

SUBMISSION:

Inquiry into the Australian Capital Territory (Self-Government) Amendment Bill 2023

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

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ACL Submission to Inquiry into the Australian Capital Territory (Self-Government) Amendment Bill



Parliament of Australia
Senate Legal and Constitutional Affairs Legislation Committee
legcon.sen@aph.gov.au

13 July 2023

Dear Sir/Madam,

On behalf of the Australian Christian Lobby (**ACL**), I welcome the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee (**Committee**) in relation to its [Inquiry](#) into (**Inquiry**) the [Australian Capital Territory \(Self-Government\) Amendment Bill 2023](#) (**Bill**) (which will amend the [Australian Capital Territory \(Self-Government\) Act 1988](#) (**Act**) that provides for the Government of the Australian Capital Territory (**ACT**)¹).

The ACL strongly supports the passage of the Bill and its proposal to insert a provision into the Act requiring the ACT Government to conduct an inquiry into the [Health Infrastructure Enabling Act 2023](#) (**HIE Act**). In our view, there are compelling reasons to require the ACT Government to conduct an inquiry into the HIE Act and the acquisition of the public Calvary Hospital (**Calvary Hospital**).

The ACL would be very willing to meet with the Committee to discuss these submissions.

Yours Sincerely,

Michelle Pearse
Chief Executive Officer

¹ See section 1 of the Act.

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EXECUTIVE SUMMARY

The ACL's submission discusses:

- 1. The compelling reasons for an inquiry into the HIE Act:** We strongly support the conduct of an inquiry into the HIE Act. In our view, there are compelling reasons to require the ACT Government to conduct an inquiry. Our submission therefore goes into matters of substance regarding the significant issues relating to the acquisition of Calvary Hospital and the HIE Act.

Firstly, there are broad issues regarding the acquisition proposal and its implications, including:

- a. questionable policy objectives and the likely relevance of Calvary Hospital's pro-life views – which may indicate that the acquisition was politically and ideologically motivated;
- b. implications for religious freedoms and the precedent for other faith-based entities; and
- c. significant and unaddressed community concern regarding the acquisition.

In our view, it is critical that an inquiry be conducted to examine the true policy objectives underlying the decision to acquire Calvary Hospital, consider the broader implications of the acquisition, and ensure that the public is given a proper opportunity to express their concerns.

We also have some specific concerns regarding the HIE Act and its provisions, including:

- a. the unprecedented Government move to introduce legislation to execute the decision;
- b. the extraordinary haste of the acquisition and its timeframes;
- c. provisions regarding the calculation of 'just terms'; and
- d. the substantial obligations on Calvary and the extent of the ACT's rights before acquisition.

In our view, an inquiry is further justified in light of these concerns. It will ensure scrutiny of the Government's actions and consideration of the fairness of the HIE Act's provisions, and would also go some way towards restoring the confidence of the public in the democratic process.

- 2. The appropriate provisions in the Bill:** The provisions in the Bill are appropriately drafted for practically conducting such an inquiry in a reasonable timeframe. For example, it is appropriate for the ACT Government to conduct the inquiry, the proposed reporting date will give sufficient time, and the new provision inserted into the Act by the Bill will later be appropriately repealed.

Recommendations:

The ACL recommends the expedient passage of the Bill (without any amendments).

Our submissions are discussed in more detail below. All **bold** emphasis in quotes and extracts is ours.

SUBMISSIONS

- 1. We strongly support the conduct of an inquiry into the HIE Act. In our view, there are compelling reasons to require the ACT Government to conduct an inquiry. There are broad issues regarding the acquisition proposal and its implications, and specific concerns regarding the HIE Act.**

The Bill proposes just one amendment – to insert a temporary provision in the Act requiring the ACT Government to conduct an inquiry into the HIE Act and report before 30 June 2024.² In our view, this is vital. There are compelling reasons to require the Government to conduct such an inquiry.

Broad issues regarding the acquisition proposal and its implications

Questionable policy objectives and the likely relevance of Calvary Hospital's pro-life views

The [Explanatory Notes](#) to the HIE bill asserted that its policy objectives were connected to motivations such as operational efficiency and the delivery of 'effective' and 'accessible' healthcare:³

² See section 1 of Schedule 1 in the Bill, adding a new section 75 to the end of Part IX of the Act (miscellaneous provisions).

³ See page 3 of the Explanatory Notes to the HIE bill.

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*“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 ... 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 Bill supports the most efficient and effective delivery of public health services for Canberrans and the region.**”*

However, Calvary as an organisation has existed for 137 years and Calvary Hospital has been a trusted healthcare provider for public ACT patients since 1979 (for 44 years).⁴ The ACT Government itself has even clearly affirmed the “valuable role” Calvary has played in delivery of public hospital care in the ACT.⁵ In fact, the latest ACT Public Health Services Quarterly Performance Report⁶ [here](#) even found that during Quarter 1, 2022-23, 93% of respondents to an inpatient survey reported a positive experience and were satisfied with the care at Calvary Hospital (for some comparison, 88% of patients rated their care at Canberra Health Services as good or very good).⁷ The second reading speech of the Bill also notes that the relevant Minister has admitted that Calvary has delivered good healthcare and was not in any breach of its contract.⁸ Clearly, Calvary was already an effective public health service provider, so there seems to be some reason to question the stated policy objectives of the HIE Act. Calvary had also been negotiating with the Government about its role in the context of a new northside hospital,⁹ and we understand that there were other available greenfield sites in any case. Effectively, we understand that the Government had other options available to achieve such policy objectives. Calvary itself also rejects that its operations prevented the delivery of a publicly owned hospital that provides an accessible, accountable and sustainable health system in the ACT.¹⁰

In our view, it is apparent that the acquisition may in fact have been linked to the pro-life stance of Calvary on the matters of elective abortion and euthanasia. We query whether the Government’s stated policy objectives regarding ‘efficient’, ‘effective’ and ‘accessible’ healthcare related to an intent to ensure easy access to all health services including elective abortion and VAD in due course.

Notably, the decision to acquire Calvary Hospital came shortly after the ACT Government’s criticism of its unwillingness to conduct elective abortions. In particular, a report published in April 2023 [here](#) by the Legislative Assembly for the ACT Standing Committee on Health and Community Wellbeing on its ‘Inquiry into Abortion and Reproductive Choice in the ACT’ (supplemented by [this Corrigendum](#) in June 2023) contained many specific comments about Calvary Hospital. These included:

- Recommendation 14, which recommended¹¹ “[t]hat the ACT Government advocate Calvary Hospital¹² to provide full reproductive health services in accordance with human rights”.
- Negative comments about “societal punitive responses” to abortion referring to Calvary:¹³
“3.44. The refusal to promote abortion services may protect abortion providers from harassment but the lack of publicity denotes a barrier to reproductive justice. Whilst the practice in Australia, in an era of illegal abortion, of backyard, floating abortion rings may

⁴ See Calvary Hospital editorial: [This link](#) and Calvary Hospital blog: [This link](#).

⁵ See this ACT Government statement: [This link](#).

⁶ See this ACT Government website: [This link](#).

⁷ See page 5 of the Report.

⁸ See second reading speech for the Bill here: [This link](#).

⁹ See page 4 of the Explanatory Notes.

¹⁰ See this Calvary Hospital website: [This link](#).

¹¹ See page vii of the Report.

¹² Note: The words ‘Calvary Hospital’ were later changed to ‘Calvary Public Hospital Bruce’ by page 2 of the Corrigendum.

¹³ See pages 12 and 13 of the Report.

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*have ceased, a culture of secrecy still thrives in Canberra's abortion provision, through practitioners' fear of persecution. **Following the legality of abortion, societal punitive responses may have ended from State but still they prosper at the hands of the Church (see sections in this report 'Calvary Hospital'**¹⁴ and 'Stigma and Harassment')."*

- On the topic of conscientious objection, an entire section about Calvary Hospital specifically. Among other things, it discussed concerns about 'equity of access' (a theme which bears some similarity to the stated objectives of the HIE bill discussed above) and 'reproductive justice':¹⁵

*"3.93 There is a longstanding practice within Australia of private hospitals providing public health services. However, the **Australian Senate Standing Committees on Community Affairs, following its inquiry into public hospital funding conducted in 2000, noted that this mode of provision is increasing resulting in a 'blurring of the roles of private and public sectors'. Further, the Senate Committee expressed concern at the lack of research and 'lack of clear benefits for public patients' in governments' involvement with private operators.***

3.94. The 'lack of benefits' has been noted in governments' limited ability to ensure equity in health care when provided by private operators. This concern about equity of access is echoed internationally and throughout Australia and is exemplified within the arena of reproductive justice."

- Overall, the Committee formed a view that Calvary's "overriding religious ethos" was "problematic" and suggested that the issue needed to be addressed by the ACT Government:¹⁶

*"3.102. **It is the Committee's view that it is problematic that one of the ACT's major hospitals is, due to an overriding religious ethos, restricted in the services that can be delivered to the Canberra community.** It is also reasonable to assume that a significant number of Canberrans would be unaware of the religious model of care which underpins Calvary Hospital's operation and impacts on their available services.*

*3.103. **It is the view of the Committee that the aforementioned patient's experience is unacceptable and that the ACT Government needs to address what the Committee perceives as an ethically fraught dependence on the Sisters of the Little Company of Mary for provision of health services.** At a minimum, Calvary Public Hospital needs to abide by Recommendation 1 in this report and refer the patient to another publicly funded facility."*

While paragraph 3.102 was apparently excluded from the Report by the Corrigendum (and 3.103 revised),¹⁷ the Corrigendum included a new paragraph on the Committee's view that community "unease" could only be resolved by Calvary Hospital providing "full reproductive health care":¹⁸

*"3.105. **This evidence together with the advice of a specialist (as cited in paragraph 3.103) demonstrates a narrative of concern throughout the community in the ACT about which reproductive health-care procedures Calvary Public Hospital Bruce may or may not provide and under which circumstances. It is the Committee's view that this unease can only be resolved if Calvary Public Hospital Bruce provides full reproductive health care."***

As Calvary Hospital itself noted in [this editorial](#) in April, the Report took direct aim at Calvary:¹⁹

¹⁴ Note: The words 'Calvary Hospital' were later changed to 'Calvary Public Hospital Bruce' by page 2 of the Corrigendum.

¹⁵ See pages 23 to 26 of the Report, and particularly page 24 of the Report.

¹⁶ See page 26 of the Report.

¹⁷ See page 1 of the Corrigendum.

¹⁸ See page 2 of the Corrigendum.

¹⁹ See <https://www.calvarycare.org.au/blog/media-releases/care-without-judgement-at-calvary/>.

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“...the report takes direct aim at Calvary, suggesting that because of its overriding religious ethos, Calvary is restricted in the services we can deliver to the Canberra community ...”

Clearly, the Government was critical of Calvary’s conscientious objection to elective abortions. It was determined that Calvary Hospital should provide “full reproductive health services” and that the ACT Government advocate for this. Evidently, Calvary’s religious ethos hindered the abortion roll-out.

On a similar front, Calvary is also well-known for its opposition to euthanasia in the ACT.

In fact, Calvary’s own website sets out its response to such legislation [here](#). It clearly states that it does not support euthanasia, assisted suicide or voluntary assisted dying (VAD), nor provide such services to patients, residents or clients.²⁰ It even links its past submissions on this issue in the ACT, including to the ACT Government itself in April 2023 [here](#)²¹ and to the Select Committee on End of Life Choices in the ACT [here](#)²² in March 2018 (both opposing VAD). Calvary also publishes a [position statement](#) opposing VAD.²³ Clearly, Calvary has strongly opposed the introduction of VAD in the ACT.

With a VAD bill expected to be introduced in the ACT Legislative Assembly in the second half of 2023²⁴ (a bill which we expect to be perhaps the most radical VAD legislation yet introduced in Australia), Calvary is clearly out-of-step with the ACT Government’s views on this topic. In our view, Calvary Hospital’s almost certain objection to the ACT’s anticipated VAD laws may also be relevant to the ACT Government’s decision to acquire it. Once such laws are introduced, Calvary Hospital would likely have become a key barrier to the universal roll-out of VAD in the ACT.

Overall, we consider it highly unlikely that the timing of these events are coincidental – the HIE Act was first presented on 11 May 2023, just after the release of the inquiry report regarding abortion in the ACT and Calvary’s submission to the ACT Government regarding VAD (both in April 2023). In our view, the ACT Government’s assertion that the policy objectives underlying the HIE bill were only centred around the need for integration and operational efficiency likely ignore the political realities at play. The evidence suggests that the acquisition may have been politically and ideologically motivated. If any such ideological basis for the acquisition is established, we understand that it could mean that the acquisition may have been invalid (eg. if an ill-motivated acquisition in principle is established, and is found not to fulfil ‘just terms’ (discussed below)). As a result, it is critical that an inquiry be conducted to examine the true policy objectives underlying the decision to acquire Calvary Hospital.

In this context, we also note that Calvary has been providing specialised palliative care services in Canberra since 1995, with hospice services provided at Clare Holland House (CHH) in Grevillea Park since 2001.²⁵ Although the Calvary Hospital acquisition apparently did not originally include the services provided by CHH,²⁶ after further discussions the Government determined to also take over the operation of CHH. As the ACT Government announced in [this media release](#) on 26 June 2023, it came to a “mutual agreement” with Calvary to transition CHH to Canberra Health Services from 3 July (a media release by Calvary [here](#) also confirmed that it “reluctantly” agreed to the transfer²⁷).

The Government’s media release refers to considerations including CHH’s “existing connections with Calvary Public Hospital Bruce”, and that the decision would “preserve the nation-leading integrated

²⁰ See <https://www.calvarycare.org.au/about-you/voluntary-assisted-dying/>.

²¹ See [this link](#). See also this media release by Calvary: [This link](#).

²² See [this link](#).

²³ See [this link](#).

²⁴ See this ACT Government website: [This link](#).

²⁵ See [this link](#).

²⁶ See this Legislative Assembly website with an answer to a question regarding Calvary Hospital on this topic: [This link](#).

²⁷ See this media release by Calvary: [This link](#).

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care model for both inpatients and outpatients” and “ensure continuity of care for patients needing public palliative care”.²⁸ However, we query whether the take over of CHH is also connected to the anticipated VAD laws. This makes sense even from a purely logical perspective, as CHH is the only inpatient palliative care unit in the ACT.²⁹ Its terminally ill inpatients would obviously likely comprise the main candidates for the uptake of VAD in the ACT once VAD laws are eventually introduced.

Notably, even the Government itself seems to have alluded to a natural connection between CHH and VAD. In particular, in [this](#) ABC News segment, Minister for Health of the ACT Rachel Stephen-Smith herself spoke about CHH with reference to it eventually being “closely related” to VAD:³⁰

“We are still in a conversation with them about running palliative care services for the whole of the ACT. If this was about removing a faith-based provider from that critical element of service that will be closely related to voluntary assisted dying we wouldn’t be in that conversation. We believe that if Calvary remains the provider of Clare Holland House hospice, of the palliative care services, that we will be able to work through those issues with them as well.”

In our view, this directly indicates that the Government may view CHH in connection with VAD, and that its take over may advance an underlying intention that it eventually provide VAD services. We consider that this only strengthens speculation about the possibility that the acquisition may have been politically and ideologically motivated overall, and adds to the case for conducting an inquiry.

Implications for religious freedoms and the precedent for other faith-based entities

If the acquisition of Calvary Hospital was linked to its pro-life views, the introduction of the HIE Act has significant implications for religious freedoms. Essentially, it would represent an act by the ACT Government to seize control of an institution merely on account of its religious views. This shows no respect for religious freedoms and eliminates Calvary Hospital’s right to operate according to its religious ethos. It also implicates religious freedoms nationwide. While Calvary is obviously an entity rather than an individual, there are various situations in which things done to entities may impinge upon and thereby violate the fundamental rights of individuals. Entities are well understood as being the vehicles for individuals to exercise certain rights, particularly those concerned with religious practice. It is well acknowledged that freedom of religion is enjoyed collectively through institutions.

The acquisition also raises legitimate questions about the potential implications for other faith-based organisations. It sets a dangerous precedent for future Government takeovers of institutions whose religious beliefs are out-of-step with Government views. There is serious concern that government could also seize such services in education and aged care, or other hospitals, charities or churches.

There are currently no protections in place to stop governments (including ideologically-driven ones) from deeming a religious institution that provides a public service as ineffective, inefficient or inaccessible and then acquiring it because it deems it so. While individuals have some protections of their rights (and that varies between the states), institutions do not have those protections.

In our view, the seriousness of these issues also necessitates an inquiry. Even if the ACT Government was within its rights to acquire Calvary Hospital in the way that it did, the broader implications of it having such power and whether it is right that this can occur more broadly requires consideration.

Significant and unaddressed community concern regarding the acquisition

The decision to acquire Calvary Hospital was made by the ACT Government with no consultation (with Calvary or the public), and no inquiry by the Legislative Assembly prior to its announcement.

²⁸ See [this link](#). See also this news release by the ACT Government with similar statements: [This link](#).

²⁹ See, for example, discussion by ABC News here: [This link](#).

³⁰ See approximately 6:42 of the segment onwards.

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Notably, the HIE Act bypassed the normal parliamentary committee and public submission process. As the [Explanatory Notes](#) to the Bill confirm, this caused significant public outcry across Australia.³¹

We are also aware of significant community concern about the acquisition, including among the ACL's supporters. For example, there were ground protests outside the Legislative Assembly and a standing-room-only public meeting which demonstrated significant community opposition. Concerns have also been raised directly with ACT politicians. For example, Senator Canavan indicated in the second reading speech of the Bill that his office alone received thousands of emails on this topic.³²

Other sources also evidence a high level of community concern about the acquisition. For example, a poll conducted by Riotact (for Region Media) in May 2023 [here](#)³³ found that most respondents (59% of 1,670 total voters) opposed the ACT Government acquiring Calvary Hospital. Catholic Voice also ran a 'save Calvary Hospital' petition to the Legislative Assembly in May 2023 [here](#).³⁴ It reportedly reached 25,000 signatures by 22 May,³⁵ and the Spectator reported on 4 June that the petition had by then surpassed 33,000 signatures.³⁶ A 'Save Calvary' petition on [this website](#) also indicates that (at the time of drafting this submission), 48,686 people had signed to oppose the acquisition.

In our view, there is clearly sufficient community concern to justify an inquiry. The ACT Government has clearly proceeded with its proposal despite this unaddressed community opposition. An inquiry would give the public a proper opportunity to express their concerns in a forum in which they will be considered. As the Explanatory Notes to the Bill note, an inquiry would not impact the Government's rights to make decisions, but would merely ensure public consultation on the decision made.³⁷

Specific concerns regarding the HIE Act and its provisions

The unprecedented Government move to introduce legislation to execute the decision

The move to acquire Calvary Hospital was so unexpected and unprecedented that the ACT Government introduced new legislation to execute its decision. Even the Explanatory Notes to the HIE bill acknowledged that the agreement under which Calvary operated the hospital was not due to expire until 2098, and was only re-negotiated in 2011. However, because it included "contract terms with limited provisions for termination" and the Government wanted "to reassess the contractual relationship", it used the HIE bill as a mechanism to terminate the contractual agreement.

The acquisition was also clearly not welcomed by Calvary Hospital. Calvary publicly affirmed that it was "committed to the remaining 76 years" of its contract and questioned how the ACT Government had legislated to end the commercial arrangement despite Calvary not having breached the contract conditions (and despite it having previously provided an option to the Government to transfer land, build a new hospital, etc,³⁸ apparently during 12 months of negotiations³⁹). Calvary publicly criticised the Government's unilateral and unexpected decision-making⁴⁰, and even brought an application to challenge the validity of the HIE Act (and was left "disappointed" by the ACT Supreme Court's

³¹ See Explanatory Notes to the Bill here: [This link](#).

³² See second reading speech for the Bill here: [This link](#).

³³ See <https://the-riotact.com/probing-the-polls-working-from-home-and-the-calvary-takeover/661458>.

³⁴ See <https://www.catholicvoice.org.au/petition-to-save-calvary-hospital-bruce/>.

³⁵ See <https://catholicleader.com.au/news/australia/petition-to-stop-calvary-hospital-takeover-reaches-25000-signatures/>.

³⁶ See <https://www.spectator.com.au/2023/06/petition-to-save-calvary-hospital-surpasses-33000-signatures/>.

³⁷ See the Explanatory Notes to the Bill: [This link](#).

³⁸ See this Calvary Hospital website: [This link](#).

³⁹ See pages 2 and 4 of the Explanatory Notes in particular.

⁴⁰ See this Calvary Hospital website: [This link](#).

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decision to dismiss it).⁴¹ Calvary also criticised the Government for introducing a bill “to effectively circumvent commercial negotiations and achieve by way of legislation the outcome they wanted”.⁴²

In our view, these criticisms are legitimate and well-warranted. We consider that the ACT Government’s actions defy normal due process. We consider that an inquiry into the unprecedented HIE Act will go some way towards restoring the confidence of the public in the democratic process.

The extraordinary haste of the acquisition and its timeframes

The HIE Act was very hastily passed by the ACT Government. In fact, the HIE bill was first presented on 11 May 2023,⁴³ and passed just a few weeks later on 31 May.⁴⁴ According to the second reading speech of the Bill, the HIE bill was tabled without any notice, and pushed through “without proper scrutiny on the next sitting day” (31 May). It also notes that the ACT Government “even went so far as to move a motion to ensure that the normal committee inquiry process into legislation was circumvented”.⁴⁵ Essentially, the HIE Act was rushed through parliament as abruptly as possible.

Further, under section 7 of the HIE Act, the default acquisition day was set as 3 July 2023 (unless the Executive gave notice before then of a day earlier or later than the default acquisition day). Essentially, the acquisition was set to occur around just 5 weeks after the HIE Act was passed. Calvary Hospital has publicly discussed how this was an “imposed unrealistic timeline” that “distressed” its staff and could “put clinical safety at risk”.⁴⁶ It considered that the timeframe did not allow for genuine consultation and created a risk to its operations, workforce and patients.⁴⁷

In our view, the acquisition was conducted with extraordinary haste, further justifying an inquiry.

Provisions regarding the calculation of ‘just terms’

The purposes of the HIE Act include to ensure that interests acquired under the Act are acquired “on just terms”.⁴⁸ Section 10 also specifically requires the ACT Government to provide “just terms” to a person from whom an interest is acquired.⁴⁹ This includes “reasonable compensation” for the acquisition of Calvary Hospital’s interest in the public hospital land⁵⁰ and for public hospital assets.⁵¹

However, the HIE Act does not itself specify how this is worked out. Instead, it states⁵² that a regulation may provide for matters including:

- how just terms for an interest acquired are provided;
- how compensation is worked out;
- how claims for compensation are made and dealt with;
- a time limit within which a claim for compensation may be made;
- information or other things required from a person claiming compensation;
- how any dispute about working out compensation is resolved;
- how compensation is paid; and
- any other matter relevant to providing just terms.

⁴¹ See this Calvary Hospital website: [This link](#).

⁴² See this article by Calvary Hospital: [This link](#).

⁴³ See this ACT Legislation website: https://www.legislation.act.gov.au/b/db_67631/.

⁴⁴ See this ACT Legislation website: https://www.legislation.act.gov.au/b/db_67631/.

⁴⁵ See second reading speech for the Bill here: [This link](#).

⁴⁶ See this article by Calvary Hospital: [This link](#).

⁴⁷ See this article by Calvary Hospital: [This link](#).

⁴⁸ See section 5(f) of the HIE Act.

⁴⁹ See particularly sections 10(1) and 10(2)(a) of the HIE Act.

⁵⁰ See section 10(2) of the HIE Act, particularly subsection (a).

⁵¹ See section 10(2) of the HIE Act, particularly subsection (c).

⁵² See section 10(3) of the HIE Act.

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Two regulations were in fact subsequently made under the Act, which included provisions regarding the calculation of compensation – the *Health Infrastructure Enabling Regulation 2023* (SL2023-11) [here](#) which was first published on 2 June 2023 (and republished 29 June 2023),⁵³ and the *Health Infrastructure Enabling Amendment Regulation 2023 (No 1)* (SL2023-14) [here](#) which was notified on 28 June 2023⁵⁴. The Regulations contain a whole Part relating to compensation, including matters relevant to working out compensation for the acquisition of Calvary’s interest under section 10.

We find it astounding that the ACT Government was able to specify by its own regulations how compensation would be calculated, and that it was entitled under the HIE Act to acquire Calvary Hospital and take over operations before any compensation was even agreed upon (let alone paid). As a result, Calvary Hospital considered that a legal challenge to the acquisition was “the only response left available” to it, as its “review of the proposed legislation and associated regulation [indicated] that just terms [were] simply not available and outside of this there is no indication that commercial terms [were] available”.⁵⁵ Clearly, Calvary did not expect that it could receive ‘just terms’ for its interest under the clauses the Government drafted in the HIE Act and associated Regulations.

This only exacerbates the need for a public inquiry to scrutinise the ACT Government’s actions. Obviously, it is essential that any acquisitions by the Government actually occur on ‘just terms’.

The substantial obligations on Calvary and the extent of the ACT’s rights before the acquisition

There are also other reasons to question the balance struck by the HIE Act provisions.

Under section 11, the ACT Government had rights to enter hospital land even before the acquisition. An authorised person could, “at any reasonable time before the acquisition day and with reasonable written notice” do various things on hospital land.⁵⁶ In doing so, the Government had to “minimise any interference with Calvary’s use of the land” but only “to the extent reasonably practicable”.⁵⁷

There were also substantial obligations placed on Calvary Hospital with respect to the acquisition, both before and after the acquisition occurred, and including ongoing requirements. For example:

- it had obligations to assist authorised persons before acquisition day in many specified ways;⁵⁸
- it could be required to provide a long list of information within a reasonable period;⁵⁹
- it had all sorts of obligations arising out of the requirement that it “act in good faith, cooperate and do all other things reasonably necessary to ensure” the safe and orderly transition of the public hospital to the Government and continued service delivery standards,⁶⁰ including to:⁶¹
 - appoint a senior executive to be the contact person relating to the transition;
 - cooperate with the ACT Government to develop a transition plan and ensure employees, officers and contractors comply with it;
 - provide “all reasonable assistance” for the Government to get licences and authorisations;
 - provide reasonable access to records management IT systems and other records;
 - ensure its employees and officers provide “all reasonable assistance” to the ACT Government to assist the transition and ensure there is sufficient staffing to do so;
 - ensure all maintenance and repair of public hospital facilities and assets continues;
 - comply with all requirements under the HIE Act “as soon as is reasonably practicable”;

⁵³ See this ACT Legislation website: <https://www.legislation.act.gov.au/sl/2023-11/>.

⁵⁴ See this ACT Legislation website: <https://www.legislation.act.gov.au/sl/2023-14/>.

⁵⁵ See this article by Calvary Hospital: [This link](#).

⁵⁶ See section 11(1) of the HIE Act.

⁵⁷ See section 11(4) of the HIE Act.

⁵⁸ See sections 11(2) and 11(3) of the HIE Act.

⁵⁹ See particularly sections 12(2) and 12(3) of the HIE Act.

⁶⁰ See section 13 of the HIE Act.

⁶¹ See section 13(2) of the HIE Act.

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- not do anything that hinders, obstructs or delays the transition (and promptly notify the ACT Government of any matter of which it is aware may do so); etc.;
- it had other obligations under the Regulations, including to use all reasonable endeavours to ensure the ACT Government receives the full benefit of nominated public hospital contracts;⁶²
- it had various obligations on acquisition day;⁶³
- it has obligations regarding records and their storage and retention after acquisition day;⁶⁴ etc.

In our view, the HIE Act and its Regulations placed substantial burdens on Calvary Hospital regarding the acquisition, including before Calvary Hospital had received any compensation for the acquisition of its interest and despite the acquisition being unexpected and conducted with extraordinary haste. Calvary itself has publicly decried the five-week acquisition period as “harrowing”.⁶⁵

Notwithstanding this, if a person hindered or obstructed (or intended to) an authorised person in its functions, or if Calvary did not comply with certain requirements⁶⁶, the Magistrates Court was empowered to make an order authorising a police officer to provide assistance or use force as is reasonably necessary, or make an order requiring Calvary or a related corporation to comply.⁶⁷

Essentially, despite the unexpected and substantive obligations placed on Calvary in such a short timeframe, the HIE Act could lead to police officers using force to ensure its compliance.

Again, a public inquiry would require the fairness of these provisions to be adequately scrutinised.

2. The provisions in the Bill are appropriately drafted for practically conducting such an inquiry in a reasonable timeframe.

In our view, the Bill’s provisions are appropriately drafted in scoping such an inquiry. For example:

- Conduct of the inquiry: It is obviously appropriate for the ACT Government to conduct the inquiry under section 75(1), as it is the government of the jurisdiction which passed the HIE Act.
- Reporting date: The proposed reporting date of before 30 June 2024 under section 75(1) is appropriate, as it will give sufficient time for an inquiry. In particular, the reporting date for this Inquiry is 9 August 2023,⁶⁸ and if the Bill is passed relatively expediently after the Committee’s release of its Inquiry report, there will likely remain sufficient time (ie. likely at least 6 months or more) for the ACT Government to conduct an inquiry into the HIE Act and release its own report.
- Later repeal: The new provision inserted into the Act by the Bill will only be temporary, as section 75(2) states that it will be repealed “at the start of 1 July 2025”. As such, the new section 75 will not be a permanent feature of the Act – it is intended to be repealed after the release of a HIE Act inquiry report. This is appropriate – a provision regarding the conduct of a particular inquiry should not remain a permanent feature of an Act after the conclusion of such an inquiry. It is also appropriate that section 75(2) factors in a buffer (essentially an additional year after the inquiry report is due to be released), in case the inquiry timeframes are extended.

⁶² See section 7 of the Regulations: [This link](#).

⁶³ See section 14(1)(c) of the HIE Act.

⁶⁴ See section 17 of the HIE Act.

⁶⁵ See this Calvary Hospital website: [This link](#).

⁶⁶ Under sections 11, 12, 13, 14 and 17(3) of the HIE Act.

⁶⁷ See section 25 of the HIE Act.

⁶⁸ As per this Inquiry website: [This link](#).