

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*.

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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.