



# AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

## Bishops Commission for Life, Family and Public Engagement

14 July 2023

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100,  
Parliament House  
Canberra ACT 2600  
legcon.sen@aph.gov.au

Dear Sir/Madam

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

This submission from the Australian Catholic Bishops Conference (the Conference), as prepared by the Bishops Commission for Life, Family and Public Engagement (the Commission), is made to contribute to this inquiry into the *Australian Capital Territory (Self-Government) Amendment Bill 2023*.

More than one in five Australians identify as Catholic. The Catholic Church and its agencies contribute in various ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people to experience the fullness of life. It is concerned with all that impacts on human dignity and wellbeing for the common good.

The Australian Catholic Bishops Conference is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Commission is one of several commissions established by the Conference to address important issues both within the Church and in the broader Australian community. The Commission has responsibility for commenting on public issues, including religious freedom.

The Conference seeks to participate in public debate by making reasoned arguments that can be considered by all people of goodwill.

For simplicity, this submission will refer to Calvary Public Hospital Bruce as Calvary Hospital.

Despite Calvary Hospital's exceptional record of offering quality healthcare to the local community for 44 years, the ACT Government has undertaken a demonstrably poor, rushed and compulsory

acquisition process that, by its nature, increases the risks of change compared to a more orderly negotiated process. There are concerns that the motivation for this action may include the fact that the healthcare provider was Catholic.

Calvary was determined to continue to provide healthcare to Canberrans for the remaining 76 years of its contract.<sup>1</sup> There was no suggestion from the ACT Government that Calvary was not providing quality healthcare or not meeting the terms of its contract.

The decision remains controversial in the Canberra community, and a petition against the compulsory acquisition has garnered more than 45,000 signatures.<sup>2</sup>

A thorough investigation into the ACT Government's extraordinary action is warranted to determine why the forced takeover neglected normal processes including community consultation, why so little time was allowed and why Calvary Hospital received such unprecedented and unfavourable treatment.

### **The Unusual Process of Acquisition**

It is important to consider the unusual process by which the ACT Government compulsorily acquired Calvary Hospital:

- Calvary Hospital says that the ACT Government had not negotiated with it for more than six months before the compulsory acquisition was announced. Calvary supported redeveloping the hospital. The only area of disagreement appears to have been the Government proposal to cut the agreement with Calvary to provide healthcare services from 76 years to 25 years. Calvary national chief executive Martin Bowles said he was open to further discussions on this point.<sup>3</sup> Calvary continued to offer to reopen talks with the Government.<sup>4</sup>
- On 8 May 2023, the ACT Government informed Calvary Hospital management that negotiations were over and that the Government would forcibly acquire and operate Calvary Hospital.<sup>5</sup>
- On 10 May 2023, the ACT Government issued a public announcement about its intentions to acquire Calvary Hospital through the *Health Infrastructure Enabling Bill 2023*, to be introduced

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<sup>1</sup> Martin Bowles, 10 May 2023, *Re: ACT Government acquisition of Calvary Public Hospital Bruce* [media release], Calvary Care, accessed 13 July 2023.

<sup>2</sup> Veronika Cox, 'This is just the beginning, not the end', *Catholic Voice*, 16 June 2023, Accessed 6 July 2023, <https://www.catholicvoice.org.au/this-is-just-the-beginning-not-the-end-senator-pocock-scuttles-senate-inquiry/>

<sup>3</sup> Lucy Bladen, 'Calvary national CEO Martin Bowles speaks out on acquisition of Bruce hospital', *The Canberra Times*, 10 May 2023, Accessed 12 July 2023, <https://www.canberratimes.com.au/story/8191059/quite-devastated-calvary-boss-says-govt-went-quiet-for-six-months/>

<sup>4</sup> Calvary Care, 'Calvary pursuing genuine negotiation with ACT Government', 24 May 2023, Accessed 12 July 2023, <https://www.calvarycare.org.au/blog/media-releases/calvary-pursuing-genuine-negotiation-with-act-government/>

<sup>5</sup> Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 2023, 1196, <https://www.hansard.act.gov.au/hansard/10th-assembly/2023/HTML/week04/1196.htm>

to the Legislative Assembly the next day.<sup>6</sup> The legislation was confirmed to have been prepared in the weeks before the announcement.<sup>7</sup> The acquisition plans included the land, staff and assets of Calvary Hospital, as well as detailed plans for a new hospital to be built on the site. The legislation would also effectively end the contract the Government had with Calvary to provide healthcare services. The announcement did not cite any concerns with the quality of healthcare as motivation for the acquisition. The Government merely stated that negotiations were unsuccessful.<sup>8</sup>

- The *Health Infrastructure Enabling Bill 2023* bypassed the usual requirements of the *Lands Acquisition Act 1994*, which is legislation that sets out how the ACT Government can acquire land by compulsory process, and associated laws as set out in the proposed legislation.<sup>9</sup> For example, the *Lands Acquisition Act* stipulates the need for appropriate compensation before the Government assumes operation, rather than the Government plan to offer compensation afterwards.<sup>10</sup>
- This announcement was made without consultation with Calvary Hospital staff, many of whom found out about the Government's plans for the hospital on social media or through connections at Canberra Hospital.<sup>11</sup>
- The bill was introduced on 11 May 2023. The ACT Government waived the normal requirement of a discussion period, referral to committee enquiry and commission of reports before the Legislative Assembly voted on the acquisition.<sup>12</sup> The requirements of ACT Standing Orders 174 and 175 were suspended. These standing orders mandate that bills be referred to the relevant standing committee and that a "bill cannot be dealt with by the Assembly until the committee has reported."<sup>13</sup> The amendment meant the bill could be debated and passed

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<sup>6</sup>Andrew Barr and Rachel Stephen-Smith, 10 May 2023, *Building a new northside hospital and a more efficient health system* [media release], ACT Government, accessed 12 July 2023, [https://www.cmtedd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/barr/2023/building-a-new-northside-hospital-and-a-more-efficient-health-system](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2023/building-a-new-northside-hospital-and-a-more-efficient-health-system).

<sup>7</sup> Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 2023, 1198, <https://www.hansard.act.gov.au/hansard/10th-assembly/2023/HTML/week04/1198.htm>

<sup>8</sup> Andrew Barr and Rachel Stephen-Smith, 10 May 2023, *Building a new northside hospital and a more efficient health system* [media release], ACT Government, accessed 12 July 2023,

<sup>9</sup> *Lands Acquisition Act 1994* (ACT); Calvary Health Care ACT Limited v Australian Capital Territory (2023) ACTSCFC 1 [https://www.courts.act.gov.au/\\_data/assets/pdf\\_file/0011/2243567/Calvary-Health-Care-ACT.pdf](https://www.courts.act.gov.au/_data/assets/pdf_file/0011/2243567/Calvary-Health-Care-ACT.pdf)

<sup>10</sup> Calvary Health Care ACT Limited v Australian Capital Territory (2023) ACTSCFC 1 [https://www.courts.act.gov.au/\\_data/assets/pdf\\_file/0011/2243567/Calvary-Health-Care-ACT.pdf](https://www.courts.act.gov.au/_data/assets/pdf_file/0011/2243567/Calvary-Health-Care-ACT.pdf)

<sup>11</sup> Newstime Media, 'Nurses write open letter re acquisition of Calvary Public Hospital' *Canberra Weekly*, 27 May 2023, Accessed 7 July 2023, <https://canberraweekly.com.au/nurses-write-open-letter-on-acquisition-of-calvary-public-hospital/>

<sup>12</sup> Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 2023, 1284, <https://www.hansard.act.gov.au/hansard/10th-assembly/2023/HTML/week04/1284.htm>

<sup>13</sup> Australian Capital Territory, Legislative Assembly, Standing Orders and continuing resolutions of the Assembly, 2023, Page 50. [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0005/2160374/Standing-Orders-as-at-1-January-2023.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0005/2160374/Standing-Orders-as-at-1-January-2023.pdf)

before the relevant committee could issue a report, missing an opportunity for scrutiny of the Government's plans.<sup>14</sup> The Legislative Assembly was not due to sit again until 31 May 2023.

- On 31 May 2023, the Public Accounts Standing Committee resolved not to conduct an inquiry into the Bill.<sup>15</sup> Later that day the Bill was passed by the Legislative Assembly.<sup>16</sup>
- On 9 June 2023, the legal case brought by Calvary Health Care against the ACT Government was dismissed.<sup>17</sup>
- The *Health Infrastructure Enabling Act 2023* allowed the takeover of Calvary Hospital on 3 July 2023,<sup>18</sup> a mere 40 working days after Calvary Hospital was first notified of the Government's intention to take possession of the hospital, staff and responsibility for patients.

This timeline demonstrates that acquiring Calvary Hospital occurred with unprecedented haste, without adequate negotiation or communication with the necessary stakeholders and did not allow the necessary time for community consultation and an orderly transition.

The lack of consultation with key stakeholders is most clearly evident in an open letter written by senior nurses at Calvary Hospital. They stated that the ACT Government's legislative process, as well as the projection of a possible 15 per cent loss of staff, had "stirred up concerns for their future employment" and left staff of the hospital feeling "voiceless" at having to "navigate the uncertainty of our jobs and the lack of information."<sup>19</sup>

In the words of the nurses of Calvary Hospital, who, with their patients, have been the most immediately affected by the acquisition, "concepts fundamental to safety culture and good leadership – accountability, integrity, transparency, trust and communication, just to name a few – have all seemingly been bypassed by [the ACT] Government and **CHS** [Canberra Health Services] in recent weeks."<sup>20</sup>

### **Calvary Hospital Singled Out**

The inquiry should consider why Calvary Hospital was singled out for this treatment.

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<sup>14</sup> Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 2023, 1283, <https://www.hansard.act.gov.au/hansard/10th-assembly/2023/HTML/week04/1283.htm>

<sup>15</sup> Legislative Assembly for the Australian Capital Territory, *Minutes of Proceedings*, No 84, Wednesday 31 May, 1182, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0014/2231114/MoP084F.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0014/2231114/MoP084F.pdf)

<sup>16</sup> Legislative Assembly for the Australian Capital Territory, *Minutes of Proceedings*, No 84, Wednesday 31 May, 1190, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0014/2231114/MoP084F.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0014/2231114/MoP084F.pdf)

<sup>17</sup> Calvary Health Care ACT Limited v Australian Capital Territory (2023)

ACTSCFC 1 [https://www.courts.act.gov.au/\\_data/assets/pdf\\_file/0011/2243567/Calvary-Health-Care-ACT.pdf](https://www.courts.act.gov.au/_data/assets/pdf_file/0011/2243567/Calvary-Health-Care-ACT.pdf)

<sup>18</sup> *Health Infrastructure Enabling Act 2023*

<sup>19</sup> Newstime Media, 'Nurses write open letter re acquisition of Calvary Public Hospital' *Canberra Weekly*, 27 May 2023, Accessed 7 July 2023, <https://canberraweekly.com.au/nurses-write-open-letter-on-acquisition-of-calvary-public-hospital/>

<sup>20</sup> Newstime Media, 'Nurses write open letter re acquisition of Calvary Public Hospital' *Canberra Weekly*, 27 May 2023, Accessed 7 July 2023, <https://canberraweekly.com.au/nurses-write-open-letter-on-acquisition-of-calvary-public-hospital/>

Such an acquisition of a Catholic institution is unprecedented in Australia. The forcible acquisition of Calvary Hospital marks the first time in Australian history where a federal, state or territory government has forcibly taken over an institution of the Catholic Church.

It is also perplexing why Calvary Hospital has been singled out from among Canberra's healthcare providers when, for many years, concerns have surrounded the capacity of the ACT Government to manage the hospital system effectively. Canberra Hospital and CHS have experienced repeated criticism, underlined in a 2019 Culture Review, for difficult workplace culture and ongoing industrial disputes.<sup>21</sup>

### **Other Possible Reasons for the Acquisition of Calvary Hospital**

The lack of consultation, the transaction costs of expelling a longstanding healthcare provider,<sup>22</sup> and the pressing need for reform in the government-owned CHS mean other motivations must be considered. There is a resulting concern the Government may in part be motivated by disapproval of Calvary Hospital's Catholic ethos and mission.

The Legislative Assembly's *Inquiry into Abortion and Reproductive Choice in the ACT*, released in the weeks before the announcement of the takeover of the hospital, criticises the faith-based ethos of Calvary Hospital. Although the territory-run Canberra Hospital does not generally provide abortions, Calvary Hospital alone was singled out as "intensely problematic" for being a public hospital that did not provide the procedure.<sup>23</sup> In the report, the Committee criticised Calvary Hospital's "overriding religious ethos" as "problematic", "ethically fraught" and resulting in an "unacceptable" patient

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<sup>21</sup> Isaac Nowroozi, 'Senior doctor launches legal action over handling of alleged safety concerns in Canberra Hospital's Intensive Care Unit', *ABC News*, 14 July 2022, Accessed 7 July 2023, <https://www.abc.net.au/news/2022-07-14/canberra-health-services-doctor-legal-action-against-hospital/101236002>; Harry Frost, 'Canberra Health Services has had its fair share of negative publicity lately — and it's risking the trust of staff as well as patients', *ABC News*, 25 March 2023, Accessed 7 July 2023, <https://www.abc.net.au/news/2023-03-25/canberra-health-services-reputation-risking-trust-act-politics/102143530>; Anonymous Junior Doctor at Canberra Hospital, 'Morale at Canberra Hospital is not on the rise', *The Canberra Times*, 21 November 2020, Accessed 13 July 2023, <https://www.canberratimes.com.au/story/7021376/morale-at-canberra-hospital-is-not-on-the-rise/>;

Lucy Bladen, 'ACT Health refuses to release portions of review due to fears it could be 'detrimental'', *The Canberra Times*, 5 April 2023, Accessed 12 July 2023, <https://www.canberratimes.com.au/story/8147676/health-heavily-redacts-review-citing-fears-of-negative-impact/>

<sup>22</sup> Georgia Roberts, 'ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital', *ABC News*, 20 May 2023, Accessed 12 July 2023, <https://www.abc.net.au/news/2023-05-10/calvary-hospital-to-be-acquired-by-act-government/102325324>

<sup>23</sup> Legislative Assembly for the Australian Capital Territory, *Standing Committee on Health and Community Wellbeing*, 'Inquiry into Abortion and Reproductive Choice in the ACT', 18 April 2023, 3.98, page 25, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-ACT.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-ACT.pdf)

experience.<sup>24</sup> The report also claimed without evidence that women suffer “punitive responses ... at the hands of the Church.”<sup>25</sup>

The ACT Government has plans to legalise euthanasia and assisted suicide. Calvary Hospital had stated that it would not provide euthanasia in the hospital or the associated hospice, Clare Holland House.<sup>26</sup>

There is an underlying implication that religious organisations and those with conscientious objections to performing certain procedures should not participate in public healthcare.<sup>27</sup>

The religious mission expressed at Calvary Hospital was inconvenient for the Territory Government. An inquiry should consider the extent to which the ACT Government’s decision was influenced by its disapproval of Calvary Hospital’s Catholic ethos and mission.

### **Why Does This Matter?**

The rushed compulsory acquisition process presented unnecessary difficulty for the staff of Calvary, for whom the hurried change in management and potential staff turnover might exacerbate the staffing shortages and disruptions to the health system caused by the Covid pandemic. This might affect the operation of a major public hospital and the patients who rely on it for healthcare. Concerns regarding the hospital's future administration and culture, and how this would directly impact the standard of care that patients receive, have already been voiced by a number of staff members and medical experts.<sup>28</sup>

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<sup>24</sup> Legislative Assembly for the Australian Capital Territory, *Standing Committee on Health and Community Wellbeing*, ‘Inquiry into Abortion and Reproductive Choice in the ACT’, 18 April 2023, 3.102-103, page 26, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-act.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-act.pdf)

<sup>25</sup> Legislative Assembly for the Australian Capital Territory, *Standing Committee on Health and Community Wellbeing*, ‘Inquiry into Abortion and Reproductive Choice in the ACT’, 18 April 2023, 3.102-103, page 26, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-act.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-act.pdf)

<sup>26</sup> Katie Burgess, ‘Calvary won't offer voluntary euthanasia, even if it's made legal’, *The Canberra Times*, 14 May 2018, Accessed 12 July 2023, <https://www.canberratimes.com.au/story/6017601/calvary-wont-offer-voluntary-euthanasia-even-if-its-made-legal/>

<sup>27</sup> A Legislative Assembly for the Australian Capital Territory, *Standing Committee on Health and Community Wellbeing*, ‘Inquiry into Abortion and Reproductive Choice in the ACT’, 18 April 2023, 3.98, page 25, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-act.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-act.pdf)

<sup>28</sup> Newstime Media, ‘Nurses write open letter re acquisition of Calvary Public Hospital’ *Canberra Weekly*, 27 May 2023, Accessed 7 July 2023, <https://canberraweekly.com.au/nurses-write-open-letter-on-acquisition-of-calvary-public-hospital/>; Lucy Bladen, ‘ANMF ACT say the loss of even one nurse or midwife has implications for a ward ahead of Calvary takeover’, *The Canberra Times*, 15 June 2023, Accessed 5 July 2023, <https://www.canberratimes.com.au/story/8234351/staffing-levels-are-so-thin-unions-warning-if-nurses-leave/>; Steve Evans and Lanie Tindale, ‘Shocked' Calvary Public Hospital Bruce doctors concerned with Canberra Health Services management, culture’ *The Canberra Times*, 13 May 2023, Accessed 5 July 2023, <https://www.canberratimes.com.au/story/8192879/former-canberra-hospital-top-doctor-attacks-act-govt-over-acquisition/>; Lucy Bladen and Lanie Tindale, ‘ASMOF ACT concerned at CHS' capacity to handle acquisition’, *The Canberra Times*, 11 May 2023, Accessed 5 July 2023. <https://www.canberratimes.com.au/story/8191768/doctors-union-concerned-at-chs-capacity-to-handle-acquisition/?cs=14229>

The actions of the ACT Government set a worrying precedent for civil society groups, including those with a religious mission, which have a contract with a government to provide services to the public. Are they also at risk of losing assets or contracts without community consultation, a public evaluation of their performance and public examination of the options available to government?<sup>29</sup>

The Catholic approach to healthcare is motivated by respect for the value of human life and the dignity of every person. Because of this understanding of our inherent dignity, Catholic healthcare professionals understand that the person in front of them is more than a patient, client or resident. They are a unique person with lives that are sacred, unique and irreplaceable. Catholic healthcare seeks the healing of the whole person, mind, body and soul, and is not just confined to treating disease or bodily ailment. A person in care must experience recognition of themselves as a whole person with irreplaceable value, even when the person may feel that this is obscured by illness, weakness, loneliness and anxiety.

Because of this commitment, the Catholic Church is Australia's largest non-Government healthcare provider. Catholic hospitals account for around 10 per cent of the country's total hospital services and provide more than 1.5 million instances of healthcare annually.<sup>30</sup> When a person's life is most vulnerable, when it is just beginning or about to end, as well as during times of illness and disability, Catholic healthcare is fundamentally oriented towards paths that are life-affirming and always heal and never harm.

Calvary Hospital has served the local Canberra community since its establishment in 1979, where it carries on the legacy of its founders, the Sisters of the Little Company of Mary. Many of Calvary's staff were not Catholic but deeply appreciated and lived out its ethos of compassionate, holistic and inclusive care.

## **Conclusion**

The demonstrably poor and unprecedented process the ACT Government used to compulsorily take over Calvary Hospital and the risks of this rushed process are of great concern. The Government contract with Calvary was ended even though Calvary had not broken its contractual obligations. This precedent has raised fears for civil society groups including religious providers of government services that there is now the possibility that their contracts may also be summarily ended. There are also concerns that the motivation for this action may include the fact that the healthcare provider was Catholic.

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<sup>29</sup> Andrew Podger, 'ACT government Calvary hospital takeover handled appallingly', *The Canberra Times*, 4 June 2023, Accessed 6 July 2023, <https://www.canberratimes.com.au/story/8220153/takeover-handled-appallingly-for-a-questionable-outcome/>

<sup>30</sup> 'The Catholic Contribution to the Common Good: Providing hope, a sense of belonging, spiritual comfort and consolation.' Australian Catholic Bishops Conference, 2022. <https://www.catholic.au/s/article/Key-Documents-Public-Policy-Office>

Yours faithfully

**Most Rev Peter A Comensoli**

Archbishop of Melbourne

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