



**Andrew Barr MLA**  
Chief Minister  
Treasurer  
Minister for Climate Action  
Minister for Economic Development  
Minister for Tourism  
  
Member for Kurrajong

---

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600

via email [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Secretary

Thank you for the opportunity to provide a submission to the inquiry into the Australian Capital Territory (Self-Government) Amendment Bill 2023.

The ACT Legislative Assembly passed the *Health Infrastructure Enabling Act 2023* to enable the ACT Government to acquire the Calvary Public Hospital land, and transition existing Calvary staff and assets to the Territory. That Act commenced on 3 July 2023, and all staff and assets are now under the direct management of the ACT Government.

The ACT Government will build a new northside hospital on the previous Calvary Public Hospital site to meet the needs of our rapidly growing population. The new northside hospital will be owned by the ACT Government and operated by Canberra Health Services, delivering a more efficient and effective health system for Canberrans.

This was the result of a lengthy policy process and consideration by the ACT Government, which included a two-stage public consultation and a long period of engagement with the previous operator of the public hospital, Calvary Health Care. The ACT Government negotiated with Calvary Health Care in good faith for many months to find an agreed path forward. However, these negotiations were not successful in delivering an outcome consistent with the needs of the ACT community.

---

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601



@ABarrMLA



+61 2 6205 0011



AndrewBarrMLA



barr@act.gov.au



andrewbarrmla

While Calvary has played an important role in the delivery of public hospital care for generations of Canberrans over the last 44 years, consolidating our public hospitals to create a single network will allow us to better coordinate our health services, distribute resources effectively, strengthen the capacity of our workforce, plan infrastructure on a Territory-wide basis, and improve health outcomes for all Canberrans.

The new hospital will be developed in partnership with clinicians and the community, ensuring it meets Canberra's future health care needs with no disruption to existing services.

Canberra's northside will continue growing in the coming decades, and planning now for a bigger, modern hospital on the northside will provide Canberrans with access to more healthcare services closer to where they live.

The debate and passage of the *Health Infrastructure Enabling Act 2023* represents the considered and expressed will of the Territory's elected legislature.

Please find attached a submission on behalf of the ACT Government that details the scrutiny and accountability mechanisms underpinning self-government in this jurisdiction, and explains why the Self-Government Amendment Bill impinges on both the parliamentary processes and the right to self-determination of the ACT.

Yours sincerely

Andrew Barr MLA  
Chief Minister

20 July 2023



**ACT**  
Government

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

Submission by the  
Australian Capital Territory Government

July 2023

## Introduction

On 19 June 2023, Senator the Hon Matthew Canavan (Queensland) introduced a private Senator's Bill - the *Australian Capital Territory (Self-Government) Amendment Bill 2023* (the Self-Government Amendment Bill). This Bill proposes to amend the *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act), by adding to it a section that would state "The Government of the Territory must conduct an inquiry into the *Health Infrastructure Enabling Act 2023* (ACT) (the Enabling Act), reporting before 30 June 2024."

The Self-Government Amendment Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 9 August 2023. The ACT Government makes this submission to the Inquiry.

This submission explains that the Self-Government Amendment Bill is an inappropriate and unnecessary attempt to intervene in the Australian Capital Territory's (ACT) self-government. Its drafting is inconsistent with the Self Government Act and it is inappropriate because it does not take account of ACT Legislative Assembly processes that led to the Enabling Act being passed. It is unnecessary because it ignores all the accountability mechanisms present in the ACT's system of government: systems that operated as intended in the case of the Enabling Act. The Self-Government Amendment Bill is also inconsistent with the principles of responsible government.

## Failure to take account of self-government

The Self-Government Amendment Bill attempts to require an inquiry by the ACT Government into a piece of legislation, the Enabling Act, that has been passed by the ACT Legislative Assembly as authorised by Section 22 of the Self Government Act. The Enabling Act represents the considered and expressed will of the Territory's elected legislature. It would be inappropriate for the "Government of the Territory" (presumably the Executive) to be compelled to conduct an "inquiry" (a term undefined in the legislation) into the actions of the Legislative Assembly and its committees in enacting the Enabling Act. This is inconsistent with the separation of executive and legislative power and the principles of responsible government.

The Enabling Act was the result of a lengthy policy process and consideration by the ACT Government. This included a two-stage public consultation regarding the new northside hospital that occurred in 2022, during which a range of feedback was received regarding health services across Canberra, particularly in relation to health services on the northside of Canberra. Information about the consultation (both the processes undertaken and the nature of feedback received) is available on the ACT Government's 'Your Say' website here: <https://yoursayconversations.act.gov.au/accessing-health-care>.

There had also been a long period of engagement with the previous operator of the public hospital, Calvary Health Care (Calvary). In addition, the ACT Government has undertaken design and feasibility studies and attempted to develop a joint master plan for the site with Calvary. The Self-Government Amendment Bill ignores and purports to override these normal activities of the government of the ACT. It would direct "the Government of the Territory", which is undefined, to undertake an "inquiry", of unknown power, scope and authority, into legislation enacted by the Legislative Assembly and to which its ordinary processes remain applicable.

The Committee should note that there are technical flaws in the drafting of the Self-Government Amendment Bill. It proposes that an “inquiry” be conducted by “the Government of the Territory” (proposed amendment Section 75 (1)), but neither term is defined or used elsewhere in the Self-Government Act. The disconnection between the primary legislation and the proposed amendment reflects the lack of consideration of how self-government and, indeed, responsible government, works and how it is given effect through the Self Government Act.

The approach to intervening in ACT Government matters is not only unnecessary but has future implications for self-government. The approach would undermine the Legislative Assembly’s ability to make further laws without interference. It is not consistent with the Legislative Assembly’s ability to legislate on its own terms, in its own words, and on behalf of its own people. The Federal Parliament does not interfere in these terms with government in states, such as Queensland or New South Wales, and it should not do so in the ACT. It goes against the principles of the legislation recently passed by the Commonwealth Parliament, the *Restoring Territory Rights Act 2022*, that removed restrictions placed on both the ACT and the Northern Territory to enact laws relating to voluntary assisted dying. It sets a dangerous precedent in that it seeks to again interfere in the Legislative Assembly of the ACT’s democratic right to make laws appropriate for its community. This is particularly egregious when it comes so soon after Territory rights were restored.

## ACT Legislative Assembly scrutiny mechanisms

The ACT Legislative Assembly has multiple mechanisms in place to ensure scrutiny of both executive decisions and to examine legislation before it. These mechanisms have been determined by the Legislative Assembly of the ACT, including through regular review of its Standing Orders, to be the appropriate ones for providing accountability for ACT Government actions and proposed legislation.

The ACT Legislative Assembly has established and effective systems for deliberation and scrutiny of legislation, similar to those of the Australian Senate.

Within the Legislative Assembly chamber there are requirements for the giving of notice of bills,<sup>1</sup> their referral to committees, and debate in the chamber, including opportunities for any member to propose amendments.<sup>2</sup> Question Time occurs each sitting day,<sup>3</sup> allowing any member of the Legislative Assembly to ask questions of government ministers. In addition, questions can be given on notice and are required to be answered or an explanation provided.<sup>4</sup>

Under the Legislative Assembly Standing Orders, all bills are referred to a standing committee for consideration.<sup>5</sup> In addition, subject to any direction of the Legislative Assembly, any standing committee may inquire into and report on any matter it considers merits investigation or which the Legislative Assembly refers to it.<sup>6</sup> The committees of the Legislative Assembly are therefore always able to consider bills, and can choose to consider legislation that has passed, where that is within the area of responsibility of the committee.

In addition to a standing committee having the ability to examine all aspects of every bill presented in the Legislative Assembly, the Standing Committee on Justice and Community Safety has a legislative scrutiny

<sup>1</sup> Standing Order 168

<sup>2</sup> Standing Orders 171-191

<sup>3</sup> Assembly Standing Order 74

<sup>4</sup> Standing Orders 113, 118, 118A.

<sup>5</sup> Standing Order 174

<sup>6</sup> Standing Order 216.

role. In this role, the committee scrutinises bills and subordinate legislation for best practice in law-writing and human rights compliance.

In support of this scrutiny process, for every bill, the Attorney General is required to provide to the Legislative Assembly a human rights compatibility statement, advising the Assembly of the bill's compatibility with the rights set out in the *Human Rights Act 2004*.

Legislative Assembly Committees also conduct budget estimates hearings, during which questions are asked about the operations of government.

In the case of the *Health Infrastructure Enabling Bill 2023* (the Enabling Bill), these mechanisms operated as intended.

The Bill was referred to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) and in its report of 23 May 2023, comments were provided. A link to the Committee's report can be found [here](#). The Committee requested clarifying responses from the Minister, and these [were provided](#) prior to the Enabling Bill being debated. Minister Stephen-Smith also moved an amendment in response to one of the matters raised by the Committee.

Given all of the appropriate scrutiny processes occurred for the Enabling Bill before its passage, it is unnecessary to mandate an "inquiry" be conducted by "the Government of the Territory" as proposed in the Self Government Bill.

### Standing Committee consideration

The Standing Committee on Health and Community Wellbeing held a private meeting on the day the Enabling Bill was introduced to determine whether it would undertake an inquiry into the Enabling Bill and decided instead to seek a series of briefings in order to monitor the transition process. The Chair of that Committee, Johnathan Davis MLA, said at the time:

Following the presentation of the bill, the Assembly debated and passed a motion allowing for the bill to be debated by the Assembly prior to any committee inquiry or report, with the exception of the Standing Committee on Justice and Community Safety in its legislative scrutiny role. The committee acknowledges this decision of the Assembly in passing the motion.

To enable the committee to still perform its role of scrutinising government policy, the committee has written to the Chief Minister, the Minister for Health and the Minister for Mental Health requesting briefings. The committee will be asking for fortnightly briefings with ministers and Canberra Health Services officials during their regular private meetings, and the committee looks forward to receiving these briefings. (ACT Legislative Assembly Hansard, [11 May 2023](#), p1310).

Accordingly, the Standing Committee wrote to the Minister for Health proposing a regular time for ongoing briefings outside of sitting weeks. The Minister and officials appeared before the Committee on 23 May 2023 and again on 20 June 2023. The Government understands the Committee intends to publish a summary of these meetings in due course. Had the Committee wished to progress to a formal inquiry, the Executive would have engaged in this process.

Although there was an expectation that the Enabling Bill (as it then was) would be referred to the Standing Committee on Health and Community Wellbeing, it was in fact referred to the Standing Committee on Public Accounts. The Chair of that Committee, Elizabeth Kikkert MLA, advised the Legislative Assembly on 31 May 2023 that the Committee had also resolved not to undertake an inquiry into the Enabling Bill (ACT Legislative Assembly Hansard, [31 May 2023](#), p P1358). However, it was free to do so, had it chosen to.

## Assembly accountability mechanisms

There are other mechanisms through which the Legislative Assembly maintains accountability of the Executive, and which have been in evidence during the consideration of the Enabling Bill and the transition to public ownership that it supports.

These have included:

- The Assembly's Standing Committee on Health and Community Wellbeing is undertaking an Inquiry into Recovery Plan for Nursing and Midwifery Workers. This inquiry held a public hearing on 14 June 2023. At this hearing, the northside hospital transition was discussed with a number of witnesses, including the Australian Nursing and Midwifery Federation ACT, Minister Stephen-Smith and officials.
- The Assembly will hold Budget Estimates hearings between 17-31 July 2023, where Members of the Legislative Assembly will be free to ask questions about the decisions regarding the North Canberra Hospital and the transition process.
- Questions have been asked and answered in Question Time and questions have been placed on notice by Members of the Legislative Assembly, which have been and are being responded to.
- There is nothing to prevent the Legislative Assembly from referring the operation of the Enabling Act and related matters to one of its committees for inquiry and report, should it wish.

## Conclusion

The Self-Government Amendment Bill disregards the established self-government mechanisms on the Australian Capital Territory and seeks to create an inquiry that the majority of elected members of the ACT Legislative Assembly have so far concluded that they do not want and did not seek to create. The Self-Government Amendment Bill ignores existing mechanisms for deliberation, accountability, transparency and debate that have operated as intended. It instead attempts to interfere in the ACT's self-government and to impose a poorly defined requirement that undermines the Assembly's decisions on when and how to consider, scrutinise and pass legislation and is, on its terms, inconsistent with the principles of responsible government.

The ACT Government requests the Senate Legal and Constitutional Affairs Legislation Committee to recommend that the Self-Government Amendment Bill **not be passed**.