

Health Infrastructure Enabling Amendment Regulation 2023 (No 1)

Subordinate law SL2023–14

made under the

Health Infrastructure Enabling Act 2023, s 28 (Regulation-making power)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the Health Infrastructure Enabling Amendment Regulation 2023 (No 1) (the Regulation) as made by the Executive. The Regulation makes a number of amendments to the *Health Infrastructure Enabling Regulation 2023*.

This explanatory statement must be read in conjunction with the Regulation. It is not a complete description of the Regulation but provides information about the intent of the provisions in the Regulation.

It has been prepared to assist the reader of the Regulation. It does not form part of the Regulation or the Act, has not been endorsed by the Assembly, and is not to be taken as providing a definitive interpretation of the meaning of a regulation.

Overview

The *Health Infrastructure Enabling Regulation 2023* is subject to challenge in *Calvary Health Care ACT Limited v Australian Capital Territory* (SC 225 of 2023) which is presently in the ACT Supreme Court (Supreme Court). The Regulation has been made in response to tentative concerns expressed in the Supreme Court proceeding.

The Regulation amends the *Health Infrastructure Enabling Regulation 2023* to further the obligation contained in s 10(1) of the *Health Infrastructure Enabling Act 2023* (the Act).

Consistency with Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters. There are no human rights impacts related to this regulation. The Regulation does not engage with human rights under the Human Rights Act 2004.

CLAUSE NOTES

Clause 1 Name of Regulation

This clause provides that the name of the Regulation is the *Health Infrastructure Enabling Amendment Regulation 2023 (No 1)*.

Clause 2 Commencement

This clause provides that the Regulation commences on the day after its notification.

Clause 3 Legislation amended

This clause provides that the Regulation amends the *Health Infrastructure Enabling Regulation 2023*.

Clause 4 New section 9A

This clause inserts new section 9A in div 4.1 of the *Health Infrastructure Enabling Regulation 2023* under which a person who is given, or entitled to be given, compensation under a provision of the regulation or another territory law will be barred from making a claim under another provision of the regulation or another territory law in relation to the same matter.

The clause is intended to prevent multiple claims for which compensation has already been given or a claim under another provision of the regulation where compensation is entitled to be given under a particular regulation in the *Health Infrastructure Enabling Regulation 2023*.

Clause 5 Section 10 (1) (a)

This clause substitutes section 10 (1) (a) of the *Health Infrastructure Enabling Regulation 2023* which now provides that one of the matters that may be relevant to working out the amount of compensation for the acquisition of Calvary's interest in the public hospital land includes:

- (a) *the market value of the Crown lease for the hospital land on the acquisition day;*

The amendment removes provisions which were required to be taken into account in determining ‘market value’.

Clause 6 Section 11

This clause removes s 11 from the *Health Regulation Infrastructure Regulation 2023* as a consequence of the insertion of s 9A in the regulation.

Clause 7 Section 14

This clause removes s 14 from the *Health Infrastructure Enabling Regulation 2023* as a consequence of the insertion of s 9A in the regulation.

Clause 8 Section 17 (1) (a) (i)

This clause removes the later portion of 17 (1) (a) (i) in the *Health Infrastructure Enabling Regulation 2023* which originally provided for matters which were required to be taken into account in determining ‘market value’ of an interest.

Clause 9 Section 18

This clause removes s 18 from the *Health Infrastructure Enabling Regulation 2023* as a consequence of the insertion of s 9A in the regulation.

Clause 10 New section 20 (2A)

This clause inserts a new section 20 (2A) in the *Health Infrastructure Enabling Regulation 2023* under which the Minister may, in writing, extend the timeframe for making a claim which was not made in the timeframe provided for under ss (2) provided a person has a reasonable excuse for not having made the claim in time.

Clause 11 New section 20 (3)

This clause replaces ‘subsection (2)’ with ‘subsection (2) or (2A)’ as a consequence of new section 20 (2A) in the *Health Infrastructure Enabling Regulation 2023*.

Clause 12 Section 33 (8), definition of *dispute*

This clause removes from the definition of dispute ‘but does not include a question of law’. This has been removed to clarify that a determination made by an independent expert may be reviewed by a court of competent jurisdiction and to ensure that an independent expert is not limited in determining a dispute.

Clause 13 Court to ensure just terms

This clause makes certain that nothing in the *Health Infrastructure Enabling Regulation 2023* is to operate to exclude the jurisdiction of a court of competent jurisdiction to determine a question of law or the just terms for any acquisition of property under the Act, if—

- the application of a provision of the regulation would result in just terms not being provided for the acquisition; or
- the regulation does not otherwise provide for it.

The dispute resolution in s 33 of the in the *Health Infrastructure Enabling Regulation 2023* remains final and binding on the parties, but new section 33A ensures that a person has recourse to a court of competent jurisdiction under s 33(6)(b) on a question of law or where the application of a regulation has not resulted in just terms acquisition or has not otherwise provided for it.

Clause 14 Section 35

This clause omits section 35 from the *Health Infrastructure Enabling Regulation 2023*.

Clare Holland House staff can transfer to the Territory as per mutual agreement between Calvary and the Territory for the operation of Clare Holland House.