

Submission to:

Senate Standing Committees on Legal and Constitutional Affairs
Legal and Constitutional Affairs Legislation Committee
Australian Capital Territory (Self-Government) Amendment Bill 2023

The present Australian Capital Territory (ACT) Government has compulsorily taken over the land, property, and assets of Canberra's Calvary Public Hospital, under the mechanism of the *Health Infrastructure Enabling Act 2023* (ACT). This has ended the remaining 76-year contract and under duress transferred Calvary staff employed at the public hospital to ACT Health.

This decision was made with no consultation, and no inquiry by the ACT Legislative Assembly prior to the announcement. This submission supports the Bill's proposal to insert a requirement that the ACT Government conduct an inquiry into the ACT legislation that enables the acquisition, with the intention to ensure that there is public consultation with the decision that has been made, so that people have the ability to have their voices heard.

Negotiations between the ACT government and Calvary Health Care to arrange for the acquisition by the ACT government of the privately-owned Calvary Public Hospital failed to reach an agreement. That should have been the end of the matter. However, the ACT government has decided to use the violence of state power through the mechanism of legislation to compulsorily acquire this private asset.

Property is an inalienable human right. The Declaration of the Rights of Man (1789) states that '[s]ince property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.' The Virginia Declaration of Rights from 1776 (which inspired the U.S. Bill of Rights) declared property an inherent right of all men, and the right to property is protected by the Fifth Amendment to the U.S. Constitution. Article 17 of the Universal Declaration of Human Rights (1948) states that 'everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.'

Notwithstanding that property is an inviolable right, 'public necessity' on this occasion does not 'clearly demand' the public acquisition of a private asset. This is clear, since the negotiation for a mutually-agreed outcome did not favour both parties; the ACT government reverted to violence of state power and Calvary Health Care (representing the owner of the property, Little Company of Mary) on the basis of freely-negotiated market prices will not be 'equitably indemnified.' This action is revelatory of how far the concept of human rights has changed since the United States became the first country to be founded on the idea that all possess inalienable rights. The United States founders and early European proponents of liberal democracy understood the importance of the legal protection of private property against arbitrary interference. This creates a province of inviolability necessary for the enjoyment of other freedoms, such as privacy and the freedoms of expression, association, and religion. And this is happening in Australia!

If this compulsory acquisition was not done for efficiency purposes, then it is political and ideological. Who is more efficient at running a business, government or private enterprise? If there is fault on the efficiency and performance of Calvary Health Care to operate the privately-owned Calvary Public Hospital on behalf of the government, that can be addressed in contractual terms. It is evident that there have been differences between Calvary Health Care and the ACT government's Canberra Health Services over the provision of specific health-care services. Ironically, the ACT government by its actions unilaterally disposed of the 76 years remaining of Calvary's contract.

The compulsory acquisition of a private asset through the use of legislation for the 'common good,' sets a dangerous precedent for Australia. Australia is a liberal democracy and free-market economy, established and operated on the assumption that all property is privately owned. No argument for government takeover of a private asset, especially via the use of a legislated instrument, is defensible. There is no justification in a court of law on the basis of evidence that Calvary Health Care had done anything wrong, other than incur strained relations with the ACT government on the provision of certain health services.

Compulsory acquisition is nationalisation. Nationalisation, like all variants of socialism, entrenches the elite and powerful. It creates inefficiencies, extends and expands the bureaucratisation of the state and impoverishes the average person. Government ownership of the means of production cannot, notwithstanding the known problems of companies and organisations, operate as efficiently or ethically to produce the level of quality and quantity of goods and services that produce an increase in the standard of living of the average person. Even a non-profit organisation is driven by the profit motive set prices to cover costs!

The solution for the ACT government is the public acquisition of the Calvary Health Care. However, the ACT government has plans to develop the site and invest more than \$1 billion towards a new hospital at the existing Calvary site. It appeared that Calvary Health Care could not agree with the health-care plans of the ACT government. One solution would be to negotiate an end to Calvary Health Care's contract with the ACT government (and not unilaterally terminate it). This would have ended the provision of hospital services in the region. Another solution is for the ACT government to purchase at market prices land in the area and build a new hospital. If we assume that either of these commercial options may not be possible, the compulsory acquisition of a private asset is also not a commercial solution.

This submission supports the proposal in the Australian Capital Territory (Self-Government) Amendment Bill 2023 that would require the Government of the Australian Capital Territory to conduct an inquiry into the *Health Infrastructure Enabling Act 2023 (ACT)*, to ensure that there is public consultation with the decision that has been made.