



Australian Capital Territory

Health Infrastructure Enabling Regulation 2023

Subordinate Law SL2023-11

The Australian Capital Territory Executive makes the following regulation under the *Health Infrastructure Enabling Act 2023*.

Dated 2 June 2023.

ANDREW BARR
Chief Minister

RACHEL STEPHEN-SMITH
Minister



Australian Capital Territory

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[Health Infrastructure Enabling Act 2023](#)

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Health Infrastructure Enabling Regulation 2023*.

2 Commencement

This regulation commences on the day the [Act](#), section 3 commences.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation.

For example, the signpost definition ‘*acquisition*, for part 4 (Compensation)—see section 9.’ means that the term ‘acquisition’ is defined in that section for part 4.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Part 2 Operation of public hospital

5 Public hospital employees—Act, s 14 (2) (a) and (b)

- (1) The head of service must make a written offer of employment with the Territory to each public hospital employee who satisfies all of the following criteria:
 - (a) they are a public hospital employee immediately before the acquisition day;
 - (b) they are an eligible person under the *Public Sector Management Act 1994*;
 - (c) they are not a person to whom the *Public Sector Management Act 1994*, section 138 (No reappointment of former officer in certain circumstances) applies;
 - (d) they are not ineligible under an industrial agreement to be re-employed by the Territory for a certain period because the employee has received a voluntary redundancy payment from the Territory;
 - (e) they have not accepted a redundancy payment or similar payment from Calvary or a related corporation in relation to their employment as a public hospital employee.
- (2) An offer must be on terms that are, as far as possible under the *Public Sector Management Act 1994*, the same as or no less favourable than the terms applying to the public hospital employee's employment immediately before the day the employee's employment with Calvary ends under subsection (4) (a).
- (3) An offer is conditional on the public hospital employee accepting the offer before the acquisition day or by any later day notified in writing by the head of service.

(4) For each public hospital employee who accepts an offer of employment with the Territory under this section—

- (a) unless otherwise agreed in writing between the head of service and the employee, the employee is taken to have resigned and the employee's employment with Calvary or a related corporation as a public hospital employee ends, or is taken to have ended, on the acquisition day; and
- (b) the Territory is liable for any entitlement (including annual, long service, personal or other leave) the employee has accrued or has a right to, immediately before the day the employee's employment with Calvary ends under paragraph (a); and
- (c) the employee's employment as a public hospital employee is recognised prior service and continuous service for leave and other entitlements under the *Public Sector Management Act 1994* and any relevant industrial agreement.

Note 1 The *Fair Work Act 2009* (Cwlth) (**FWA**), s 22 (5), which recognises prior service of employees if there is a transfer of employment, applies to the employment of a public hospital employee by the Territory under this section. As a transferring employee's prior service counts as service with the Territory, the employee is not entitled to a redundancy payment because their employment with Calvary ends under par (a) (see **FWA**, s 122 (2)).

Note 2 In accordance with par (b), annual and other leave accrued by a public hospital employee as at the day their employment with Calvary ends under par (a) carries over to their employment with the Territory. Accrued annual leave cannot be cashed out except if permitted under an industrial agreement mentioned in s 6 (see **FWA**, s 92).

(5) The Territory is liable for—

- (a) any liability, loss or expense Calvary or a related corporation incurs as a result of the Territory not complying with subsection (4) (b) or (c); and

- (b) any redundancy or similar payment (not including any accrued annual, long service, personal or other leave) payable in accordance with law by Calvary or a related corporation to a public hospital employee—
 - (i) who is not employed by the Territory under this section; and
 - (ii) whose employment with Calvary or a related corporation as a public hospital employee has been terminated on or immediately after the acquisition day because of the operation of this Act.
- (6) The amount equivalent to the Territory's liability under subsection (4) (b) must be taken into account when working out the amount of compensation to which Calvary or a related corporation is entitled under the Act as worked out under part 4.
- (7) The following provisions do not apply to an offer of employment with the Territory under this section:
 - (a) the *Public Sector Management Act 1994*—
 - (i) section 25 (Employees); and
 - (ii) section 27 (Application of the merit and equity principle); and
 - (iii) section 68 (Appointment to vacant office);
 - (b) the *Public Sector Management Standards 2016*, part 2 (Selection process).
- (8) In this section:
eligible person—see the *Public Sector Management Act 1994*, dictionary.

6 Prescribed industrial agreements—Act, dict, def *public hospital employee*, par (a) (ii)

- (1) The following industrial agreements are prescribed:
 - (a) the *Administrative and Related Classifications Enterprise Agreement 2021-2022*;
 - (b) the *Health Professionals Enterprise Agreement 2021-2022*;
 - (c) the *Infrastructure Services Enterprise Agreement 2021-2022*;
 - (d) the *Support Services Enterprise Agreement 2021-2022*;
 - (e) the *Technical and Other Professional Enterprise Agreement 2021-2022*;
 - (f) the *Medical Practitioners Enterprise Agreement 2021-2022*;
 - (g) the *Nursing and Midwifery Enterprise Agreement 2020-2022*;
 - (h) any other agreement, including any agreement replacing an agreement mentioned in paragraphs (a) to (g) before the acquisition day, declared by the head of service.
- (2) A declaration under subsection (1) (h) is a notifiable instrument.

7 Public hospital contracts—Act, s 14 (2) (c)

- (1) The Territory must notify Calvary in writing which public hospital contracts (the *nominated contracts*) the Territory proposes to have novated or assigned to it.
- (2) Calvary must use all reasonable endeavours to ensure the Territory receives the full benefit of the nominated contract including by procuring the execution of deeds of assignment or novation if consent and agreement of a third party is required.

- (3) The Territory must—
- (a) assume the rights and liabilities under each nominated contract novated or assigned to it under this section; and
 - (b) cooperate with Calvary in any reasonable arrangement intended to transfer to the Territory the benefit and the burden of each of those contracts.
- (4) If a nominated contract (a *residual nominated contract*) is not effectively assigned or novated to the Territory, on the written request of the Territory—
- (a) Calvary or a related corporation must account to the Territory for any benefit it receives in relation to the contract; and
 - (b) Calvary must do all things reasonably required by the Territory to ensure that the Territory receives the benefit of the contract; and
 - (c) Calvary or a related corporation must hold the benefit of the contract on bare trust for the Territory and deal with the contract only as directed by the Territory.
- (5) The Territory may give written notice (which must not be less than 7 days) to Calvary and the third party under a residual nominated contract that the Territory intends to novate the contract to the Territory.
- (6) However, the Territory may only give notice under subsection (5) if it considers that novating the residual nominated contract is necessary for—
- (a) the safe and orderly transition of the operation of the public hospital to the Territory;
 - (b) the continued operation of, and maintenance of service delivery standards at, the public hospital.

- (7) If the Territory gives notice in relation to a residual nominated contract under subsection (5)—
- (a) the contract is novated on the day stated in the notice; and
 - (b) the third party may at any time 6 months after the contract is novated to the Territory, or any other period stated in the notice, terminate the contract by 14 days written notice to the Territory; and
 - (c) if the third party terminates the contract under paragraph (b), the third party is not liable to the Territory for breach of the contract or for any compensation to the Territory because of the termination.
- (8) Calvary is liable for any liability, loss or expense the Territory incurs because of a default by Calvary or a related corporation under, or breach by Calvary or a related corporation of, any nominated contract before the day the contract is assigned or novated to, or held in trust for, the Territory.
- (9) The Territory is liable for any liability, loss or expense Calvary or a related corporation incurs as a result of any breach under, or breach by the Territory of, any nominated contract after the day the contract is assigned or novated to, or held in trust for, the Territory.

Part 3 Amendment of Crown lease

8 Amendment of Crown lease—Act, s 19 (1) (b)

The Crown lease is amended as set out in schedule 1.

Part 4 Compensation

Division 4.1 Preliminary

9 Definitions—pt 4

In this part:

acquisition means an acquisition of an interest under the Act.

claim means a claim for compensation under this part.

claimant means a person making a claim for compensation under this part.

compensation—see the [Act](#), section 10 (5).

market value, of an interest on the acquisition day, means the amount that would have been paid for the interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

miscellaneous interest—see section 16.

Division 4.2 Acquisition of Calvary's interest in the public hospital land

10 Matters relevant to working out compensation—Calvary's interest in the public hospital land

- (1) Matters that may be relevant to working out the amount of compensation for the acquisition of Calvary's interest in the public hospital land include the following:
 - (a) the market value of the Crown lease for the hospital land on the acquisition day taking into account the following:
 - (i) the Crown lease and preceding Crown lease for the hospital land were granted to Calvary for no charge and a nominal rent was payable under the leases;

- (ii) the Crown lease as amended under the [Act](#), section 19 continues to be held by Calvary for no charge and for nominal rent;
 - (iii) certain buildings and improvements on the hospital land and capital items were funded by the Territory, the Commonwealth or entities other than Calvary or a related corporation;
 - (b) the value, on the acquisition day, of any financial advantage to Calvary, additional to the market value of the Crown lease for the hospital land, incidental to Calvary's interest in the hospital land;
 - (c) any reasonable increase or decrease in the value of the private hospital land or buildings or other improvements on it directly caused by—
 - (i) the removal of the public hospital land from the Crown lease; or
 - (ii) the development of a new public hospital on the public hospital land;
 - (d) any costs reasonably incurred by Calvary as a direct and reasonable consequence of it complying with its obligations under the Act;
 - (e) any other loss, injury or damage suffered, or expense reasonably incurred, by Calvary as a direct and reasonable consequence of the acquisition.
- (2) Calvary must take all reasonable steps to minimise any loss, injury or damage suffered, or expense reasonably incurred by Calvary because of the acquisition of Calvary's interest in the public hospital land.

Example

make a claim under an insurance policy or under an indemnity or other contractual right for a loss

11 Matters excluded from compensation—Calvary’s interest in the public hospital land

The following are matters in relation to which compensation must not be given under this division:

- (a) costs arising from the termination or variation of an agreement or other arrangement between Calvary and a related corporation;
- (b) a matter for which compensation is given, or is excluded from being given, under another provision of this regulation, the Act or another territory law.

12 Hospital land subject to security

- (1) As a general rule, the compensation for the acquisition of Calvary’s interest in the public hospital land is determined as if the interest had not been subject to any security.
- (2) If compensation is payable under this part to a securityholder, the compensation payable to Calvary is reduced by so much of the compensation payable to the securityholder as represents the amount worked out under division 4.3 (Acquisition of security rights).

Division 4.3 Acquisition of security rights

13 Matters relevant to working out compensation—security rights

- (1) Matters that may be relevant to working out the amount of compensation for the acquisition of a security right under a security (the *relevant security*) include the following:
 - (a) the amount reasonably determined to reflect the value of the impact of the acquisition of the security right on the debt arrangements which are secured by the relevant security;
 - (b) any other costs reasonably incurred by the securityholder as a direct and reasonable consequence of the acquisition.

- (2) Calvary and any securityholder must take all reasonable steps to minimise any loss, injury or damage suffered, or expense reasonably incurred because of the acquisition of the security right.

14 Matters excluded from compensation—security interests

A matter for which compensation is given, or is excluded from being given, under another provision of this regulation, the Act or another territory law is a matter in relation to which compensation must not be given under this division.

15 Securityholder may waive rights in relation to security rights

- (1) The securityholder under a security may, by written notice to the Territory, waive the securityholder's right to any compensation under the Act in relation to the acquisition of a security right.
- (2) The Territory may, by written notice given to a securityholder from whom a security right has, or may have been, acquired under the Act, require the securityholder, at the securityholder's option to—
 - (a) make a claim under division 4.5; or
 - (b) waive the right to compensation.
- (3) If a securityholder does not, within 30 days after a notice under subsection (2) is given to the securityholder or any further period as the Territory, in writing, allows, make a claim for compensation, the securityholder is taken to have waived the right to compensation in relation to the acquisition of the security right.

- (4) A securityholder who waives the right to compensation in relation to the acquisition of a security right—
- (a) is debarred from recovering any compensation from the Territory or the Commonwealth in relation to the acquisition; but
 - (b) retains, in relation to the security right, any right or remedy that the securityholder may have—
 - (i) against Calvary; or
 - (ii) in relation to any interest in the public hospital land, public hospital assets or network agreements that is still subject to the security.

Division 4.4 Acquisition of miscellaneous interests

16 Application—div 4.4

This division applies to an acquisition of an interest (a ***miscellaneous interest***) other than an acquisition of—

- (a) Calvary's interest in the public hospital land; or
- (b) a security right.

Examples

- 1 Calvary's interest in the public hospital assets acquired under the [Act](#), s 9 (1) (Acquisition of public hospital assets)
- 2 any interest in land that is not a security right that is taken to have been acquired under the [Act](#), s 8 (2) (Acquisition of public hospital land)
- 3 any other interest that is not a security right that is taken to have been acquired under the [Act](#), s 9 (2)

**17 Matters relevant to working out compensation—
miscellaneous interests**

- (1) Matters that may be relevant to working out the amount of compensation for an acquisition of a miscellaneous interest include the following:
- (a) except in a case to which paragraph (b) applies—
 - (i) the market value of the interest on the acquisition day taking into account certain assets used for or related to the public hospital may have been funded by the Territory, the Commonwealth or entities other than Calvary or a related corporation; and
 - (ii) the value, on the acquisition day, of any financial advantage to the person, additional to market value, incidental to the person's interest; and
 - (iii) the impact caused by the acquisition on any other interest ancillary to the person's interest;
 - (b) if the person's interest was diminished, but not extinguished, by the acquisition—the loss suffered by the person because of the diminution of the person's interest;
 - (c) any loss, injury or damage suffered, or expense reasonably incurred, by the person as a direct and reasonable consequence of the acquisition.
- (2) A person must take all reasonable steps to minimise any loss, injury or damage suffered, or expense reasonably incurred by them because of the acquisition of the person's interest.

Example

make a claim under an insurance policy or under an indemnity or other contractual right for a loss

18 Matters excluded from compensation—miscellaneous interests

The following are matters in relation to which compensation must not be given under this division:

- (a) costs arising from the termination or variation of an agreement or other arrangement between Calvary and a related corporation;
- (b) a matter for which compensation is given, or is excluded from being given, under another provision of this regulation, the Act or another territory law

19 Miscellaneous interest subject to security

- (1) This section applies if—
 - (a) a miscellaneous interest is acquired from a person (the *owner*) under the Act; and
 - (b) immediately before the acquisition day, the interest was subject to a security.
- (2) As a general rule, the compensation to which the owner of the interest is entitled in relation to the acquisition is determined as if the interest had not been subject to any security.
- (3) If compensation is payable under this part to a securityholder, the compensation payable to Calvary is reduced by so much of the compensation payable to the securityholder as represents the amount worked out under division 4.3 (Acquisition of security rights).

Division 4.5 Claims for, and offers of compensation

20 Claims for compensation——generally

- (1) A person who considers that they are entitled to be paid compensation under the Act may make a claim for compensation in accordance with this division.
- (2) A claim must be made—
 - (a) within the 12-month period starting on the acquisition day; or
 - (b) if the Minister gives notice before the end of that period of a later day—the day stated in the notice.
- (3) If a person does not make a claim for compensation within the period mentioned in subsection (2), the person is taken to have waived the right to compensation in relation to the acquisition.
- (4) A person who waives the right to compensation in relation to the acquisition under subsection (3)—
 - (a) is debarred from recovering any compensation from the Territory or the Commonwealth in relation to the acquisition; but
 - (b) in relation to a security interest—retains, in relation to the security, any right or remedy that the person may have against Calvary or a related corporation.
- (5) A notice under subsection (2) (b) is a notifiable instrument.

21 How claims must be made

- (1) A claim must—
 - (a) be in writing and in any form reasonably required by the Territory; and
 - (b) state the interest of the person that has been acquired under the Act; and
 - (c) state the amount of compensation the person claims in relation to the acquisition; and
 - (d) include sufficient detail to allow the claim to be considered, including detail about how a monetary amount claimed is worked out; and
 - (e) if the claim is in relation to the acquisition of a security right under a security—state the total value of the impact of the acquisition on the relevant debt arrangement, how it has been determined (including calculations, if relevant), and the total amount of debt secured by the security.
- (2) A claim is taken to be made only when it is given to the director-general.
- (3) A person may withdraw their claim by written notice to the director-general.
- (4) If a claim is withdrawn, the Act has effect as if the claim had never been made.
- (5) The director-general may determine further requirements for how a claim must be made under this section.
- (6) A determination under subsection (5) is a notifiable instrument.

22 Territory may request further information about claims

The director-general may, in writing, require a claimant to give the director-general information that the director-general reasonably considers is needed to decide a claim within a stated period.

23 Timeframe for deciding initial claims

- (1) The director-general must decide a claim within 12 weeks after the day—
 - (a) the claim is given to them; or
 - (b) if information is requested under section 22—the information is given to them.
- (2) The claimant may agree in writing to an extension of the 12-week period before the end of the period.

24 Early compensation arrangements

- (1) The Territory may make a payment to a claimant or do any other thing on account of compensation that may—
 - (a) become payable to a claimant under this division; or
 - (b) be required to be done by the Territory under this division; or
 - (c) assist to mitigate the impacts of the acquisition on the claimant in the period before compensation is given.
- (2) Anything done by the Territory under subsection (1) does not constitute acceptance by the Territory of any claim made under this division.
- (3) Acceptance by a claimant of anything done by the Territory under subsection (1) does not constitute an acceptance of any offer made by the Territory under this division.

25 Effect of compensation claim in relation to acquisition of security rights

- (1) This section applies if—
 - (a) a security right has been acquired by the Territory from a securityholder; and
 - (b) the securityholder makes a claim for compensation in relation to the acquisition.
- (2) The acquisition is taken, on the acquisition day, to have—
 - (a) discharged and released the public hospital land, public hospital assets and Calvary's interests in the network agreements from the security; and
 - (b) discharged and released the liability of Calvary under the security to the extent attributable to the public hospital land, public hospital assets and Calvary's interests in the network agreements; and
 - (c) discharged and released Calvary and its related corporations from the obligation to pay or repay to the securityholder an amount equal to the amount of compensation paid to or for the account of the securityholder.
- (3) On the giving of the compensation to the securityholder, the securityholder must, if required by Calvary and at the expense of Calvary, execute a discharge to the extent provided for in subsection (2).

26 Amount paid in relation to security rights extinguished by s 25

- (1) If an amount has been paid to or recovered by the securityholder under a security in relation to a liability that, on the making of a claim by the securityholder, is, by section 25, taken to have been discharged—
 - (a) the securityholder is liable to repay that amount to the person who paid it; and
 - (b) the Territory may deduct from the compensation payable to the securityholder and pay to the person who paid that amount the amount that has not been repaid.
- (2) A payment made by the Territory under subsection (1) (b) is taken to have been made in discharge of the obligation of the securityholder under subsection (1) (a).

27 Territory must accept or reject claim for compensation

- (1) If the Territory is satisfied that the interest stated in a claim has been acquired from the claimant, the Territory must make an offer of compensation to the claimant that the Territory considers the claimant is entitled to in accordance with this part.
- (2) The Territory must give the claimant written notice stating—
 - (a) that the claim is accepted; and
 - (b) how the compensation offered was, or will be, worked out.
- (3) If the Territory does not consider that an interest has been acquired from the claimant under the Act, the Territory must reject the claim.
- (4) If the Territory rejects the claim, it must give written notice to the claimant stating—
 - (a) that the claim is rejected; and
 - (b) the reasons why it is rejected.

- (5) If the Territory has not given the claimant a notice under subsection (2) or (4) within the period mentioned in section 23 (Timeframe for deciding initial claims), the Territory is taken to have rejected the claim.

28 Claimant may accept or reject Territory's compensation offer

- (1) If the Territory makes an offer of compensation under section 27 (1), the claimant may, by written notice to the director-general—
- (a) accept the offer; or
 - (b) do both of the following:
 - (i) reject the offer;
 - (ii) state the amount of compensation they consider they are entitled to and how the amount is worked out.
- (2) If the claimant has not given the Territory a notice under subsection (1) within 30 days after the day the Territory makes the offer of compensation, the claimant is taken to have rejected the offer.

29 Territory must reconsider offer and make final offer

- (1) If the director-general receives a notice rejecting an offer under section 28 (1) (b) (i) or section 28 (2) applies, the Territory must—
- (a) reconsider the amount of compensation within 12 weeks after the day the Territory receives the notice; and
 - (b) consider the information included in the notice; and
 - (c) give the claimant a written final offer of compensation that the Territory considers the claimant is entitled to under this part.
- (2) The Territory must state in the final offer how the compensation offered is worked out.

- (3) The claimant must accept or reject the final offer by written notice to the director-general.
- (4) If the claimant has not given the Territory a notice under subsection (3) within 30 days after the day the Territory makes the final offer of compensation, the claimant is taken to have rejected the offer.

Division 4.6 Payment etc of compensation

30 Payment etc of compensation

- (1) If a claimant accepts an offer of an amount of compensation under section 28 (a) or section 29(3) in relation to an acquisition, the amount of compensation given to the claimant under the [Act](#), section 10 (Acquisition must be on just terms) for the acquisition is—
 - (a) the amount of compensation in the accepted offer; less
 - (b) any amount paid, or the value of any other compensation given, by the Territory to the claimant under section 24 (Early compensation arrangements).
- (2) The Territory must give the claimant the compensation as soon as is reasonably practicable after the claimant has—
 - (a) produced or surrendered all deeds and documents relating to, or evidencing, the claimant's title to the acquired interest that the Territory reasonably requires to be produced or surrendered; and
 - (b) executed all documents, including any deed of release, the Territory reasonably requires; and
 - (c) complied with any obligations under the Act.

31 Interest payable on compensation—acquisition other than security rights

- (1) This section applies if the Territory is liable to pay a monetary component of compensation to a claimant under this part in relation to an acquisition, other than a security right.
- (2) The Territory must pay the claimant interest on the compensation at the relevant rate for the month when the Territory becomes liable to pay the compensation on and from the acquisition day until—
 - (a) the day on which the compensation is paid; or
 - (b) if payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) Subsection (4) applies if—
 - (a) the claimant rejects, or is taken to have rejected, a final offer made under section 29 (1) (c); and
 - (b) the amount of compensation payable under this division is less than the final offer.
- (4) The period for which interest is payable under subsection (2) does not include the period—
 - (a) starting on the day the claimant rejects, or is taken to have rejected, the final offer; and
 - (b) ending on the day the amount of compensation payable under this division is determined.
- (5) Interest is not payable to the claimant on the whole or any part of the compensation otherwise than in accordance with this section.

- (6) In this section:

relevant rate, of interest for the month when the Territory becomes liable to pay the compensation, means the rate that is the assessed secondary market yield for 5 year non-rebate Treasury bonds, published by the Reserve Bank of Australia on the first day of the month.

32 Interest payable on compensation—security rights

- (1) This section applies if the Territory is liable to pay compensation to a claimant under this part in relation to the acquisition of a security right.
- (2) The Territory must pay the claimant interest on the amount representing the principal secured under the security included in the compensation at the lowest rate (whether for prompt payment or otherwise) provided for by the security on and from the acquisition day until—
 - (a) the day on which the compensation is paid; or
 - (b) if payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) Subsection (4) applies if—
 - (a) the claimant rejects, or is taken to have rejected, a final offer made under section 29 (1) (c); and
 - (b) the amount of compensation payable under this division is less than the final offer.
- (4) The period for which interest is payable under subsection (2) does not include the period—
 - (a) starting on the day the claimant rejects, or is taken to have rejected, the final offer; and

- (b) ending on the day the amount of compensation payable under this division is determined.
- (5) Interest is not payable to the claimant on the whole or any part of the compensation payable otherwise than in accordance with this section.

Division 4.7 Dispute resolution

33 Expert determination

- (1) This section applies if a dispute arises between a claimant and the Territory.
- (2) The party in dispute must give the other party written notice of the dispute no later than 30 days after the dispute arises.
- (3) Unless the parties to the dispute otherwise agree—
 - (a) as soon as is practicable after the notice under subsection (2) is given—
 - (i) an independent expert must be appointed to decide the dispute; and
 - (ii) the dispute must be promptly referred to the independent expert; and
 - (b) a party may not commence legal proceedings in relation to the dispute if the dispute has not been first decided by the independent expert.
- (4) The person appointed as an independent expert, including the terms of the appointment, is—
 - (a) as agreed in writing by the parties to the dispute; or
 - (b) if the parties are unable to agree—a person nominated in writing by a relevant professional body declared by the Minister.

- (5) If a dispute is referred to an independent expert, the expert must—
 - (a) make a determination—
 - (i) as an expert; and
 - (ii) based on the information provided to them by the parties; and
 - (b) give the parties written notice of the determination and reasons for it.
- (6) A determination by an independent expert—
 - (a) is final and binding on the parties for the Act and any court proceeding under the Act; but
 - (b) may be reviewed by a court of competent jurisdiction for legal error.
- (7) A declaration under subsection (4) (b) is a notifiable instrument.
- (8) In this section:

dispute means a dispute about how compensation is worked out under this part but does not include a question of law.

Part 5 Miscellaneous

34 **Effect of acquisition of security right on securityholder's rights**

- (1) This section applies to any security right that is taken to have been acquired by the Territory under the Act.
- (2) The securityholder retains, in relation to so much of the security as is not discharged by section 25 (Effect of compensation claim in relation to acquisition of security right), any right and remedy that the securityholder may have—
 - (a) against Calvary; or
 - (b) in relation to any interest that is still subject to the security.

35 **Excluded public health service—Act, dict, def *public health service*, par (b)**

The palliative care facility known as Clare Holland House is excluded.

Schedule 1 Amended Crown lease

(see s 8)

1.1 Amendment of Crown lease

The Crown lease is amended as follows:

- (a) text that is underlined is inserted into the Crown lease;
- (b) text that is struck through is omitted from the Crown lease.

Entered in the Register Book

Volume

Folio

Registrar-General

Section 167

Land (Planning and Environment) Act applies

*AUSTRALIAN CAPITAL TERRITORY
LAND (PLANNING AND ENVIRONMENT) ACT 1991*

*Australian Capital Territory (Planning and Land
Management) Act 1988 (C'th) ss 29, 30 & 31*

LESSEE

LEASE GRANTED pursuant to the *Land
(Planning and Environment) Act 1991* and the
Regulations thereunder on the Sixteenth day of
November One thousand nine hundred and ninety
nine WHEREBY THE AUSTRALIAN
CAPITAL TERRITORY EXECUTIVE ON
BEHALF OF THE COMMONWEALTH OF
AUSTRALIA (hereinafter called "the
Commonwealth") grants to **CALVARY
HOSPITAL ACT INCORPORATED** an

LAND

association incorporated under the Associations Incorporation Act 1991 of the Australian Capital Territory having its principal office at Calvary Hospital Bruce in the said Territory (hereinafter called "the Lessee") ALL THAT piece or parcel of land situate in the Australian Capital Territory containing **an area of ~~12.69~~** [insert area of private

TERM

hospital land] **hectares** or thereabouts and being **~~Block 1 Section 1 Division of Bruce~~** [insert identifier for private hospital land] as delineated on **~~Deposited Plan Number 2360~~** [insert deposited plan number for private hospital land] in the Registrar-General's Office at Canberra in the said Territory (hereinafter referred to as "the land") RESERVING unto the Territory all minerals TO HOLD unto the Lessee for the term of ninety nine years commencing on the sixteenth day of November One thousand nine hundred and ninety nine (hereinafter referred to as "the date of the commencement of the lease") to be used by the Lessee for the purpose set forth in sub-clause (a) of Clause 3 of this lease only YIELDING AND PAYING THEREFOR rent in the amount and in the manner and at the times hereinafter

provided and UPON AND SUBJECT TO the covenants conditions and agreements hereinafter contained.

1. INTERPRETATION

1.1 IN THIS LEASE, unless the contrary intention appears:

- (a) **Adjacent Land** means [insert identifier for public hospital land];
- (b) **Australian Capital Territory Executive** means the **Executive** established by section 36 of the *Australian Capital Territory (Self-Government) Act 1988 (C'th)*;
- (c) **Lessee** shall –
 - (i) where the Lessee consists of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;
 - (ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the persons and each of them and their and each of their executors administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and

assigns of the survivor of them;
and

- (iii) where the Lessee is a corporation
be deemed to include such
corporation its successors and
assigns;

(d) **Territory** means –

- (i) when used in a geographical sense
the Australian Capital Territory;
and
(ii) when used in any other sense the
body politic established by
section 7 of the *Australian Capital
Territory (Self Government)
Act 1988* (C'th);

**2. THE LESSEE COVENANTS WITH THE
COMMONWEALTH** as follows:

RENT

- (a) That the Lessee shall pay to the
Territory rent at the rate of ten cents
per annum if and when demanded
payable within one month of the date
of any demand made by the Territory
relating thereto and served on the
Lessee;

**MANNER OF
PAYMENT OF RENT**

- (b) That any rent or other moneys payable
by the Lessee to the Territory under
this lease shall be paid to such person
as may be authorised by the Territory
for that purpose at Canberra in the said
Territory without any deduction
whatsoever.

3. THE LESSEE FURTHER COVENANTS WITH THE COMMONWEALTH as follows:

- | | | |
|-------------------------------------|-----|--|
| PURPOSE | (a) | To use the said land only for the purpose of a hospital and ancillary services thereto and accommodation facilities for employees of the hospital and a residence and ancillary services for members of the Calvary Hospital ACT Incorporated who are conducting the hospital; |
| BUILDING SUBJECT TO APPROVAL | (b) | That the Lessee shall not without the previous approval in writing of the Territory erect any building or structure other than a hospital or make any structural alteration to any building or erection on the said land; |
| REPAIR | (c) | That the Lessee shall at all times during the said term maintain repair and keep in repair all buildings and erections on the said land all to the satisfaction of the Territory. In case of loss or damage to any buildings or other improvements on the said land which have been wholly paid for directly or indirectly by the Territory the Territory may in their absolute discretion at their own cost replace such buildings or other improvements as they think fit; |
| FAILURE TO REPAIR | (d) | If and whenever the Lessee fails to repair or keep in repair any building or erection on the said land the Territory may by notice in writing to the Lessee specifying the wants of repairs require the Lessee to effect repairs in |

accordance with the said notice or to remove the building or erection and if after the expiration of one calendar month from the date of the said notice or such longer time as the Territory may in writing allow the Lessee has not effected the said repairs or removed the building or erection the Territory with such equipment as is necessary may enter upon the said land and effect the said repairs or (if the Territory is of the opinion the building or erection is beyond reasonable repair) may demolish and remove the building or erection;

SUB-LETTING

(e)

Not to assign sub-lease or part with possession of any or all of the said land or buildings erections or improvements thereon without the previous approval in writing of the Territory;

RIGHT OF INSPECTION

(f)

Subject to the provisions of the *Land (Planning and Environment) Act 1991* to permit any person or persons authorised by the Territory to enter upon the said land at all reasonable times and in any reasonable manner and inspect the said land and any buildings erections and improvements thereon;

RATES AND CHARGES

(g)

To pay all rates charges and other statutory outgoings assessed levied or payable in respect of the said land as and when the same fall due;

LAND ACCESS

(h)

To permit any person or persons authorised by the Territory to enter upon the said land at all reasonable times and in any reasonable manner to enable access between the hospital on the Adjacent Land and any hospital on the land.

4. **THE COMMONWEALTH COVENANTS WITH THE LESSEE** that the Lessee observing and performing the covenants on the part of the Lessee to be observed or performed shall quietly enjoy the said land without interruption by the Territory; **THE COMMONWEALTH FURTHER COVENANTS WITH THE LESSEE** that while the Adjacent Land is owned or controlled by the Territory the Lessee (and/or any approved sublessee operating a hospital on the land) will be permitted to access any hospital on the Adjacent Land at such times and in such manner as is reasonably required for the purpose of the conduct of the business of a hospital operated from the land by the Lessee and/or their approved sublessee.

5. **IT IS MUTUALLY COVENANTED AND AGREED** as follows:

SURRENDER

(a)

In the event of the expiration surrender or termination of the lease (not being termination arising under the next succeeding sub-clause) the Lessee shall not remove or be entitled to compensation for the value of any buildings or other improvements on the said land which have been wholly paid for directly or indirectly by the Territory. In respect of all other buildings and other improvements the Lessee may be paid such compensation as determined by the

Territory having regard to the financial contribution made by the Lessee in the construction of those buildings and other improvements provided that the amount or amounts payable as compensation shall not exceed the value or values of such buildings or other improvements at the time of the expiration surrender or termination;

- (b) In the event that the Lessee breaches or fails to comply with any ~~of the terms and conditions of the Agreement made between the Australian Capital Territory and Calvary Health Care ACT Limited dated the seventh day of December two thousand and eleven which said Agreement deals with the construction establishment operation and maintenance of Calvary Hospital in the said Territory or any~~ of the covenants of this lease or any applicable law of the said Territory the Territory without prejudice to any other remedy may give the Lessee thirty days notice requiring it to rectify such breach or omission and in the event that such breach or omission is not rectified within such time the Territory may forthwith terminate the lease and in that event the Lessee will be entitled to fair and reasonable compensation for the value of the buildings and other improvements having regard to the financial contributions made by the Lessee in the construction of those buildings and other improvements;

FURTHER LEASE	(c)	Subject to the provisions of the <i>Land (Planning and Environment) Act 1991</i> the Lessee shall be entitled to a further lease of the said land for such further term and at such rent and subject to such conditions as may then be provided or permitted by Statute Ordinance or Regulation;
NOTICES	(d)	That any notice requirement demand consent or other communication to be given to or served upon the Lessee under this lease shall be deemed to have been duly given or served if signed by or on behalf of the Territory and delivered to or sent in a prepaid letter addressed to the Lessee at the registered office of the Lessee in the said Territory BUT if for any reason the Lessee does not have a registered office in the said Territory then at the usual or last-known address of the Lessee or affixed in a conspicuous position on the said land;
EXERCISE OF POWERS	(e)	<p>Any and every right power and or remedy conferred on the Commonwealth the Territory or the respective Ministers hereunder or implied by law may be exercised on behalf of the Commonwealth the Territory or the respective Ministers as the case may be by:</p> <ul style="list-style-type: none">(i) the Australian Capital Territory Executive;(ii) the Minister for the time being administering the <i>Land (Planning</i>

and Environment) Act 1991 or
any Statute Ordinance or
Regulation substituted therefor;

- (iii) an authority or person for the time
being authorised by the
Australian Capital Territory
Executive or the Minister referred
to in (i) or (ii) above or by law to
exercise those powers or
functions of the Territory the
Commonwealth or the relevant
Minister; or
- (iv) the person to whom the Minister
referred to in (ii) above has
delegated all his powers or
functions under the said *Land*
(Planning and Environment)
Act 1991 or any Statute
Ordinance or Regulation
substituted therefor.

IN WITNESS whereof the Australian Capital Territory Executive on behalf of
the Commonwealth and the Lessee have executed this Lease.

**SIGNED, SEALED and
DELIVERED** by [insert delegate's
name]

a person duly authorised by the
Australian Capital Territory
Executive for and on behalf of the
Commonwealth in the presence of:

Signature of delegate

Signature of witness

Name of delegate (block letters)

Full name of witness (block letters)	Position of delegate (block letters)
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The Common Seal of **CALVARY HOSPITAL ACT INCORPORATED** was affixed hereto by the authority of the Local Council and in the presence of:

Signature of authorised person

Signature of witness	Name of authorised person (block letters)
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Full name of witness (block letters)	Position of authorised person (block letters)
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Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions relevant to this regulation. For example:

- head of service
- notifiable instrument
- the Territory
- territory law.

Note 2 Terms used in this regulation have the same meaning that they have in the *Health Infrastructure Enabling Act 2023*. For example, the following terms are defined in the [Act](#), dict:

- acquisition day (see s 7)
- Crown lease
- director-general (see s 23 (1))
- hospital land
- interest, in the public hospital land or a public hospital asset
- network agreement
- public hospital assets
- public hospital contract
- public hospital employee
- public hospital land
- security
- securityholder
- security right.

acquisition, for part 4 (Compensation)—see section 9.

claim, for part 4 (Compensation)—see section 9.

claimant, for part 4 (Compensation)—see section 9.

compensation—see the [Act](#), section 10 (5).

market value, for part 4 (Compensation)—see section 9.

miscellaneous interest, for part 4 (Compensation)—see section 16.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 2 June 2023.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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