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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**HEALTH INFRASTRUCTURE ENABLING BILL 2023**

**GOVERNMENT AMENDMENTS**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

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# HEALTH INFRASTRUCTURE ENABLING BILL 2023

## GOVERNMENT AMENDMENTS

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# HEALTH INFRASTRUCTURE ENABLING BILL 2023

## Government Amendments

### Outline of Government Amendments

On 11 May 2023, the Health Infrastructure Enabling Bill 2023 (the Bill) was introduced into the Legislative Assembly. The Bill includes provision for the Territory to acquire the public hospital land from Calvary for the purpose of construction of a public hospital and enables the transition of the operation of the public hospital from Calvary to the Territory providing that any interests acquired under the Act are acquired on just terms.

This supplementary explanatory statement relates to the Government amendments to the Bill as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Government amendments and help inform debate on the Bill and the amendments. It does not form part of the Bill and has not been endorsed by the Legislative Assembly. A more detailed explanation of the purposes and intended operation of the Bill are set out in the Explanatory Statement for the Bill.

The Government amendments to the Bill are minor and technical in nature and seek to further the purposes of the Bill, Government amendments 4 and 5 are responsive to comments from the Standing Committee on Justice and Community Safety, ACT Legislative Assembly, *Scrutiny Report 29* (10th Assembly, 26 May 2023).

### Consistency with Human Rights

The preamble to the *Human Rights Act 2004* (ACT) states that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. This is further reflected in section 28 of the Human Rights Act with subsection (2) stating that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered.

An assessment of the rights engaged and potentially limited under the Bill is set out in the Explanatory Statement for the Bill.

## Health Infrastructure Enabling Bill 2023

### Detail

#### Government Amendment 1

Clause 2 (1)  
Page 2, line 5—

This amendment omits the phrase “the day after” leaving the clause to mean the Act (other than schedule 2) will commence on the notification day.

#### Government Amendment 2

Clause 5 (d)  
Page 3, line 17—

This amendment omits the word “immediately” from the clause. This provides clarity surrounding one of the purposes of the Act, which is not to be limited to only the period during and “immediately” after the transition.

#### Government Amendment 3

Proposed new clause 6 (5) and (6)  
Page 4, line 17—

This amendment inserts a new clause 6(5) and (6) which disapplies the *Government Procurement Act 2001* and the *Government Procurement Regulations 2007* to the procurement of goods, services or works by a territory entity necessary for or ancillary to the operation of the public hospital for a period of 6 months after acquisition. This clause is intended to provide for continuity of service through the ability to quickly establish contracts necessary for or ancillary to the operation of the public hospital.

#### Government Amendment 4

Proposed new clause 10 (3) (aa)  
Page 7, line 11—

This amendment inserts a new clause 10(3)(aa) which states that a regulation may provide for “how just terms for an interest acquired under this Act are provided”. This makes clear that a regulation may provide for the working out of just terms which under clause 10(1) the Territory must provide to a person from whom an interest is acquired under the Act.

### **Government Amendment 5**

Clause 10 (3) (a)

Page 7, line 12—

The amendment omits “under subsection (2)” from clause 10(3)(a). This broadens what a regulation may provide for in relation to working out compensation and avoids a potentially restrictive reading that a regulation under s 10(3)(a) may only provide for working out compensation for acquisitions under subsection (2).

### **Government Amendment 6**

Clause 11 (1) (d) (ii)

Page 9, line 24—

This amendment omits the word “immediately” from the clause. This provides clarity that entry to the hospital for a purpose under the Act is for assessment of matters relevant to future operation and not just immediately after acquisition.

### **Government Amendment 7**

Clause 11 (1) (d) (iii)

Page 9, line 28—

This amendment omits the word “immediately” from the clause. This provides clarity that entry to the hospital for a purpose under the Act is for assessment of matters relevant to future operation and not just immediately after acquisition.

## **Government Amendment 8**

Clause 11 (1) (d) (iv)

Page 10, line 3—

This amendment omits the word “immediately” from the clause. This provides clarity that entry to the hospital for a purpose under the Act is for assessment of matters relevant to future operation and not just immediately after acquisition.

## **Government Amendment 9**

Clause 12 (1)

Page 11, line 3—

This amendment inserts “documents or other” before “information” in clause 12(1) which provides that for the purpose of this Act, the director-general may request Calvary provide “documents or other” information about any of the things enumerated under clause 12.

## **Government Amendment 10**

Clause 13 (3) (c)

Page 15, line 1—

This amendment replaces clause 13(3)(c) which broadly referred to minimising disruption to Calvary as a result of the public hospital transition. The proposed clause 13(3)(c) is more specific and provides that the Territory is to ensure that the impact of the public hospital transition on Calvary’s operation of facilities on the private land is minimised as far as reasonably practicable.

## **Government Amendment 11**

Clause 14 (1) (a)

Page 16, line 7—

This is a minor and technical amendment to correct an error under clause 14(1)(a) which incorrectly references “section 18” instead of “section 19” – the latter being the provision under which the Crown lease is amended.

## **Government Amendment 12**

Clause 17 heading

Page 19, line 5—

This amendment omits the word “historical” from the heading of clause 17, which is a provision that should provide for continued access to records relating to the public hospital not limited to historical records.

## **Government Amendment 13**

Clause 17 (1) (a)

Page 19, line 9—

This amendment omits the word “historical” from clause 17(1)(a) and substitutes “documents and other” as the director-general must have the power after acquisition to request that Calvary provide documents and other information outlined in that clause not limited to historical information.

## **Government Amendment 14**

Clause 17 (1) (a) (i)

Page 19, line 11—

This amendment replaces the words “existing or pending” with the words “past, current or future” to ensure that the director-general may request information from Calvary on any investigations, proceeding, or remedy which relates to the operation of the public hospital prior to acquisition.

## **Government Amendment 15**

Clause 25 (1) (b) (v)

Page 26, line 4—

This amendment omits the word “historical” from the clause.

This is a consequential amendment which results from the removal of “historical” from the heading of clause 17 as proposed by Government Amendment 12.

## **Government Amendment 16**

Proposed new clause 28 (2)

Page 27, line 9

This clause inserts a new point at clause 28 being that a regulation may commence on notification day which enables a regulation to commence the day it is notified.

## **Government Amendment 17**

Schedule 2, part 2.2

Proposed new amendment 2.7A

Page 31, line 11—

This amendment inserts 2.7A into sch 2, pt 2.2 to omit “planning and land authority” in clause 27 and replace it with “territory planning authority”. This provision would commence with section 3 (Dictionary) of the *Planning Act 2023*.

## **Government Amendment 18**

Dictionary, note, proposed new dot point

Page 32, line 6—

This amendment inserts a new dot in the Dictionary of the Bill which refers the reader to the definition of “document” in the Legislation Act.

## **Government Amendment 19**

Dictionary, definition of *interest*, paragraph (b) (iii)

Page 33, line 20—

This is a minor amendment to omit the word “and” and substitute it for the word “but” to correct a grammatical error in the meaning of the defined term “interest” under the Bill.

## **Government Amendment 20**

Dictionary, definition of *operation*

Page 34, line 8—



This amendment omits the definition “operation” in the dictionary to the Bill and replaces it with a new definition of “operation” which states that operation of the public hospital includes provision of a public health service.

### **Government Amendment 21**

Dictionary, proposed new definition of *public health service*

Page 34, line 19—

This amendment inserts a new definition “public health service” into the dictionary of the Bill which is relevant to the definition of operation in Government Amendment 20.

#### ***public health service*—**

- (a) means a public health service provided by public hospital employees at places other than the public hospital; but
- (b) does not include a thing excluded by regulation.

This amendment provides clarity as to the consideration of public health services delivered outside the public hospital itself.

### **Government Amendment 22**

Dictionary, definition of *public hospital assets*, paragraph (a) (iii)

Page 34, line 27—

This amendment expands the definition of public hospital assets in paragraph (a)(iii) so that it not only includes motor vehicles used for the public hospital but also a public health service nominated by the Territory.

### **Government Amendment 23**

Dictionary, definition of *public hospital assets*, paragraph (a) (v)

Page 35, line 4—

This amendment inserts “or a public health service” after “public hospital” in the definition of public hospital assets at paragraph (a)(v) to include any asset purchased for the public hospital “or a public health service” before the acquisition day.

## **Government Amendment 24**

Dictionary, definition of *public hospital contract*, paragraph (a)

Page 35, line 13

This amendment omits part of paragraph (a) of the definition of public hospital contract and substitutes “necessary for or ancillary to the operation of the public hospital or a public health service”. This amendment corrects a grammatical error in relation to “and/or” and further expands the definition to include contracts related to a “public health service”.

## **Government Amendment 25**

Dictionary, definition of *public hospital employee*, paragraph (a)

Page 35, line 20—

This is a minor amendment following the inclusion of the definition of public health service at Government Amendment 20 which omits “other public health services” and substitutes it for “or a public health service”.

## **Government Amendments 26 and 27**

Dictionary, definition of *public hospital employee*, paragraph (a) (iii)

Page 35, line 26—

These amendments together omit paragraph (a) (iii) and substitute it with:

*(aa) includes any other person prescribed by regulation; but*

The amendment corrects a grammatical error in the meaning of the defined term “public hospital employee” and addresses a structural issue with the clause by effectively replacing the word “and” with “but”.

## **Government Amendment 28**

Dictionary, definition of *public patient health records*

Page 36, line 11

This amendment seeks to ensure outreach/offsite patient records are captured and inserts “or a public health service” after “public hospital”.