

Submission - Australian Capital Territory (Self-Government) Amendment Bill 2023

1 Introduction

- 1.1 This is a submission by Calvary Health Care ACT Limited ACN 105 304 989 (**Calvary**) in response to the Legal and Constitutional Affairs Legislation Committee's call for submissions in relation to the Australian Capital Territory (Self-Government) Amendment Bill 2023 (**Amendment Bill**).
- 1.2 The Amendment Bill would require the Government of the Australian Capital Territory (**Territory**) to conduct an inquiry into the *Health Infrastructure Enabling Act 2023* (ACT) (**Act**), and to report before 30 June 2024.

2 Executive summary

- 2.1 The compulsory acquisition of the Calvary's public hospital land and assets situated in Bruce (**Public Hospital**) by the Territory has proceeded in regrettable circumstances marked by a complete lack of consultation, manufactured urgency, disregard for significant health system risks and indifference to employee rights. The action of the Territory is unprecedented and has caused significant distress to employees, placing the reputation of a national, trusted, healthcare provider at risk. The Territory's suspension of usual legislative chamber processes gives rise to broader sovereign risk issues which merit closer consideration.
- 2.2 Calvary's position may be summarised as follows:
- (a) since 1979, Calvary has worked hand-in-hand with the Commonwealth and Territory to diligently and faithfully serve the Australian Capital Territory and its people, having been operating at Bruce for approximately 44 years and some 11 years before the Territory established its self-governance;
 - (b) Calvary was not informed or consulted about the Territory's intention to compulsorily acquire the Public Hospital *and* terminate its contract to operate the Public Hospital. Calvary was provided the draft of the *Health Infrastructure Enabling Act 2023* (ACT) (**Act**) and *Health Infrastructure Enabling Regulation 2023* (**Regulation**) two days before they were tabled in the Legislative Assembly;
 - (c) Calvary had been negotiating in good faith with the Territory the arrangements in respect of the redevelopment of the Public Hospital. These discussions proceeded on the basis that Calvary would continue to operate the Public Hospital. The parties last exchanged substantive correspondence on the issue in November 2022. Calvary did not receive a substantive response to its correspondence. Rather, it was notified on 8 May 2023 of the Territory's intention to compulsorily acquire the Public Hospital including termination of its contract;
 - (d) the unilateral actions of the Territory to compulsorily acquire the Public Hospital took Calvary and its now former employees by surprise, particularly in light of Calvary's successful relationship with the Commonwealth and Territory for the last four decades;
 - (e) at that time of the acquisition, the Crown Lease in respect of the land upon which Calvary operated the public and private hospital facilities as well as the network agreement pursuant to which Calvary operated the Public Hospital would have had approximately 75 years left;
 - (f) the rationale for the acquisition and transition of the Public Hospital has not been properly explained. Calvary has not been presented with any clear reasoning or data capable of supporting the Territory's claims with respect to 'system efficiencies' to be generated by the acquisition. While claims have been made by the Territory about the benefit of a single government provider, no substantial evidence has been tabled to demonstrate benefit to the community. The Territory had not previously raised issues of 'system efficiencies' with Calvary either during the parties' good faith negotiations with respect to the re-development of the Public Hospital or during the parties' regular operational discussions;
 - (g) the Act and the Regulation contain provisions which, in Calvary's view, seek to quarantine and minimise the compensation which may be payable to Calvary. Calvary is concerned

to ensure that it is appropriately compensated for the rights and assets which have been acquired. These are matters of considerable complexity;

- (h) the conduct of the Territory has damaged Calvary's reputation and is expected to result in economic loss for its broader private operations including that of the Bruce Private Hospital, Hyson Green Private Mental Health, John James Hospital and the Canberra Clinic. These are vital services for the community in which Calvary has invested hundreds of millions of dollars; and
- (i) Calvary is a mission-based organisation. The acquisition of the Public Hospital has considerably impaired Calvary's ability to deliver its mission in the Territory.

- 2.3 Although Calvary has found itself in extraordinary circumstances, it has at all times prioritised the interests of its patients, staff and the community. Accordingly, Calvary has deployed considerable resources and efforts (which has impacted other parts of its national operations) to comply with its obligations under the Act and to minimise the disruptive impacts of the transition process.

3 Background - Calvary and its mission

- 3.1 Calvary is a public company limited by guarantee and operates on a not-for-profit basis. It is a registered charity with the Australian Charities and Not-for-profits Commission (**ACNC**) and is part of an ACNC approved reporting group under the Little Company of Mary Health Care Limited (**Little Company of Mary**).
- 3.2 The Little Company of Mary is part of a group of entities which includes Calvary. The group is collectively referred to as **Calvary Group**. The Calvary Group and its mission draw their roots from the charitable work carried out by a group of six Sisters who arrived in Sydney in 1885 to continue the mission of the Venerable Mary Potter and the Sisters of the Little Company of Mary to care for those in need.
- 3.3 The Calvary Group provides acute health services through private and public hospital facilities, sub-acute services, palliative care, residential aged care, independent retirement living, home care services and virtual care.
- 3.4 The Calvary Group's purpose is the maintenance and enhancement of the overall quality of life, dignity and well-being of every individual needing care, particularly at the most vulnerable times of their life.
- 3.5 The Calvary Group has over 18,000 staff and volunteers and a national network of 13 public and private hospitals, 72 residential care and retirement communities and 19 community care service centres. It operates across seven States and Territories within Australia.

4 Background - History of Calvary's service on the Bruce Site

- 4.1 Since 1979, Calvary has worked hand-in-hand with the Commonwealth and Territory to serve the Australian Capital Territory and its people, having operated the public hospital at Bruce for approximately 44 years and some 11 years prior to the Territory becoming self-governed (as to which, see below).
- 4.2 In 1966, the then-Prime Minister, the late Mr Harold Holt CH, sent a letter to the then-Archbishop of Canberra and Goulburn in relation to offering financial assistance to the Little Company of Mary in erecting and running a Catholic hospital in Canberra. The arrangements were that the Commonwealth would assist in funding the construction of the hospital on a \$3 for \$1 basis.
- 4.3 In 1971, the Commonwealth Government and the Corporation of the Little Company of Mary reached an agreement in relation to the operation of a public hospital in north Canberra. Construction then commenced for what would become the Public Hospital at Block 1, Section 1 Division of Bruce (**Bruce Site**). The Public Hospital is presently situated at 5 Mary Potter Circuit, Bruce. The public hospital is co-located with the Calvary Private Hospital. Together, these hospitals and their associated facilities are sometimes referred to as the Bruce Health Precinct.
- 4.4 On 2 March 1979, the Public Hospital was opened. On 9 April 1979, an agreement was entered into between the Commonwealth of Australia, the Corporation of the Little Company of Mary, Calvary Hospital ACT Incorporated and the Capital Territory Health Commission which, among

other things, provided for Calvary to take over the operations of the public hospital in place of the Corporation of the Little Company of Mary.

- 4.5 On 11 May 1989, the Australian Capital Territory established itself as a self-governing territory within the Commonwealth of Australia. This resulted in Calvary's agreement with the Commonwealth being transferred to the Territory.
- 4.6 On 16 November 1999, a Crown lease was granted to Calvary Hospital ACT Incorporated (which later was converted under the *Corporations Act 2001* (Cth) to a public company limited by guarantee) (being Calvary) (**Crown Lease**) with a 99-year term over the Bruce Site. Subsequently, the Territory entered into an agreement with Calvary for Calvary to construct and operate the Public Hospital which was known as 'Calvary Public Hospital'.
- 4.7 On about 7 December 2011, Calvary and the Territory entered into the Calvary Network Agreement (**CNA**), a Precinct Deed (**Precinct Deed**) as well as a Deed of Variation of Private Hospital Agreements. This was signed by the then Chief Minister of the Territory, Katy Gallagher.

5 Background – the former Calvary Public Hospital

- 5.1 On 3 July 2023, the former Calvary Public Hospital was compulsorily acquired by the Territory.
- 5.2 The Public Hospital is one of three public hospitals in Canberra. The other two hospitals are the Canberra Hospital, located in Garran, and the University of Canberra Hospital. The Canberra Hospital has approximately 670 beds and is a tertiary teaching hospital. It provides similar services to the Calvary Public Hospital. The University of Canberra Hospital is relatively small, only having approximately 140 beds, and acts as a specialist centre for rehabilitation, recovery and associated research.
- 5.3 The Public Hospital has approximately 270 beds and is a general hospital which provides a 24/7 emergency department, intensive and coronary care services, medical and surgical inpatient services, maternity services, palliative care services as well as specialist outpatient clinics. It is also a teaching hospital.
- 5.4 As part of the obligation within the CNA and Precinct Deed that Calvary agreed with the Territory, in 2018 Calvary built, through its own funds, a 150 bed, 7 theatre Private Hospital (**Calvary Private Hospital**). The total investment made by Calvary, on the basis of its long term arrangements was over \$100 million. The business case for this investment was predicated on the longevity of Calvary operation of the co-located Public Hospital.
- 5.5 The Public Hospital and the Calvary Private Hospital are currently situated on the land identified in the current Crown Lease. They are co-located and physically joined by an airbridge. Calvary Private Hospital operating theatres are currently being used to support the function of the Public Hospital following a fire in late 2022.
- 5.6 Immediately prior to the compulsory acquisition, the Public Hospital had approximately 1,800 staff and was party to hundreds of contracts (including leases).
- 5.7 The Public Hospital was a substantial operation. Its revenue from operations in the 2021/2022 financial year was in excess of \$320 million with an operating surplus in excess of \$6 million.

6 Timeline of events

6.1 Correspondence in the period April 2022 to January 2023

- 6.2 Calvary sets out below the timeline of events leading to the Territory's compulsory acquisition of Calvary's public hospital.
- 6.3 In April 2022, Calvary received a letter from the Territory's Minister for Health, Ms Rachel Stephen-Smith MLA (the **Minister**), regarding the Territory's intention to build a new public hospital in north Canberra on the Bruce Site. The proposed facility has been referred to as the **New Northside Hospital (April 2022 Letter)**.
- 6.4 Calvary and the Territory subsequently corresponded in relation to the matters outlined in the above letter and, in the period between about May 2022 to November 2022, met on over 15

occasions to discuss the Territory's intentions. During the course of these discussions, the Territory's interests were represented by the ACT Health Directorate. These discussions did not result in a clear agreement.

- 6.5 On 14 September 2022, Calvary received a letter from the Minister referring to the parties' negotiations regarding the Territory's intentions. This letter proposed that further negotiations between the parties take place in relation to the Territory's proposal to construct the New Northside Hospital. It was proposed that certain land comprising the Bruce Site, being the land on which all current and future public health services and support services are located but excluding the land used by Calvary for the operation of the Calvary Private Hospital and associated facilities (**Public Hospital Land**), be transferred to the Territory and that the Territory would negotiate with Calvary the compensation for the transfer. It was also proposed that the Territory construct the New Northside Hospital on the Bruce Site and offer Calvary a modern services agreement for the operation of the new hospital with a 25-year term.
- 6.6 On 28 November 2022, Calvary sent a letter to the Minister (a copy of which is **attached**). The key tenets of this letter were:
- (a) Calvary was prepared to work with the Territory to meet the objectives set out in the April 2022 Letter;
 - (b) the September letter requested more than what was originally discussed through the discussions April – September 2022; and
 - (c) Calvary could not accept a 25 year contract (reducing its current arrangements by 51 years).
- 6.7 It should be noted that nowhere in these letters or discussions was greater system efficiency ever discussed with Calvary or raised as a concern. Had these matters been raised, Calvary would have afforded them due consideration and responded accordingly.
- 6.8 On 10 January 2023, Calvary received correspondence from the Minister acknowledging Calvary's letter of 28 November 2022 and indicating that the Territory was considering its contents. Calvary did not receive any further correspondence from the Territory in relation to these matters until 8 May 2023. Insofar as Calvary was aware, in the period 10 January 2023 to 8 May 2023, the Territory was considering the matters set out in Calvary's 28 November 2022 correspondence. Calvary repeatedly sought updates from the ACT Health Directorate and the Minister and were informed that the issue was being considered by Cabinet and is subject to the budget process.
- 6.9 **Calvary first learns of the compulsory acquisition**
- 6.10 On 8 May 2023, Martin Bowles, CEO of Calvary Group, attended a meeting with the Minister together with Mr Ross Hawkins who is Calvary's Regional Chief Executive Officer – ACT. During the course of this meeting, the Minister handed to Mr Bowles a letter from Mr Andrew Barr MLA, the Territory's Chief Minister, and the Minister. By this letter, Calvary was advised for the first time that the Territory had resolved to introduce legislation to acquire the Public Hospital, including the Public Hospital Land.
- 6.11 On 9 May 2023, Calvary sent a letter to the Chief Minister and the Minister. In this letter, Calvary made it clear that:
- (a) the short timeframe in which the Territory proposed to transition the operations of the Public Hospital from Calvary to ACT Health (i.e., by 3 July 2023, being less than 8 weeks from the date on which Calvary was notified of the Territory's intentions) would put patients and staff at risk;
 - (b) Calvary would expect that the period to transition given the operations the size and complexity of the Public Hospital from one service provide to another service provider would be at minimum 12 months;
 - (c) the transition timeframe imposed by the Territory appeared to be arbitrary and would not allow sufficient time to complete the actions necessary to effectively transition the services without compromising patient and staff safety;

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- (d) the matters identified by the Territory as relevant to the transition process were incomplete and Calvary outlined further matters which required further planning and discussion; and
 - (e) staff would be required to be properly consulted and supported throughout any operational changes and the proposed transition timeframe did not allow for effective engagement with the staff of the Public Hospital, effectively undervaluing the significant efforts of the workforce in running essential health services. In particular, Calvary emphasised that an absence of consultation or its poor execution could sound in poor staff attrition.
- 6.12 Calvary also noted that it estimated that it had hundreds of contracts, including leases, which would need to be properly identified and managed. To demonstrate the impracticability and considerable risks of the proposed transition timeframe, Calvary set out a sample workflow demonstrating that an extended period of time would be required to carry out the transition.
- 6.13 On 10 May 2023, Calvary received correspondence from the Minister enclosing a copy of the *Health Infrastructure Enabling Bill 2023 (Bill)* and the Regulation.
- 6.14 Also on 10 May 2023, the Minister held a press conference at which the Minister announced the Bill and the Regulation.
- 6.15 Importantly, Calvary was not provided with an opportunity to comment on the Bill and the Regulation prior to their presentation.
- 6.16 On 11 May 2023, the Bill and the Regulation were introduced to the Legislative Assembly. Resolutions were passed to suspend ordinary processes of the Legislative Assembly.
- 6.17 On 11 May 2023, Canberra Health Services (**CHS**) started a deliberate and pre-planned campaign to attract Calvary staff to 'sign up' and transition them to CHS despite there being no legislation in place to support this. The conduct of CHS gave rise to considerable confusion among staff as the campaign appeared not to differentiate between persons employed at the Public Hospital and other staff working at the Bruce Health Campus. Calvary's demands that CHS cease and desist were not complied with.
- 6.18 On 31 May 2023, the Bill was debated in the Legislative Assembly and passed on the same day.
- 6.19 Also on 31 May 2023, Calvary commenced proceedings in the Supreme Court of the ACT seeking a declaration that the Act and the Regulation were both invalid.
- 6.20 On 2 June 2023, the Bill was notified in the Legislation Register and commenced as the Act. The Regulation also came into effect on the same day, however some of its terms had been amended since the Regulation was first provided to Calvary.
- 6.21 To the extent the Territory had developed acquisition and transition plans, those were developed without Calvary's input and Calvary was not aware of their existence until the Territory exhibited the same as part of the affidavit evidence on which it relied in the proceedings.
- 6.22 On 9 June 2023, the Supreme Court of the ACT made findings with respect to Calvary's challenge to the validity of the Act.

7 Calvary's response to the Territory's conduct

- 7.1 Calvary has a long and established history of providing health services to the Canberra community for over four decades, initially partnering with the Commonwealth and subsequently the Territory.
- 7.2 Calvary considers the Territory's conduct as grossly unfair and unprecedented. In Calvary's view, the Territory has disregarded the significant contribution Calvary has made to the Canberra community and the legal commitment both parties made in agreeing the terms of the CNA.
- 7.3 Calvary is astonished that the Territory proceeded with such unexpected and unilateral conduct which has material implications for Calvary, its former and continuing staff as well as the Canberra community, without any prior consultation with those parties. Calvary is surprised that the Territory would treat its long-term partner, with over 44 years of provision of health services, in this manner.

It is difficult to reconcile the Territory's conduct with the parties' prior lengthy history of collaboration and the good faith in which both parties appeared to enter negotiations in May 2022.

8 Inefficiencies

- 8.1 The Territory has suggested that the current model of split public health service delivery in the Territory results in inefficiencies and restricts the ability of the Territory's public health system to respond dynamically to public health requirements, including in emergency situations.
- 8.2 Calvary strongly rebuts the Territory's position.
- 8.3 The Territory has not discussed the issue of structural inefficiencies with Calvary.
- 8.4 The operation of Calvary Bruce Public has always been a part of the Health system in the Territory. This has included cross-territory senior committees, operational management of the health system and the response to Calvary Public Hospital theatre fires. When any operational issues have been raised, both Calvary and the Territory have collaborated to address them. The Territory has not informed Calvary of any concerns regarding the alleged current inefficiencies in the Territory's public health system or areas of focus that could lead to immediate greater efficiency in the last 18 months.
- 8.5 There is an open question as to what, if any, efficiencies will be realised through the Territory's compulsory acquisition of the Public Hospital and the transition of its operations from Calvary to the Territory. It may be appropriate to examine whether the structural savings outlined by the Territory in support of its conduct rely on sound estimates. This is particularly so in circumstances where approximately 70% of the Public Hospital budget related to staffing costs, and the balance to contracts (some of which were with the Territory).

9 Poor Planning

- 9.1 Since Calvary was advised on 8 May 2023 of the Territory's intention to pass the Act and the Regulation, it has on a number of occasions squarely raised with the Territory its concerns regarding the acquisition of the Public Hospital and the transition of its operations to the Territory. Some of this correspondence has been detailed above in paragraph 6.11. It is clear to Calvary that the acquisition and transition have proceeded under a cloud of manufactured urgency – in Calvary's view, the Territory has failed to advance any compelling reasons for the pace which it has set and the clandestine manner by which these events were brought about. To the extent the Territory has suggested that it timed its actions to provide certainty to the staff of the Public Hospital and the community, the matters set out in section 10 below suggest the opposite is in fact true.
- 9.2 Calvary's examination of the transition planning documents (which it obtained for the first time on 6 June 2023 in the context of the above legal proceedings and which have since been read in open Court) indicates that the transition plan was based on a number of assumptions which had not been verified with Calvary. This, in Calvary's respectful submission, is symptomatic of an entirely short-sighted approach on the part of the Territory.
- 9.3 Notwithstanding the considerable challenges posed by the Territory's lack of open consultation, Calvary and the Calvary Group have spared no effort in ensuring that the transition is effected with as little impact on staff, patients and the community as possible.

10 Impact on Staff

- 10.1 The impact of staff on this transition has been significant. There has been no opportunity to properly consult staff about the acquisition and transition process. The compulsory acquisition and transition process has largely deprived staff of their agency, including by effectively forcing staff to

make decisions regarding their future employment in an impracticably short timeframe dictated by the Territory.

- 10.2 As at the date of this submission, there are still over 200 employees whose employment position is uncertain.
- 10.3 Staff commentary has been clear regarding the Governments approach. Below are excerpts from the numerous emails and letters staff have sent to Calvary leadership:

"I have had a working connection with Calvary for the past 22 years, with a short stint of 2 years in the Health Directorate. I chose to return to Calvary from the health directorate due to incompetency's in management of the health director, blatant ignorance of bullying and harassment. Being a gay man, I can honestly say I felt less welcome in the Health Directorate than I ever did at Calvary, in fact as a gay man I feel extremely welcomed within the public hospital and with management across the Calvary organisation."

"As a collective of senior nurses we write in response to the recent announcement of the Government's intention to compulsorily acquire Calvary Public Hospital, with Canberra Health Services (CHS) assuming governance.

The way in which this has been done reflects poorly on the highest levels of leadership within the territory. To allow the majority of Calvary's 1800 staff to find out about this via social media was absolutely disgraceful. Clearly this had been in covert planning for quite some time. The level of complicity in this deception speaks to a some-what disturbing ethical code and leaves us with many questions related to your party's ideology.

The arrogance of making and releasing you tube videos and transition websites by CHS prior to this decision even going to the legislative assembly makes an absolute mockery of democratic process and was so disrespectful to the staff of Calvary Public Hospital. The subsequent misinformation and mixed messages that have ensued following the announcement, fed by the inability to present staff with a clear and transparent plan for what this all means, is incredibly unfair.

Culture has supposedly been high on the public hospital agenda since the 2019 culture review and in one surprise announcement all the work that has been done in this space since that report was issued has been undermined. It has certainly convinced us that the culture of CHS – described as toxic, even by its own employees – is a direct reflection of the values and behaviours that stems all the way to the top, and that the culture review was nothing but a box ticking exercise. If you are familiar with the Speak Up for Safety Program, one of the programs rolled out in public health in response to the Culture Review, then you should recognise this letter for what it is, an attempt to call a Safety Code on what is currently happening in our public health system and the process by which it has been allowed to happen.

As members of the Canberra community it concerns us hugely that we have now set a precedent for due process to be bypassed, for consultation to be bypassed, in order to facilitate the government to do as it pleases. It concerns us that the appointment of a whole team of transitional staff at CHS (many of whom are nurses) has occurred with no consideration for the principles related to fair and transparent recruitment processes as outlined in the nursing and midwifery EBA."

"The ACT government really needs to explain why staff haven't been adequately consulted and informed. It is not in our interests to transition quickly and haphazardly! I do fear that important processes will be missed during the transfer!"

11 Clare Holland House

- 11.1 Since 2001, Calvary has been operating Clare Holland House, a highly valued and specialised inpatient palliative care service where a specially trained team cares for people with a life-threatening illness. Clare Holland House is the epitome of Calvary's mission and values.

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- 11.2 Calvary had hoped to continue to operate Clare Holland House given the importance of palliative care service delivery within Calvary's mission framework. Initially the Territory appeared not to have a clear vision for the future of Clare Holland House following the acquisition of the Public Hospital. Following a meeting between Calvary staff and the Minister, Calvary was offered the opportunity to keep operating Clare Holland House. Calvary was initially offered a 7-year contract which required Calvary to offer public sector arrangements to its employees.
- 11.3 As Calvary worked through these considerations and the transition program, it became clear that the level of integration between Clare Holland House and the Public Hospital meant it was unviable for Calvary to continue to operate Clare Holland House on a standalone basis. This was not an easy decision to make, but focused on Calvary's core belief of putting patients and staff first. Accordingly, Calvary agreed with the Territory after the passage of the Act and the Regulation that the Territory would also take over the operations of Clare Holland House.
- 11.4 The loss of Clare Holland House weighed heavy on Calvary and its Board. Having operated the palliative care service in the Territory for a long time, Calvary had developed specialist palliative care service in Canberra to what is widely recognised as National best practice. Calvary has been at the forefront of pioneering palliative care services in the Territory, not least due to support for the dying patients at their most vulnerable being at the core of Calvary's mission.
- 11.5 Given the very late agreement by the parties regarding the operation and assets of the Clare Holland House, there remain many issues in relation to this service that are not clearly dealt with in the Act and Regulation, specifically in relation to assets and intellectual property rights. These will need to be the subject of further communications between Calvary and the Territory.

12 Concluding Remarks

- 12.1 In light of the matters set out above, Calvary is supportive of an inquiry into the Act and the Territory's conduct regarding the acquisition and transition of the Public Hospital to the Territory.
- 12.2 Calvary remains deeply concerned by the clandestine manner by which the acquisition and transition were orchestrated. These events create a dangerous precedent for departure from usual parliamentary scrutiny and due process. The marked absence of consultation and the self-induced urgency gave rise to considerable patient and community risks.

28 November 2022

Ms. Rachel Stephen-Smith MLA
Minister for Health, Minister for Families and Community Services
& Minister for Aboriginal and Torres Strait Islander Affairs
GPO Box 1020
Canberra ACT 2601

Dear Minister Stephen-Smith

RE: Development of Northside Hospital

Thank you for your correspondence sent on 14 September 2022 and our meeting on the 21 November 2022.

Calvary Health Care ACT Limited (**Calvary**) has a long and established history within the Territory, providing health services since 1979. As an organisation, we pride ourselves on the ability to deliver essential support to those that need it most. Our mission of '*being for others*' resonates for us as much today as it did at the founding of our organisation in 1877; serving communities remains at the core of who we are and what we value.

Calvary has been serving the ACT community for 43 years and we have been working closely with the ACT Government for 33 of those years. Since self-government, Calvary has been an essential partner for the ACT Government and we are proud of what we have achieved together in support for the people in the ACT and the north of Canberra. I acknowledge that at times this relationship has been complex, but Calvary and the ACT Government have always found a way to work through any of these complexities, in our collective commitment to providing the best possible services to the community of the ACT. We seek to continue that commitment in the matters outlined below.

In 2011, Calvary and your Government entered into our current agreement. The Calvary Network Agreement (**CNA**) established the governance and performance framework for our operations. The CNA, signed at the time by the Chief Minister Katy Gallagher, agreed to align the services that Calvary provides with the remainder of the length of the lease to land that was leased to us by the Commonwealth.

The CNA and the Lease between Calvary and the ACT Government still has 76 years to run and Calvary is committed to delivering on our obligations for the duration of that tenure.

The CNA has commitments to be delivered by both Calvary and the ACT Government. Both parties have benefited through this certainty. For example, Calvary has invested significantly in developing the Calvary Bruce Private Hospital next to the Calvary Bruce Public Hospital.

We have also both worked together to provide a new carpark on the Bruce site for the Public Hospital. Both of these have been possible because of the strength of our agreement and the acknowledged benefit of investing for the long term.

It is worth noting that the CNA already considers asset replacement and expansion including a new hospital on the Bruce site as part of a broader precinct plan. The CNA sets out:

Section 12 - Precinct Deed

12.1 The parties acknowledge that they have entered into the precinct deed which contemplated the entry into a precinct master plan for purposes including the following:

- (a) the development of the land, including the development of a multi-storey carpark facility;*
- (b) the renovation, replacement or rebuilding of the public hospital;*
- (c) the allocation of an area of the land which may be used by Calvary or its related body corporate at some future date to develop a private hospital and/or related services.*

Despite the CNA and Precinct Deed already providing the agreement to redevelop the Public Hospital, we approached the negotiation process in good faith, to continue to support the ACT Government and the people of Canberra, as has been the case for 43 years.

In your letter sent on the 21 April you requested that we work on a solution that includes:

- ACT Government title to the land on which the hospital sits including future expansion areas and space for increased public services over time;
- ACT Government delivery of the construction project (through Major projects Canberra); and
- An updated modern services agreement for the operation of a new Northside hospital.

Through the negotiations with my team, I believe we delivered in good faith against each of these criteria for you:

- While it is not Calvary's preferred solution, we provided ACTHD a pathway through which title could be provided to the ACT Government for just under 4 Hectares of land on the Bruce site. This land would be more than suitable for a new public hospital and include opportunities for further expansion. It should be noted that the ability to facilitate transfer of title is inextricably linked to the tenure of Calvary being able to operate the hospital on the site.
- Calvary has a demonstrated track record in the efficient and effective design and construction of hospitals in Canberra, Adelaide and Melbourne in the last 8 years with others in development in Launceston, Sydney and the northern suburbs of Adelaide. We have had the opportunity to show you our facility in Adelaide which was built in 3 years and cost \$350M for a 350-bed hospital. Against a backdrop of current cost estimates of over \$1Bn and completion by the end of the decade, Calvary could deliver the hospital faster and cheaper for you. We have also offered the ACT Government the option to offset the high cost of capital within the operating payments to Calvary (over the short or long term). We believe this could assist you in reducing the overall cost associated with the construction of the new hospital which would allow the Government to invest in other necessary capital intensive projects. We appreciate that ACT Government decisions on delivery mechanisms will form part of your business case to Cabinet, including value for money cost assessments including the benefits that will be yielded for the community we serve.
- In terms of the 'updated modern services agreement', while the current agreement already provides for the inclusion of the proposed development; we are open to reviewing a number of areas of the agreement. We have indicated our willingness to look at future governance, performance planning, KPI's and termination clauses. It also provides the opportunity to remove elements that are no longer relevant due to the performance of Calvary's obligations (such as the delivery of the private hospital), and amend elements that are relevant given Government changes (such as the relationship with Canberra Health Services). These

changes can occur *via amendment* to the CNA, and as contemplated by the CNA, and we do not need a new agreement, which will save time.

- We also clarified that Calvary would not accept any position that could be considered ‘compulsory acquisition’. Calvary sees itself continuing to provide important patient services which we have been delivering for well over 40 years, both in Canberra and around Australia. If the ACT Government were to pursue this approach, we would need to cease our collective deliberations and we would seek to challenge any attempt to acquire the land on which we operate. If this option was pursued it would be extremely damaging to all parties involved.

Therefore, I was somewhat surprised by your letter of the 14 September. From a position where we believed we could offer the ACT Government what you were seeking, your current request causes us some difficulty.

In particular:

- The land you requested is far more than what has been discussed or foreshadowed in the extensive meetings which have occurred between our teams and more than what is required for the new public hospital and expansion space. This request ignores and thus prevents Calvary’s aspirations for the site including our future planning which was based on the certainty that our existing agreement provided;
- The tenure you offer us would see a reduction of 51 years from our current agreement. This is a significant reduction in the scope of our current contract without any tangible reference to recompense. Your letter doesn’t provide any rationale for this reduction and fails to recognise the significant investments we have made on the basis of an existing contract and;
- Despite the agreement to negotiate constructively with a view to achieving a mutually agreeable outcome under Item 6 of the negotiation protocol and the obligation to act reasonably in good faith under the CNA, the ACT Government position in your 14 September letter does not illustrate any shift in position from your initial letter of 21 April and genuine consideration of the commercially sensible and mutually beneficial compromises presented by Calvary.

I have discussed your proposition with the Calvary Board and it is unanimous in its opinion that they are unable to accept your current proposal.

To be clear, Calvary’s position is as follows:

- Calvary is committed to a continued positive relationship with the ACT Government to support the people of Canberra. We currently have a 76 year arrangement with you to do this.
- We are willing to facilitate the transfer (on just terms) of the title to the almost 4 HA of land, that was discussed in our good faith negotiations adjacent to Haydon Drive. This will enable the building of a new hospital, and allow for expansion space for future services. We remain flexible to support the exact composition of your requirement and we are willing to work with you; however we do not support the totality of the land inside the “ring road” being transferred. Facilitating any transfer would be inextricably linked to maintaining tenure as it is set out in our current agreement.
- We need commitment by both parties to the development of the Precinct Master Plan. While detailed in 2011, this has yet to be delivered and agreed by both parties. The formalising of this Plan will provide greater clarity on the long term utility of the site and ensure we have a vibrant healthcare hub at Bruce with a collaborative mix of public and private facilities to provide services to the people of Canberra.

- We agree to collaboratively amend the CNA in accordance with the position presented by Calvary in its negotiations with the ACTHD to achieve a contemporary performance agreement including working on revised governance, performance standards and KPIs. The CNA must be positioned to support the broader stewardship of the ACT Health Network, including the division of support between Calvary and CHS. This will need to ensure that Calvary continues to be the primary provider running and operating the Northside public hospital.
- While our legal advice is that there is no need from contractual or procurement perspective to retrospectively apply current legislation, we are conscious of the ACT Government's approach to its industrial relations framework including insourcing. To support this we will continue to support our current alignment with the ACT Government on pay for clinical and administrative staff; we also believe that we could bring in house cleaning and catering staff, which may assist you with the broader alignment to your industrial approach.
- Regardless of who the ACT Government decides will build the facility, as the future operator we insist on a commitment from the ACT Government for Calvary to have an equal voice in design considerations facilitating the involvement of our health practitioners to ensure there are no unintended downstream consequences for workforce staffing and funding models. This is ultimately for the benefit of patients, staff and the ACT Government as it will assist in the efficient and effective delivery of services at the new hospital.

As I highlighted when we met, I am of course more than happy to discuss the details of this with you.

Yours sincerely,

Martin Bowles AO PSM
National CEO, Calvary

CC: Mr. Andrew Barr, Chief Minister