must also be involved in other aspects of the ITO process, including in the making or extension of an ITO or in applying for amendment or revocation.
- 1.70. The Childrens Court can make an interim ITO of up to 2 weeks, with further orders totalling up to 12 weeks, where the court is satisfied that there is a significant risk of significant harm to the child or someone else arising from the child's conduct, and the interim order is necessary to prevent the harmful conduct. An interim ITO can also order a child be confined where that is necessary as a last resort to prevent the child engaging in harmful conduct and ensure the child undergoes any necessary treatment in accordance with a therapy plan.
- 1.71. The Childrens Court can also issue an ITO for up to 12 weeks (with further orders extending the period by 8 weeks up to a total of 6 months) where the Court is satisfied of each of the following:

- a) If the order is not made or extended there will be a significant risk of significant harm to the child or someone else arising from the child's conduct;
 - b) Less restrictive ways to prevent the child engaging in harmful conduct have not been successful or are not considered appropriate, and there are no other less restrictive ways available;
 - c) Any confinement may be necessary as a last resort to enable assessment of the child's behaviour and needs or treatment in accordance with a therapy plan;
 - d) The therapy plan is more likely than not to reduce the likelihood of the child engaging in harmful conduct in the future; and
 - e) Making the order or extension is in the best interest of the child or young person.
- 1.72. Any confinement direction issued by the director-general must be as a last resort and necessary and reasonable to ensure assessment or treatment of the child. Continuous confinement can only last for 14 days, although there can be more than one period of confinement while an ITO is in place.
- 1.73. While subject to an ITO or interim ITO, a child may be subject to a scanning, frisk or electronic search and anything dangerous found seized if there are reasonable grounds for believing they are carrying anything that would present a danger to another person or could be used to escape from the place where they are receiving therapy. The search must be as least intrusive as possible, but force can be used as is necessary and reasonable.
- 1.74. The entity which operates a place where a child may be confined while receiving intensive therapy must keep a register including personal details of each child confined and details of their therapy plan and any searches conducted and force used. The register can be accessed only by listed persons.
- 1.75. Police can be asked by the director-general to assist in carrying out an ITO. A warrant can be issued to authorise entry into stated premises to take a child into custody if the child is in danger due to a breach of the ITO or interim ITO, or the child is absent from the therapy place where they are to be confined.
- 1.76. Information relating to intensive therapy is protected information under the CYP Act and must be protected in the same way as other information collected under that Act. Information brought into existence for the purposes of a referral to the therapeutic support panel, preparation of a therapy plan, relating to a child in intensive therapy or implementation of an ITO or interim ITO is not admissible in any criminal proceeding. The Bill will also amend the *Victims of Crime Act 1994* to provide for information disclosure to the victim of a child's harmful behaviour, including information about the child's therapeutic treatment but only if considered appropriate by the Chair of the therapeutic support panel and the Commissioner and the information does not include personal information about the child.
- 1.77. By providing for therapeutic treatment to be provided to a child without their or their parent's consent, including confining a child for the purpose of administering treatment, the Bill may limit the right to protection from torture and cruel, inhuman or degrading

treatment in section 10 of the HRA. By authorising confinement of a child and restricting a child's movements while under an ITO or interim ITO the Bill may limit the right to freedom of movement in section 13 of the HRA, the right to liberty and security of person in section 18 of the HRA, and the right to protection of the family and children in section 11 of the HRA. By allowing personal searches, and providing for the sharing and keeping of records relating to highly sensitive information, the Bill may limit the protection of privacy provided by section 12 of the HRA.

- 1.78. The Committee draws these matters to the attention of the Assembly, but does not require a response from the Minister.**

[Right to protection from torture and cruel, inhuman or degrading treatment \(section 10 HRA\)](#)

[Right to privacy and reputation \(section 12 HRA\)](#)

[Right to freedom of movement \(section 13 HRA\)](#)

[Right to peaceful assembly and freedom of association \(section 10 HRA\)](#)

Therapeutic Correction Orders

- 1.79. The Bill will also amend the *Crimes (Sentencing) Act 2005* to allow a Court to impose a therapeutic correction order (TCO) where a young offender has been found guilty of an offence committed when they were under 18. The explanatory statement suggests that the TCO is a community-based sentencing option intended to be a more intensive therapeutic order for those young offenders for whom a good behaviour order does not have a strong enough therapeutic benefit.
- 1.80. A TCO is based on an assessment of the offender's suitability for a TCO arranged by the director-general responsible for the CYP Act. The assessment must consider various factors relating to whether the offender is likely to comply with or benefit from the TCO. A TCO can last up to four years, and require an offender to not commit any further offences, to report to or receive visits from the therapeutic correction team, and prevents an offender from leaving the Territory without approval from the director-general. The offender must also complete a program of treatment, including medical, psychiatric or psychological treatment or detoxification, participate in counselling, attend meetings, participate in education or employment programs, and submit to alcohol and drug testing.
- 1.81. A court will also be able to make a non-association and place restriction order along with the TCO. A non-association order prohibits an offender from attempting to be with or communicate with a named person. A place restriction order prohibits an offender from attempting to be in or near a named place or area. The Court can make the order only for relevant offences and when the order is necessary and reasonable to prevent someone being harassed or their safety or welfare endangered, to prevent further offences or to assist the offender manage things that make them more likely to commit further offences. Non-association and place restriction orders can last up to 24 months. The director-general may also apply for a review of an offender's TCO if they believe that a change in the

offender's circumstances, including living arrangements, is likely to substantially affect the offender's ability to comply with the order.

- 1.82. By placing restrictions on where a person can live or go including preventing an offender leaving the Territory without approval, the Bill potentially limits the right to freedom of movement protected by section 13 of the HRA. By requiring supervision as a requirement of a TCO the Bill may also limit the protection of privacy provided by section 12 of the HRA. By restricting who an offender may associate or communicate with the Bill may limit the freedom of association provided by section 15 of the HRA. The explanatory statement accompanying the Bill recognises these potential limitations and provides for why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly subject to the following comments.
- 1.83. One of the purposes and conditions of a TCO is that an offender complete a program of treatment, including medical treatment. This may limit the right to protection from torture and cruel, inhuman or degrading treatment under section 10 of the HRA, which includes the right to not be subjected to medical treatment without free consent.
- 1.84. The Bill will also provide assessors carrying out an assessment of an offender's suitability for a TCO with authority to ask any entity to provide information, including documents, for the purpose of the assessment. The entity must comply as soon as practicable. Providing the information honestly and with reasonable care is not a breach of confidence or professional ethics or misconduct, or a ground for defamation. Information obtained as part of making a therapeutic correction assessment or TCO can be shared between the Court, the director-general and prescribed entities for the purpose of exercising functions under the Crimes (Sentencing) Act. By providing for the provision of information, including personal information, to be compelled or shared in these ways, the Bill may further limit the protection of privacy provided by section 12 of the HRA.
- 1.85. **The Committee therefore requests further information on why the provisions in the Bill relating to amendments to the Crimes (Sentencing) Act and the making of a TCO may not limit the rights in sections 10 and further limit the right in section 12 of the HRA, and why any limitation should be considered reasonable using the framework set out in section 28 of the HRA. Consideration should be given to amending the explanatory statement to include this information.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Right to life (section 9 HRA)

Right to liberty and security of person (section 18 HRA)

- 1.86. The Bill will amend the *Criminal Code 2002* to provide that, after seven days from notification, a child under 12 years old is not criminally responsible for an offence and a child between 12 and 14 can be criminally responsible only if the prosecution proves they

know their conduct is wrong. After 1 July 2025 a child under 14 years old will not be criminally responsible for an offence unless the child is at least 12 years old, engages in conduct that is an offence mentioned in the proposed schedule 1 to that Act, and the prosecution proves that the child knows that their conduct is wrong. Raising the MACR will also prevent children under 12 or 14 from being a respondent to an application for a family violence order under the *Family Violence Act 2016* or a protection order under the *Personal Violence Act 2016*.

- 1.87. These amendments may limit the right to life under section 9 of the HRA, which requires public authorities take reasonable steps to protect life, including protecting someone whose life is at risk from another person, where the authorities know or should know of this risk. The amendments may also limit the right to security of person under section 18 of the HRA, which may include providing victims and witnesses with information about the outcome of court proceedings as soon as possible, particularly where the accused is released from custody.
- 1.88. The explanatory statement accompanying the Bill recognises these potential limitations and sets out why they should be considered reasonable using the framework in section 28 of the HRA. In particular, the explanatory statement suggests that the alternative pathways set out in the Bill to respond to harmful behaviour will protect against potentially harmful behaviour of children. There will also be provision for victims of harmful behaviour to provide a harm statement to be considered by the therapeutic support panel, or to be informed of certain information about the child's therapy plan where appropriate. They will still be eligible for financial assistance through the Victim Support Scheme. The child may also participate in a restorative justice conference. Police will retain powers of arrest and detention. The Committee refers that statement to the Assembly.
- 1.89. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Protection of the Family and Children (section 11 HRA)

- 1.90. Subsection 11(2) of the HRA states that every child has the right to the protection needed because of being a child, without distinction or discrimination of any kind. This right is potentially limited by the exceptions provided in the Bill for children aged 12 or 13 who will remain criminally culpable after the MACR is raised to 14 where they commit one of the four offences listed in the proposed schedule 1 of the Criminal Code. Those offences will be murder; intentionally inflicting grievous bodily harm; sexual assault in the first degree; and act of indecency in the first degree.
- 1.91. The explanatory statement accompanying the Bill recognises that this exception is contrary to the statement of the United Nations Committee on the Rights of the Child, whose recommendation to raise the MACR to at least 14 is used in the explanatory statement as part of the basis for the Bill. That UN Committee, in its General comment No. 24 (2019) on children's rights in the child justice system, stated (at [25]):

The [UN] Committee is concerned about practices that permit the use of a lower minimum age of criminal responsibility in cases where, for example, the child is

accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children's development. The Committee strongly recommends that States parties abolish such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception.

- 1.92. The explanatory statement, however, states that the exception to raising the MACR to 14, and the consequent limitation of the rights of children, is warranted:

This legislation is intended to promote the rights of children and young people by adopting therapeutic approaches that focus on rehabilitation. However, it is vital that the community is also properly protected from harm, particularly where the new therapeutic system is being established, and the ability of that system to manage risks associated with extreme cases is not fully tested.

This limitation is considered reasonable and proportionate due to the nature of these very serious offences and the response that may be required to ensure public safety.

- 1.93. The Committee recognises that the offences listed in the proposed schedule 1 of the Criminal Code are exceptionally serious and violent offences. However, as the UN Committee report indicates, there is insufficient evidence to support the conclusion that children under 14 are sufficiently intentional to warrant criminal culpability. Similarly, there is no evidence presented in the explanatory statement that suggests that a child is more likely to cause harm to others after the commission of these particular offences than they would after commission of other violent offences, or that the therapeutic treatment otherwise provided under the Bill will be less effective in relation to these particular offences in providing for rehabilitation or otherwise protecting against further harm to the community.
- 1.94. The Committee notes that the explanatory statement suggests that there are practical issues in a small jurisdiction in providing alternative therapeutic approaches for the likely very small number of young people who may commit the offences listed, at least in comparison to the opportunities provided in a youth justice facility. There would also be concerns with subjecting young people for longer periods of secure care without conclusively establishing their involvement in such serious criminal activity. The Committee is concerned, however, that these statements are premised to some degree on the need to treat children who have committed the particular crimes in question differently from those that have committed other violent or serious offences.
- 1.95. The Committee therefore requests further information on why it is considered necessary that an exception to the protection of children provided by the Bill should be made for the ages and offences in question, and why that exception should be considered proportionate given the consequences of criminal culpability in those circumstances.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

Do any provisions of the Bill inappropriately delegate legislative powers?— Committee Resolution of Appointment paragraph (10)(a)(iv)

Henry VIII clause

- 1.96. The Bill will insert new transitional parts in the *Crimes Act 1900* (proposed parts 33 and 34), the *Family Violence Act 2016* (proposed part 23 and 24), and the *Personal Violence Act 2016* (proposed parts 23 and 24) setting out transitional provisions to reflect the staged lifting of the MACR to 12 seven days after commencement of the Bill and then 14 after 1 July 2025. The proposed transitional parts include a Henry VIII clause in the following terms:
- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023.
 - (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
 - (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- 1.97. The proposed transitional parts will expire five years after their commencement.
- 1.98. The explanatory statement accompanying the Bill does not recognise the nature of these clauses as providing authority for regulations to modify the effect of primary legislation, nor set out a justification for why they have been included. **The Committee therefore requests further information on why the Henry VIII clauses are considered necessary in the context of this Bill and the Crimes Act, Family Violence Act and Personal Violence Act in particular, including:**
- a) what limits, if any, are placed on the scope, subject matter and duration of the Henry VIII clause so as to restrict the potential impact of any regulations; and
 - b) what alternatives to the Henry VIII clause, either to the clause itself or the use of a Henry VIII clause in general, were considered and why those alternatives were not accepted.
- Consideration should also be given to amending the explanatory statement to include this information.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Supreme Court Amendment Bill 2023

- 1.99. This Bill will amend the *Supreme Court Act 1933* to provide for the Court of Appeal to grant leave to appeal against a conviction on the ground that there is fresh and compelling evidence that should be considered and granting leave is in the interests of justice. Where, after taking into account that fresh and compelling evidence, the Court of Appeal considers that there has been a substantial miscarriage of justice, the court may set aside the conviction or finding of guilt, and either order a verdict of not guilty to be entered or order a new trial or hearing.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the *Human Rights Act 2004* (HRA)

Rights in criminal proceedings (section 22 HRA)

- 1.100. The rights in criminal proceedings protected by section 22 of the HRA includes the right of anyone convicted of a criminal offence to have the conviction and sentence reviewed by a higher court in accordance with law. The Bill will extend this right by allowing the grant of leave to appeal on the basis of fresh and compelling evidence. However, by only allowing a successful appeal where there has been a substantial miscarriage of justice, the Bill may potentially limit the right to appeal in section 22.
- 1.101. The explanatory statement accompanying the Bill recognises this potential limitation and sets out why it should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.
- 1.102. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Proposed Amendments—No Comment

Period Products and Facilities (Access) Bill 2022

- 1.103. On 18 May 2023 the Committee received proposed government amendments to the Period Products and Facilities (Access) Bill 2022. The proposed amendments will omit Part 3 of the Bill, which provided for workplace access to toilets, handwashing and sanitary waste facilities, and make other consequential amendments. The Committee has no comments on these amendments.

Proposed Amendments—Comment

Planning Bill 2022

- 1.104. On 15 May 2023 the Committee received proposed government amendments to the Planning Bill 2022. These amendments are mainly of a technical nature, or to clarify or make minor amendments to provisions of the Bill. The Bill also amends the process for the issue of controlled activity orders to address privacy concerns raised by the Committee in its report on the Bill.
- 1.105. The proposed amendments will insert new provisions providing for design guides for development proposals to support the territory plan to be prepared by the Minister and technical specifications to support design guides and the territory plan to be developed by the chief planner. Both the design guides and technical specifications are notifiable instruments and must be published on the authority website (clause 31 of the proposed amendments).
- 1.106. An amendment to the territory plan to add or change a reference to a design guide will be a minor plan amendment for which no consultation is needed (clause 35). In deciding a development application under Part 7.6 of the Bill, the decision-maker will have to consider any applicable design guidance in a design guide. An application for a development proposal in relation to which a design guide applies has to include the proponent's response to the design guide (clause 92).
- 1.107. The Committee is concerned that design guides may substantially affect the requirements for development approvals and potentially act as a legislative requirement for which insufficient scrutiny is provided. **The Committee therefore requests further information on why design guides cannot be subject to disallowance by the Assembly.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Right to recognition and equality before the law (section 8 HRA)

Right to privacy and reputation (section 12 HRA)

Right to a fair trial (section 21 HRA)

- 1.108. The proposed amendments were accompanied by a supplementary explanatory statement which responds to several comments made by this Committee in its report on the Bill by providing additional statements recognising and justifying potential limits on various rights protected under the HRA, including the right to equality in section 8 of the HRA, the protection of privacy and reputation in section 12 of the HRA, and the right to a fair trial in section 21 of the HRA. The Committee refers that statement to the Assembly.
- 1.109. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Government Response—No Comment

- 1.110. The Committee received a response to the Committee's comments on the following Bill and has no further comments:
- a) *Motor Accident Injuries Amendment Bill 2023*
- 1.111. This response can be viewed [online](#).
- 1.112. The Committee wishes to thank the Minister for Transport and City Services for his helpful response.

2. Subordinate Legislation

Disallowable Instruments—No comment

- 2.1. The Committee has examined the following disallowable instruments and has no comments on them:
- **Disallowable Instrument DI2023-30** being the City Renewal Authority and Suburban Land Agency (Agency Board Member) Appointment 2023 (No 1) made under section 45 of the *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as an expert member of the Suburban Land Agency Board.
 - **Disallowable Instrument DI2023-31** being the Health Records (Privacy and Access) (Fees) Determination 2023 (No 1) made under section 34 of the *Health Records (Privacy and Access) Act 1997* revokes DI2020-300 and determines fees payable for the purposes of the Act.
 - **Disallowable Instrument DI2023-32** being the Taxation Administration (Amounts Payable—Utilities (Network Facilities Tax)) Determination 2023 made under section 139 of the *Taxation Administration Act 1999* revokes DI2021-46 and determines the rate for section 8 of the *Utilities (Network Facilities Tax) Act 2006* for the year ending 31 March 2022.
 - **Disallowable Instrument DI2023-34** being the Land Tax (Affordable Community Housing) Determination 2023 made under paragraph 13A(5)(a) of the *Land Tax Act 2004* revokes DI2020-277 and determines the eligibility criteria that an owner of a parcel of land must satisfy to be eligible for an exemption under section 13A of the Act.
 - **Disallowable Instrument DI2023-35** being the Cultural Facilities Corporation (Governing Board) Appointment 2023 (No 1) made under section 9 of the *Cultural Facilities Corporation Act 1997* and section 78 of the *Financial Management Act 1996* revokes DI2021-285, and appoints a specified person as a member of the Cultural Facilities Corporation Governing Board.
 - **Disallowable Instrument DI2023-36** being the Board of Senior Secondary Studies Appointment 2023 (No 1) made under section 8 of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as a member of the ACT Board of Senior

Secondary Studies, after consultation with business and industry representative organisations.

- **Disallowable Instrument DI2023-37** being the Heritage (Council Chairperson) Appointment 2023 made under section 17 of the *Heritage Act 2004* appoints a specified person as chairperson of the ACT Heritage Council.
- **Disallowable Instrument DI2023-38** being the Heritage (Council Deputy Chairperson) Appointment 2023 made under section 17 of the *Heritage Act 2004* revokes DI2021-27, and appoints a specified person as deputy chairperson of the ACT Heritage Council.
- **Disallowable Instrument DI2023-39** being the Heritage (Council Member) Appointment 2023 (No 1) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-40** being the Heritage (Council Member) Appointment 2023 (No 2) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-41** being the Heritage (Council Member) Appointment 2023 (No 3) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-42** being the Heritage (Council Member) Appointment 2023 (No 4) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-43** being the Heritage (Council Member) Appointment 2023 (No 5) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-44** being the Heritage (Council Member) Appointment 2023 (No 6) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-45** being the Heritage (Council Member) Appointment 2023 (No 7) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-46** being the Heritage (Council Member) Appointment 2023 (No 8) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-47** being the Heritage (Council Member) Appointment 2023 (No 9) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council.
- **Disallowable Instrument DI2023-49** being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2023 (No 1) made under section 12 of the *Road Transport (General) Act 1999* provides that section 205 of the *Road*

Transport (Road Rules) Regulation 2017 does not apply to a specified area during the Dettol T20 International cricket series for the period 11 to 20 February 2022.

- **Disallowable Instrument DI2023-52** being the Veterinary Practice (Fees) Determination 2023 (No 1) made under section 144 of the *Veterinary Practice Act 2018* determines fees payable for the purposes of the Act and revokes DI2021-53.
- **Disallowable Instrument DI2023-59** being the Financial Management (Transfer of Funds from Capital Injection to Other Appropriations) Approval 2023 (No 1) made under paragraph 14A(2)(b) *Financial Management Act 1996* (Transfer of funds from capital injection appropriation to other appropriations).
- **Disallowable Instrument DI2023-65** being the Legal Profession (Bar Council Fees) Determination 2023 made under subsection 84(2) of the *Legal Profession Act 2006* revokes DI2015-180 and determines fees payable for applications for the grant or renewal of a barrister practising certificate.

Disallowable Instruments—Comment

- 2.2. The Committee has examined the following disallowable instruments and offers these comments on them:

No Human Rights Issues

- **Disallowable Instrument DI2023-50** being the Utilities (Licensing) Exemption 2023 (No 1) made under section 22 of the *Utilities Act 2000* exempts the Suburban Land Agency & Riverview Developments (ACT) Pty Limited from the requirement to hold a utility licence for various water-related utility services provided in the ACT.
 - **Disallowable Instrument DI2023-51** being the Utilities (Licensing) Exemption 2023 (No 2) made under section 22 of the *Utilities Act 2000* exempts the Australian Capital Territory (as represented by the Directorate which has responsibility for a stormwater utility service licence for various water-related utility services provided in the ACT.
- 2.3. The first instrument mentioned above, made under section 22 of the *Utilities Act 2000*, exempts the Suburban Land Agency & Riverview Developments (ACT) Pty Limited ABN 72 619 778 053, which the explanatory statement for the instrument states is the 'West Belconnen Joint Venture also commonly referred to as the Ginninderry Joint Venture', from the requirement to hold a utility licence in relation to the building and commissioning of stormwater infrastructure in the Ginninderry Estate in West Belconnen.
- 2.4. The second instrument mentioned above exempts 'the Australian Capital Territory, as represented by the Directorate which has responsibility for a stormwater utility service' from the requirement to hold a utility licence in relation to the management and operation of the stormwater harvesting and distribution network in the Ginninderry Estate in West Belconnen.

- 2.5. The Committee notes that the explanatory statement for each of the instruments mentioned above states that there are no human rights implications arising from the instrument.
- 2.6. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned above.
- 2.7. This comment does not require a response from the Minister.

Displacement of subsection 47(6) of the *Legislation Act 2001*

- **Disallowable Instrument DI2023-33** being the Taxation Administration (Amounts Payable—Motor Vehicle Duty) Determination 2023 made under section 139 of the *Taxation Administration Act 1999*.
- 2.8. This instrument, made under section 139 of the *Taxation Administration Act 1999*, determines motor vehicle registration duties for Part 9.1 of the *Duties Act 1999*. The explanatory statement for the instrument notes that the instrument implements the Vehicle Emission Reduction Scheme (VERS), under which duty is charged on the basis of four rating categories (A, B, C and D), with the rating category of a motor vehicle depending on its environmental performance as measured by the grams of carbon dioxide emitted by the vehicle per kilometre. The classification of vehicles in the instrument relies on the Commonwealth *Green Vehicle Guide*, defined in section 3 of the instrument as:
- Green Vehicle Guide** means the Green Vehicle Guide published by the Commonwealth as in force from time to time.
- Note The Green Vehicle Guide is available at www.greenvehicleguide.gov.au.
- 2.9. Section 4 of the instrument then provides:
- 4 Displacement of Legislation Act, s 47 (6)—Green Vehicle Guide**
- The *Legislation Act 2001*, section 47 (6) does not apply to the Green Vehicle Guide.
- Note This section of the Legislation Act would require the Green Vehicle Guide to be remade as a notifiable instrument each time the Green Vehicle Guide is amended.
- 2.10. As the Note indicates, the effect of section 4 is to displace subsection 47(6) of the *Legislation Act 2001*, which would otherwise require that the Green Vehicle Guide (and any amendment to it) be published on the ACT Legislation Register as a notifiable instrument. This issue is addressed in the explanatory statement for the instrument:

Displacement of *Legislation Act 2001*, section 47 (6)

As the CO₂ emissions of motor vehicles under this instrument are ascertained by reference to the GVG [Green Vehicle Guide], this instrument incorporates those details as in force from time to time.

Section 47 (6) of the *Legislation Act 2001* (Legislation Act) provides that an incorporated instrument, and any amendment or replacement of such an

instrument, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act.

However, for the purpose of determining a rate for motor vehicle duty, section 208 (3) permits a determination under section 139 of the [Taxation Administration Act] to apply, adopt or incorporate an instrument as in force from time to time.

As the GVG is amended frequently (whenever a new vehicle model becomes available for sale, which can be as frequent as two to three times per week), section 5 of this instrument displaces section 47 (6) of the Legislation Act.

If section 47 (6) of the Legislation Act were not displaced, the text of the GVG would have to be remade as a new notifiable instrument every time the GVG is amended. The displacement ensures that the current version of the GVG always applies for the purposes of the instrument, removing the need to remake it as a notifiable instrument whenever it is amended by the Commonwealth.

- 2.11. While the Committee notes that it has ongoing concerns about the displacement of subsection 47(6) of the Legislation Act (particularly in relation to Australian Standards), the Committee considers that the above is a reasonable justification for the disapplication of subsection 47(6), in this instance, particularly the ready availability of the *Green Vehicle Guide*, free of charge.

- 2.12. **This comment does not require a response from the Minister.**

Retrospectivity

- **Disallowable Instrument DI2023-48** being the Land Tax (Affordable Community Housing) Determination 2023 (No 2) made under paragraph 13A(5)(a) of the *Land Tax Act 2004* revokes DI2020-277 and determines the eligibility criteria that an owner of a parcel of land must satisfy to be eligible for an exemption under section 13A of the Act.
- 2.13. This instrument, made under paragraph 13A(5)(a) of the *Land Tax Act 2004*, determines the eligibility criteria that an owner of a parcel of land must satisfy to be eligible for an exemption under section 13A of the Act. Section 3 of the instrument provides that it is taken to have commenced on 1 April 2023. As the instrument was made on 15 April 2023, this means that it has a retrospective operation. The Committee notes (with approval) that the retrospectivity issue is addressed in the explanatory statement for the instrument:

Commencement and retrospectivity

The Determination is taken to have commenced on 1 April 2023 – that being the date of commencement of section 45 of the *Residential Tenancies Legislation Amendment Act 2023*.

Under section 76 of the *Legislation Act 2001*, a statutory instrument may provide that a non-prejudicial provision of the instrument commences retrospectively. The correction of the errors in Table 1 from the previous Determination is non-prejudicial, as the corrected values provide an additional allowance to the combined annual gross income threshold for households with children. Without the values for

each child the income thresholds would only be based on adult members of a household, potentially reducing eligibility for the land tax exemption.

- 2.14. In relation to the 'errors', the explanatory statement states:

Update

This instrument corrects errors in the stated amounts in Table 1 of the Land Tax (Affordable Community Housing) Determination 2023, DI2023-34 (the previous Determination). Specifically, the combined annual gross income thresholds for a tenant/s for 2022/23 and 2023/24 values now include values for children consistent with the National Rental Affordability Scheme (NRAS).

- 2.15. This comment does not require a response from the Minister.

Human Rights Issues

- **Disallowable Instrument DI2023-53** being the Road Transport (General) Application of Road Transport Legislation Declaration 2023 (No 4) made under section 13 of the *Road Transport (General) Act 1999*.
- 2.16. The instrument mentioned above is made under section 13 of the *Road Transport (General) Act 1999*, which allows the Minister to declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a vehicle, person or animal in a place or circumstance stated in the declaration. Section 3 of the instrument declares that the *Motor Accident Injuries Act 2019* does not apply in relation to the LCCC Blue Range Rally Sprint 2023, scheduled to be held on 30 April 2023. Section 4 of the instrument provides that various specified provisions of other road transport legislation do not apply (in certain circumstances), in relation to the same rally.
- 2.17. The Committee notes that the explanatory statement for the instrument contains the following discussion of human rights issues:

Human rights implications

During the development of this instrument, due regard was given to its effect and the operation of the rally in relation to the compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

Section 28 of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected
- b) the importance of the limitation
- c) the nature and extent of the limitation
- d) the relationship between the limitation and its purpose

e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Section 13 of the HRA provides a right for people to move freely within the ACT.

The declarations in this instrument do not of itself restrict a person's freedom of movement within the Territory, however the operation of the event in closing parts of the forest in which the event will be conducted to members of the public will restrict the free movement of people in that area of the Territory during the event. As parts of the road transport legislation are being disapplied for the event to operate as intended, vehicles will be travelling in parts of the forest in excess of the usual speed limits and in a manner not consistent with the road rules. As such, the restriction on the free movement of people in those parts of the forest at those times is considered reasonable and proportionate to ensure safety of non-participants and represents the least restrictive approach that enables the event to proceed.

2.18. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.

2.19. This comment does not require a response from the Minister.

Disapplication of subsections 47(5) and (6) of the *Legislation Act 2001* / Human Rights Issues

- **Disallowable Instrument DI2023-67** being the Building (ACT Appendix to the Building Code) Determination 2023 (No 1) made under subsection 136(3) of the *Building Act 2004* revokes DI2019-45 and makes the ACT appendix to the Building Code of Australia.
 - **Disallowable Instrument DI2023-68** being the Water and Sewerage (ACT Appendix to the Plumbing Code) Determination 2023 made under subsection 44C(3) of the *Water and Sewerage Act 2000* revokes DI2019-46 and makes the ACT appendix to the Plumbing Code of Australia .
 - **Disallowable Instrument DI2023-69** being the Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 1) made under the *Building Act 2004*.
- 2.20.** The first instrument mentioned above makes an ACT Appendix to the Building Code of Australia, under section 136 of the *Building Act 2004*. Section 136 of the Building Act gives effect to the Building Code of Australia, for the ACT. However, subsection 136(2) allows for an ACT Appendix to the Building Code, with 'variations, additions and exclusions for the ACT'. Subsection 136(3) makes such an appendix a disallowable instrument.
- 2.21.** The explanatory statement for the instrument states:
- This instrument revokes the I (DI2019-175) and provides for revised adoption dates for certain provisions of the BCA, to allow earlier adoption of the provisions with transitional arrangements for building approvals considered before 1 May 2023, and identifying the 1 October 2023 adoption date for certain provisions.

- 2.22. Section 5 of the instrument states:

5 Disapplication of Legislation Act

The *Legislation Act 2001*, section 47 (5), does not apply to this instrument.

Note 1 Australian Standards are available for purchase at www.standards.org.au and are available for inspection by members of the public at the National Library of Australia.

Note 2 A copy of the National Construction Code is freely available for inspection at www.abcb.gov.au.

- 2.23. The Committee notes that this provision is not actually necessary, given that subsection 136A(3) of the Building Act expressly disapplies subsections 47(5) and (6).

- 2.24. Nevertheless, the Committee notes that the disapplication issue is addressed in the explanatory statement for the instrument:

Section 5 of the instrument displaces the requirement in the *Legislation Act 2001* (the Legislation Act), section 47 (5). Section 47 (5) provides that the text of an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore must be published on the Legislation Register. Copyright to the BCA [Building Code of Australia] is collectively owned by the Australian Government and the states and territories.

The arrangement between jurisdictions is that the BCA will be published on behalf of the jurisdictions in a single place by the [Australian Building Codes Board]. It would not be appropriate to publicly notify the code on an ACT Government website. The notes to section 5 of the instrument describe alternative access to the BCA as it is not being notified on the Legislation Register.

- 2.25. The Committee notes that the explanatory statement does not address the availability (at no cost) of Australian Standards relied upon by the instrument, which is an ongoing issue for the Committee.
- 2.26. The second instrument mentioned above makes an ACT Appendix to the Plumbing Code of Australia, under section 44C of the *Water and Sewerage Act 2000*. Section 44C of the Water and Sewerage Act gives effect to the Plumbing Code of Australia, for the ACT. However, subsections 44C(2) and (3) allow for an ACT Appendix to the Building Code, with 'variations, additions and exclusions for the ACT'. Subsection 44C(4) makes such an appendix a disallowable instrument.
- 2.27. The explanatory statement for the second instrument mentioned above states:

This instrument is made under section 44C of the *Water and Sewerage Act 2000* (the Act).

The Plumbing Code of Australia (PCA) is developed and published by the Australian Building Codes Board (ABCB). The ACT is represented on the ABCB along with

representatives from all States, the Northern Territory, the Commonwealth Government and the building industry.

Section 44C of the Act, adopts the PCA including any ACT-specific requirements as published in the appendices of the PCA as part of the plumbing code for the purposes of the Act.

Section 44C (3) of the Act entitles the Minister to make an ACT appendix to the PCA to provide a mechanism for the ACT to amend the PCA from time to time, including to amend the date and edition of the PCA, or a provision of the PCA, comes into effect in the ACT.

The PCA and its ACT appendix form part of ACT law. The published ACT appendices in the PCA (published on the ABCB website) do not include specific provisions but instead refer readers to the ACT Legislation Register, where all instruments made under the Act can be found, including the ACT appendix to the PCA. This is so that there is a single source for the ACT appendix to the PCA, and a single version published as current at any one time, which can be amended as required.

The ACT appendix only applies to the ACT and Jervis Bay Territory.

- 2.28. Section 5 of the second instrument disapplies subsection 47(5) of the Legislation Act:

5 Disapplication of notification requirement

The *Legislation Act 2001*, section 47 (5), does not apply to this instrument.

Note 1 Australian Standards are available for purchase at www.standards.org.au and are available for inspection by members of the public at the National Library of Australia.

Note 2 A copy of the National Construction Code, which incorporates the Plumbing Code of Australia, is freely available for inspection at www.abcb.gov.au.

- 2.29. Again, this provision would appear to be unnecessary, as subsection 44D(3) of the Water and Sewerage Act expressly disapplies subsections 47(5) and (6) of the Legislation Act.
- 2.30. Nevertheless, the Committee notes that the explanatory statement for the second instrument states:

Section 5 of the instrument displaces the requirement in the *Legislation Act 2001* (the Legislation Act), section 47 (5). Section 47 (5) provides that the text of an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore must be published on the Legislation Register. Copyright to the PCA [Plumbing Code of Australia] is collectively owned by the Commonwealth, States and Territories.

The arrangement between jurisdictions is that the PCA will be published on behalf of the jurisdictions in a single place by the ABCB. It would not be appropriate to publicly notify the PCA on an ACT Government website. The notes to section 5 of the instrument describe alternative access to the PCA, as it is not being notified on the Legislation Register.

2.31. The Committee notes again that the explanatory statement does not address the availability (at no cost) of Australian Standards relied upon by the instrument, which is an ongoing issue for the Committee.

2.32. The third instrument mentioned above is made under section 24 of the *Building (General) Regulation 2008*, which allows the Minister to determine 'alternative requirements' for '[a]n unaltered part of a substantially altered class 1, class 10a or class 10b building'. The explanatory statement for the third instrument states:

This instrument contains provisions relating to alternative requirements to the Building Code of Australia (BCA) that apply to unaltered parts of substantially altered class 1, 10a or 10b buildings.

A substantial alteration is defined in the regulation.

These provisions were previously located in the regulation. In the latest republication of the regulation, dated 1 April 2021, they were included at sections 24 to 29 inclusive. These provisions addressed energy efficiency, fire safety, swimming pool safety, glazing, stairs and barriers and handrails.

2.33. Section 5 of the third instrument disapplies subsection 47(5) of the Legislation Act:

5 Disapplication of notification requirement

The *Legislation Act 2001*, section 47 (5) does not apply to this instrument.

Note 1 Australian Standards are available for purchase at www.standards.org.au and are available for inspection by members of the public at the National Library of Australia.

Note 2 A copy of the National Construction Code is freely available for inspection at www.abcb.gov.au.

2.34. The Committee notes that, in relation to this disapplication of subsection 47(5) of the Legislation Act, the explanatory statement for the third instrument states:

Section 5 of the instrument displaces the requirement in the *Legislation Act 2001* (the Legislation Act), section 47 (5). Section 47 (5) provides that the text of an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore must be published on the Legislation Register. Copyright to the BCA is collectively owned by the Commonwealth Government and the states and territories.

The arrangement between jurisdictions is that the BCA will be published on behalf of the jurisdictions in a single place by the Australian Building Codes Board (ABCB). It would not be appropriate to publicly notify the code on an ACT Government website. Section 5 of the instrument provides for alternative access to the BCA as it is not being notified on the Legislation Register.

2.35. Again, the Committee notes that the explanatory statement does not address the availability (at no cost) of Australian Standards relied upon by the instrument, which is an ongoing issue for the Committee.

- 2.36. In relation to each of the instruments mentioned above, the Committee reiterates its ongoing concern about the reliance on Australian Standards and, in particular, about the availability of those Standards to users of legislation, free of charge. The Committee notes that it has recently raised this issue, in correspondence with the Chief Minister and the Attorney-General.
- 2.37. The Committee notes that the explanatory statements for each of the three instruments mentioned above state that there are 'no human rights impacts related to this Instrument'.
- 2.38. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned above.
- 2.39. This comment does not require a response from the Minister.

Subordinate Laws—Comment

- 2.40. The Committee has examined the following subordinate laws and offers these comments on them:

Disapplication of subsections 47(5) and (6) of the *Legislation Act 2001* / Human Rights Issues

- **Subordinate Law SL2023-4** being the *Residential Tenancies Amendment Regulation 2023 (No 1)* made under the *Residential Tenancies Act 1997*.
- 2.41. This subordinate law amends the *Residential Tenancies Regulation 1998* (according to the explanatory statement for the subordinate law), 'to establish a minimum energy efficiency standard for premises made available for occupation under a residential tenancy agreement in the ACT.' The substantive provisions refer to and rely on two Australian Standards – AS 4859.1 (Materials for the thermal insulation of buildings) and AS 60598.2.2:2001 (Luminaries) – 'as in force from time to time'.
- 2.42. Section 14 of the subordinate law provides:
- 14 Disapplication of Legislation Act, s 47 (5) and (6)**
- The Legislation Act, section 47 (5) and (6) do not apply to an Australian Standard applied, adopted or incorporated under this part.
- Note* An Australian Standard applied, adopted or incorporated under this part does not need to be notified under the Legislation Act because s 47 (5) and (6) do not apply (see Legislation Act s 47 (7)). Australian Standards may be purchased at www.standards.org.au. Australian Standards are also available for inspection by members of the public at the National Library of Australia.
- 2.43. This means that the relevant Standards (and any amendments to them) do not need to be published on the ACT Legislation Register as notifiable instruments. As the Committee has indicated elsewhere in this *Scrutiny Report*, the Committee has an ongoing concern about disapplication of subsections 47(5) and (6) of the *Legislation Act 2001*, in relation to the reliance on Australian Standards. The Committee has a particular concern about the

availability of those Standards to users of legislation, free of charge. The Committee notes that it has recently raised this issue, in correspondence with the Chief Minister and the Attorney-General.

- 2.44. The Committee notes that, for this subordinate law, the explanatory statement states:

Section 14 Disapplication of Legislation Act, s 47 (5) and (6)

Ceiling insulation comes in different materials and different thicknesses which have different thermal properties. To ensure consistency in measurement, insulation materials are rated using an R value. The 'R value' is a measure of the thermal performance of insulation and is determined in accordance with a particular Australian Standard (AS- 4859.1 - Materials for the thermal insulation of buildings). To ensure rental premises achieve a particular level of thermal insulation, it was considered necessary to set the minimum standard for ceiling insulation with reference to a particular 'R value'. As the R value for insulation is determined with reference to an Australian Standard, reliance on an Australian Standard is necessary.

Copyright in Australian Standards is owned by Standards Australia, a private organisation. These documents cannot be notified on the Legislation Register without breaching Standards Australia's copyright. As such, the disapplication of section 47 (5) and (6) is necessary in this instance.

This section therefore provides that section 47 (5) and (6) of the *Legislation Act 2001* does not apply to an Australian Standard applied, adopted or incorporated under new part 3.

This removes the requirement for the text of an Australian Standard applied under the part to be notified as an instrument on the Legislation Register.

However, in disapplying section 47 (5) and (6), it is noted that the organisations that will be engaged to undertake inspections and upgrades to ensure compliance with the minimum standards in the regulation are already required to comply with Australian Standards. As such, they already have a good working knowledge of these documents to provide a report or any document to the lessor (and subsequently, any prospective tenant).

Australian Standards may be purchased at www.standards.org.au and are available at the National Library of Australia. Their availability at the National Library of Australia ensures that community members who are interested in or affected by the application of the Australian Standard can access the standard free of charge.

- 2.45. **The Committee notes, with approval, that this is a detailed justification for the disapplication of subsections 47(5) and (6) of the Legislation Act. However, the Committee reiterates its concerns about the availability Australian Standards to users of legislation, free of charge. The Committee awaits a response on these issues from the Chief Minister and the Attorney-General.**
- 2.46. The Committee notes that the explanatory statement for this subordinate law discusses human right issues, by reference to:

Rights engaged

The regulation engages the following rights under the *Human Rights Act 2004*:

- Section 8 (2): Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
- Section 8 (3): Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.
- Section 11 (1): Protection of the family and children. The family is the natural and basic group unit of society and is entitled to be protected by society.
- Section 12 (a): Everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

- 2.47. A detailed discussion of these rights follows, with the explanatory statement explaining that the first three rights mentioned above being promoted and the fourth – the right to privacy – being only marginally limited and with justification.
- 2.48. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**
- 2.49. **This comment does not require a response from the Minister.**

Human Rights Issues

- **Subordinate Law SL2023-5** being the *Medicines, Poisons and Therapeutic Goods Amendment Regulation 2023 (No 1)* made under section 184 of the *Medicines, Poisons and Therapeutic Goods Act 2008* supports the expansion of the COVID-19 vaccinating workforce at ACT Government-operated vaccination clinics.
- 2.50. This subordinate law amends the *Medicines, Poisons and Therapeutic Goods Regulation 2008*. The amendments relate to the prescribing of medicines by intern doctors and dealings with regulated substances and regulated goods by public employees. The explanatory statement for the subordinate law states:
- Both these changes seek to create efficiencies in the public health system through enabling people employed in health professional roles to deal with medicines in accordance with their scope of professional practice and employment.
- 2.51. The explanatory statement goes on to discuss human rights issues, by reference to the right to life, protected by section 9 of the *Human Rights Act 2004* (which is promoted):
- Ensuring the effective regulation of medicines and poisons in the ACT and the authorities that deal with them through the [subordinate law] as described above engages and promotes the right to life under the HR Act. The right to life is concerned with preventing the arbitrary deprivation of life and is relevant to the delivery of medical treatment.
- The amendment enables the Director-General to authorise a class of public employees to deal with medicines within the scope of their employment to ensure timely and safe delivery of medicines, indirectly improving patient access to medical

treatment. This amendment also enables intern doctors to prescribe medicines for patients on discharge from an institution.

Through enabling greater flexibility in the health workforce and in the safe and quality use of medicines within the public health system, these changes are considered to indirectly engage and promote the right to life.

- 2.52. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**
- 2.53. This comment does not require a response from the Minister.**

Human Rights Issues

- **Subordinate Law SL2023-6** being the *Electoral Amendment Regulation 2023 (No 1)* made under the *Electoral Act 1992* amends the *Electoral Regulation 1993* to allow the Commissioner for Australian Capital Territory Revenue to access the ACT electoral roll for the purposes of the administration and enforcement of tax laws.
- 2.54.** This subordinate law amends the *Electoral Regulation 1993* to allow the Commissioner for the ACT Integrity Commissioner (integrity commissioner) to access a roll kept under the *Electoral Act 1992* for the purposes prescribed in new section 4AC. The explanatory statement for the subordinate law states:
- The amendment provides that the integrity commissioner may give a copy of a roll or information contained on a roll to another person or entity if they are satisfied that the person or entity requires it for a prescribed purpose. The regulations may provide for how a prescribed authority may deal with material provided.
- Giving the integrity commissioner access to electoral roll information allows the commissioner to rely on best available evidence when carrying specific functions under the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*, which include investigating allegedly corrupt conduct, dealing with corruption reports and referring suspected instances of criminality to appropriate authorities. It improves the integrity commissioner's ability to fulfil its functions of combatting corruption and aids to foster public confidence in the integrity of the ACT Government.
- The integrity commissioner's access to electoral rolls will be for the purposes prescribed in this amendment only. Criminal penalties apply to the misuse of this information (see section 65 (2) of the *Electoral Act 1992*).
- This amendment will allow the integrity commissioner to improve its ability to investigate, expose and prevent corruption, and to oversee the management of public interest disclosures in the ACT Public Service.
- 2.55.** The explanatory statement goes on to discuss human rights issues, stating:
- This Regulation is compatible with the *Human Rights Act 2004*. While it limits the right to privacy, that limitation is reasonable, necessary and proportionate.

- 2.56. A detailed justification for this statement is then set out.
- 2.57. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**
- 2.58. **This comment does not require a response from the Minister.**

No Human Rights Issues

- **Subordinate Law SL2023-7** being the *Building and Construction Legislation Amendment Regulation 2023 (No 1)* made under the *Building Act 2004*, *Construction Occupations (Licensing) Act 2004*, *Unit Titles Act 2001* and the *Water and Sewerage Act 2000*.
- 2.59. This subordinate law amends the *Building (General) Regulation 2008*, the *Construction Occupations (Licensing) Regulation 2004*, the *Unit Titles Regulation 2001* and the *Water and Sewerage Regulation 2001*. According to the explanatory statement for the subordinate law:
- It seeks to clarify the desired policy intent and outcome of the provisions, remove inconsistencies and reduce duplication. This is in part achieved by updating references to specific sections or parts of the Building Code of Australia (the **BCA**). Most of these amendments are minor and technical amendments to update references to old provisions of the National Construction Code (the **NCC**).
- The primary purpose of the regulation is to amend the amended regulations due to a new version of the NCC coming into effect. This amendment will also address several minor and technical amendments identified by the Building Reform team or sought by Access Canberra, as the building and construction industry regulator.
- 2.60. The explanatory statement goes on to discuss human rights issues:
- Consistency with Human Rights**
- The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters. There are no human rights impacts related to this regulation. The regulation does not engage with human rights under the *Human Rights Act 2004*.
- 2.61. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**
- 2.62. **This comment does not require a response from the Minister.**

Regulatory impact statement—No Comment

- 2.63. The Committee has examined a regulatory impact statement for the following subordinate law and has no comments on it:
- **Subordinate Law SL2023-4** being the *Residential Tenancies Amendment Regulation 2023 (No 1)* made under the *Residential Tenancies Act 1997*.

Government Responses—No Comment

- 2.64. The Committee received a response to the Committee's comments on the following instrument and has no further comments:
- **Disallowable Instrument DI2023-7** being the Lifetime Care and Support (Catastrophic Injuries) (Home Modifications) Guidelines 2023 made under section 93 of the Lifetime Care and Support (Catastrophic Injuries) Act 2014.
- 2.65. This response can be viewed [online](#).
- 2.66. The Committee wishes to thank the Minister for Transport and City Services for his helpful response.

3. Outstanding responses

Bills/Subordinate Legislation

Report 12, dated 1 February 2022

Bills

- Electoral Amendment Bill 2021

Report 28, dated 3 May 2023

Bills

- Human Rights Commission Amendment Bill 2023
- Modern Slavery Legislation Amendment Bill 2023

Subordinate Legislation

- **Disallowable Instrument DI2023-15** being the Domestic Animals (Temporary Variation of Prohibited Areas—Glebe Park) Declaration 2023 made under section 41 of the *Domestic Animals Act 2000*.



Peter Cain MLA
Chair

23 May 2023



Rachel Stephen-Smith MLA

Minister for Health

Minister for Families and Community Services

Minister for Aboriginal and Torres Strait Islander Affairs

Member for Kurrajong

Mr Peter Cain MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny)

Legislative Assembly for the ACT

scrutiny@parliament.act.gov.au

Dear Mr Cain

Thank you for providing Scrutiny Report No. 29 (the Report) of 23 May 2023 and the Standing Committee on Justice and Community Safety's (the Committee) comments on the Health Infrastructure Enabling Bill 2023 (the Bill).

I thank the Committee for its consideration of the Bill and offer the following comments in relation to the matters that the Committee has raised in their report.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties? – Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the Human Rights Act 2004

Right to privacy and reputation (section 12 HRA)

Right to work and other work-related rights (section 27B)

Section 12 of Bill provides that public patient health records, personal information and other records necessary for the effective transition of the Calvary Public Hospital Bruce (CPHB) from Calvary to the Territory are to be provided to the Territory to facilitate the safe and efficient transfer of those operations. Pursuant to s 22, any public hospital health records and personal information to be transferred must be dealt with in accordance with existing territory privacy laws.

In response to the concern raised in [1.47] of the Report, s 22(3) of the Bill operates to confirm that territory privacy laws apply to that material in the hands of the Territory, once provided by Calvary. Likewise, Calvary's obligations in respect of territory privacy laws will continue in relation to any information it holds.

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Although it is likely that a transfer of information would be possible without the inclusion of s 22, the provision has been included to put it beyond doubt and to provide reassurance that any information or records which are provided will be protected.

In response to the Committee's query at [1.46]-[1.47], about the continued operation of the Territory Records Act 2002, and principle 4.1 of Schedule 1 of the Health Records (Access and Privacy) Act 1997, those laws will continue to apply in relation to the holding of the information and records, once the acquisition is complete. In response to the query raised by the Committee, the use of the term "security" in s 22(3) encompasses the holding of the information.

Do any provisions of the Bill make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers? – Committee Resolution of Appointment paragraph (10)(a)(iii)

In response to the query raised at [1.50] of the Scrutiny Report, it is uncertain at this stage the circumstances in which a body corporate may be nominated under s 21(2) as being subject to the requirements of the Act.

As the Territory is unaware of the internal governance arrangements that Calvary and its associated entities may have in place, s 21 exists as a matter of prudence to address a contingency where Calvary itself does not have the ability to deliver the requested material, to allow the entity that has that material to deliver it.

Do any provisions of the Bill inappropriately delegate legislative powers? – Committee Resolution of Appointment paragraph (10)(a)(iv)

Breadth of Regulations

In response to [1.54] of the Scrutiny Report, the validity of the Bill is not dependent on the provisions in the Regulation. Of course, the Regulation must provide for just terms.

The Bill provides for an acquisition of property, and it provides that any such acquisition must be on just terms. Noting the information requested in [1.55] of the Scrutiny Report, the identification of those just terms and the matter of their determination is provided for in the draft Regulation, that enables any person who claims that an interest has been acquired to seek compensation.

The Committee may be interested to note that an amendment to s 10(3) of the Bill has been proposed to make it clear that a Regulation may provide for any acquisition of property.

In response to [1.54b] of the Scrutiny Report, ss 8(3) and 9(4) of the Bill provide for matters to be dealt with differently in the event that further information comes to hand that means the subject matter should be dealt with differently to the matter addressed in the relevant sections (ss 8(2) and 9(2)). The provisions are there as precaution to ensure that the interests mentioned in subsections 8(2) and 9(2) are dealt with fairly and appropriately.

Henry VIII clauses

A “Henry VIII” clause is not a provision that is lightly included in the drafting of a bill. The circumstances of the proposed acquisition and associated activities leading to the Territory assuming conduct of CPHB involves a range of variable and presently uncertain issues, the clarification of which will depend heavily on the information and associated documents that are gathered during the transition period.

Government Amendments to the Regulation

I can confirm the ACT Government will be putting forward additional amendments to the Bill, in advance of the Bill being debated on 31 May 2023.

A summary of the proposed amendments is provided at Attachment A to this letter.

I trust the information provided has been of assistance.

Yours sincerely

Rachel Stephen-Smith MLA

[No date - Minister will handwrite this in]

This draft is supplied in confidence and should be
given appropriate protection.

DRAFT

(Prepared by Parliamentary Counsel's Office)

Health Infrastructure Enabling Regulation 2023

Subordinate Law SL2023-

The Australian Capital Territory Executive makes the following regulation under
the *Health Infrastructure Enabling Act 2023*.

Dated 2023.

Chief Minister

Minister

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(Prepared by Parliamentary Counsel’s Office)

Health Infrastructure Enabling Regulation 2023

Subordinate Law SL2023-

made under the
Health Infrastructure Enabling Act 2023

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Health Infrastructure Enabling Regulation 2023*.

2 Commencement

This regulation commences on the day the Act, section 3 commences.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation.

For example, the signpost definition ‘*acquisition*, for part 4 (Compensation)—see section 9.’ means that the term ‘acquisition’ is defined in that section for part 4.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

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Part 2 Operation of public hospital

5 Public hospital employees—Act, s 14 (2) (a) and (b)

- (1) The head of service must make a written offer of employment with the Territory to each public hospital employee who satisfies all of the following criteria:
 - (a) they are a public hospital employee immediately before the acquisition day;
 - (b) they are an eligible person under the *Public Sector Management Act 1994*;
 - (c) they are not a person to whom the *Public Sector Management Act 1994*, section 138 (No reappointment of former officer in certain circumstances) applies;
 - (d) they are not ineligible under an industrial agreement to be re-employed by the Territory for a certain period because the employee has received a voluntary redundancy payment from the Territory;
 - (e) they have not accepted a redundancy payment or similar payment from Calvary or a related corporation in relation to their employment as a public hospital employee.
- (2) An offer must be on terms that are, as far as possible under the *Public Sector Management Act 1994*, the same as or no less favourable than the terms applying to the public hospital employee's employment immediately before the day the employee's employment with Calvary ends under subsection (4) (a).
- (3) An offer is conditional on the public hospital employee accepting the offer before the acquisition day or by any later day notified in writing by the head of service.
- (4) For each public hospital employee who accepts an offer of employment with the Territory under this section—

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- (a) unless otherwise agreed in writing between the head of service and the employee, the employee is taken to have resigned and the employee's employment with Calvary or a related corporation as a public hospital employee ends, or is taken to have ended, on the acquisition day; and
 - (b) the Territory is liable for any entitlement (including annual, long service, personal or other leave) the employee has accrued or has a right to, immediately before the day the employee's employment with Calvary ends under paragraph (a); and
 - (c) the employee's employment as a public hospital employee is recognised prior service and continuous service for leave and other entitlements under the *Public Sector Management Act 1994* and any relevant industrial agreement.

Note 1 The *Fair Work Act 2009* (Cwlth) (**FWA**), s 22 (5), which recognises prior service of employees if there is a transfer of employment, applies to the employment of a public hospital employee by the Territory under this section. As a transferring employee's prior service counts as service with the Territory, the employee is not entitled to a redundancy payment because their employment with Calvary ends under par (a) (see FWA, s 122 (2)).

Note 2 In accordance with par (b), annual and other leave accrued by a public hospital employee as at the day their employment with Calvary ends under par (a) carries over to their employment with the Territory. Accrued annual leave cannot be cashed out except if permitted under an industrial agreement mentioned in s 6 (see FWA, s 92).

- (5) The Territory is liable for—
 - (a) any liability, loss or expense Calvary or a related corporation incurs as a result of the Territory not complying with subsection (4) (b) or (c); and
 - (b) any redundancy or similar payment (not including any accrued annual, long service, personal or other leave) payable by Calvary or a related corporation to a public hospital employee—

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- (i) who is not employed by the Territory under this section; and
 - (ii) whose employment with Calvary or a related corporation as a public hospital employee has been terminated on or immediately after the acquisition day because of the operation of this Act.
 - (6) The amount equivalent to the Territory's liability under subsection (4) (b) must be taken into account when working out the amount of compensation to which Calvary or a related corporation is entitled under the Act as worked out under Part 4.
 - (7) The following provisions do not apply to an offer of employment with the Territory under this section:
 - (a) the *Public Sector Management Act 1994*—
 - (i) section 25 (Employees); and
 - (ii) section 27 (Application of the merit and equity principle); and
 - (iii) section 68 (Appointment to vacant office);
 - (b) the *Public Sector Management Standards 2016*, part 2 (Selection process).
 - (8) In this section:

eligible person—see the *Public Sector Management Act 1994*, dictionary.

6 Prescribed industrial agreements—Act, dict, def *public hospital employee*, par (a) (ii)

- (1) The following industrial agreements are prescribed:
 - (a) the *Administrative and Related Classifications Enterprise Agreement 2021-2022*;

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- (b) the *Health Professionals Enterprise Agreement 2021-2022*;
 - (c) the *Infrastructure Services Enterprise Agreement 2021-2022*;
 - (d) the *Support Services Enterprise Agreement 2021-2022*;
 - (e) the *Technical and Other Professional Enterprise Agreement 2021-2022*;
 - (f) the *Medical Practitioners Enterprise Agreement 2021-2022*;
 - (g) the *Nursing and Midwifery Enterprise Agreement 2020-2022*;
 - (h) any other agreement, including any agreement replacing an agreement mentioned in paragraphs (a) to (g) before the acquisition day, declared by the head of service.
- (2) A declaration under subsection (1) (h) is a notifiable instrument.

7 Public hospital contracts—Act, s 14 (2) (c)

- (1) The Territory must notify Calvary in writing which public hospital contracts (the *nominated contracts*) the Territory proposes to have novated or assigned to it.
- (2) Calvary must use all reasonable endeavours to ensure the Territory receives the full benefit of the nominated contract including by procuring the execution of deeds of assignment or novation if consent and agreement of a third party is required.
- (3) The Territory must—
 - (a) assume the rights and liabilities under each nominated contract novated or assigned to it under this section; and
 - (b) cooperate with Calvary in any reasonable arrangement intended to transfer to the Territory the benefit and the burden of each of those contracts.

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- (4) If a nominated contract (a *residual nominated contract*) is not effectively assigned or novated to the Territory, on the written request of the Territory—
 - (a) Calvary or a related corporation must account to the Territory for any benefit it receives in relation to the contract; and
 - (b) Calvary must do all things reasonably required by the Territory to ensure that the Territory receives the benefit of the contract; and
 - (c) Calvary or a related corporation must hold the benefit of the contract on bare trust for the Territory and deal with the contract only as directed by the Territory.
 - (5) The Territory may give written notice (which must not be less than 7 days) to Calvary and the third party under a residual nominated contract that the Territory intends to novate the contract to the Territory.
 - (6) However, the Territory may only give notice under subsection (5) if it considers that novating the residual nominated contract is necessary for—
 - (a) the safe and orderly transition of the operation of the public hospital to the Territory;
 - (b) the continued operation of, and maintenance of service delivery standards at, the public hospital.
 - (7) If the Territory gives notice in relation to a residual nominated contract under subsection (5)—
 - (a) the contract is novated on the day stated in the notice; and
 - (b) the third party may at any time 6 months after the contract is novated to the Territory, or any other period stated in the notice, terminate the contract by 14 days written notice to the Territory; and

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- (c) if the third party terminates the contract under paragraph (b), the third party is not liable to the Territory for breach of the contract or for any compensation to the Territory because of the termination.
- (8) Calvary is liable for any liability, loss or expense the Territory incurs because of a default by Calvary or a related corporation under, or breach by Calvary or a related corporation of, any nominated contract before the day the contract is assigned or novated to, or held in trust for, the Territory.
- (9) The Territory is liable for any liability, loss or expense Calvary or a related corporation incurs as a result of any breach under, or breach by the Territory of, any nominated contract after the day the contract is assigned or novated to, or held in trust for, the Territory.

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Part 3 Amendment of Crown lease

8 Amendment of Crown lease—Act, s 19 (1) (b)

The Crown lease is amended as set out in schedule 1.

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Part 4 Compensation

Division 4.1 Preliminary

9 Definitions—pt 4

In this part:

acquisition means an acquisition of an interest under the Act.

claim means a claim for compensation under this part.

claimant means a person making a claim for compensation under this part.

compensation—see the Act, section 10 (5).

market value, of an interest on the acquisition day, means the amount that would have been paid for the interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

miscellaneous interest—see section 16.

Division 4.2 Acquisition of Calvary's interest in the public hospital land

10 Matters relevant to working out compensation—Calvary's interest in the public hospital land

- (1) Matters that may be relevant to working out the amount of compensation for the acquisition of Calvary's interest in the public hospital land include the following:
 - (a) the market value of the Crown lease for the hospital land on the acquisition day taking into account the following:

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- (i) the Crown lease and preceding Crown lease for the hospital land were granted to Calvary for no charge and a nominal rent was payable under the leases;
 - (ii) the Crown lease as amended under the Act, section 19 continues to be held by Calvary for no charge and for nominal rent;
 - (iii) certain buildings and improvements on the hospital land and capital items were funded by the Territory, the Commonwealth or entities other than Calvary or a related corporation;
 - (b) the value, on the acquisition day, of any financial advantage to Calvary, additional to the market value of the Crown lease for the hospital land, incidental to Calvary's interest in the hospital land;
 - (c) any reasonable increase or decrease in the value of the private hospital land or buildings or other improvements on it directly caused by—
 - (i) the removal of the public hospital land from the Crown lease; or
 - (ii) the development of a new public hospital on the public hospital land;
 - (d) any costs reasonably incurred by Calvary as a direct and reasonable consequence of it complying with its obligations under the Act;
 - (e) any other loss, injury or damage suffered, or expense reasonably incurred, by Calvary as a direct and reasonable consequence of the acquisition.
- (2) Calvary must take all reasonable steps to minimise any loss, injury or damage suffered, or expense reasonably incurred by Calvary because of the acquisition of Calvary's interest in the public hospital land.

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Example

make a claim under an insurance policy or under an indemnity or other contractual right for a loss

11 Matters excluded from compensation—Calvary’s interest in the public hospital land

The following are matters in relation to which compensation must not be given under this division:

- (a) costs arising from the termination or variation of an agreement or other arrangement between Calvary and a related corporation;
- (b) a matter for which compensation is given, or is excluded from being given, under another provision of this regulation, the Act or another territory law.

12 Hospital land subject to security

- (1) As a general rule, the compensation for the acquisition of Calvary’s interest in the public hospital land is determined as if the interest had not been subject to any security.
- (2) If compensation is payable under this part to a securityholder, the compensation payable to Calvary is reduced by so much of the compensation payable to the securityholder as represents the amount worked out under Division 4.3 (Acquisition of security rights).

Division 4.3 Acquisition of security rights

13 Matters relevant to working out compensation—security rights

- (1) Matters that may be relevant to working out the amount of compensation for the acquisition of a security right under a security (the *relevant security*) include the following:

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- (a) the amount reasonably determined to reflect the value of the impact of the acquisition of the security right on the debt arrangements which are secured by the relevant security;
 - (b) any other costs reasonably incurred by the securityholder as a direct and reasonable consequence of the acquisition.
- (2) Calvary and any securityholder must take all reasonable steps to minimise any loss, injury or damage suffered, or expense reasonably incurred because of the acquisition of the security right.

14 Matters excluded from compensation—security interests

A matter for which compensation is given, or is excluded from being given, under another provision of this regulation, the Act or another territory law is a matter in relation to which compensation must not be given under this division.

15 Securityholder may waive rights in relation to security rights

- (1) The securityholder under a security may, by written notice to the Territory, waive the securityholder's right to any compensation under the Act in relation to the acquisition of a security right.
- (2) The Territory may, by written notice given to a securityholder from whom a security right has, or may have been, acquired under the Act, require the securityholder, at the securityholder's option to—
 - (a) make a claim under Division 4.5; or
 - (b) waive the right to compensation.
- (3) If a securityholder does not, within 30 days after a notice under subsection (2) is given to the securityholder or any further period as the Territory, in writing, allows, make a claim for compensation, the securityholder is taken to have waived the right to compensation in relation to the acquisition of the security right.

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- (4) A securityholder who waives the right to compensation in relation to the acquisition of a security right—
 - (a) is debarred from recovering any compensation from the Territory or the Commonwealth in relation to the acquisition; but
 - (b) retains, in relation to the security right, any right or remedy that the securityholder may have—
 - (i) against Calvary; or
 - (ii) in relation to any interest in the public hospital land, public hospital assets or network agreements that is still subject to the security.

Division 4.4 Acquisition of miscellaneous interests

16 Application—div 4.4

This division applies to an acquisition of an interest (a *miscellaneous interest*) other than an acquisition of—

- (a) Calvary's interest in the public hospital land; or
- (b) a security right.

Examples

- 1 Calvary's interest in the public hospital assets acquired under the Act, s 9 (1) (Acquisition of public hospital assets)
- 2 any interest in land that is not a security right that is taken to have been acquired under the Act, s 8 (2) (Acquisition of public hospital land)
- 3 any other interest that is not a security right that is taken to have been acquired under the Act, s 9 (2)

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**17 Matters relevant to working out compensation—
miscellaneous interests**

- (1) Matters that may be relevant to working out the amount of compensation for an acquisition of a miscellaneous interest include the following:
 - (a) except in a case to which paragraph (b) applies—
 - (i) the market value of the interest on the acquisition day taking into account certain assets used for or related to the public hospital may have been funded by the Territory, the Commonwealth or entities other than Calvary or a related corporation; and
 - (ii) the value, on the acquisition day, of any financial advantage to the person, additional to market value, incidental to the person's interest; and
 - (iii) the impact caused by the acquisition on any other interest ancillary to the person's interest;
 - (b) if the person's interest was diminished, but not extinguished, by the acquisition—the loss suffered by the person because of the diminution of the person's interest;
 - (c) any loss, injury or damage suffered, or expense reasonably incurred, by the person as a direct and reasonable consequence of the acquisition.
- (2) A person must take all reasonable steps to minimise any loss, injury or damage suffered, or expense reasonably incurred by them because of the acquisition of the person's interest.

Example

make a claim under an insurance policy or under an indemnity or other contractual right for a loss

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18 Matters excluded from compensation—miscellaneous interests

The following are matters in relation to which compensation must not be given under this division:

- (a) costs arising from the termination or variation of an agreement or other arrangement between Calvary and a related corporation;
- (b) a matter for which compensation is given, or is excluded from being given, under another provision of this regulation, the Act or another territory law

19 Miscellaneous interest subject to security

- (1) This section applies if—
 - (a) a miscellaneous interest is acquired from a person (the *owner*) under the Act; and
 - (b) immediately before the acquisition day, the interest was subject to a security.
- (2) As a general rule, the compensation to which the owner of the interest is entitled in relation to the acquisition is determined as if the interest had not been subject to any security.
- (3) If compensation is payable under this part to a securityholder, the compensation payable to Calvary is reduced by so much of the compensation payable to the securityholder as represents the amount worked out under Division 4.3 (Acquisition of security rights).

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Division 4.5 Claims for, and offers of compensation

20 Claims for compensation—generally

- (1) A person who considers that they are entitled to be paid compensation under the Act may make a claim for compensation in accordance with this division.
- (2) A claim must be made—
 - (a) within the 12-month period starting on the acquisition day; or
 - (b) if the Minister gives notice before the end of that period of a later day—the day stated in the notice.
- (3) If a person does not make a claim for compensation within the period mentioned in subsection (2), the person is taken to have waived the right to compensation in relation to the acquisition.
- (4) A person who waives the right to compensation in relation to the acquisition under subsection (3)—
 - (a) is debarred from recovering any compensation from the Territory or the Commonwealth in relation to the acquisition; but
 - (b) in relation to a security interest—retains, in relation to the security, any right or remedy that the person may have against Calvary or a related corporation.
- (5) A notice under subsection (2) (b) is a notifiable instrument.

21 How claims must be made

- (1) A claim must—
 - (a) be in writing and in any form reasonably required by the Territory; and

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- (b) state the interest of the person that has been acquired under the Act; and
 - (c) state the amount of compensation the person claims in relation to the acquisition; and
 - (d) include sufficient detail to allow the claim to be considered, including detail about how a monetary amount claimed is worked out; and
 - (e) if the claim is in relation to the acquisition of a security right under a security—state the total value of the impact of the acquisition on the relevant debt arrangement, how it has been determined (including calculations, if relevant), and the total amount of debt secured by the security.
- (2) A claim is taken to be made only when it is given to the director-general.
 - (3) A person may withdraw their claim by written notice to the director-general.
 - (4) If a claim is withdrawn, the Act has effect as if the claim had never been made.
 - (5) The director-general may determine further requirements for how a claim must be made under this section.
 - (6) A determination under subsection (5) is a notifiable instrument.

22 Territory may request further information about claims

The director-general may, in writing, require a claimant to give the director-general information that the director-general reasonably considers is needed to decide a claim within a stated period.

23 Timeframe for deciding initial claims

- (1) The director-general must decide a claim within 12 weeks after the day—

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- (a) the claim is given to them; or
 - (b) if information is requested under section 22—the information is given to them.
- (2) The claimant may agree in writing to an extension of the 12-week period before the end of the period.

24 Early compensation arrangements

- (1) The Territory may make a payment to a claimant or do any other thing on account of compensation that may—
 - (a) become payable to a claimant under this division; or
 - (b) be required to be done by the Territory under this division; or
 - (c) assist to mitigate the impacts of the acquisition on the claimant in the period before compensation is given.
- (2) Anything done by the Territory under subsection (1) does not constitute acceptance by the Territory of any claim made under this division.
- (3) Acceptance by a claimant of anything done by the Territory under subsection (1) does not constitute an acceptance of any offer made by the Territory under this division.

25 Effect of compensation claim in relation to acquisition of security rights

- (1) This section applies if—
 - (a) a security right has been acquired by the Territory from a securityholder; and
 - (b) the securityholder makes a claim for compensation in relation to the acquisition.
- (2) The acquisition is taken, on the acquisition day, to have—

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- (a) discharged and released the public hospital land, public hospital assets and Calvary's interests in the network agreements from the security; and
 - (b) discharged and released the liability of Calvary under the security to the extent attributable to the public hospital land, public hospital assets and Calvary's interests in the network agreements; and
 - (c) discharged and released Calvary and its related corporations from the obligation to pay or repay to the securityholder an amount equal to the amount of compensation paid to or for the account of the securityholder.
- (3) On the giving of the compensation to the securityholder, the securityholder must, if required by Calvary and at the expense of Calvary, execute a discharge to the extent provided for in subsection (2).

26 Amount paid in relation to security rights extinguished by s 25

- (1) If an amount has been paid to or recovered by the securityholder under a security in relation to a liability that, on the making of a claim by the securityholder, is, by section 25, taken to have been discharged—
 - (a) the securityholder is liable to repay that amount to the person who paid it; and
 - (b) the Territory may deduct from the compensation payable to the securityholder and pay to the person who paid that amount the amount that has not been repaid.
- (2) A payment made by the Territory under subsection (1) (b) is taken to have been made in discharge of the obligation of the securityholder under subsection (1) (a).

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27 Territory must accept or reject claim for compensation

- (1) If the Territory is satisfied that the interest stated in a claim has been acquired from the claimant, the Territory must make an offer of compensation to the claimant that the Territory considers the claimant is entitled to in accordance with this part.
- (2) The Territory must give the claimant written notice stating—
 - (a) that the claim is accepted; and
 - (b) how the compensation offered was, or will be, worked out.
- (3) If the Territory does not consider that an interest has been acquired from the claimant under the Act, the Territory must reject the claim.
- (4) If the Territory rejects the claim, it must give written notice to the claimant stating—
 - (a) that the claim is rejected; and
 - (b) the reasons why it is rejected.
- (5) If the Territory has not given the claimant a notice under subsection (2) or (4) within the period mentioned in section 23 (Timeframe for deciding initial claims), the Territory is taken to have rejected the claim.

28 Claimant may accept or reject Territory's compensation offer

- (1) If the Territory makes an offer of compensation under section 27 (1), the claimant may, by written notice to the director-general—
 - (a) accept the offer; or
 - (b) do both of the following:
 - (i) reject the offer;
 - (ii) state the amount of compensation they consider they are entitled to and how the amount is worked out.

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- (2) If the claimant has not given the Territory a notice under subsection (1) within 30 days after the day the Territory makes the offer of compensation, the claimant is taken to have rejected the offer.

29 Territory must reconsider offer and make final offer

- (1) If the director-general receives a notice rejecting an offer under section 28 (1) (b) (i) or section 28 (2) applies, the Territory must—
- (a) reconsider the amount of compensation within 12 weeks after the day the Territory receives the notice; and
 - (b) consider the information included in the notice; and
 - (c) give the claimant a written final offer of compensation that the Territory considers the claimant is entitled to under this part.
- (2) The Territory must state in the final offer how the compensation offered is worked out.
- (3) The claimant must accept or reject the final offer by written notice to the director-general.
- (4) If the claimant has not given the Territory a notice under subsection (3) within 30 days after the day the Territory makes the final offer of compensation, the claimant is taken to have rejected the offer.

Division 4.6 Payment etc of compensation

30 Payment etc of compensation

- (1) If a claimant accepts an offer of an amount of compensation under section 28 (a) or section 29(3) in relation to an acquisition, the amount of compensation given to the claimant under the Act, section 10 (Acquisition must be on just terms) for the acquisition is—
- (a) the amount of compensation in the accepted offer; less

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- (b) any amount paid, or the value of any other compensation given, by the Territory to the claimant under section 24 (Early compensation arrangements).
 - (2) The Territory must give the claimant the compensation as soon as is reasonably practicable after the claimant has—
 - (a) produced or surrendered all deeds and documents relating to, or evidencing, the claimant's title to the acquired interest that the Territory reasonably requires to be produced or surrendered; and
 - (b) executed all documents, including any deed of release, the Territory reasonably requires; and
 - (c) complied with any obligations under the Act.

31 Interest payable on compensation—acquisition other than security rights

- (1) This section applies if the Territory is liable to pay a monetary component of compensation to a claimant under this part in relation to an acquisition, other than a security right.
- (2) The Territory must pay the claimant interest on the compensation at the relevant rate for the month when the Territory becomes liable to pay the compensation on and from the acquisition day until—
 - (a) the day on which the compensation is paid; or
 - (b) if payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) Subsection (4) applies if—
 - (a) the claimant rejects, or is taken to have rejected, a final offer made under section 29(1)(c); and
 - (b) the amount of compensation payable under this division is less than the final offer.

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- (4) The period for which interest is payable under subsection (2) does not include the period—
 - (a) starting on the day the claimant rejects, or is taken to have rejected, the final offer; and
 - (b) ending on the day the amount of compensation payable under this division is determined.
 - (5) Interest is not payable to the claimant on the whole or any part of the compensation otherwise than in accordance with this section.
 - (6) In this section:

relevant rate, of interest for the month when the Territory becomes liable to pay the compensation, means the rate that is the assessed secondary market yield for 5 year non-rebate Treasury bonds, published by the Reserve Bank of Australia on the first day of the month.

32 Interest payable on compensation—security rights

- (1) This section applies if the Territory is liable to pay compensation to a claimant under this part in relation to the acquisition of a security right.
- (2) The Territory must pay the claimant interest on the amount representing the principal secured under the security included in the compensation at the lowest rate (whether for prompt payment or otherwise) provided for by the security on and from the acquisition day until—
 - (a) the day on which the compensation is paid; or
 - (b) if payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) Subsection (4) applies if—

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- (a) the claimant rejects, or is taken to have rejected, a final offer made under section 29(1)(c); and
 - (b) the amount of compensation payable under this division is less than the final offer.
- (4) The period for which interest is payable under subsection (2) does not include the period—
- (a) starting on the day the claimant rejects, or is taken to have rejected, the final offer; and
 - (b) ending on the day the amount of compensation payable under this division is determined.
- (5) Interest is not payable to the claimant on the whole or any part of the compensation payable otherwise than in accordance with this section.

Division 4.7 Dispute resolution

33 Expert determination

- (1) This section applies if a dispute arises between a claimant and the Territory.
- (2) The party in dispute must give the other party written notice of the dispute no later than 30 days after the dispute arises.
- (3) Unless the parties to the dispute otherwise agree—
 - (a) as soon as is practicable after the notice under subsection (2) is given—
 - (i) an independent expert must be appointed to decide the dispute; and
 - (ii) the dispute must be promptly referred to the independent expert; and

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- (b) a party may not commence legal proceedings in relation to the dispute if the dispute has not been first decided by the independent expert.
 - (4) The person appointed as an independent expert, including the terms of the appointment, is—
 - (a) as agreed in writing by the parties to the dispute; or
 - (b) if the parties are unable to agree—a person nominated in writing by a relevant professional body declared by the Minister.
 - (5) If a dispute is referred to an independent expert, the expert must—
 - (a) make a determination—
 - (i) as an expert; and
 - (ii) based on the information provided to them by the parties; and
 - (b) give the parties written notice of the determination and reasons for it.
 - (6) A determination by an independent expert—
 - (a) is final and binding on the parties for the Act and any court proceeding under the Act; but
 - (b) may be reviewed by a court of competent jurisdiction for legal error.
 - (7) A declaration under subsection (4) (b) is a notifiable instrument.
 - (8) In this section:

dispute means a dispute about how compensation is worked out under this part but does not include a question of law.

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Part 5 Miscellaneous

34 Effect of acquisition of security right on securityholder's rights

- (1) This section applies to any security right that is taken to have been acquired by the Territory under the Act.
- (2) The securityholder retains, in relation to so much of the security as is not discharged by section 25 (Effect of compensation claim in relation to acquisition of security right), any right and remedy that the securityholder may have—
 - (a) against Calvary; or
 - (b) in relation to any interest that is still subject to the security.

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Schedule 1 Amended Crown lease

(see s 8)

1.1 Amendment of Crown lease

The Crown lease is amended as follows:

- (a) text that is underlined is inserted into the Crown lease;
- (b) text that is struck through is omitted from the Crown lease.

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Entered in the Register Book

Volume

Folio

Registrar-General

Section 167

**Land (Planning and
Environment) Act applies**

*AUSTRALIAN CAPITAL TERRITORY
LAND (PLANNING AND ENVIRONMENT) ACT 1991*

*Australian Capital Territory (Planning and Land
Management) Act 1988 (C'th) ss 29, 30 & 31*

LESSEE

LEASE GRANTED pursuant to the *Land
(Planning and Environment) Act 1991* and the
Regulations thereunder on the Sixteenth day of
November One thousand nine hundred and ninety
nine WHEREBY THE AUSTRALIAN
CAPITAL TERRITORY EXECUTIVE ON
BEHALF OF THE COMMONWEALTH OF
AUSTRALIA (hereinafter called "the

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LAND Commonwealth") grants to **CALVARY HOSPITAL ACT INCORPORATED** an association incorporated under the Associations Incorporation Act 1991 of the Australian Capital Territory having its principal office at Calvary Hospital Bruce in the said Territory (hereinafter called "the Lessee") ALL THAT piece or parcel of land situate in the Australian Capital Territory containing **an area of 12.69** *[insert area of private hospital land]* hectares or thereabouts

TERM and being ~~**Block 1 Section 1 Division of Bruce**~~ *[insert identifier for private hospital land]* as delineated on ~~**Deposited Plan Number 2360**~~ *[insert deposited plan number for private hospital land]* in the Registrar-General's Office at Canberra in the said Territory (hereinafter referred to as "the land") RESERVING unto the Territory all minerals TO HOLD unto the Lessee for the term of ninety nine years commencing on the sixteenth day of November One thousand nine hundred and ninety nine (hereinafter referred to as "the date of the commencement of the lease") to be used by the Lessee for the purpose set forth in

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sub-clause (a) of Clause 3 of this lease only
YIELDING AND PAYING THEREFOR rent in
the amount and in the manner and at the times
hereinafter provided and UPON AND SUBJECT
TO the covenants conditions and agreements
hereinafter contained.

1. INTERPRETATION

1.1 IN THIS LEASE, unless the contrary intention appears:

- (a) **Adjacent Land** means *[insert identifier for public hospital land]*;
- (b) **Australian Capital Territory Executive** means the **Executive** established by section 36 of the *Australian Capital Territory (Self-Government) Act 1988 (C'th)*;
- (c) **Lessee** shall –
 - (i) where the Lessee consists of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;
 - (ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the persons and each of them and their and each of their executors

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administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and assigns of the survivor of them; and

(iii) where the Lessee is a corporation be deemed to include such corporation its successors and assigns;

(d) **Territory** means –

- (i) when used in a geographical sense the Australian Capital Territory; and
- (ii) when used in any other sense the body politic established by section 7 of the *Australian Capital Territory (Self Government) Act 1988* (C'th);

2. **THE LESSEE COVENANTS WITH THE COMMONWEALTH** as follows:

RENT

- (a) That the Lessee shall pay to the Territory rent at the rate of ten cents per annum if and when demanded payable within one month of the date of any demand made by the Territory relating thereto and served on the Lessee;

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MANNER OF PAYMENT OF RENT	(b)	That any rent or other moneys payable by the Lessee to the Territory under this lease shall be paid to such person as may be authorised by the Territory for that purpose at Canberra in the said Territory without any deduction whatsoever.
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3. THE LESSEE FURTHER COVENANTS WITH THE COMMONWEALTH as follows:

PURPOSE	(a)	To use the said land only for the purpose of a hospital and ancillary services thereto and accommodation facilities for employees of the hospital and a residence and ancillary services for members of the Calvary Hospital ACT Incorporated who are conducting the hospital;
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BUILDING SUBJECT TO APPROVAL	(b)	That the Lessee shall not without the previous approval in writing of the Territory erect any building or structure other than a hospital or make any structural alteration to any building or erection on the said land;
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REPAIR	(c)	That the Lessee shall at all times during the said term maintain repair and keep in repair all buildings and erections on the said land all to the satisfaction of the Territory. In case of loss or damage to any buildings or other improvements on the said land which have been wholly paid for directly or indirectly by the Territory
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FAILURE TO REPAIR	(d)	the Territory may in their absolute discretion at their own cost replace such buildings or other improvements as they think fit;
		If and whenever the Lessee fails to repair or keep in repair any building or erection on the said land the Territory may by notice in writing to the Lessee specifying the wants of repairs require the Lessee to effect repairs in accordance with the said notice or to remove the building or erection and if after the expiration of one calendar month from the date of the said notice or such longer time as the Territory may in writing allow the Lessee has not effected the said repairs or removed the building or erection the Territory with such equipment as is necessary may enter upon the said land and effect the said repairs or (if the Territory is of the opinion the building or erection is beyond reasonable repair) may demolish and remove the building or erection;
SUB-LETTING	(e)	Not to assign sub-lease or part with possession of any or all of the said land or buildings erections or improvements thereon without the previous approval in writing of the Territory;

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RIGHT OF INSPECTION	(f)	Subject to the provisions of the <i>Land (Planning and Environment) Act 1991</i> to permit any person or persons authorised by the Territory to enter upon the said land at all reasonable times and in any reasonable manner and inspect the said land and any buildings erections and improvements thereon;
RATES AND CHARGES	(g)	To pay all rates charges and other statutory outgoings assessed levied or payable in respect of the said land as and when the same fall due;
<u>LAND ACCESS</u>	(h)	<u>To permit any person or persons authorised by the Territory to enter upon the said land at all reasonable times and in any reasonable manner to enable access between the hospital on the Adjacent Land and any hospital on the land.</u>

- 4. THE COMMONWEALTH COVENANTS WITH THE LESSEE** that the Lessee observing and performing the covenants on the part of the Lessee to be observed or performed shall quietly enjoy the said land without interruption by the Territory; THE COMMONWEALTH FURTHER COVENANTS WITH THE LESSEE that while the Adjacent Land is owned or controlled by the Territory the Lessee (and/or any approved sublessee operating a hospital on the land) will be permitted to access any hospital on the Adjacent Land at such times and in such manner as is reasonably required for the purpose of the conduct of the business of a hospital

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operated from the land by the Lessee and/or their approved sublessee.

5. IT IS MUTUALLY COVENANTED AND AGREED as follows:

SURRENDER

- (a) In the event of the expiration surrender or termination of the lease (not being termination arising under the next succeeding sub-clause) the Lessee shall not remove or be entitled to compensation for the value of any buildings or other improvements on the said land which have been wholly paid for directly or indirectly by the Territory. In respect of all other buildings and other improvements the Lessee may be paid such compensation as determined by the Territory having regard to the financial contribution made by the Lessee in the construction of those buildings and other improvements provided that the amount or amounts payable as compensation shall not exceed the value or values of such buildings or other improvements at the time of the expiration surrender or termination;
- (b) In the event that the Lessee breaches or fails to comply with any ~~of the terms and conditions of the Agreement made between the Australian Capital Territory and Calvary Health Care ACT Limited dated the seventh day of December two thousand and eleven~~

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~~which said Agreement deals with the construction establishment operation and maintenance of Calvary Hospital in the said Territory or any of the~~ covenants of this lease or any applicable law of the said Territory the Territory without prejudice to any other remedy may give the Lessee thirty days notice requiring it to rectify such breach or omission and in the event that such breach or omission is not rectified within such time the Territory may forthwith terminate the lease and in that event the Lessee will be entitled to fair and reasonable compensation for the value of the buildings and other improvements having regard to the financial contributions made by the Lessee in the construction of those buildings and other improvements;

- | | | |
|----------------------|-----|--|
| FURTHER LEASE | (c) | Subject to the provisions of the <i>Land (Planning and Environment) Act 1991</i> the Lessee shall be entitled to a further lease of the said land for such further term and at such rent and subject to such conditions as may then be provided or permitted by Statute Ordinance or Regulation; |
| NOTICES | (d) | That any notice requirement demand consent or other communication to be given to or served upon the Lessee under this lease shall be deemed to have been duly given or served if |

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**EXERCISE OF
POWERS**

- signed by or on behalf of the Territory and delivered to or sent in a prepaid letter addressed to the Lessee at the registered office of the Lessee in the said Territory BUT if for any reason the Lessee does not have a registered office in the said Territory then at the usual or last-known address of the Lessee or affixed in a conspicuous position on the said land;
- (e) Any and every right power and or remedy conferred on the Commonwealth the Territory or the respective Ministers hereunder or implied by law may be exercised on behalf of the Commonwealth the Territory or the respective Ministers as the case may be by:
- (i) the Australian Capital Territory Executive;
 - (ii) the Minister for the time being administering the *Land (Planning and Environment) Act 1991* or any Statute Ordinance or Regulation substituted therefor;
 - (iii) an authority or person for the time being authorised by the Australian Capital Territory Executive or the Minister referred to in (i) or (ii) above or by law to exercise those powers or functions of the Territory the

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Commonwealth or the relevant
Minister; or

- (iv) the person to whom the Minister
referred to in (ii) above has
delegated all his powers or
functions under the said *Land*
(Planning and Environment)
Act 1991 or any Statute
Ordinance or Regulation
substituted therefor.

IN WITNESS whereof the Australian Capital Territory Executive on behalf of
the Commonwealth and the Lessee have executed this Lease.

**SIGNED, SEALED and
DELIVERED** by [*insert delegate's
name*]

a person duly authorised by the
Australian Capital Territory
Executive for and on behalf of the
Commonwealth in the presence of:

Signature of delegate

Signature of witness

Name of delegate (block letters)

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Full name of witness (block letters)	Position of delegate (block letters)
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The Common Seal of **CALVARY HOSPITAL ACT INCORPORATED** was affixed hereto by the authority of the Local Council and in the presence of:

Signature of authorised person

Signature of witness

Name of authorised person (block letters)

Full name of witness (block letters)

Position of authorised person (block letters)

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions relevant to this regulation. For example:

- head of service
- notifiable instrument
- the Territory
- territory law.

Note 2 Terms used in this regulation have the same meaning that they have in the *Health Infrastructure Enabling Act 2023*. For example, the following terms are defined in the Act, dict:

- acquisition day (see s 7)
- Crown lease
- director-general (see s 23 (1))
- hospital land
- interest, in the public hospital land or a public hospital asset
- network agreement
- public hospital assets
- public hospital contract
- public hospital employee
- public hospital land
- security
- securityholder
- security right.

acquisition, for part 4 (Compensation)—see section 9.

claim, for part 4 (Compensation)—see section 9.

claimant, for part 4 (Compensation)—see section 9.

compensation—see the Act, section 10 (5).

market value, for part 4 (Compensation)—see section 9.

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miscellaneous interest, for part 4 (Compensation)—see section 16.

Endnotes

1 Notification

Notified under the Legislation Act on 2023.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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Date: 9 May 2023

SUBJECT: Northside Hospital Project

1. Northside Hospital

(1.1) When will construction begin on the new northside hospital?

- The ACT Government has committed to commencing construction by mid this decade.

(1.2) When does the ACT Government expect the new northside hospital to be completed?

- It is expected that the new hospital will finish construction in 2030.

(1.3) Why not just expand on the existing assets at Calvary public hospital instead of building a new hospital?

- ACT Health data suggests that we will need over double the capacity that is currently provided at the public hospital in Bruce by 2041, in addition to the increasing capacity at Canberra Hospital.
- Most of the buildings on the Bruce campus were built in the 1970s and they are no longer fit for purpose. Simply adding new buildings to old ones will not result in a good outcome for the community.
- The new hospital will be larger than the existing Calvary Public Hospital Bruce, boosting our health care capacity over the coming decades.
- The ACT Government is committed to delivering modern healthcare facilities that are safe, accessible, and welcoming for staff, patients, and visitors.

(1.4) Why was the Bruce campus chosen as the best site for the new hospital?

- There is already a hospital there which people have been accessing for over 40 years, it is in a good location, and we know the site services can support a hospital.

Action Officer: Lachlan Roberts

Cleared By: Liz Lopa – 2pm on 9 May 2023; GSO – 1pm on 9 May 2023

- In addition to this, Calvary has built its private hospital and consulting suites on the site, and we have invested in a multi-storey carpark. Building the new hospital there will make it part of an existing health precinct.
- It is centrally located to the north Canberra communities in Gungahlin, Belconnen, and the Inner North.
- The ACT Government did consider greenfield sites but there was not a site that could offer the same advantages as the existing site and with the scarcity of land in the ACT, the government decided not to take land that could be used for other services when we already have a northside campus.

(1.5) How much will the new hospital cost?

- The new northside hospital will be one of the largest health infrastructure investments in the history of the Territory and we expect the project to be over a billion dollars.
- In the 2023/24 ACT Budget, the ACT Government has allocated \$64.2 million to progress the northside hospital through to detailed design and have provisioned a construction amount for future years.

(1.6) How much has the ACT Government spent on the Bruce site?

- The buildings have all been paid for, including new buildings, repairs, and maintenance, by either the Commonwealth Government or ACT Government.
- Over the last five years alone, the ACT Government has invested more than \$62 million in capital works at Calvary Public Hospital.
- The ACT Government will continue to invest in the facility until the new northside hospital is built. This ensures staff have access to a safe working environment and patients are provided with safe and appropriate healthcare.
- The ACT Government currently pays approximately \$260 million per annum for Calvary's services, one of the largest contracts in the Territory.

(1.7) After the negotiations ceased with Calvary, did the ACT Government consider a different private operator to run the northside hospital?

- Following Calvary's rejection of the Territory's offer, the ACT Government sought advice on the benefits of having one provider across the territory's public hospital system.
- That advice showed that the population and geographical profile of the ACT was found to be best suited to a single network health system when benchmarked against most NSW Local Hospital Networks.
- A single network health system will mean better efficiencies in our delivery of public health services, better mobility of services and staff across the three hospitals, and clearer clinical governance. **(See answer 2.3 for additional information)**

(1.8) When will consultation with the community begin regarding the design of the new northside hospital? Why weren't the community consulted on the operator question?

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- In 2022, the ACT Government undertook community consultation on the future of the ACT's health care system.
 - The first phase of the consultation ran from August – September 2022 and focused on developing a broad understanding of public opinion about healthcare across the ACT through an online survey.
 - The second phase of consultation broke into separate streams, with activities held during October and November 2022 focusing on the Integrated Care Program and the northside hospital project.
 - Listening reports for these engagement activities are available at <https://yoursayconversations.act.gov.au/accessing-health-care>
- Community and stakeholder consultation on the design of the new northside hospital is expected to commence later this year.
- While the community consultation did not specifically ask about the operator, the community provided feedback during Phase 2 which related to operations and governance (2% of overall feedback in Phase 2). This included feedback about the northside hospital operator and the existing operator of Calvary Public Hospital.

(1.9) What role will the new northside hospital have in the ACT's public health system once it is operational?

- The northside hospital will continue to provide quality public health services to the people of Canberra, providing more services closer to where people on the northside live.
- While the new northside hospital will be more than double the size of the current hospital, the Canberra Hospital will remain the lead tertiary trauma facility.

2. Canberra Health Services

(2.1) Why is Canberra Health Services chosen as the preferred operator?

- The ACT Government's vision is for a person-centred health system that is accessible, accountable, and sustainable.
- The ACT Government believes a single network health system is the best option for the Territory. This will create a more efficient and integrated health system, benefiting patients, staff, and the community for decades to come.
- A single network health system will enable better efficiencies in our delivery of public health services, better mobility of services and staff across our three public hospitals, and clearer clinical governance.
- Canberra Health Services has extensive experience running a broad range of interconnected services for people across the Territory and surrounding southern NSW region, including:
 - Canberra Hospital;
 - University of Canberra Hospital;
 - A growing network of Walk-in centres and community health centres; and

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- A range of community-based health services, such as early childhood services, youth and women's health, dental health, mental health and alcohol and drug services.
- Canberra Health Services also runs the Territory-wide elective surgery wait list and has existing relationships with private hospital providers across the ACT.
- This experience and expertise makes Canberra Health Services best suited to operate the northside hospital as part of its network of public health services.

(2.2) Has the ACT Government undertaken community consultation regarding a single network health system?

- During community consultation, key stakeholders, including Carers ACT and Health Care Consumers' Association (HCCA), advocated for one service provider. **(See answer 1.8 for additional information)**
- This matter was also extensively canvassed in 2010 and 2011, including through a Legislative Assembly Committee inquiry that concluded hospital services are best delivered through an integrated model.

(2.3) What modelling has the ACT Government undertaken to show the effectiveness of one service provider model?

- When benchmarked against most NSW Local Hospital Networks, the population and geographical profile of the ACT was found to be best suited to a single network health system.
- A single network public health services will mean better efficiencies in service delivery, better mobility of services and staff across the three hospitals, and clearer clinical governance.
- A one service provider model could result in efficiency improvement of 5-10%.

(2.4) There has been criticism of how Canberra Health Services have run the Canberra Hospital. Do you believe that Canberra Health Services can effectively run a third hospital?

- Canberra Health Services has a proud history of delivering safe, quality person-centred care to our community, including through the operation of Canberra Hospital – which is the Territory's tertiary referral hospital.
- Just last year Canberra Health Services was fully accredited against all National Safety and Quality Health Service Standards following a thorough independent assessment by the Australian Council on Healthcare Standards.
- All clinical areas and many clinical and non-clinical support areas were visited as part of this five-day assessment. The official report noted "a workforce culture that is closely aligned to the CHS vision, values, Clinical Governance Framework and Exceptional Care Framework".
- This is clear external independent validation of the experience and capability of Canberra Health Services to effectively run our expanding public health care system.
- Canberra Hospital's performance benchmarks favourably with its peers nationally across most measures.

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- There is room for service improvement in every health service. Through an integrated system, CHS will be able to deliver more efficient and innovative services, leveraging all its hospitals and community-based services to deliver care more effectively across the Territory.
- CHS has experience opening and operating new hospitals. University of Canberra was seamlessly integrated into the CHS network when it opened in 2018, providing rehabilitation and sub-acute services.
- It is normal for health services to run services from multiple facilities and contributes to better outcomes for patients. Canberra Health Services already has the experience and expertise to do this.

(2.5) A Calvary staff member has come forward and shared their experience working at Canberra Hospital/CHS, alleging they were bullied and harassed. This staff member now refuses to work for CHS again and will now consider moving interstate to continue working. What is the Government's response? Is the Government concerned that CHS' reputation will see less health care workers in the ACT?

- Workplace culture has steadily improved at Canberra Health Services over recent years, with successive workplace culture surveys recording increases in staff engagement.
- CHS's engagement score is above the national benchmark for public hospitals and health services according to Best Practice Australia Analytics (BPAA) data.
- We know we are going in the right direction.
- However, we recognise that some people will have had poor experiences in the past. We want to assure those staff that CHS is an organisation and workforce that will welcome new team members with open arms.
- As an organisation, CHS also understands that Calvary Public Hospital is a community, and that staff identity may be closely tied to the hospital. CHS will work to ensure that staff feel heard during the transition and have the opportunity to help shape the future of the northside hospital service.
- For the majority of the workforce currently working at Calvary, there will be no change to their employment conditions or who they work with or to.
- The Transition Team will work with individuals to identify the best ongoing employment opportunities for them as part of this transition.
- A safe workplace and positive culture underpin great patient care. Canberra Health Services has made solid improvements to its workplace culture in recent times.
- Results from a workplace culture survey conducted in November 2021, the most recent survey that asked about bullying, showed an 18% reduction in team members who had been subjected to bullying or harassment since 2019.
- This shows that our focus on improving culture is making a real difference to team members on the ground.
- In addition, in the past 12 months, the number of preliminary assessments in relation to bullying complaints has almost halved (Apr 2022 – 79, Apr 2023 – 41).

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(2.6) The Australian Institute of Health and Welfare's latest report found that emergency department wait time in Canberra more than double the national average. Data from the Productivity Commission says the ACT times are the worst of all the states and territories. According to the Australian Medical Association's latest report, nearly half of patients who presented to Canberra's ED were there for longer than four hours. Does the Government expect a one-service provider system to fix wait times?

- It is problematic to directly compare the ACT to other jurisdictions when comparing ED wait times, as we have a number of unique factors.
- The ACT only has two hospital emergency departments, which is quite different from other jurisdictions.
- We have a very busy tertiary hospital at Canberra Hospital, which is one of the busiest emergency departments in the country and is also a referral trauma hospital for surrounding southern NSW.
- Calvary Public Hospital also has quite a busy emergency department.
- When you compare our two hospitals to their respective peer hospitals, they compare more favourably on most measures than simply looking at whole-of-jurisdiction data.
- We expect that the one provider model will lead to a more efficient public hospital system, with the two campuses being able to work together to share the demand load, staffing and subspecialisation, which will assist in more efficient services.
- The ACT Government also continues to invest in new community-based health services allowing Canberrans to access treatment before they need to visit a hospital ED. For example, many people who would present to ED in other jurisdictions are treated quickly and efficiently at Walk-in Centres in the ACT and don't contribute to ED data.

3. Transition

(3.1) Why has the ACT Government decided that the proposed transition should take place by 3 July 2023?

- There are a number of reasons the ACT Government has made the decision on a short transition period:
 - to provide certainty for staff;
 - to ensure no interruption in service provision to patients and the community; and to take advantage of the benefits of a single provider system.

(3.2) What will the ACT Government do to ensure a smooth transition?

- To ensure a smooth and timely transition of services at the start of a new financial year, a transition team has been established, which will oversee, coordinate, and implement the proposed transition of operations at the hospital.

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- The Transition Team will work closely with Canberra Health Services, Calvary Health Care and a number of other government agencies to ensure patients, workforce and the community remain well informed during the transition of operations.
- **For workforce (staff, contractors etc):** If you are concerned about how this change affects you or your employment, please visit <http://www.act.gov.au/northsidehospital>, otherwise contact our Transition Team via email CHS.northsidehospitalenquiries@act.gov.au or call our Transition Hotline on (02) 5124 0400, which operates Monday to Friday between 8:30am and 4:30pm, Saturday & Sunday 10:00am – 4:00pm. **(refer to answer 4.2 regarding workforce support sessions and how we are contracting workforce)**
- **For general enquiries from public:** For all other general enquiries, please call Access Canberra on 13 22 81.
- **For enquiries relating to your appointments:** Current or future booked patients at Calvary Public Hospital Bruce will continue to receive services as planned, unless contacted directly by Calvary. If you have an enquiry regarding your appointment at Calvary Public Hospital, contact your doctor.

(3.3) Will the transition affect delivery of services?

- Our key priority during the transition is supporting team members and continuing to deliver quality healthcare for patients.
- The Transition Team and Canberra Health Services remain ready to assist Calvary in any disruption this transition may result in. Key to achieving this is to fully support the existing Calvary Public Hospital team members during this difficult and uncertain time for them.
- Appointments and surgeries booked during the transition period will proceed as planned. Any changes to appointments will be communicated with individuals directly as per normal processes.
- The implementation of the Digital Health Record in late 2022 means the ACT health system is operating under a single system for patient records. This will help to ensure continuity of care during the transition.

(3.4) Can people still access health care services at Calvary during the transition?

- Canberrans can continue to access health care services at the hospital while the proposed transition of operators occurs. The Emergency Department will continue to operate, and we can assure the community that anyone who presents in need of treatment will be cared for.
- We ask Canberrans to be patient and kind with staff and fellow patients as the transition takes place.
- Canberrans can access free treatment for non-life-threatening injuries and illnesses at a Walk-in Centre. The Gungahlin, Belconnen and Inner North Walk-in Centres are located on the northside.

4. Staffing

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(4.1) What is the ACT Government doing to ensure staff at Calvary Hospital will not be left without a job?

- We recognise that this is a big change for staff. We will work with staff and our industrial partners to make the transition as smooth as possible.
- Calvary Public Hospital staff will be invited to transition to Canberra Health Services to continue delivering the valued services they currently provide.
- Entitlements will be transferred, and conditions will be unchanged for most staff who are employed under the shared ACTPS Enterprise Agreement arrangements and are eligible to be employed under the Public Sector Management Act.
- The Transition Team invites any person currently employed or contracted to work at Calvary Public to contact the Transition Hotline on (02) 5124 0400 between 8:30am – 4:30pm Monday to Friday, Saturday & Sunday 10:00am – 4:00pm or email CHS.northsidehospitalenquiries@act.gov.au, so we can provide specific information and register their details.

(4.2) How is the ACT Government contacting Calvary staff?

- Until the legislation passes, direct communication with staff will be the responsibility of Calvary Health Care ACT. The Transition Team will work closely with Calvary management to ensure staff remain well-informed.
- Staff are invited to voluntarily contact the Transition Team through the Transition Hotline by email at CHS.northsidehospitalenquiries@act.gov.au or on (02) 5124 0400 between 8:30am – 4:30pm Monday to Friday, Saturday & Sunday 10:00am – 4:00pm, so we can register their details and provide specific information.
- In addition, a number of workforce support sessions, pop-up information stands, and Webex sessions are scheduled.
- These will be located at the AIS, University of Canberra Hospital, University of Canberra, and CIT. Sessions will be scheduled to make it easy for those working shift work to attend. Sessions will be advertised on <http://www.act.gov.au/northsidehospital>.

(4.3) What will the Government do to ensure that there is enough staff to fulfill operations of the hospital?

- A surge workforce can be stood up if required to fulfill urgent, acute activity required across the Territory. These mechanisms were well tested during COVID.

(4.4) How many staff will be required to operate the new hospital once it is built?

- Operation of the new northside hospital is forecast to require more than 2000 staff.
- Analysis has already indicated that a single provider model will benefit the organisation and patients because staff will be able to move between sites to meet demand.

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- In preparation for the opening of the new Critical Services Building at Canberra Hospital, the CHS Talent Acquisition Team is currently implementing process and system enhancements, along with planning a Recruitment Campaign for later this year.
- The experience gained from the upcoming Recruitment Campaign, along with the system and process enhancements, will mean the CHS Talent Acquisition team will be able to successfully run a large-scale Recruitment Drive for the future Northside Hospital.

(4.5) Who should staff contact if they have questions or concerns?

- If you are concerned about how this change affects you or your employment, please visit <http://www.act.gov.au/northsidehospital>, otherwise contact our Transition Team via email CHS.northsidehospitalenquiries@act.gov.au or call our Transition Hotline on (02) 5124 0400, which operates Monday to Friday between 8:30am and 4:30pm, Saturday & Sunday 10:00am – 4:00pm. **(See answer 4.2 for additional information)**

5. Calvary

(5.1) Has the relationship between the ACT Government and Calvary broken down?

- Calvary Health Care has been a valued partner in delivering both public and private health care in the ACT for over 40 years.
- Calvary has served the ACT community well, but the arrangements under which Calvary provides services do not reflect modern health care arrangements.
- Calvary's private hospitals will continue to play an important role in the delivery of health care in the ACT and the ACT Government will seek to maintain a positive working relationship with Calvary with respect to its private hospitals and aged care services.
- The ACT Government is committed to working collaboratively with Calvary through the transition period.

(5.2) Why did the ACT Government renew the contract with Calvary Health Care in February 2012?

- The arrangements with Calvary were originally set up by the Commonwealth in 1971.
- Following the unsuccessful attempt by the Territory to purchase the CPHB, the parties renegotiated their contractual arrangements and signed the Calvary Network Agreement (CNA), which came into effect in February 2012.
- The new agreement represented an improvement on the original contract – especially as it resulted in Calvary removing private patients from the public hospital, freeing up more space for public service delivery.
- There was a need to sign a new contract at that time as the previous agreement had been signed in 1971 and no longer reflected appropriate arrangements.
- However, even with the advances in the CNA, the contract does not represent contemporary health service delivery, and the result is not providing the best outcomes for our community. Continuing this arrangement is not in the best interest of our community.

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(5.3) Does the ACT Government regret signing the CNA in 2012?

- At the time, the CNA represented a significant improvement on the arrangements that preceded it and was necessary to move forward.
- The needs and demands of our healthcare system have grown and evolved. In 2023, the health system faces challenges that we could not foresee a decade ago when the ACT Government of the day signed the current agreement.
- It is the responsibility of the current ACT Government to ensure the Territory is getting the best arrangements for the delivery of healthcare services of our community.

(5.4) How long has the ACT Government been negotiating with Calvary?

- In April 2022, ACT Minister for Health Rachel Stephen-Smith wrote to Calvary Health Care and asked for negotiations to begin formally on a new northside hospital on the Calvary Hospital campus.
- The ACT Government identified that it wanted to own the land (with room to expand) on which the hospital would be built, and that it wanted to negotiate a new, modern services agreement for the delivery of public hospital services.
- Negotiations between ACT Government and Calvary officially began in May 2022, but were unsuccessful and concluded in January 2023.

(5.5) When did the ACT Government advise Calvary that they were considering the option of utilising either existing or new special legislation for the transfer of land to the ACT Government?

- In April 2022, the Minister for Health wrote to Calvary Health Care at the beginning of the negotiation process and was clear that the Government would consider legislation if no agreement could be reached.

(5.6) Calvary have said they now agree with the offer the ACT Government made in September 2022. Will the ACT Government continue with the legislation?

- The negotiation period with Calvary has expired. The ACT Government is now in a position where we need certainty over the land and operator to move on with the infrastructure project.
- The ACT Government has explored the one service provider model and found that there are many benefits to the community. **(See answer 2.3 for additional information)**

(5.7) Will Calvary be compensated?

- The ACT Government will pay compensation to Calvary Health Care on just terms, which will include compensation for the termination of the contract and for the acquisition of part of the land.
- The ACT Government will continue to negotiate with Calvary Health Care on the appropriate compensation.

(5.8) What does this mean for the future of Calvary in the ACT?

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- Calvary John James Hospital and Calvary Bruce Private Hospital are also run by Calvary Health Care. These are independent business entities and are not directly impacted by this legislation. They are also important partners in the delivery of health care in the ACT.
- The ACT Government will continue to contract Calvary to provide some services in its private facilities such as the public joint replacement program that is undertaken at John James and other elective surgery through the Private Provider Panel.

(5.9) If Calvary decides to remove their operations from Canberra, will the ACT Government step in and run Clare Holland House?

- In that event, the Government will discuss the operations of Clare Holland House with Calvary.

(5.10) Calvary have claimed that this decision is based on religious discrimination. What is your response?

- No, it is not. The ACT Government's decision is driven by the need for a new, larger hospital on the northside of Canberra and delivering the best public health system for the Territory.
- The ACT Government has existing contracts with many faith-based organisations. **(See answer 5.16 for additional information)**

(5.11) Calvary called the ACT Government "hostile in its negotiations" during the 2022 negotiations. Was that the case?

- The ACT Government discussions with Calvary were undertaken subject to confidentiality agreements. The ACT Government is not in a position to discuss the content of those negotiations.
- The ACT Government has had a good working relationship with Calvary and the ACT Government approached the negotiations in good faith.

(5.12) Calvary have accused the ACT Government of ending the contract because of Voluntary Assisted Dying legislation. Is this true?

- No, the purpose of the ACT Government's decision is to build one public health system operated by one service provider in the ACT.

(5.13) Did the findings and recommendations of the Legislative Assembly's inquiry into Canberra abortion services affect the ACT Government's decision?

- No, the outcomes of the inquiry were not considered as part of this decision.

(5.14) Does Calvary have any other public hospitals in Australia?

- Calvary Health Care operates four public and ten private hospitals across Australia. Its public hospitals are:
 - Calvary Public Hospital Bruce;
 - Calvary Mater in Newcastle;

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- Calvary Health Care Kogarah; and
- Calvary Bethlehem in Melbourne.
- Calvary Mater is the only comparable public hospital run by Calvary, with the Kogarah and Bethlehem hospitals being specialised in palliative care and rehabilitation.
- Calvary Public Hospital Bruce offers a wider range of services than Calvary Mater and is the only Calvary-run public hospital that offers maternity and birthing services.

(5.15) Is it true that Calvary have mortgaged their land in Bruce?

- This is a question for Calvary – the ACT Government will not speculate on their business affairs.

(5.16) Calvary CEO Martin Bowles AO PSM said this decision proves that the ACT Government believe there is no role for faith-based health care in the ACT. What role will faith-based health care have in the future?

- The ACT Government has a proud history of working with many faith-based organisations as part of an inclusive society and will continue to do so.
- For example, CatholicCare is a key provider of mental health, AOD and youth services.
- Calvary continues to have an important role in the ACT's health system.
- Calvary still operates other services in Canberra and the ACT Government anticipates and hopes it will continue to do so.

(5.17) Has the ACT Government previously considered introducing special legislation to acquire the land/hospital?

- The ACT Government has considered introducing legislation at various times.

(5.18) Calvary said they offered you the land in November 2022. Why did you not accept?

- The ACT Government discussions with Calvary were undertaken subject to confidentiality agreements. The ACT Government is not in a position to discuss the content of those negotiations.

(5.19) Calvary says the Territory is putting Calvary's private hospital services at risk by acquiring the land at Bruce.

- The Territory has been explicit in the legislation and regulation that the acquisition of part of Calvary's crown lease does not include any areas where Calvary currently delivers private services and only reflects the land currently used for the public hospital and needed for future delivery of public services.
- The Government has provided for Calvary to keep the surface carpark next to its private consulting suites as we are aware Calvary would like to expand its private health offerings on that site.
- The Government hopes that it will be able to continue working collaboratively with Calvary on the broader development of the Bruce site.

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(5.20) Calvary says it won't be able to afford to operate their private hospital without also running the public hospital.

- This is a question for Calvary – the ACT Government will not speculate on their business affairs.
- Part of the reason why the Government has made the decision to build the new northside hospital on the Bruce site is because there is an existing health precinct there, including the private hospital. This decision continues the operation of a public hospital in the same precinct as the private hospital.
- The Government recognises the benefits of co-located public and private hospitals and works collaboratively with HealthScope in relation to the operation of the National Capital Private Hospital on the Canberra Hospital campus.

(5.21) Why are you terminating calvary's contract over the public hospital now? Couldn't the ACT Government just secure the land and leave them running the hospital until the new one is built?

- (See answer 3.1)

(5.22) Calvary have said that this legislation does not fulfill the ACT Government's obligations to the Bruce Health Care Precinct Deed.

- The legislation brings Precinct Deed to an end.

6. Catholic Church

(6.1) Archbishop Christopher Prowse said he was not consulted or briefed by the ACT Government on its decision to introduce legislation. Why did the ACT Government not brief him?

- The ACT Government has been involved in formal negotiations with Calvary for more than 12 months, and it is the responsibility of Calvary to brief the Archbishop and the Church, should they choose to do so.

(6.2) Archbishop Christopher Prowse said this move by the ACT Government is religious discrimination and is an attack on Catholic values and practicing Catholics in the ACT. Is the Government concerned about how this will impact the local Catholic community who want to receive care from Calvary Health Care?

- The ACT Government's responsibility is to provide the best public health services we can for the Canberra community.
- It has not been an easy decision to transition the northside campus to being run by Canberra Health Services, but it is one that we have made in the best interests of the community.
- Calvary will still be providing public health services – including important elective surgery lists – through their private hospitals.

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7. Legal

(7.1) If the Calvary Public Hospital in Bruce was on Federal Government land, how can the ACT Government acquire it?

- As a result of self-government, Calvary Public Hospital is on Territory land.

(7.2) Calvary said they will challenge this in court. Is the ACT Government confident their decision will be upheld in court?

- The ACT Government won't discuss court matters publicly.
- However, no matter what the legal and commercial challenges are, the ACT Government will continue to prioritise, and expects that Calvary will prioritise, high quality patient care during the transition phase.

(7.3) Calvary have said they will file an injunction. What will that mean for the legislation?

- That will be up to a court.

(7.4) What powers does special legislation have in the Territory?

- The proposed legislation has been described as special legislation as it is distinct from legislation of a general application, such as the Lands Acquisition Act.

(7.5) Has the ACT Government introduced special legislation before or is this unprecedented?

- The Territory has previously introduced legislation to vary the rights and obligations of parties.
- For example, a number of years ago the Territory passed a law, as did other jurisdictions, to enable the transfer of the assets and contracts of banks and their customers as a consequence of bank mergers in the Bank Mergers Act 1997.
- Several years ago, the Territory restricted accessible taxi licenses by regulation and a legal challenge by Aerial Taxis on the basis that it was an acquisition of property other than on just terms failed.

(7.6) Why isn't the ACT Government using the Land Acquisition Act 1994 to acquire the land?

- The main clauses and intent in the Land Acquisition Act have been reflected into this legislation – for example the need for it to be on just terms. However, the Land Acquisition Act was not sufficient to deal with the transition of business requirements that result from the termination of the contract that governs Calvary's provision of public health services.
- These transition of business clauses in the legislation set out what Calvary and the Territory must do and prioritises patient care to ensure a smooth transition.

(7.7) Why has the ACT Government stated the legislation will be introduced and debated so quickly and without being sent to an ACT Legislative Assembly Standing Committee?

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- To ensure the highest levels of patient safety and operational matters to support the transition of services are in place a short timeframe is required between the Health Infrastructure Enabling Bill being introduced and debated.
- This is because the Bill will not be in effect prior to being debated and passed in the Assembly, with specific clauses in the Bill ensuring there will be a safe and orderly transition of services from Calvary to the ACT Government it is important to enact these as quickly as possible.
- The Assembly has resolved to bring forward a motion to suspend the standing orders that would normally send a Bill to a Standing Committee to determine whether they would inquire to ensure the time between introduction and passing of the legislation is minimised.
- Scrutiny of the Health Infrastructure Enabling Bill 2023 will still be undertaken to ensure there is a review of the legislation prior to being debated.
- The ACT Government will support briefings being provided to the Standing Committee for Health and Community Wellbeing to ensure they can be assured of the work the Government is undertaking to maintain patient and staff wellbeing throughout this period.
- We have provided publicly available information that outlines the work to support a new northside hospital, with background information regarding the transition of services.
- The ACT Government will also be attending hearings as part of other inquiries in the next few months, particularly Estimates following the 2023-24 ACT Budget.

8. Canberra Hospital

(8.1) What does this mean for the Canberra Hospital Master Plan?

- The Canberra Hospital Master Plan will continue to guide the redevelopment of the Canberra Hospital campus over the coming 20 years, but it is some years away from being able to add inpatient capacity to the system above what is already planned at in the Canberra Hospital Expansion and Centenary Expansion projects.
- In 2021, the ACT Government released the Canberra Hospital Master Plan which guides the redevelopment of the CH campus over the next 20 years, replacing ageing infrastructure and increasing capacity. Implementation of the Master Plan has commenced with funding for:
 - design of a new multi-storey car park on Yamba Drive;
 - fit-out of more inpatient units in the Critical Services Building;
 - design of a new Pathology and clinical support building; and
 - design of two new inpatient buildings to decant the Tower Block.
- Significant infrastructure funding will be required over the life of the Master Plan redevelopment to ensure fit for purpose and state of the art facilities are delivered.
- The new Critical Services Building is at the heart of the Canberra Hospital expansion.
- It will provide a brand-new emergency department, more operating rooms, more treatment spaces and more intensive care beds – future proofing our acute health care capacity into the future.

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Cleared By: Liz Lopa – 2pm on 9 May 2023; GSO – 1pm on 9 May 2023

- The building's new technology and modern facilities will also help us attract a clinical workforce from not only Australia but around the world who will want to work in this new building.
- Construction work on Canberra Hospital's new Critical Services Building is progressing well and the building will open in 2024.
- There is a significant amount of work underway within Canberra Health Services to prepare to transition services over to the new building when it opens next year. In planning for the move, we will be looking at ways that we can improve our current operations and care delivery within the context of the new facility.
- The Government's work to modernise the Canberra Hospital campus is not limited to the Critical Services Building – there are upgrades and enhancements to facilities happening right across the campus. This includes the expansion of the Centenary Hospital for Women and Children, expansion of pharmacy and medical imaging services and a new cancer research centre.
- In addition, work has also commenced to progress a new Pathology and Clinical Support Building – another key priority outlined in the Canberra Hospital Master Plan. It is a new building that will be located close to the new Critical Services Building and provide real benefits for health workers and patients.

(8.2) What does this mean for the future of the Canberra Hospital?

- Canberra Hospital, as the tertiary referral hospital, is larger and has a higher patient load than Calvary Public Hospital Bruce as a general hospital. However, there is opportunity for a more balanced relationship between the two hospitals moving forward.

(8.3) What are the current ED and elective surgery wait times at Canberra Hospital?

- The ACT Government is committed to reducing elective surgery wait lists and the delivery of 60,000 elective surgeries between 2021-22 to 2024-25.
- The fire in December 2022 at the operating theatre complex at Calvary Public Hospital Bruce (CPHB) has impacted the delivery of elective surgery across the Territory.
- The ACT Government continues to work on its recovery plan following the fire. This includes reinstating damaged infrastructure, engaging with private providers to deliver elective surgeries in private facilities where safe to do so and working in partnership with Southern NSW.

If asked about current wait times:

- Hospital data is currently not available from the Digital Health Record for reporting purposes as the workflow to retrieve large data sets is still being validated.
- This is expected to be resolved in the next few months and does not affect the ability of health professionals and other clinical staff to access patient information as the operational system and the data reporting systems are separate.

Action Officer: Lachlan Roberts

Cleared By: Liz Lopa – 2pm on 9 May 2023; GSO – 1pm on 9 May 2023

9. Mental health services

(9.1) What impacts will there be to mental health services during the transition of operators?

- Patient wellbeing and safety continues to be the ACT Government's primary focus during the transition of operations.
- Canberrans can continue to access mental health care service from Mental Health Unit at Calvary Public Hospital while the transition of operators occurs.
- Other mental health services adjacent to the Calvary Public Hospital campus include:
 - Gawanggal Mental Health Unit (operated by Canberra Health Services);
 - The Cottage (operated by the Child and Adolescent Mental Health Service); and
 - Arcadia House Drug and Alcohol Rehabilitation service (operated by Directions ACT)
- These services will continue as planned during the transition of operators.

(9.2) Will there be additional mental health services in the new northside hospital?

- The ACT Government acknowledges that mental health is one of the fastest growing areas of health care. The new northside hospital will have more mental health beds than are currently provided at Calvary Public Hospital.
- As the detailed design for the new hospital begins, the ACT Government will ensure that services are balanced across the territory.
- Community and stakeholder consultation on the design of the new northside hospital is expected to commence later this year.

Action Officer: Lachlan Roberts

Cleared By: Liz Lopa – 2pm on 9 May 2023; GSO – 1pm on 9 May 2023

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Infrastructure Enabling Bill 2023

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2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Infrastructure Enabling Bill 2023

A Bill for

An Act enabling the acquisition on just terms of land and other property for a public hospital, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

Section 1

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Health Infrastructure Enabling Act 2023*.

4 **2 Commencement**

5 (1) This Act (other than schedule 2) commences on the day after its
6 notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 (2) Schedule 2, parts 2.1, 2.3 and 2.4 commence on the acquisition day.

10 (3) Schedule 2, part 2.2 commences on the day the *Planning Act 2023*,
11 section 3 commences.

12 **3 Dictionary**

13 The dictionary at the end of this Act is part of this Act.

14 *Note 1* The dictionary at the end of this Act defines certain terms used in this
15 Act, and includes references (*signpost definitions*) to other terms defined
16 elsewhere in this Act.

17 For example, the signpost definition ‘*health record*—see the [Health](#)
18 [Records \(Privacy and Access\) Act 1997](#), dictionary.’ means that the term
19 ‘health record’ is defined in that dictionary and the definition applies to
20 this Act.

21 *Note 2* A definition in the dictionary applies to the entire Act unless the
22 definition, or another provision of the Act, provides otherwise or the
23 contrary intention otherwise appears (see [Legislation Act](#), s 155 and
24 s 156 (1)).

25 **4 Notes**

26 A note included in this Act is explanatory and is not part of this Act.

1 **5 Purposes of Act**

2 The purposes of this Act are to—

- 3 (a) enable the Territory to acquire the public hospital land for the
4 construction of a public hospital; and
- 5 (b) enable the transition of the operation of the public hospital to the
6 Territory, including by terminating the network agreements; and
- 7 (c) provide for the safe and orderly transition of the operation of the
8 public hospital to the Territory, including by—
- 9 (i) enabling the Territory to acquire the public hospital assets;
10 and
- 11 (ii) providing for the transition of employment of public
12 hospital employees to the Territory; and
- 13 (iii) providing for the novation and assignment of public
14 hospital contracts to the Territory; and
- 15 (d) ensure the continued operation of, and maintenance of service
16 delivery standards at, the public hospital during and
17 immediately after the transition; and
- 18 (e) ensure the Territory can, after the transition, effectively manage
19 its obligations and liabilities in relation to the operation of the
20 public hospital, including liabilities arising in relation to the
21 operation of the public hospital before the transition; and
- 22 (f) ensure that interests acquired under this Act are acquired on just
23 terms.

- 1 **6 Application of other territory laws**
- 2 (1) The following territory laws do not apply in relation to anything done
- 3 under this Act:
- 4 (a) the *Government Agencies (Land Acquisition Reporting)*
- 5 *Act 2018*;
- 6 (b) the *Government Procurement Act 2001*;
- 7 (c) the *Lands Acquisition Act 1994*;
- 8 (d) the *Planning and Development Act 2007*;
- 9 (e) any other territory law prescribed by regulation.
- 10 (2) Despite subsection (1) (d), on and from the acquisition day, the
- 11 *Planning and Development Act 2007* continues to apply to the
- 12 amended Crown lease.
- 13 (3) However, any provision of this Act that applies to the amended
- 14 Crown lease on and from the acquisition day prevails over any
- 15 provision of the *Planning and Development Act 2007* that applies to
- 16 the lease to the extent of any inconsistency.
- 17 (4) A regulation may modify the operation of subsections (2) and (3).

- 1 **Part 2** **Compulsory acquisition of public**
 2 **hospital land and assets**
- 3 **7** **Meaning of *acquisition day***
- 4 (1) In this Act:
- 5 *acquisition day* means—
- 6 (a) 3 July 2023 (the *default acquisition day*); or
- 7 (b) if the Executive gives notice before the default acquisition day
- 8 of a day earlier or later than the default acquisition day—the day
- 9 stated in the notice.
- 10 (2) A notice is a notifiable instrument.
- 11 **8** **Acquisition of public hospital land**
- 12 (1) On the acquisition day, Calvary's interest in the public hospital
- 13 land—
- 14 (a) vests in the Territory; and
- 15 (b) is freed and discharged from any trust, restriction, dedication,
- 16 reservation, obligation, charge, encumbrance, lien, contract,
- 17 licence, rate or any other interest.
- 18 (2) Any interest in land, or part of an interest in land, that is divested,
- 19 extinguished or diminished because of subsection (1) (b) is taken to
- 20 have been acquired by the Territory under this Act.
- 21 (3) A regulation may provide for an interest mentioned in subsection (2)
- 22 to be dealt with in a different way.

Part 2

Compulsory acquisition of public hospital land and assets

Section 9

- 1 **9 Acquisition of public hospital assets**
- 2 (1) On the acquisition day, the public hospital assets—
- 3 (a) vest in the Territory; and
- 4 (b) are freed and discharged from any trust, restriction, dedication,
- 5 reservation, obligation, charge, encumbrance, lien, contract,
- 6 licence, rate or any other interest.
- 7 (2) Any interest, or part of an interest, that is divested, extinguished or
- 8 diminished because of subsection (1) (b) is taken to have been
- 9 acquired by the Territory under this Act.
- 10 (3) Subsection (1) does not apply to an interest in an excluded asset.
- 11 (4) A regulation may provide for an interest mentioned in subsection (2)
- 12 to be dealt with in a different way.
- 13 **10 Acquisition must be on just terms**
- 14 (1) The Territory must provide just terms to a person from whom an
- 15 interest is acquired under this Act.
- 16 (2) Without limiting subsection (1), just terms for the acquisition
- 17 includes reasonable compensation for the following:
- 18 (a) the acquisition of Calvary's interest in the public hospital land;
- 19 (b) any security right or other interest in land taken to have been
- 20 acquired under section 8 (2);
- 21 (c) the acquisition of the public hospital assets;
- 22 (d) any security right or other interest in a public hospital asset taken
- 23 to have been acquired under section 9 (2);

-
- 1 (e) things arising as a consequence of an acquisition mentioned in
 2 paragraphs (a) to (d) including the following:
- 3 (i) the termination of the network agreements under
 4 section 14 (1);
- 5 (ii) the termination of any public hospital contract or other
 6 contract because of the operation of this Act;
- 7 (iii) any redundancy or similar payment payable by Calvary to
 8 a public hospital employee because of the operation of this
 9 Act;
- 10 (iv) anything else prescribed by regulation.
- 11 (3) A regulation may provide for the following matters:
- 12 (a) how compensation under subsection (2) is worked out;
- 13 (b) how claims for compensation are made and dealt with;
- 14 (c) a time limit within which a claim for compensation may be
 15 made;
- 16 (d) information or other things required from a person claiming
 17 compensation that is needed to assess their claim and work out
 18 any compensation;
- 19 (e) how any dispute about working out compensation is resolved;
- 20 (f) how compensation is paid;
- 21 (g) any other matter relevant to providing just terms to a person
 22 from whom an interest is acquired under this Act.
- 23 (4) A claim for compensation is not maintainable if brought after the end
 24 of a time limit made for subsection (3) (c), and the *Limitation*
 25 *Act 1985* does not apply to the claim.

Part 2 Compulsory acquisition of public hospital land and assets

Section 10

- 1 (5) In this section:
- 2 *compensation*, for an acquisition of an interest under this Act,
- 3 includes the following:
- 4 (a) monetary payment;
- 5 (b) the transfer or assumption of a loss, liability or expense;
- 6 (c) the grant of a right, entitlement or benefit;
- 7 (d) any other beneficial term.

Part 3 Acquisition and transition of public hospital operations

11 Territory may enter hospital land

- (1) An authorised person may, at any reasonable time before the acquisition day and with reasonable written notice, do any of the following things:
- (a) enter on the hospital land with any person, vehicle or thing for the purpose of carrying out any necessary or desirable survey, review or other investigation related to the proposed construction by the Territory of a public hospital on the hospital land;
 - (b) make surveys, take levels, dig or bore into the hospital land, examine the soil and do any other thing reasonably necessary for the purpose mentioned in paragraph (a);
 - (c) enter on the hospital land to do anything necessary for section 18 (Territory must prepare draft deposited plan) or section 19 (Amendment of the Crown lease etc);
 - (d) enter any operational or service delivery part of the public hospital to do anything reasonably necessary for a purpose of this Act, including any of the following:
 - (i) undertake an inspection or stocktake of public hospital assets;
 - (ii) assess the Territory's requirements for maintaining and operating facilities and public hospital assets immediately after the acquisition day;
 - (iii) assess the Territory's requirements for complying with all licences and authorisations required by law to operate the public hospital immediately after the acquisition day;

Part 3

Acquisition and transition of public hospital operations

Section 11

- 1 (iv) assess the Territory's requirements for operating, and
 2 maintaining service delivery standards at, the public
 3 hospital immediately after the acquisition day;
- 4 (e) enter on the hospital land to do any other thing reasonably
 5 necessary to prepare for or give effect to a purpose of this Act
 6 or to otherwise exercise a function under this Act;
- 7 (f) any other thing prescribed by regulation.
- 8 (2) If requested by an authorised person, Calvary must give the
 9 authorised person any assistance reasonably necessary for the
 10 authorised person to exercise a function under subsection (1).
- 11 (3) Without limiting subsection (2), Calvary must:
- 12 (a) give an authorised person access to secured areas in the public
 13 hospital; and
- 14 (b) show an authorised person where records, equipment and other
 15 assets in relation to the public hospital are kept on the hospital
 16 land.
- 17 (4) In entering the hospital land under this section, the Territory must
 18 minimise any interference with Calvary's use of the land to the extent
 19 reasonably practicable.
- 20 (5) In this section:
- 21 *authorised person* means a person authorised in writing by the
 22 director-general to exercise a function under this section.

1 **12 Calvary to provide information**

- 2 (1) For a purpose of this Act, the director-general may request Calvary
3 provide information about any of the following:
- 4 (a) public patient health records;
- 5 (b) stock in trade and inventory of the public hospital;
- 6 (c) fixed and non-fixed assets of the public hospital including asset
7 maintenance records and condition reports;
- 8 (d) trade debts and other receivables owed in relation to the public
9 hospital;
- 10 (e) suppliers of goods and services in relation to the public hospital;
- 11 (f) subleases, underleases, licences, easements, rights of way and
12 any other occupancy rights or arrangements in relation to the
13 public hospital land;
- 14 (g) accounting and financial records in relation to the operation of
15 the public hospital;
- 16 (h) public hospital employees including employment records and
17 payroll information;
- 18 (i) public hospital contracts;
- 19 (j) any trust funds for the public hospital including details about the
20 specific purpose for which the funds are held or the trusts
21 established;
- 22 (k) any existing or pending investigation, proceeding (whether civil
23 or criminal) or remedy in relation to a right, privilege or liability
24 under a law applying in the ACT in relation to the public
25 hospital;

Part 3

Acquisition and transition of public hospital operations

Section 12

-
- 1 (l) details about any existing security over the hospital land, public
 2 hospital assets or other property in relation to the public hospital
 3 including—
- 4 (i) contact details of the securityholder; and
- 5 (ii) the total amount of debt secured by the security and details
 6 of any other security instrument which secures that debt;
- 7 (m) details of any other personal property security interest in relation
 8 to the public hospital or the arrangements to which they relate,
 9 including contact details of the security interest holder;
- 10 (n) intellectual property relating to the operation of the public
 11 hospital, including any intellectual property created under a
 12 network agreement;
- 13 (o) public hospital administration records, including any reports,
 14 audited materials, regulatory matters, maintenance and
 15 operational records;
- 16 (p) any other matter relevant to a purpose of this Act;
- 17 (q) anything else prescribed by regulation.
- 18 (2) A request—
- 19 (a) must be in writing; and
- 20 (b) must state a reasonable period within which the information is
 21 to be provided; and
- 22 (c) may state a reasonable format or way in which the information
 23 is to be provided.
- 24 (3) Calvary must—
- 25 (a) comply with the request within the stated period; and
- 26 (b) provide the information in any stated format or way.

- 1 (4) For a purpose of this Act, the director-general may give any
 2 information, including a public patient health record, provided to
 3 them by Calvary under this section to a Territory employee or
 4 contractor.

5 **13 Calvary and Territory must cooperate to ensure safe and**
 6 **orderly transition etc**

- 7 (1) Calvary and the Territory must act in good faith, cooperate and do all
 8 other things reasonably necessary to ensure—
 9 (a) the safe and orderly transition of the operation of the public
 10 hospital to the Territory; and
 11 (b) the continued operation of, and maintenance of service delivery
 12 standards at, the public hospital.
- 13 (2) Without limiting subsection (1), Calvary must—
 14 (a) appoint a senior executive to—
 15 (i) be the contact person for operational matters relating to the
 16 transition of the operation of the public hospital to the
 17 Territory; and
 18 (ii) coordinate Calvary's role in the transition of the operation
 19 of the public hospital to the Territory; and
 20 (b) cooperate with the Territory to develop a transition plan for the
 21 transfer of the operation of the public hospital and ensure its
 22 employees, officers and contractors comply with the plan; and
 23 (c) provide all reasonable assistance to enable the Territory to
 24 obtain all licences and authorisations required by law to operate
 25 the public hospital; and
 26 (d) provide reasonable access to any records management
 27 information technology systems used for public patient health
 28 records, employee and payroll records, financial records and
 29 other operations management records; and

Part 3

Acquisition and transition of public hospital operations

Section 13

- 1 (e) ensure its employees and officers provide all reasonable
- 2 assistance to the Territory to assist in the transition of the
- 3 operation of the public hospital to the Territory and ensure there
- 4 is sufficient staffing to do so; and
- 5 (f) ensure all maintenance and repair of public hospital facilities
- 6 and public hospital assets continues until the acquisition day;
- 7 and
- 8 (g) comply with all requirements under this Act as soon as is
- 9 reasonably practicable; and
- 10 (h) provide reasonable assistance to the Territory to enable the
- 11 Territory to comply with its obligations under this Act; and
- 12 (i) not do anything that hinders, obstructs or delays the transition of
- 13 the operation of the public hospital to the Territory; and
- 14 (j) promptly notify the Territory of any matter of which it is aware
- 15 may hinder, obstruct or delay the transition of the operation of
- 16 the public hospital to the Territory; and
- 17 (k) do anything else prescribed by regulation.
- 18 (3) Without limiting subsection (1), the Territory must—
- 19 (a) appoint a senior executive to—
- 20 (i) be the contact person for operational matters relating to the
- 21 transition of the operation of the public hospital to the
- 22 Territory; and
- 23 (ii) coordinate the Territory's role in the transition of the
- 24 operation of the public hospital to the Territory; and
- 25 (b) cooperate with Calvary to develop a transition plan for the
- 26 transfer of the operation of the public hospital and ensure its
- 27 employees and contractors comply with the plan; and

- 1 (c) ensure that any disruption to Calvary caused by the transition of
- 2 the operation of the public hospital to the Territory is minimised;
- 3 and
- 4 (d) comply with all requirements under this Act as soon as is
- 5 reasonably practicable; and
- 6 (e) provide reasonable assistance to Calvary to enable Calvary to
- 7 comply with its obligations under this Act; and
- 8 (f) not do anything that hinders, obstructs or delays Calvary in
- 9 complying with its obligations under this Act; and
- 10 (g) on request by Calvary, provide Calvary with any reasonable
- 11 assistance to enable Calvary to comply with its obligations
- 12 under this Act; and
- 13 (h) promptly notify Calvary of any matter of which it is aware may
- 14 hinder, obstruct or delay the transition of the operation of the
- 15 public hospital to the Territory; and
- 16 (i) do anything else prescribed by regulation.

Part 4
Division 4.1

What happens on or after acquisition day
Operation of public hospital

Section 14

1 **Part 4** **What happens on or after**
2 **acquisition day**

3 **Division 4.1** **Operation of public hospital**

4 **14** **Operation of public hospital—generally**

- 5 (1) On the acquisition day—
- 6 (a) the Crown lease for the hospital land is amended under
7 section 18; and
- 8 (b) the network agreements are terminated; and
- 9 (c) Calvary must—
- 10 (i) vacate the public hospital land; and
- 11 (ii) allow the Territory to enter the public hospital land; and
- 12 (iii) allow the Territory to use all public hospital assets; and
- 13 (iv) allow the Territory to perform any activity necessary for
14 the continued operation of the public hospital; and
- 15 (v) execute all documents necessary to give effect to a purpose
16 of this Act; and
- 17 (vi) do all other things reasonably necessary to ensure—
- 18 (A) the safe and orderly transition of the operation of the
19 public hospital to the Territory; and
- 20 (B) the continued operation of, and maintenance of
21 service delivery standards at, the public hospital.
- 22 (2) A regulation may provide for the following matters:
- 23 (a) the offer of employment by the Territory to public hospital
24 employees and employment by the Territory of those employees
25 and related matters;

- 1 (b) the disapplication of provisions of the *Public Sector*
- 2 *Management Act 1994* for paragraph (a);
- 3 (c) for public hospital contracts—
- 4 (i) the novation or assignment of the contracts to the Territory;
- 5 and
- 6 (ii) other arrangements in relation to the contracts, including
- 7 renegotiation by the Territory of existing contractual
- 8 arrangements with other parties to the contracts;
- 9 (d) arrangements with parties to charges or other security interests,
- 10 including renegotiation by the Territory of existing
- 11 arrangements;
- 12 (e) the transfer, retention and storage of public patient health
- 13 records, employment and other records of the public hospital;
- 14 (f) any other thing reasonably necessary to ensure—
- 15 (i) the safe and orderly transition of the operation of the public
- 16 hospital to the Territory; and
- 17 (ii) the continued operation of, and maintenance of service
- 18 delivery standards at, the public hospital.

19 **15 Access to hospital land on and after acquisition day**

- 20 (1) On the acquisition day—
- 21 (a) the Territory grants Calvary a licence to enter on the public
- 22 hospital land and do all things reasonably necessary—
- 23 (i) to allow Calvary to comply with its obligations under this
- 24 Act; and
- 25 (ii) to do any other thing reasonably required to ensure the
- 26 continued operation of facilities on the private hospital
- 27 land; and
- 28 (iii) for any other reason prescribed by regulation; and

Part 4
Division 4.1

What happens on or after acquisition day
Operation of public hospital

Section 16

- 1 (b) Calvary grants the Territory a licence to enter on the private
2 hospital land—
 - 3 (i) to allow the Territory to comply with its obligations under
4 this Act; and
 - 5 (ii) to do anything mentioned in section 11; and
 - 6 (iii) to do any other thing reasonably required to ensure—
 - 7 (A) the safe and orderly transition of the operation of the
8 public hospital to the Territory; and
 - 9 (B) the continued operation of, and maintenance of
10 service delivery standards at, the public hospital; and
 - 11 (iv) for any other reason prescribed by regulation.
- 12 (2) The *Public Unleased Land Act 2013* does not apply to the grant of a
13 licence by the Territory under this section except that the licence is
14 taken to be a licence for that Act, section 43 (4) (Offence—use public
15 unleased land without permit).
- 16 (3) In entering land under a licence granted under this section, the
17 Territory and Calvary, must minimise any interference with the other
18 party's use of the land to the extent reasonably practicable.
- 19 (4) This section expires on the day declared by the Minister.
- 20 (5) A declaration under subsection (4) is a notifiable instrument.
- 21 **16 Territory may grant Calvary short-term licence to operate**
22 **public hospital**
 - 23 (1) The Territory may grant Calvary a licence to operate the public
24 hospital on and from the acquisition day to ensure the continued
25 operation of, and maintenance of service delivery standards at, the
26 public hospital while the matters required to be done under this part
27 are done.
 - 28 (2) The terms of the licence are as agreed by the Territory and Calvary.

- 1 (3) The *Public Unleased Land Act 2013* does not apply to the grant of a
2 licence by the Territory under this section except that the licence is
3 taken to be a licence for that Act, section 43 (4) (Offence—use public
4 unleased land without permit).

5 **17 Continued access to historical records relating to public**
6 **hospital**

- 7 (1) The director-general may at any time after the acquisition day request
8 that Calvary—

- 9 (a) provide historical information reasonably required by the
10 Territory in relation to the following:

- 11 (i) any existing or pending investigation, proceeding (whether
12 civil or criminal) or remedy in relation to a right, privilege
13 or liability under a law applying in the ACT in relation to
14 the operation of the public hospital before the acquisition
15 day;

- 16 (ii) the employment of public hospital employees before the
17 acquisition day including in relation to their rights and
18 entitlements;

- 19 (iii) any other thing prescribed by regulation; and

- 20 (b) do anything reasonably required in relation to the storage and
21 retention of information mentioned in paragraph (a) including
22 storing the information in a stated electronic form.

23 *Note* Nothing in this section limits any obligation Calvary or a related
24 corporation would otherwise have under a territory privacy law
25 (see s 22).

- 26 (2) A request—

- 27 (a) must be in writing; and

- 28 (b) must state a reasonable period within which the request must be
29 complied with; and

Part 4 What happens on or after acquisition day
Division 4.2 Amendment of Crown lease

Section 18

- 1 (c) may state a reasonable format or way in which the information
 2 is to be provided, stored or retained.
- 3 (3) Calvary must—
- 4 (a) comply with the request within the stated period; and
- 5 (b) provide, store or retain the information in any stated format or
 6 way.

7 **Division 4.2** **Amendment of Crown lease**

8 **18** **Territory must prepare draft deposited plan**

- 9 (1) The Territory must prepare a draft deposited plan describing—
- 10 (a) the land to be the subject of the amended Crown lease, which—
- 11 (i) substantially corresponds to the area identified as the
 12 'PRIVATE PRECINCT AREA' in the plan in schedule 1;
 13 or
- 14 (ii) corresponds to any other area in the hospital land agreed in
 15 writing by the Territory and Calvary; and
- 16 (b) any easement or right of way the Territory decides is appropriate
 17 to allow Calvary to access the land the subject of the amended
 18 Crown lease; and
- 19 (c) any other thing prescribed by regulation.
- 20 (2) In this section:
- 21 ***draft deposited plan*** means a plan in a form that is registerable under
 22 the *Districts Act 2002*, section 7 (Deposited plans).

- 1 **19 Amendment of the Crown lease etc**
- 2 (1) On the acquisition day, the Crown lease is amended—
- 3 (a) to only apply to the private hospital land; and
- 4 (b) in any other way prescribed by regulation.
- 5 (2) The registrar-general must, as soon as is practicable after the
- 6 acquisition day record the amendments on the register under the *Land*
- 7 *Titles Act 1925*.
- 8 (3) The Territory must—
- 9 (a) prepare an instrument for any easement or right of way noted in
- 10 the draft deposited plan prepared under section 18 (1) (b); and
- 11 (b) take all reasonable steps to ensure the draft deposited plan and
- 12 the instrument mentioned in paragraph (a) are registered under
- 13 the *Land Titles Act 1925*.

20 No repudiation etc of network agreements

- (1) None of the following constitutes a repudiation or breach of a network agreement:
 - (a) the development or preparation of the Bill for this Act, or government or Cabinet consideration of policy carried out in developing or preparing the Bill;
 - (b) the presentation of the Bill in, and agreement to the Bill by, the Legislative Assembly, or any processes associated with the passage of the Bill through the Legislative Assembly;
 - (c) the making, notification or commencement of this Act;
 - (d) any act done in accordance with this Act;
 - (e) anything done by the Territory to give Calvary notice (whether in writing or orally) of the Territory's intention to do a thing mentioned in paragraphs (a) to (d);
 - (f) any other communication between the Territory and Calvary before the commencement of this Act about a matter mentioned in paragraphs (a) to (e).
- (2) Calvary or a related corporation may not bring any claim against the Territory for repudiation or breach of a network agreement, and is not entitled to any compensation or remedy for repudiation or breach of a network agreement, because of an event or matter mentioned in subsection (1).
- (3) Subsection (2) does not limit any right a person may have to compensation for an acquisition under section 10 (Acquisition must be on just terms).

1 **21 Performance of Calvary's obligations**

- 2 (1) This section applies if—
- 3 (a) this Act requires Calvary to do, or not do, a thing; and
- 4 (b) Calvary fails to comply with the requirement, including because
- 5 Calvary does not have or cannot access the resources required
- 6 to do so.

7 *Note Fail* includes refuse (see [Legislation Act](#), dict).

- 8 (2) A related corporation of Calvary nominated in writing by the
- 9 Territory must comply with the requirement or ensure another related
- 10 corporation does so.

11 **22 Application of privacy legislation**

- 12 (1) This section applies in relation to either of the following information
- 13 Calvary is required to give to the Territory under this Act
- 14 (the *transferred information*):

- 15 (a) a public patient health record;
- 16 (b) personal information of a public hospital employee or other
- 17 person.

- 18 (2) None of the following constitutes a breach of a territory privacy law:

- 19 (a) Calvary or a related corporation providing the transferred
- 20 information;
- 21 (b) the Territory receiving the transferred information;
- 22 (c) the Territory keeping the transferred information;
- 23 (d) the Territory using the transferred information for a purpose of
- 24 this Act.

Part 5 Miscellaneous

Section 23

1 (3) Nothing in this section limits any obligation Calvary, a related
2 corporation or the Territory would otherwise have under a territory
3 privacy law in relation to the use, disclosure and security of the
4 transferred information.

5 (4) In this section:

6 *territory privacy law* means—

7 (a) the *Health Records (Privacy and Access) Act 1997*; and

8 (b) the *Information Privacy Act 2014*.

9 **23 References to director-general etc**

10 (1) A reference to the *director-general* in this Act means the
11 director-general of the administrative unit responsible for matters
12 generally under the *Health Act 1993*.

13 (2) The director-general may delegate a function under this Act to—

14 (a) the director-general responsible for Canberra Health Services;
15 or

16 (b) another public servant.

17 **24 Supreme Court may order stay of proceedings under**
18 **security**

19 (1) This section applies if—

20 (a) an interest acquired under this Act is, immediately before the
21 acquisition day, subject to a security and the securityholder—

22 (i) commences a proceeding and the proceeding was pending
23 on the acquisition day; or

24 (ii) commences, or proposes to commence, a proceeding on or
25 after the acquisition day and before compensation has been
26 paid in full in relation to the acquisition; or

- 1 (b) Calvary or a related corporation has granted a security over
 2 property which is not acquired under this Act and, as a direct
 3 consequence of the operation of this Act, the securityholder—
- 4 (i) commences a proceeding and the proceeding was pending
 5 on the acquisition day; or
- 6 (ii) commences, or proposes to commence, a proceeding on or
 7 after the acquisition day and before compensation has been
 8 paid in full in relation to the relevant acquisition under this
 9 Act.
- 10 (2) The Supreme Court may, on application by Calvary or a related
 11 corporation and subject to any condition it considers appropriate—
- 12 (a) order a stay of the proceeding or enjoin the securityholder
 13 against commencing or continuing the proceeding; and
- 14 (b) make any other order it considers appropriate.
- 15 (3) In this section:
- 16 *proceeding*, by a securityholder, means any action to enforce the
 17 rights of the securityholder under the security, whether or not the
 18 proceeding is in a court, including action with a view to taking
 19 possession of or selling an interest or foreclosing.

20 **25 Court order to enforce exercise of powers**

- 21 (1) This section applies if—
- 22 (a) a person hinders or obstructs or intends to hinder or obstruct an
 23 authorised person in the exercise of a function under section 11;
 24 or
- 25 (b) Calvary does not comply with a requirement under—
- 26 (i) section 11 (Territory may enter hospital land); or
 27 (ii) section 12 (Calvary to provide information); or

1 **27** **Execution of documents for or on behalf of Territory**

2 The planning and land authority may execute any instrument or other
3 document, for and on behalf of the Territory, relating to an acquisition
4 of land under this Act.

5 **28** **Regulation-making power**

6 The Executive may make regulations for this Act.

7 *Note* Power to make a regulation includes power to make different provision
8 in relation to different matters or different classes of matters (see
9 [Legislation Act](#), s 48).

Part 6 Repeal and consequential amendments

Section 29

1 **Part 6** **Repeal and consequential**
 2 **amendments**

3 **29** **Legislation repealed**

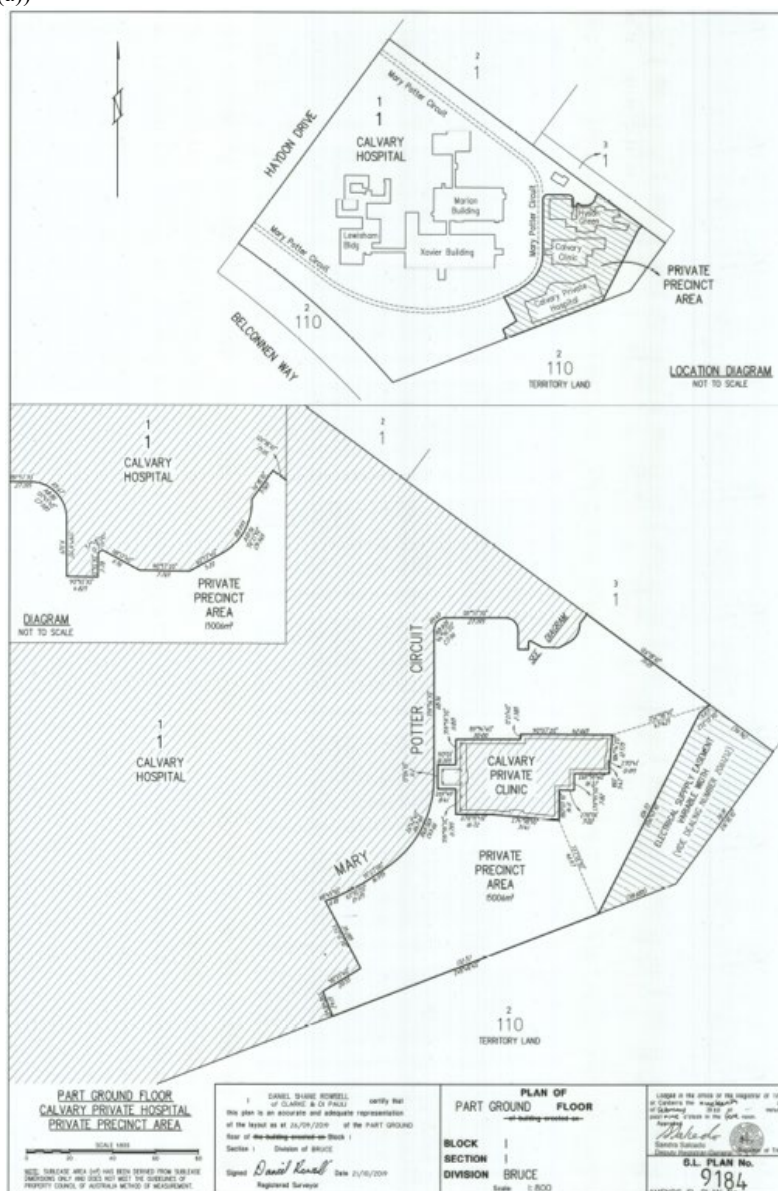
4 The *Road Transport (Safety and Traffic Management) Parking*
 5 *Authority Declaration 2020 (No 6)* (DI2020-62) is repealed on the
 6 acquisition day.

7 **30** **Legislation amended—sch 2**

8 This Act amends the legislation mentioned in schedule 2.

Schedule 1 Private precinct area

(see 18 (1) (a))



Schedule 2 Consequential amendments
Part 2.1 Health Act 1993

Amendment [2.1]

1 **Schedule 2** **Consequential amendments**

2 (see pt 6)

3 **Part 2.1** **Health Act 1993**

4 **[2.1] Section 50, definition of *chief executive officer, Calvary***

5 *omit*

6 **[2.2] Section 66 (4)**

7 *omit*

8 and the chief executive officer, Calvary (the *executive officers*)

9 **[2.3] Section 66 (5) and examples**

10 *substitute*

11 (5) If the director-general is told about the withdrawal or amendment of
 12 the scope of clinical practice of a practitioner under this section, the
 13 director-general must tell appropriate officers under their authority or
 14 direction of the committee's decision so that proper effect can be
 15 given to the decision.

16 **[2.4] Section 69 (6) (c)**

17 *omit*

18 **[2.5] Dictionary, definition of *chief executive officer, Calvary***

19 *omit*

Part 2.2 Health Infrastructure Enabling Act 2023

[2.6] Section 6 (1) (d)

substitute

(d) the *Planning and Development Act 2007* (repealed);

(da) the *Planning Act 2023*.

[2.7] Section 6 (2) and (3)

omit

Planning and Development Act 2007

substitute

Planning Act 2023

Part 2.3 Medicines, Poisons and Therapeutic Goods Regulation 2008

[2.8] Section 861A (5), definition of *public employee*

substitute

public employee includes a police officer.

Part 2.4 Public Sector Management Act 1994

[2.9] Division 8.3

omit

Dictionary

(see s 3)

Note The [Legislation Act](#) contains definitions relevant to this Act. For example:

- [Corporations Act](#)
- director-general (see s 163)
- Executive
- public servant
- registrar-general
- territory law.

acquisition day—see section 7.

amended Crown lease means the Crown lease as amended under section 19.

Calvary means Calvary Health Care ACT Limited (ACN 105 304 989).

Crown lease means the Crown lease over the hospital land.

director-general—see section 23 (1).

excluded asset means—

- (a) any asset used only in, or only purchased for, the private hospital; and
- (b) any non-fixed asset of religious or cultural significance to Calvary or a related corporation, as agreed in writing by the Territory; and
- (c) any loan receivables between Calvary and a related corporation; and
- (d) any special purpose fund or trust fund for the public hospital held by Calvary or a related corporation the terms of which only Calvary or a related corporation can fulfil; and
- (e) any other thing prescribed by regulation.

health record—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

hospital land means Block 1 Section 1 Division of Bruce.

interest, in the public hospital land or a public hospital asset—

(a) means—

(i) the legal or equitable estate or interest in the public hospital land or a public hospital asset; and

(ii) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with, the public hospital land or a public hospital asset or an interest in the public hospital land or a public hospital asset; and

(b) includes—

(i) an interest of the Territory, a State or another Territory in the public hospital land or a public hospital asset; and

(ii) an interest that did not previously exist in relation to the public hospital land or a public hospital asset; and

(iii) a restriction on the use of the public hospital land or a public hospital asset, whether or not annexed to the public hospital land or public hospital asset; and

(c) does not include an interest excluded by regulation.

network agreement—

(a) means each of the following:

(i) the agreement between the Territory and Calvary dated 7 December 2011 in relation to the operation of the public hospital on the hospital land;

(ii) the precinct deed;

Dictionary

- 1 (iii) if the provisions of the new public hospital agreement
2 applies because of clause 32 of the network agreement—
3 the agreement constituted by those provisions;
- 4 (iv) any other agreement (not including a public hospital
5 contract) related to the operation of the public hospital
6 prescribed by regulation; but
- 7 (b) does not include an agreement excluded by regulation.
- 8 **operation**, of the public hospital, includes the provision of public
9 health services by public hospital employees at places other than the
10 public hospital.
- 11 **patient**, of the public hospital, means a consumer as defined in the
12 *Health Records (Privacy and Access) Act 1997*, dictionary.
- 13 **precinct deed** means the Bruce Health Care Precinct Deed between
14 the Territory and Calvary dated on or about 7 December 2011.
- 15 **private hospital** means the private health care facilities (including
16 Hyson Green and Calvary Clinic) operated on the hospital land by
17 Calvary or a related corporation.
- 18 **private hospital land** means the land identified as the private hospital
19 land in the draft deposited plan prepared under section 18.
- 20 **public hospital** means the public hospital located on the hospital land
21 known as Calvary Public Hospital Bruce.
- 22 **public hospital assets**—
- 23 (a) means the following:
- 24 (i) the fixed and non-fixed assets of the public hospital
25 nominated by the Territory in writing;
- 26 (ii) the public hospital stock;
- 27 (iii) the motor vehicles used for the public hospital nominated
28 by the Territory in writing;

-
- 1 (iv) any special purpose fund or trust fund for the public
 2 hospital held by Calvary or a related corporation the terms
 3 of which only the Territory can fulfil;
- 4 (v) any asset purchased for the public hospital before the
 5 acquisition day;
- 6 (vi) any other thing prescribed by regulation; but
- 7 (b) does not include—
- 8 (i) an excluded asset; or
- 9 (ii) a public hospital contract;
- 10 (iii) any other thing excluded by regulation.
- 11 ***public hospital contract—***
- 12 (a) means a contract (not including a network agreement) to which
 13 Calvary or a related corporation is a party necessary for and
 14 ancillary to the operation of the public hospital; and
- 15 (b) includes a contract (not including a network agreement)
 16 prescribed by regulation.
- 17 ***public hospital employee—***
- 18 (a) means a person employed by Calvary or a related corporation
 19 solely or substantially for the purpose of providing services in
 20 or to the public hospital or other public health services and
 21 includes the following:
- 22 (i) a person employed under the *Public Sector Management*
 23 *Act 1994*;
- 24 (ii) a person employed under an industrial agreement
 25 prescribed by regulation;
- 26 (iii) any other person prescribed by regulation; and
- 27 (b) does not include a person excluded by regulation.

- 1 ***public hospital land*** means that part of the hospital land that is not
 2 private hospital land.
- 3 ***public hospital stock*** means stock in trade and inventory of the public
 4 hospital and all other items held for sale or use in the ordinary course
 5 of the operation of the public hospital as at the acquisition day and
 6 includes items which are—
- 7 (a) held by or on behalf of Calvary or a related corporation; and
 8 (b) in transit to Calvary or a related corporation; and
 9 (c) on consignment with a customer or any other person.
- 10 ***public patient health records*** means a health record for a current or
 11 past patient of the public hospital.
- 12 ***purpose of this Act*** means a purpose mentioned in section 5.
- 13 ***related corporation***, of another corporation, means a related body
 14 corporate, associate or related entity under the [Corporations Act](#).
- 15 ***security***—
- 16 (a) means security over an interest in land or other property securing
 17 the payment or repayment of money; and
- 18 (b) includes a mortgage.
- 19 ***securityholder***, in relation to a security, means the person who is or
 20 was entitled to receive payment or repayment of the money secured
 21 by the security, or any agent or security trustee on their behalf.
- 22 ***security right*** means the interest in the land or other property of a
 23 securityholder under a security.

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2023.

2 **Notification**

Notified under the [Legislation Act](#) on 2023.

3 **Republications of amended laws**

For the latest republication of amended laws, see www.legislation.act.gov.au.

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HEALTH INFRASTRUCTURE ENABLING BILL 2023

**EXPLANATORY STATEMENT AND HUMAN RIGHTS COMPATIBILITY
STATEMENT**

(HUMAN RIGHTS ACT 2004, S 37)

**Presented by
Rachel Stephen-Smith MLA
Minister for Health**

HEALTH INFRASTRUCTURE ENABLING BILL 2023

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the *Health Infrastructure Enabling Bill 2023* (the Bill) as presented to the ACT Legislative Assembly.

The statement is to be read in conjunction with the Bill. It is not a complete description but provides information about the intent of the provisions in the Bill.

It has been prepared to assist the reader. It does not form part of the Bill, has not been endorsed by the Assembly and is not to be taken as providing a definitive interpretation of the meaning of a provision.

OVERVIEW OF THE BILL

The purpose of the Bill is to introduce the *Health Infrastructure Enabling Act 2023* (the Act) as a Territory law.

The Bill, if enacted, will allow the Territory to acquire part of Block 1 Section 1 Division of Bruce for the purposes of building the new public hospital and will give the Territory certainty over the land for the new building as well as the future expansion of public hospital services on the Bruce campus over time. The Act will also terminate the Calvary Network Agreement (CNA). The Act will ensure the acquisition of the public hospital land, and the termination of the CNA will be on just terms.

The Act will enable the Territory to remove the public hospital land from the existing Crown Lease by amending the Crown Lease to ensure Calvary retains the lease for its private hospital facilities. The subordinate regulation (Regulation) to the Act will provide a mechanism to determine compensation payable to Calvary under just terms to acquire the land and terminate the CNA. It will also provide a mechanism to transition Calvary Public Hospital Bruce employees, assets, and services to the Territory.

The policy objectives of the Bill are to enable the Territory to build a new hospital on the existing Calvary Public Hospital Bruce site and to transition to a government operated, insourced, healthcare system on the northside of Canberra and to progress the health policy objectives of the ACT Government to continue to deliver accessible, accountable, and sustainable healthcare across the Territory.

The introduction of this Act will create an opportunity to plan and deliver a health system networked under one operator. This will create operational efficiencies and generate a more agile health system.

The decision to progress the Bill supports the most efficient and effective delivery of public health services for Canberrans and the region.

Background

With our health system under increasing pressure as our population ages and grows, and with higher prevalence of chronic conditions, the ACT and surrounding region need a system that can quickly and flexibly respond to the needs of our community.

A key part of this system will be the new northside hospital and its integration into the ACT public health system. This new hospital will be larger to cater for the growing population and demand on the northside of Canberra and will complement the Territory's investment at the tertiary hospital at Garran.

The northside of Canberra has the largest population in the Territory and this will continue to increase over the coming decades. By 2060, the population in the northside of Canberra is projected to grow by 285,000.¹

By 2041, the demand for hospital services on the northside of the ACT is forecast to be more than double the capacity that Calvary Public Hospital Bruce can currently deliver.

The ACT Government has agreed to progress the design and construction of a new northside hospital on the existing Calvary Public Hospital Bruce site following the

¹ https://www.treasury.act.gov.au/__data/assets/pdf_file/0007/2181985/ACT-Government-population-projections-2022-2060.pdf

2023-24 Budget process. Upon completion the new northside hospital will replace the ageing infrastructure at Calvary Public Hospital Bruce.

The government has allocated \$64.2 million to progress the northside hospital through to detailed design, and funding of more than \$1 billion for the capital costs of the hospital has been provisioned.

Prior to making this significant investment, a key consideration for the ACT Government is the operator of the northside hospital.

Calvary operates Calvary Public Hospital Bruce under the CNA which expires in 2098 and includes contract terms with limited provisions for termination.

Calvary was granted the land and original buildings to operate a public health care facility by the Commonwealth Government in the 1970s, at no cost. The ACT's health system has significantly changed since this time which has not been reflected in how our services are arranged, notwithstanding the re-negotiation of arrangements under the CNA in 2011..

Given the significant investment on behalf of the community, the ACT Government wanted to reassess the contractual relationship with Calvary and consider the land ownership arrangements on the current Bruce site.

Over the last 12 months, the ACT Government has been in discussions with Calvary about its role in the context of a new northside hospital. Following a period of negotiations with Calvary, an agreed position between the ACT Government and Calvary was not reached.

The decision to progress a one-operator model for the Territory's public hospital services has not been made lightly, and the ACT Government acknowledges the significant contribution that Calvary has made to the delivery of public health services in the ACT for more than 40 years.

Moving forward with an insourced healthcare provider model is intended to provide the best and most consistent health service to the Canberra community.

Through the northside planning process, analysis has shown that a one-provider model has significant benefits for the delivery of public health services and will lead to a more efficient and effective delivery of public hospital services for the community.

As such, the Bill, if enacted, provides a mechanism for the ACT Government to acquire part of the land where Calvary Public Hospital Bruce is situated (Block 1 Section 1 Division of Bruce). The Act will amend the Crown Lease for this purpose and terminate the CNA. This acquisition will be done on just terms.

These actions will provide certainty of land tenure and will result in a transition of operations at the current Calvary Public Hospital Bruce from Calvary to Canberra Health Services.

Cost and benefit statement

The ACT Government currently pays approximately \$260 million per annum for Calvary's services, one of the largest contracts in the Territory.

Early analysis shows there are longer term cost saving opportunities for the Government and improved health outcomes for Canberrans and residents of the surrounding region through an insourced model of operations.

Matters relating to compensation and other terms arising from the termination of the CNA will be subject to ongoing discussions between the ACT Government and Calvary. If the Bill is enacted, the Regulation proposed to be made under the Act will provide the framework for determining just terms for the acquisition of the land and termination of the CNA. It will also provide a mechanism to transition Calvary Public Hospital Bruce employees, assets, and services to the Territory.

CONSISTENCY WITH HUMAN RIGHTS

The Bill is considered to be compatible with rights protected in the *Human Rights Act 2004* (HR Act).

This section provides an overview of the human rights which may be engaged and potentially limited by the Bill.

The Bill engages and potentially limits the following rights under the HR Act:

- Section 12 – Privacy and reputation; and
- Section 27B – Right to work.

Right to privacy

Section 12 of the HR Act protects individuals from unlawful or arbitrary interference with privacy, family, home, or correspondence. The right includes the protection of personal information and communications from unlawful or arbitrary interference.

The Bill provides that the Territory may request, and Calvary must provide information for the purposes of the Bill, including patient health records and staff employment records.

To the extent that this information sharing limits the right to privacy, the limitation is considered to be reasonable and demonstrably justifiable in a free and democratic society in accordance with section 28 of the HR Act.

The sharing of personal information (current and historical) between Calvary and the Territory serves a vital and legitimate purpose of allowing continuity of service provision to patients and continuity of employment for Calvary Public Hospital Bruce staff.

This information sharing is subject to a range of safeguards which ensure that any limitation is reasonable and proportionate.

While Section 12 of the Bill allows the Territory to compel Calvary to provide information, including patient health records and staff employment records, this provision of information is not arbitrary and is only allowed to the extent that it is for the purposes of the Bill, which is a defined term in the Bill.

The purposes of the Bill are to:

- (a) enable the Territory to acquire the public hospital land for the construction of a public hospital; and
- (b) transition the operation of the public hospital to the Territory, including by terminating the network agreements; and

- (c) provide for the safe and orderly transition of the operation of the public hospital to the Territory, including by—
 - (i) enabling the Territory to acquire the public hospital assets; and
 - (ii) providing for the transition of employment of public hospital employees to the Territory; and
 - (iii) providing for the novation and assignment of public hospital contracts to the Territory; and
- (d) ensure the continuity of operation of, and maintenance of service delivery standards at, the public hospital during and immediately after the transition; and
- (e) ensure the Territory can, after the transition, effectively manage its obligations and liabilities in relation to the operation of the public hospital, including liabilities arising in relation to the operation of the public hospital before the transition; and
- (f) ensure that interests acquired under this Bill are acquired on just terms.

The Bill does not displace laws that regulate privacy of personal information and health records in the ACT. The Territory will take receipt of the information, store it securely and maintain the information in accordance with relevant Territory legislation, including the *Health Records (Privacy and Access) Act 1997*, *Territory Records Act 2002*, and *Information Privacy Act 2014*.

Similarly, those in positions to receive the information provided by Calvary to the Territory will be Territory employees or contractors bound by the terms of their employment under *Public Sector Management Act 1994* (PSM Act).

Right to work

Section 27B of the HR Act provides that everyone has the right to work, including the right to choose their occupation or profession freely. It also provides that everyone has the right to the enjoyment of just and favourable conditions of work.

This right is potentially engaged and limited by the Bill to the extent that it will affect the employment of employees and individual contractors of Calvary Public Hospital Bruce.

Any limitations of this right are considered reasonable and necessary to achieve the legitimate objective of ensuring the safe and orderly transition of the operation of the public hospital to the Territory and continuity of the operation and service delivery standards at the hospital.

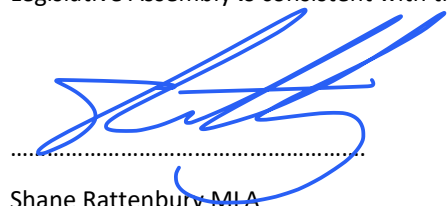
The Bill and the details of the Regulation provide safeguards for the transfer and/or novation of employment under the PSM Act. The Territory values the work of all employees at Calvary Public Hospital Bruce. These employees will be offered employment with the Territory in accordance with the PSM Act and will continue to have contractual rights as their employment is transferred to the Territory.

There may be a small number of individuals who may not be eligible for employment under the PSM Act. Where required, the Territory will work with Calvary to ensure appropriate notice and support is given to employees not eligible for employment with the Territory during the transition period. These employees will retain all existing employment rights in relation to their employment by Calvary.

The Bill and the Regulation provides for the Territory to novate any existing services and supply contracts from Calvary to the Territory. This, by extension, gives support to the Territory's intent to minimise any disruption to the operations of Calvary Public Hospital Bruce, including the operations of third-party suppliers.

Health Infrastructure Enabling Bill 2023
Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Health Infrastructure Enabling Bill 2023**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.



Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

PART 1 PRELIMINARY

Part 1 deals with formal matters including commencement.

CLAUSE 1 NAME OF ACT

This is a technical clause and sets out the name of the Act as the *Health Infrastructure Enabling Act 2023*.

CLAUSE 2 COMMENCEMENT

This clause enables the Act (other than schedule 2) to commence on the day after its notification day. Commencement of the Act will progress a period of transition from Calvary to Canberra Health Services, as the operator of the public hospital.

Schedule 2 will commence on the acquisition day as these consequential amendments are linked to the day Calvary ceases to operate the public hospital.

CLAUSE 3 DICTIONARY

This clause states that the Dictionary at the end of the Act is part of the Act.

CLAUSE 4 NOTES

This clause states that a note included in the Act is explanatory and does not form part of the Act.

CLAUSE 5 PURPOSES OF ACT

This clause sets out the purposes of the Act. The Act will:

- acquire that part of the land on which Calvary Public Hospital Bruce is situated (Block 1 Section 1 Division of Bruce), to construct a new northside public hospital;
- enable the transition of the operation of the public hospital to the Territory, including by terminating the CNA;
- provide for the safe and orderly transition of Calvary Public Hospital Bruce employees, assets, and services to the Territory;

- ensure the continuity of and standards of provision for, public hospital services at the hospital both during and immediately following the transition;
- after transition, ensure that the Territory can manage its obligations and liabilities in relation to the public hospital effectively, including those liabilities arising in relation to the operation of the public hospital before the transition; and
- ensure that any interest acquired by the Territory under the Act is acquired on just terms.

CLAUSE 6 APPLICATION OF OTHER TERRITORY LAWS

This clause states which Territory laws do not apply in relation to anything done under this Act.

PART 2 COMPULSORY ACQUISITION OF PUBLIC HOSPITAL LAND AND ASSETS

CLAUSE 7 MEANING OF ACQUISITION DAY

This clause defines the **acquisition day** as 3 July 2023 (the **default acquisition day**). The acquisition day may, however, be an earlier or later day if notice is given by the Executive through notifiable instrument before 3 July 2023.

CLAUSE 8 ACQUISITION OF PUBLIC HOSPITAL LAND

This clause relates to the compulsory acquisition of part of the hospital land by the Territory. The terms **hospital land**, **public hospital land**, and **private hospital land** are defined in the Dictionary to mean, respectively: “Block 1 Section 1 Division of Bruce”; “that part of [Block 1 Section 1 Division of Bruce] that is not private hospital land”; and “the land identified as the private hospital land in the draft deposited plan prepared under section 18”. The clause states that on acquisition day the public hospital land will vest in the Territory.

CLAUSE 9 ACQUISITION OF PUBLIC HOSPITAL ASSETS

This clause relates to the compulsory acquisition of public hospital assets by the Territory. The term **public hospital assets** is defined in some length in the

Dictionary. The clause states that on acquisition day, the public hospital assets will vest in the Territory.

CLAUSE 10 ACQUISITION MUST BE ON JUST TERMS

This clause requires the Territory to provide just terms compensation to, amongst other persons, Calvary, for the acquisition of public hospital land and the termination of the CNA in accordance with the processes set out in the Act and the Regulation.

It enables a Regulation to be made that sets out the mechanisms for how compensation claims are made and also deals with other matters relating to how compensation is worked out.

The clause also provides a time limit for making compensation claims.

PART 3 ACQUISITION AND TRANSITION OF PUBLIC HOSPITAL OPERATIONS

CLAUSE 11 TERRITORY MAY ENTER HOSPITAL LAND

On the giving of reasonable written notice to Calvary before the acquisition day, this clause allows authorised persons to, at reasonable times, enter and carry out activities on hospital land as needed, in preparation for the intended construction work and to transition the current hospital operations. The clause also obliges Calvary to allow authorised persons to enter and carry out activities on the hospital land, and to provide any assistance reasonably necessary for authorised persons to do so.

CLAUSE 12 CALVARY TO PROVIDE INFORMATION

This clause provides for Calvary to assist the Director-General through the provision of information to enable the acquisition to occur. It outlines the way a request must be made and responded to.

CLAUSE 13 CALVARY AND TERRITORY MUST COOPERATE TO ENSURE SAFE AND ORDERLY TRANSITION ETC

This clause compels both the Territory and Calvary to act in good faith, cooperate and do all other things reasonably necessary to ensure both the safe and orderly transition of the operation of the public hospital to the Territory, and the continuity of and standards of provision for, public hospital services at the hospital. The **public hospital** is defined in the Dictionary to mean “the public hospital located on the hospital land known as Calvary Public Hospital Bruce”.

PART 4 WHAT HAPPENS ON OR AFTER ACQUISITION DAY

DIVISION 4.1 OPERATION OF PUBLIC HOSPITAL

CLAUSE 14 OPERATION OF PUBLIC HOSPITAL—GENERALLY

This clause provides for the acquisition of part of Block 1 Section 1 Division of Bruce on acquisition day, via amendment to the current Crown Lease. This clause also provides for the termination of the CNA on acquisition day.

This clause requires Calvary to vacate the public hospital land on acquisition day so the Territory can, on that day, enter the land, and use all public hospital assets to continue the operations of the public hospital.

This clause enables a Regulation to be made that sets out various mechanisms for, amongst other things, transitioning Calvary Public Hospital Bruce employees, public hospital contracts, public patient records and employment records to the Territory.

CLAUSE 15 ACCESS TO HOSPITAL LAND ON AND AFTER ACQUISITION DAY

This clause grants Calvary a licence to enter the public hospital land and grants the Territory a licence to enter the private hospital land to allow both parties to comply with their obligations under this Act and ensure the continued operations of the public and private hospitals.

CLAUSE 16 TERRITORY MAY GRANT CALVARY SHORT-TERM LICENCE TO OPERATE PUBLIC HOSPITAL

This clause provides for the Territory to grant Calvary a short-term licence to operate the public hospital on and from the acquisition day, should a scenario arise where that is necessary for the continued operation of the public hospital and the continuity of and standards of provision for, public hospital services at the hospital.

CLAUSE 17 CONTINUED ACCESS TO HISTORIC RECORDS RELATING TO PUBLIC HOSPITAL

This clause states that the Director-General may request, at any time, historic information required by the Territory. It outlines the way this request will be made and responded to and provides for Calvary to ensure the safe storage of information.

DIVISION 4.2 AMENDMENT OF CROWN LEASE

CLAUSE 18 TERRITORY MUST PREPARE DRAFT DEPOSITED PLAN

The terms of the Crown Lease are amended via the Act to reflect the acquisition of the public hospital land, with the Private Precinct Area identified on a new deposited plan to be referenced in the amended Crown Lease. New block boundaries will be confirmed via a survey with a deposited plan registered on the amended Crown Lease. This will continue Calvary's land tenure over the land on which their private facilities are situated.

This clause requires the Territory to prepare a deposited plan outlining the Private Precinct Area. The deposited plan must align with the map provided at Schedule 1 to the Bill, and also include any other area in the hospital land as agreed between the Territory and Calvary.

This clause provides for an easement or right of way as appropriate to allow Calvary to access the land subject to the amended Crown Lease.

CLAUSE 19 AMENDMENT OF THE CROWN LEASE ETC

This clause provides for the acquisition of the land for the public hospital by amending the Crown Lease over Block 1 Section 1 Division of Bruce to have it apply

only to the land determined as the private hospital land. The Territory will retain the public hospital land as unleased Territory land for the time being.

The Crown Lease is amended on acquisition day.

This clause requires the Territory to prepare an instrument for any easement or right of way noted in the draft deposited plan.

PART 5 MISCELLANEOUS

CLAUSE 20 NO REPUDIATION ETC OF NETWORK AGREEMENTS

This clause limits what can be considered a repudiation or breach of the CNA or related public hospital agreements.

CLAUSE 21 PERFORMANCE OF CALVARY'S OBLIGATIONS

This clause applies if Calvary fails to comply with a requirement, including because Calvary does not have, or cannot access the resources to do so.

CLAUSE 22 APPLICATION OF PRIVACY LEGISLATION

This clause provides that the transfer of information (public patient health records, or personal information of public hospital employees or other persons) from Calvary to the Territory, or the Territory receiving or keeping this information does not constitute a breach of territory privacy law.

CLAUSE 23 REFERENCES TO DIRECTOR-GENERAL ETC

This clause defines references to Director-General in this Act to mean the Director-General of the administrative unit responsible for matters generally under the *Health Act 1993*.

This clause provides for the Director-General to delegate functions under the Act to the Director-General (or Chief Executive Officer) of Canberra Health Services or another public servant. This delegation power will enable the orderly transition of services.

CLAUSE 24 SUPREME COURT MAY ORDER STAY OF PROCEEDINGS UNDER SECURITY

This clause describes what will happen if a person holding a security interest that is included in the acquisition is taking action against Calvary at the time.

CLAUSE 25 COURT ORDER TO ENFORCE EXERCISE OF POWERS

This clause describes the process if access of authorised persons is obstructed, or if Calvary otherwise does not comply with a request for access or information. The Director-General may apply to the Magistrates Court for police assistance, and an order requiring Calvary to comply.

CLAUSE 26 PAYMENTS TO BE GOOD DISCHARGE

This clause states that payments made by the Territory are a discharge of the Territory's involvement. The Territory is not required to see the application of the money or the performance of any trust.

CLAUSE 27 EXECUTION OF DOCUMENTS FOR OR ON BEHALF OF THE TERRITORY

This clause allows the planning and land authority to execute documents for the Territory's acquisition of land under the Act.

CLAUSE 28 REGULATION-MAKING POWER

This clause provides that regulations may be made for this Act.

PART 6 REPEAL AND CONSEQUENTIAL AMENDMENTS

CLAUSE 29 LEGISLATION REPEALED

On acquisition day, the *Road Transport (Safety and Traffic Management) Parking Authority Declaration 2020 (No 6)* (DI2020-62) will be repealed.

CLAUSE 30 LEGISLATION AMENDED—SCH 2

SCHEDULE 1 PRIVATE PRECINCT AREA

Schedule 1 provides a map outlining the Private Precinct Area of Block 1 Section 1 Division of Bruce. Areas substantially approximating the Private Precinct Area will be retained by Calvary.

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS

PART 2.1 HEALTH ACT 1993

[2.1] Section 50, definition of **chief executive officer, Calvary**

This item omits the definition of **chief executive officer, Calvary**. The item commences on the acquisition day.

[2.2] Section 66 (4)

This item omits “and the chief executive officer, Calvary (the **executive officers**)”. The item commences on the acquisition day.

[2.3] Section 66 (5) and examples

This item clarifies that if the Director-General is told about the withdrawal or amendment of the scope of clinical practice of a practitioner under this section, the Director-General must tell appropriate officers under their authority or direction of the committee’s decision so that proper effect can be given to the decision. The item commences on the acquisition day.

[2.4] Section 69 (6) (c)

This item omits section 69 (6) (c). The item commences on the acquisition day.

[2.5] Dictionary, definition of **chief executive officer, Calvary**

This item omits the definition of **chief executive officer, Calvary**. The item commences on the acquisition day.

PART 2.2 HEALTH INFRASTRUCTURE ENABLING BILL 2023

[2.6] Section 6 (1) (d)

This item substitutes the (d) *Planning and Development Act 2007* (repealed); (da) the *Planning Act 2023*. The item commences on the day the *Planning Act 2023*, s 3 commences.

[2.7] Section 6 (2) and (3)

This item omits the *Planning and Development Act 2007* and substitutes the *Planning Act 2023*. The item commences on the day the *Planning Act 2023*, s 3 commences.

PART 2.3 MEDICINES, POISONS AND THERAPEUTIC GOODS REGULATION 2008

[2.8] Section 861A (5), definition of **public employee**

This item clarifies that a **public employee** includes a police officer. The item commences on the acquisition day.

PART 2.4 PUBLIC SECTOR MANAGEMENT ACT 1994

[2.9] Division 8.3

This item omits the obligations on Calvary for Calvary Public Hospital staff. The item commences on the acquisition day.

DICTIONARY

The dictionary defines certain terms used in the Act.

2023

**Legislative Assembly for
the Australian Capital Territory**

Presentation Statement
Health Infrastructure Enabling Bill 2023

Presented by
Rachel Stephen-Smith MLA
Minister for Health
11 May 2023

I am pleased to introduce the ACT Government's Health Infrastructure Enabling Bill 2023 (the Bill).

The Bill, if passed, will enable the ACT Government to:

- acquire the part of the land where Calvary Public Hospital Bruce is situated (Block 1 Section 1 Division of Bruce) to construct a new northside public hospital;
- transition the operation of the public hospital to the Territory, including by terminating the Calvary Network Agreement;
- allow for the safe and orderly transition of Calvary Public Hospital Bruce employees, assets and services to the Territory; and
- provide for compensation on just terms.

New northside hospital

We know that the ACT and the surrounding region is growing and ageing. Demand for public health services is increasing, as is the complexity of the health needs of the Canberra community.

As our population ages and grows, we are also seeing an increasing prevalence of chronic conditions, and the ACT needs a public health system that can flexibly respond to the needs of our community now and into the future.

Canberra's northside has the largest population in the Territory and this will continue to increase over the coming decades. By 2060, the population in the northside of Canberra is projected to grow by 285,000.

By 2041, the demand for hospital services on the northside is forecast to be more than double the current capacity of Calvary Public Hospital Bruce.

In 2016, the ACT Government committed to conducting a scoping study for longer-term new and expanded northside hospital facilities. This was supported by funding in the 2017-18 ACT Budget with \$3.25 million invested to commence planning for enhanced northside hospital facilities. This led to additional investment in the 2018-19 Budget of \$1 million for the continuation of feasibility and planning works for a northside hospital.

To address the need for more capacity, the ACT Government undertook a condition assessment of the Calvary Public Hospital Bruce infrastructure in 2020, along with an options analysis for the building of a new northside hospital. This condition assessment found that many of the buildings at Calvary Public Hospital were ageing and nearing the end of their useful life.

The options analysis recommended that a new northside hospital be built, rather than a remediation and expansion of the existing Calvary Public Hospital Bruce. Preliminary architectural work as part of this analysis showed a new hospital could be built on the existing campus without a need to interrupt delivery of any public hospital services during construction.

In 2020, the ACT Government committed to building a new northside hospital. In the 2021-22 Budget an investment of more than \$13.5 million was provided to establish a Northside Hospital Project team to:

- undertake scope and early design of the new northside hospital; and
- investigate whether the best location for the hospital was at the existing Bruce campus or at a greenfield location in Canberra's north.

Madam Speaker, a new northside hospital will be the largest single health infrastructure investment in the history of the Territory and is expected to cost more than a billion dollars. This is, of course, in addition to more than \$640 million invested in the Canberra Hospital Expansion and the ongoing work on the Canberra Hospital Master Plan.

The ACT Government is committed to commencing construction of the new northside hospital by mid-decade and funding is allocated in the 2023-24 Budget to progress the new hospital through to detailed design, as well as provisioning for construction.

Prior to making this significant investment, there have been two key considerations for the ACT Government – owning the land on which the hospital is built and who would be the operator of the new, larger, northside hospital. As Members are aware, the northside public general hospital is currently operated by Calvary Health Care ACT Limited (Calvary).

Madam Speaker, the ACT Government plans to build a new northside hospital on the current Calvary Public Hospital site in Bruce.

This is the site where Canberrans have been going for public hospital services for more than 40 years and where there is a private hospital and other health services, as well as an ACT Government owned multi-storey carpark. From the planning we've done to date, we also know we can build a new hospital without having to interrupt the delivery of services – just as we are delivering the new Canberra Hospital Expansion without reducing clinical services across the functioning hospital campus.

Planning for the hospital over the coming years will be supported and informed by ongoing engagement with the community, clinicians and key stakeholders, ensuring it meets Canberra's future health care needs with no disruption to existing services.

Madam Speaker, this will be a bigger, state-of-the-art hospital that will be a great environment for patients, carers, staff, volunteers and visitors. Community consultation undertaken last year on the new hospital showed people are interested in having access to quality services on a campus that is welcoming, easy to navigate and accessible. This hospital will be all those things and will serve the needs of our growing population on the northside.

On the question of operator, the Government has decided the new northside hospital will be operated by Canberra Health Services, delivering a more efficient and effective health system for Canberrans.

It will enable the new hospital to slot into a genuinely integrated public hospital network across the ACT – as a general hospital working alongside the tertiary hospital in Garran and the sub-acute rehabilitation hospital at the University of Canberra.

Calvary

Madam Speaker, while this decision is a difficult one for Calvary and has not been an easy one for the Government to make, this is not a decision about Calvary as an organisation – it is a decision about providing the best public health system and infrastructure for Canberra.

As the Assembly may know Madam Speaker, Calvary – then known as Little Company of Mary Health Care – was granted the land and the buildings in Bruce by the Commonwealth Government in 1971, and began operating the Calvary Public Hospital Bruce in 1979.

Calvary operates the public hospital in Bruce under the Calvary Network Agreement linked to the Crown Lease, which expires in 2098.

It has been discussed and debated for many years whether the ACT system would be better to have a single provider delivering public hospital services in our small city. It was the subject of extensive consideration by a committee in this place in 2011, which concluded a single integrated public hospital network would be more efficient and effective for the ACT.

However, it was not possible at that time to move to a single operator. As a result, the Government negotiated a new agreement with Calvary – the Calvary Network Agreement – that came into effect on 1 February 2012.

Over the last 12 months, the ACT Government has been in discussions with Calvary about its role in the context of a new northside hospital. Following a period of exclusive negotiations with Calvary, an agreed position between the ACT Government and Calvary was not reached.

Benefits of one-service operator

Following careful consideration of the options for the new northside hospital and the needs of the broader health system, the ACT Government has decided to move forward with one service operator of public hospitals across the Territory. This means Canberra Health Services will transition to operating the northside public hospital from this year.

Bringing the management of public hospitals in the ACT under a single operator will enable a range of benefits across the health system and improve the ability of the system to respond to health demands across the ACT and the region. It presents a significant shift in the provision of healthcare but is consistent with other jurisdictions and regions of a similar size, and provides opportunities for greater health efficiencies and outcomes.

Experience from other Australian jurisdictions has demonstrated that one-service, multi-hospital models deliver significant improvements in throughput and cost-effectiveness.

The benefits of having a single provider, which have been evidenced in other jurisdictions include:

- more appropriate load sharing across hospitals;
- easier transition of patients and mobilisation between sites;
- improved mobility for staff, including training rotations;
- removal of ambiguities in clinical governance;
- efficiencies in service provision which support delivery of increased activity at marginal cost; and
- true hub and spoke models of clinical service provision.

While not the primary motivation, this change will also remove potential conflicts of interest with a single organisation running a general public hospital and two private hospitals within the same relatively small health system.

The Bill

Madam Speaker, this Bill will allow the Territory to acquire the land where the existing Calvary Public Hospital Bruce is situated. It will allow the Territory to amend the Crown Lease for Block 1 Section 1 Division of Bruce to enable Calvary to retain the lease over its private hospital and health services. The Territory will retain the public hospital land as unleased Territory land for the time being.

The Bill provides a mechanism to determine the just terms for the acquisition of the land and termination of the Calvary Network Agreement. It will also provide a mechanism to transition Calvary Public Hospital Bruce employees, assets, and services to the Territory.

The Bill represents a significant moment in the delivery of public health care for the Territory and will ensure the most efficient and effective delivery of public hospital services for Canberrans.

Transition of services

Planning for the transition of the essential public health services at Calvary Public Hospital Bruce to Canberra Health Services is being undertaken with staff wellbeing and patient safety at the centre of all decisions.

The ACT Government will work collaboratively with Calvary to support information being available to all staff, patients, visitors and other key stakeholders including contractors and referrers.

Planning has included a dedicated transition team that will ensure any risks to the continuity of service delivery are minimised and assist Calvary as needed to effectively transition services to Canberra Health Services.

We know that staff will find this period unsettling and some people will be worried about their jobs. Let me be clear Madam Speaker that we want to grow the health workforce in the ACT.

Calvary staff will be invited to transition to Canberra Health Services and the transition team will be providing them with a letter of offer to join the Canberra Health Services team. There is a small handful of staff that the transition team will need to work with on an individual basis, but for the vast majority this will be a simple process.

Communications have been sent out and information is on the website to let the workforce know what they need to do to transfer to the Canberra Health Services. Staff sessions are being held for concerned staff and there is also a hotline number to call.

Our clear aim is that staff will be able to keep doing the same job, with the same team, in a public hospital that respects the care they provide every day to patients and to each other.

We will respect that the public hospital at Bruce needs to remain 'large enough to deliver, small enough to care'. Canberra Health Services understands that Calvary Public Hospital has its own culture and ways of doing things. Our aim is to minimise disruption for staff and patients to the greatest possible extent.

That's why we have proposed a relatively short transition period – an acquisition date of 3 July with an expected formal transition period from 31 May – in order to minimise the uncertainty for staff.

Madam Speaker, it is also the Territory's intent to honour contracts and contractors can also access the website for information or call the hotline.

Conclusion

Madam Speaker, there are some who will want to take this as an attack on the Catholic Church and on faith-based care. I want to assure Members that this is no such thing. The Government partners with many faith-based and Catholic organisation in the delivery of services and we will continue to do so – indeed we will continue to partner with Calvary's private hospitals in the delivery of health care and I am pleased that Calvary has indicated it intends to remain part of the Territory's healthcare system.

Calvary has played a crucial role in the delivery of public hospital services in the ACT for more than 40 years. For decades, Calvary's public hospital staff – doctors, nurses, midwives, allied health professionals, wards people, cleaners, support staff and administrators – have dedicated themselves to supporting the people of Canberra in times of need.

Many Canberrans will have fond memories of the services Calvary has provided as Canberra has grown. Many Canberrans will continue to do so as Calvary remains an important contributor to health and aged care services in our community.

As Canberra continues to develop into a larger and more diverse city, the ways we deliver public health services need to continually evolve to meet increased and complex demand. The introduction of the Bill creates an opportunity to plan and deliver a hospital system networked under one operator – with the ability to strengthen workforce capacity and co-ordinate services – all with the goal of improving health outcomes for all Canberrans.

Madam Speaker, I am pleased to table the Bill, and the accompanying Explanatory Statement and Human Rights Compatibility Statement, and commend the Bill to the Assembly.

ENDS

AMMENDMENTS TO THE LEGISLATION

Status	Item	Section	Change	Explanation	Talking points
For agreement.	1	Clause 2(1) Page 2	<i>Omit</i> The day after	This would change the day the Act comes into effect making it the day it is notified.	This change allows for the Act to be notified as soon as possible to assist with the transition activities.
For agreement: Recommended	2	Clause 5 (d) Page 3, line 17 Clause 11 (d) (ii) Page 9, line 24 Clause 11 (d) (iv) Page 10, line 3 Clause 11 (1) (d) (iii) Page 9, line 28— Clause 11 (1) (d) (iv) Page 10, line 3—	<i>omit</i> immediately	As there may be transitional matters that need to be dealt with after acquisition day, it's best to avoid any argument about whether this limits those transitional arrangements.	There may be transitional matters to be dealt with after July 3. In all clauses where the word “immediately” has been omitted it is because we do not want the timeframe to be limited for dealing with some transition matters.
For agreement: Recommended	3	Proposed new clause 6 (5) and (6) Page 4, line 17	<i>Insert</i> The following provisions do not apply to a procurement of goods, services or works by a territory entity necessary for or ancillary to the	This amendment will disapply the Government Procurement Act to ensure that contracts can be quickly amended, novated, entered or varied to ensure uninterrupted clinical service delivery during transition. An alternative process will still	This clause is intended to provide for continuity of service through the ability to quickly establish contracts necessary for the operation of the public hospital.

			<p>operation of the public hospital in the 6-month period immediately after the acquisition day:</p> <p>(a) the <i>Government Procurement Act 2001</i>—</p> <p>(i) part 2A (Procurement activities) other than section 22A (1) and (2); and</p> <p>(ii) part 2B (Secure local jobs code); and</p> <p>(iii) any other provision prescribed by regulation;</p> <p>(b) the <i>Government Procurement Regulation 2007</i>—</p> <p>(i) part 2 (Government procurement—quotation and tender thresholds); and</p> <p>(ii) part 3 (Procurement proposals); and</p> <p>(iii) part 4 (Secure local jobs code); and</p> <p>(iv) any other provision prescribed by regulation.</p> <p>(6) In this section:</p>	<p>ensure that key elements of value for money, ethical procurement and other procurement policies are applied will be developed and may be notified for transparency.</p>	
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			territory entity —see the <i>Government Procurement Act 2001</i> , section 3.		
For agreement: Recommended in response to Scrutiny	4	Proposed new clause 10 (3) (aa) Page 7, line 11 -	<i>Before clause 10 (3) (a) insert</i> (aa) how just terms for an interest acquired under this Act are provided;	For clarity on the provision of just terms. As recommended by ACT GSO and in response to Scrutiny.	This makes clear that a <i>regulation</i> may provide for the working out of just terms which the Territory must provide to a person from whom an interest is acquired under the Act.
For agreement: Recommended	5	Clause 10 (3) (a) Page 7, line 12—	<i>omit</i> under subsection (2)	No longer required.	This broadens what a regulation may provide for in relation working out compensation and avoids a potentially restrictive reading that a regulation may only provide for working out compensation for acquisitions this section
For agreement: Recommended	9	Clause 12 (1) Page 11, line 3	<i>Before</i> Information <i>Insert</i> Documents or other	To ensure the Territory can request the documents rather than just information about the items.	This allows the director-general to request Calvary provide “documents or other” information about any of the things enumerated under this clause
For agreement: Recommended	10	Clause 13 (3) (c) Page 15, line 1	<i>substitute</i> (c) ensure that any disruption to Calvary’s operation of facilities on the private land caused by the transition of the operation of the public hospital to the Territory is minimised	We suggest this amendment to make it clear that the obligation is limited to Calvary’s operations on the private hospital land. With the aim to minimise disruption to food, linen and other services.	The previous clause broadly referred to minimising disruption to Calvary as a result of the public hospital transition. The proposed clause is more specific and provides that the Territory is to ensure that the impact of the public hospital transition on Calvary’s operation of the private hospital facilities is minimised as far as reasonably practicable

			to the extent reasonably practicable; and		
For agreement: Recommended	11	Clause 14 (1) (a) Page 16, line 7—	<i>Omit</i> Section 18 <i>Substitute</i> Section 19	Correction to numbering.	
For agreement: Recommended	12	Clause 17 heading, Page 19, line 5	<i>Omit the heading, substitute</i> Continued access to records relating to public hospital	In response to ACTIA suggestion to ensure ongoing access to records and information relevant to claims, investigations or inquests.	This amendment omits the erroneous word “historical” from the heading of clause 17. This will provide for continued access to records relating to the public hospital not limited to historical records.
For agreement: Recommended	13	Clause 17 (1) (a) Page 19, line 9	<i>omit</i> historical <i>substitute</i> documents and other	As above.	This amendment omits the erroneous word “historical” from the clause as the director-general must have the power after acquisition to request that Calvary provide information that may not be historical
For agreement: Recommended	14	Clause 17 (1) (a) (i) Page 19, line 11	<i>omit</i> existing or pending <i>substitute</i> past, current or future	As above.	This amendment replaces the words “existing or pending” with the words “past, current or future” to ensure that the director-general may request information from Calvary on any investigations, proceeding, or remedy which relates to the operation of the public hospital prior to acquisition.

For agreement: Recommended	15	Clause 25 (1) (b) (v) Page 26, line 4	<i>omit</i> historical	Clarity	This amendment omits the erroneous word “historical” from the clause. Consequent of removal of “historical” from the heading of clause 17 as proposed by Government Amendment 12.
For agreement: Recommended	16	16 Proposed new clause 28 (2) Page 27, line 9 .	<i>insert</i> regulation may commence on its notification day	This amendment enables the regulation to commence on the day the Act commences (ie the day of notification). This amendment will also allow any amendment of the regulation to commence the day the amending regulation is notified.	This clause inserts a new point at clause 28 being that a regulation may commence on notification day which enables the regulations to commence on the day the Act commences.
For agreement: Recommended	17	Schedule 2, part 2.2 Proposed new amendment 2.7A Page 31, line 11	<i>insert</i> 2.7A Section 27 <i>omit</i> planning and land authority <i>substitute</i> territory planning authority	Change of title	This amendment inserts 2.7A into sch 2, to omit “planning and land authority” in clause 27 and replace it with “territory planning authority”.
For agreement: Recommended	18	Dictionary, note, proposed new dot point Page 32, line 6	<i>Insert</i> - Document	Additional reference to a definition in the Legislation Act	This amendment inserts a new dot in the Dictionary of the Bill.

					It refers the reader to the definition of “document” in the Legislation Act.
For agreement: Recommended	19	Dictionary, definition of <i>interest</i> , paragraph (b) (iii) Page 33, line 20	<i>omit</i> and <i>substitute</i> but	This amendment is a drafting correction.	
For agreement: Recommended	20	Dictionary, definition of <i>operation</i> Page 34, line 8	<i>omit the definition, substitute operation</i> , of the public hospital, includes a public health service	This amendment, together with the following amendment, is necessary because otherwise references, for example, to “transition of the operation of the public hospital” would apply to public hospital services provided in the community.	This amendment omits the definition of “operation” in the dictionary to the Bill. It replaces it with a new definition of “operation” which states that operation of the public hospital includes provision of a public health service.
For agreement: Recommended	21	Dictionary, proposed new definition of <i>public health service</i> Page 34, line 19	<i>insert public health service—</i> (a) means a public health service provided by public hospital employees at places other than the public hospital; but (b) does not include a thing excluded by regulation.	This new definition captures employees providing services at places other than the public hospital, and allows the Territory to exclude any other categories by regulation. The definition is also used to ensure that contracts, assets and patient records used for off-site services are captured by the Act otherwise for example a car used solely for outreach services may not be captured	This amendment provides clarity as to the consideration of staff as public hospital employees and assets by defining a “public health service” in this context. <i>The definition is “public health service”</i> (a) means a public health service provided by public hospital employees at places other than the public hospital; but (b) this allows the Territory to make a regulation if certain services need to be

					<p>excluded (for example palliative care services).</p> <p>This includes such things as Hospital in the Home and other inreach services.</p>
For agreement: Recommended	22	Dictionary, definition of <i>public hospital assets</i> , paragraph (a) (iii) Page 34, line 27	<i>after</i> public hospital <i>insert</i> or a public health service	As above	<p>These additions of “public health service” extend the definition to consideration of</p> <ul style="list-style-type: none"> - Motor vehicles - Assets purchased <p>Contracts</p>
For agreement: Recommended	23	Dictionary, definition of <i>public hospital assets</i> , paragraph (a) (v) Page 35, line 4	<i>after</i> public hospital <i>insert</i> or a public health service	As above	<p>These additions of “public health service” extend the definition to consideration of</p> <ul style="list-style-type: none"> - Motor vehicles - Assets purchased <p>Contracts</p>
For agreement: Recommended	24	Dictionary, definition of public hospital contract, paragraph (a) Page 35, line 13	<p><i>Omit</i> Necessary for and ancillary to the operation of the public hospital</p> <p><i>Substitute</i> Necessary for or ancillary to the operation of the public hospital or a public health service</p>	As above	<p>This amendment omits part of paragraph of the definition of public hospital contract and substitutes it “necessary for or ancillary to the operation of the public hospital or a public health service”.</p> <p>This amendment corrects a grammatical error in relation to “and/or” and further expands the definition to include contracts related to a “public health service”.</p>

For agreement: Recommended	25	Dictionary, definition of public hospital employee, paragraph (a) Page 35, line 20—	<i>omit</i> other public health services <i>substitute</i> or a public health service	This allows consistency with changes to the definitions above.	This allow consistency of terms.
For agreement: Recommended – relates to below.	26	Dictionary, definition of public hospital employee, paragraph (a) (iii) Page 35, line 26	<i>Omit</i>	This amendment together with the below clarifies the amendment for the Assembly.	Drafting change for clarity.
For agreement: Recommended	27	Dictionary, definition of public hospital employee, proposed new paragraph (aa) Page 35, line 26—	<i>insert</i> (aa) includes any other person prescribed by regulation; but	This provides the Territory a regulatory power in relation to public hospital employees.	Drafting change for clarity.
For agreement: Recommended	28	Dictionary, definition of <i>public patient health records</i> Page 36, line 11	<i>after</i> public hospital <i>insert</i> or a public health service	This definition is needed to ensure outreach/offsite patients' records are captured.	This amendment seeks to ensure outreach/offsite patient records are captured



MINISTERIAL BRIEF

ACT Health Directorate

To:	Chief Minister	Tracking No.: MIN23/486
CC:	Minister for Health Rebecca Cross, Director-General	
From:	Liz Lopa, Deputy Director General, Infrastructure & Engagement	
Subject:	Meeting with the Archbishop for the Archdiocese of Canberra and Goulburn	
Critical Date:	30/05/2023	
Critical Reason:	Meeting is scheduled for this day.	

Recommendation

That you note the information contained in this brief.

Noted / Please Discuss

Andrew Barr MLA

30/5/23

Minister's Office Feedback

Background

1. The Archbishop for the Archdiocese of Canberra and Goulburn, Christopher Prowse, has actively spoken publicly to media numerous times since the ACT Government announced the introduction of the *Health Infrastructure Enabling Bill 2023* on 10 May 2023, including authoring an opinion piece in *The Australian* on 24 May 2023.
2. The Archbishop has been vocally critical of the ACT Government's decision to compulsorily acquire Calvary Public Hospital Bruce, and has urged parishioners and the Canberra community to voice their concerns to government.
3. The Archdiocese has appointed a 'Calvary Hospital Taskforce', led by Father Tony Percy, to petition government to halt the acquisition of the hospital. The online petition started by this taskforce has garnered over thirty thousand signatures to date.
4. The Archbishop has called the hospital acquisition an 'attack on religion', noting that he is not convinced by the reasons put forward officially by the government as being behind this decision.
5. On 19 May 2023, following a press event at Calvary Public Hospital Bruce after visiting staff and management in the morning, the Archbishop stated he wants negotiations with ACT Government to resume.
6. On 23 May 2023, the Archbishop met with Minister for Health, Rachel Stephen-Smith, to discuss the acquisition and the reasons that informed the government's decision.

Issues

7. In a media release issued on 10 May 2023, the day of the original announcement, the Archbishop said, "It is a very sad day when Governments can simply decide to mount a take-over of any enterprise they like without any justification."
8. This media release continues to say that the Catholic Church were blindsided by the decision, noting a lack of contact from the government prior to the announcement being made. "We are utterly astounded. There has been no formal contact with the Archdiocese, nor has any reason been given."
9. On 19 May 2023, during a press event at Calvary Public Hospital Bruce, the Archbishop told the *Canberra Times*, "I know there's been difficulties, but let's make a fresh start. I want to announce that we're prepared to go backwards and start looking at this matter in a fresh way. I am not convinced by the arguments that the government are giving us."

10. On 24 May 2023, the Archbishop said in an opinion piece penned for *The Australian*, "The approach of the ACT government does not meet any sense of transparency or accountability. Rather, it raises wider fears about the intent of government toward religious services in Australia. If the Catholic Church, despite long years of service, is a target for government takeover, who is safe from similar predations?"

Financial Implications

11. Not applicable.

Consultation

Internal

12. The Northside Hospital Communications Team was engaged in the preparation of this brief.

Cross Directorate

13. Not applicable.

External

14. Not applicable.

Work Health and Safety

15. Not applicable.

Benefits/Sensitivities

16. The debate of the legislation is occurring on Wednesday, 31 May, and the outcomes of this meeting are likely to be used as in a proactive capacity by the Archbishop to denounce the actions of the Government following the passage of legislation.

Communications, media and engagement implications

17. This meeting has media implications and is therefore likely to lead to further commentary in the media. The Archbishop's comments have previously garnered national attention.

Signatory Name: Liz Lopa

Phone: MS Teams

Action Officer: Caitlin Bladin

Phone: MS Teams



SENSITIVE: CABINET

To: Rachel Stephen-Smith MLA, Minister for Health

Through: Rebecca Cross, Director-General
Dave Pepper, Chief Executive Officer, Canberra Health Services

Subject: Northside Hospital project - Briefing note

Legislation and regulation

- The Legislation and amendments passed the assembly on 31 May 2023.
- The Legislation and subordinate Regulation were notified 2 June 2023, and given the amendment in relation to timing of commencement, the law and regulation commenced at 12:01am 2 June 2023.

Negotiation and other legal

- Calvary has commenced legal proceedings and a full court hearing on the substantive matter will be heard on 7 June 2023.
- Separate briefings regarding the legal advice are ongoing with your Office.
- Regular updates on legal responsibilities are being provided to the transition team and executive to ensure compliance and best practice with requirements.

Clare Holland House

- **Schedule 1.6** [REDACTED]
- Communication from your Office has been prepared to address CHH and the concerns of the staff employed there.
- Engagement with the staff of CHH is being prepared and will include information sessions and written advice.

Workforce engagement

- The number of forms and enquiries received has increased
- At 4:30pm 1 June 2023 -
 - o 90 hotline enquiries
 - o 20 Workforce Support Sessions with about 200 attendees.

- 112 employee transition forms received from CPHB employees
- 16 forms from VMOs
- 4 contractor forms.
- A schedule for workforce information sessions 5-9 June 2023 is being published to include several online sessions on Monday and Tuesday with a face-to-face session organised for Friday in anticipation of outcomes from the legal action.
- The team are planning for the kiosk onsite and developing fact sheets on key issues (VMOS, Staff specialists, HR/employee onboarding, Contractors/Suppliers, Culture, Governance/Policies, Volunteers).

Employee Case Management

- Dashboard on Employee onboarding will be presented at the meeting. This will include themes from submitted forms, case management and future tracking of the offer and acceptance process.

Contract Management

- The truncated time frame poses the biggest risk for this large piece of work.
- Novation and the provision of current contract details requires Calvary's consent. Any further delays to this will require the Transition Team to reassess approach and earlier invoking of contingency arrangements. The Team will map this out with as much detail as is available next week and provide advice to your Office.

Plan for Transition

- The draft Plan for Transition is being finalised today and will remain a draft until agreement is reached with Calvary. The final draft will be provided to your Office for information. It is not intended to make this document public.

Communication

- We are continuing to work closely with your office to adapt and refine our proactive media and communications approach based on the shifting public discourse.
- We are working to prepare an initial community and stakeholder engagement plan on the next phase of the design and development of the northside hospital.
- We are working in collaboration with the workforce engagement team to develop collateral and materials for the on-site pop-up kiosk.

- A summary of communications reporting from the third week since the announcement has been provided to your office.
- We are continuing to progress a proactive media schedule in collaboration with Canberra Health Services and ACT Health to support northside hospital related announcements and good news stories. We are working closely with your Office to execute this.

It appears I may not have
signed this one off previously

Noted, Please Discuss


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Rachel Stephen-Smith
Minister for Health

217123

Contact Officer: Liz Lopa, Deputy Director-General
Contact Number: Schedule 2.2(a)(ii)
Date: 2 June 2023



ACT
Government

ACT Health

CAVEAT BRIEF

SENSITIVE: CABINET

To: Rachel Stephen-Smith MLA, Minister for Health

Through: Rebecca Cross, Director-General
Dave Pepper, CEO, CHS

Subject: Northside Hospital project - Briefing note

Legislation and regulation

The Legislation provides powers to the Director-General, ACT Health Directorate to name a person as an authorised person to enter the public hospital land to undertake relevant functions under section 11 of the Act and to request information from Calvary under sections 12 and 17 of the Act. The Director-General will delegate these powers to the CEO CHS, DDG CHS and DDG Infrastructure and Engagement, ACTHD.

Commented [OS(1)]: Might be 'has' by Tuesady

The Regulation provides powers to the Head of Service including making a written offer of employment to each public hospital employee that meets criteria listed under section 5. The Head of Service will delegate this power to CEO CHS and DDG CHS to support transition.

Commented [OS(2)]: Might be 'has' by Tuesady

Negotiation and other legal

Clare Holland House

Workforce engagement

Employee Case Management

Contract Management

Plan for Transition

Communication

- We are continuing to work closely with your office to adapt and refine our media and communications approach based on the shifting public discourse and the legal proceedings that are occurring.
- We are preparing a presence on-site from acquisition date, to commence engagement of the Calvary workforce on the development and design of the new northside hospital. Formal engagement activities with allied health professionals and the Calvary workforce will then commence from late August/September (timing TBC).

- We are working in collaboration with the workforce engagement team to develop collateral and materials for the on-site pop-up kiosk and the launch of the new site specific Intranet site to launch post-acquisition date.
- Reporting on communications activities for the period 31 May to 6 June (week 4) has been provided to your office.
- We are continuing to progress proactive media activities in collaboration with CHS and ACT Health to support northside hospital related announcements and good news stories. We are working closely with your office to execute this.

Contact Officer: Liz Lopa, Deputy Director-General
Contact Number: Schedule 2.2(a)(ii)
Date: 9 June 2023

Noted/Please Discuss

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Rachel Stephen-Smith
Minister for Health



SENSITIVE: CABINET

To: Rachel Stephen-Smith MLA, Minister for Health

Through: Rebecca Cross, Director-General
Dave Pepper, CEO, CHS

Subject: Northside Hospital project - Briefing note – 19 June 2023

Legal and commercial

Proposed amendments to the Health Infrastructure Enabling Regulation

- Following recent court proceedings, ACT Government Solicitors Office (GSO) has recommended amendments to the Regulation. The legal advice has been provided to your office separately.

Schedule 1.2

- PCO is preparing the revised Regulation for your and the Chief Minister's endorsement.

Schedule 1.2

Commercial negotiations

- PwC have recommended that further discussions related to the commercial negotiations are placed on hold pending the directions hearing about the Regulation on Friday 23 June 2023, as it is the Regulation that provides the formal framework for commercial discussions.

Clare Holland House

- Following decisions of Government on 14 June 2023, the Deputy Director-General, Infrastructure and Engagement wrote to Ross Hawkins on Friday, 16 June to advise that the Government would like to commence discussions with Calvary to negotiate a services agreement and occupancy agreement for ongoing operations of CHH, including inpatient and in home palliative care services.

Transition update - operations

The Deputy Director-General, Canberra Health Services will provide a verbal update on activities in the service continuity stream, utilising the Transition reporting dashboards.

Communication

- We are continuing to work closely with your office to adapt and refine our media and communications approach based on the shifting public discourse.
- We are preparing collateral to support an onsite presence for the commencement of engagement with the Calvary workforce on the development and design of the new northside hospital. Formal engagement activities with allied health professionals and the Calvary workforce will then commence from late August/September (timing TBC).
- We are preparing to run some proactive radio advertisements to support patient continuity messaging. This is expected to commence w/c 19 June for a period of three weeks.
- We continue to promote northside hospital and transition related content across ACT Health, Canberra Health Services, and ACT Government social media channels to ensure a continuity of information.
- We are continuing to progress proactive media activities in collaboration with CHS and ACT Health to support northside hospital related announcements and good news stories. We are working closely with your office to execute this.
- Reporting on communications activities for the period 7-13 June (week 5) has been provided to your office.

Contact Officer: Liz Lopa, Deputy Director-General
 Contact Number: Schedule 2.2(a)(ii)
 Date: 19 June 2023

Noted / Please Discuss



 Rachel Stephen-Smith
 Minister for Health

22/6/23