



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

Submission by Archbishop Christopher Prowse on behalf of the Archdiocese of Canberra and Goulburn.

I thank the Senate for the opportunity to provide some level of official public scrutiny of the ACT Assembly's passage of the *Health Infrastructure Enabling Act 2023 (ACT)*. This submission has three sections: an Introduction setting out the issues as I understand them to be; some commentary on some of these issues from the perspective of the largest non-government employer in the ACT and one heavily reliant on relationships with Government to offer services; finally, observations about the benefits of this proposed Amendment to the Self-Government Act.

It should be noted that Calvary Health Care, the entity which operated the former Calvary Public Hospital is operated by Calvary Ministries, a public juridic person within the Catholic Church but legally and canonically distinct from the Archdiocese. Therefore, this submission is as the Archbishop of Canberra and Goulburn and does not purport to represent the views of either Calvary Health Care or Calvary Ministries.

Introduction

1. As is now well known, the purpose of this Act was to compulsorily acquire Calvary Public Hospital, the land on which the public hospital stands and to nullify a contract to operate the hospital. The purported rationale was to enable the ACT Government to fulfil its election commitment to commence a new northside public hospital during this term of the Assembly.
2. The effects of the Act are chilling in terms of public policy and public accountability:
 - a. The ACT Government ceased good faith negotiations in November 2022 and, despite requests from Calvary Health Care, did not re-engage until 8 May when Calvary Health Care were informed of the decision to introduce a Bill to give effect to the acquisition in three days' time.
 - b. In introducing the Bill to the Assembly, the Minister indicated that the Assembly's normal accountability processes, including an Assembly Committee inquiry with public hearings and a Report to the Assembly prior to the passage of legislation would be abjured. The grounds for this was that the Act would certainly pass given the Government's commitment to its passage.
 - c. The Act acquires not only the property but also nullifies a long-term Government contract.
 - d. Details of 'just terms' compensation are determined to be negotiable only after the acquisition has taken place.



3. For the ACT Community there are several public interest concerns with this process:
 - a. Scrutiny of Government claims has been unable to be tested:
 - i. That it was not possible for the Government and Calvary Health Care to negotiate for a new public hospital broadly within the terms of the existing ownership and business contract;
 - ii. That public investment requires public ownership;
 - iii. That the acquisition will lead to improved outcomes for ACT Health;
 - iv. That there were ecclesial obstructions to further collaboration and joint operations of a new public hospital.
 - b. The loss of a like-for-like comparator to provide for options and the capacity for improved outcomes.
 - c. The avoidance of public scrutiny of substantive claims related to the proposed new hospital: for instance that the cost associated is in the order of \$1 billion for construction, given the Government had been provided with proof that Calvary Health Care had already delivered a similar facility for the South Australian Government at much less than 50% of that cited amount. Secondly, that this Act creates no precedent for other jurisdictions, nor for other contractual agreements between service providers and government in the ACT.
 - d. The impact on people of faith who actively seek a faith based provider for public services, whether in health, education or social services. This is especially acute in the provision of pre-natal/maternity services and end-of-life care services.
 - e. The impact on people of faith who seek to be employed in an enterprise that shares their values and commitments.
 - f. The impact on those who regularly engage with Government and who rely on Government for funding and who may now question the validity of any contractual arrangements.
 - g. The impact on all Canberran land owners who may see their property compulsorily acquired with the Government noting, as it has with Calvary Health Care, that the land had been granted at no cost to Calvary with the implication that this may mean limited or no compensation.
4. The Australian Capital Territory is unique in the Australian Constitution. While it shares similarities with other Territories, it is also distinct in many respects. As the 'Seat of Government' land ownership here can never be 'free-hold' – hence it is always subject to leases being varied, cancelled or not renewed.



5. For the same reason it is essential that the ACT Government be subject to higher levels of scrutiny as provided in the Self-Government Act. Unlike other Territories, the 'Seat of Government' can never aspire to Statehood; can never develop its own Constitution; and, necessarily occupies a significant space in the national agenda.

Comments on the Issues

1. Cessation of good faith negotiations: throughout this term of Government negotiations were proceeding between Ministers and the Health Directorate with Calvary Health Care regarding options for a new northside hospital. Calvary's preference was for Calvary Health Care to build and operate the new facility on the current site and within the broad parameters of the extant contract. One area of friction was that ACT Health sought to build the new hospital and to acquire at least a portion of the public hospital land to do so. In November 2022 the Government simply ceased engaging.

As has been well publicized during this controversy, in 2010 the ACT Government (essentially the same ACT Government) entered into a 99 year lease for the land on which the public hospital operated, replacing the former perpetual lease on the site; at the same time, and in order to provide certainty to Calvary Health Care, it entered into a 99 year contract for Calvary Health Care to operate the facility. The effect of the ACT Health Infrastructure Enabling Act is to both acquire the property and nullify the contract. This is not an old and moribund contract – it was only signed 13 years ago by the same Government. Nor was Calvary Health Care in breach of the contract in any way: they provided all services specified in the contract under the terms specified.

Given the unique situation of the ACT, the fact that no-one can own land within the Territory, as well as the heavy reliance of many enterprises on Government contracts, the cessation of good faith negotiations followed by the sudden declaration of Government intent without any of the usual (self-imposed) elements of scrutiny gives rise to serious long term concerns. Can Government contracts be relied on? Can citizens generally assume that their leases will be honoured and renewed?

2. Media has been filled with suggestions that this hostile take-over has religion as a core reason for the Government's actions. I have taken the Government and individual Ministers at their word – this is not predicated on religious beliefs or specific positions on, especially, beginning and end of life issues. That being noted, it does also need to be observed that religion and religious belief are not entirely removed from these actions.



The fact that Calvary Health Care is a religious entity providing services within a specific religious ethos means that these actions will be viewed as part of the landscape of Government interaction with religious entities and with people of faith. In other words, the ACT Government is naïve to suggest that there is no impact for people of faith or for Government relations with people of faith. The fact that in the space of 6 weeks the Act has moved from having a third of public health care and virtually all the public palliative care services offered by a faith-based provider to zero provision by faith-based providers has implications.

Further, this "it has nothing to do with religion" stance is at odds with other Government actions and decisions. A recent Assembly inquiry into the provision of pre-natal services including abortion and giving birth contained errors which were countered by Calvary Health Care but which the Committee refused to correct. During this debate regarding Calvary, the ACT Government permitted significant discussion that implied termination services will be routinely offered at the former Calvary hospital despite the fact that the Minister for Health gave evidence to the Senate in February 2023 indicating that public hospitals did not offer these services and would not offer them in future. The Chief Minister has stated that there would always be a need for spiritually based public palliative care in the Territory, as of today there is none. Later this year it is likely that legislation to introduce Voluntary Assisted Dying will be introduced to the Assembly – this will, on current readings, almost certainly pass. There is a complete lack of recognition from Government that religious and faith-based entities supply significant health and aged care; that parishes and religious bodies offer solace and support to those in their final years. As a result, during the preliminary consultations to inform the Bill, there was no formal engagement with religions as such. It has already been suggested that the VAD Bill will also not require the usual Assembly level scrutiny due to the levels of community support. Again, the views of the community, especially those of people of faith will be removed from the public debate. It appears to many religious leaders as though many ACT Government decisions and practices are designed to exclude them from formal interaction in the public sphere. This is of major concern to me and to other religious leaders.

3. Of substantial concern to all citizens of the Territory are the legislation and other provisions set aside in the course of this acquisition. The Government suspended its own *Standing Orders* which would normally require a prior Assembly Inquiry to report prior to passage of legislation; the legislation itself disallowed the provisions of the Government Agencies (Land Acquisition Reporting) Act 2018; the Government Procurement Act 2001, the Lands Acquisitions Act 1994, the Planning and Development Act 2007; and, the legislation enabled any other Territory law to be prescribe by regulation.



While such exemptions are features of legislation from time to time, it is rare in the Territory that the Government would so actively seek to avoid any scrutiny of this hostile takeover by exempting itself from the very mechanisms of scrutiny designed to assure citizens that appropriate probity, transparency and accountability standards are applied in the Territory.

Given that this has been the situation, the Amendment currently being considered by the Senate would be very appropriate in light of the fact that the Territory Government and the Territory Assembly has demonstrated a willingness to avoid scrutiny. This sense is heightened through the extraordinary haste demonstrated in this acquisition by Government.

The ACT Supreme Court has ruled that the legislation is valid; this does not at all constitute an endorsement of the Government's behaviour and nor does it provide comfort for Territorians that there is scope to investigate the actions of Government as long as it complies with the Self-Government Act.

The Senate, in my view, is acting appropriately in seeking a level of scrutiny in the 'Seat of Government' that cannot be achieved by its citizens acting on their own recognizance.

The timeframe for this Committee Inquiry is likely to be too narrow to permit hearings; however, should hearings be held, I believe that a number of citizens of the ACT would be supportive of that move. I would be willing to appear before the Committee should that be considered valuable.

In conclusion, this proposed amendment does not alter the ACT Legislation; it does not invalidate the acquisition; however, it would require that the ACT Government be held to account to some extent and would enable a degree of scrutiny that has, hitherto, been denied.

Yours sincerely in Christ,

Archbishop Christopher Prowse
Catholic Archbishop of Canberra and Goulburn
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