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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary,

Enclosed is a copy of our submission in response to the Australian Capital Territory (Self-Government) Amendment Bill 2023. Thank you for providing us with the opportunity to contribute to this critical issue.

We stand in support of this Bill. There is no doubt the recent decision of the ACT Government to forcibly acquire Calvary Public Hospital in Canberra lacked proper consultative and stakeholder engagement, avoided public input, and was rushed through the Legislative chamber. In short, the ACT Government failed to provide an inquiry that this Bill sets forth to rectify.

Indeed, we will put forward the case that whilst an ACT Government inquiry is necessary, we understand that the circumstances call for a more comprehensive review – namely, a Royal Commission.

The Canberra Declaration is a growing community of caring Australians who have a vision for a better Australia where everyone can enjoy the prosperity, peace and freedom that come from the revitalisation of Judeo-Christian values that formed the foundation

of Australia. We continue in “humbly relying on the blessing of Almighty God”, as the preamble to our Constitution so memorably puts it.

Along with our current 91,578 signatories, we at the Canberra Declaration request the Committee to carefully consider the case made in this submission that the compulsory acquisition of Calvary Hospital has taken place at least in part to remove Judeo-Christian values from the public sphere. We are confident this is a position a large portion of the 43.9% of Australians who affiliated with Christianity in the last census would readily identify with.

The loss of our Judeo-Christian values is determinantal for all Australians regardless of cultural or religious affiliation, because it is precisely these values that have fashioned our country into one of the most prosperous and free nations of the world. It also signals to other religious minority groups that their place in Australian society is precarious, or even undesired.

Thank you for taking the time to review our submission.

Yours sincerely,

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Senate Legal and
Constitutional Affairs
Committee

**Australian Capital
Territory (Self-
Government)
Amendment Bill
2023**

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1.0 Executive Summary

The acquisition of Calvary Public Hospital in Bruce, Canberra, has raised serious concerns over the legitimacy of the process leading to the Health Infrastructure Enabling Act 2023 (ACT). These concerns centre around the complete lack of required consultation with the community and stakeholders, and rushed legislation that avoids the processes laid out in the ACT's Land Acquisitions Act 1994.

While the ACT Government has stated that the acquisition is necessary for public health system efficiency, serious doubts and concerns remain over the legitimacy of this claim. Specifically, the ongoing documented tension between the government and Calvary Hospital over the hospital's pro-life Catholic ethics places a big question mark over the government's denial the acquisition is related to this conflict. The government's denial is unconvincing and comes with serious ramifications for freedom of religion, association, conscience and thought.

We strongly urge the Committee to give due diligence to the evidence presented in this submission.

2.0 Process

Serious doubts surround the process the ACT Government took in compulsorily acquiring Calvary Hospital. The plans by the government were labelled "controversial"¹ from the beginning. More scathing was one *ABC News* report that stated the "condemnation of the way the government's gone about the process has been almost unanimous."²

Health Minister Rachel Stephen-Smith labelled the takeover a "big decision for the future of healthcare in the ACT"³ – which it undoubtedly is. But unlike any other major parliamentary decision, standard protocol was entirely absent, as is demonstrated by the following points.

¹ Georgia Roberts, "ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital", *ABC News*, 10 May 2023, <<https://www.abc.net.au/news/2023-05-10/calvary-hospital-to-be-acquired-by-act-government/102325324>> (11 July 2023).

² Harry Frost, "Opinions are mixed on the Calvary hospital takeover but condemnation of the government's process is almost unanimous", *ABC News*, 4 June 2023, <<https://www.abc.net.au/news/2023-06-04/act-calvary-hospital-takeover-debate-government-went-wrong-way/102427784>> (12 July 2023).

³ Roberts, "ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital".

2.1 Lack of Community Input

Calvary Public Hospital serves the public health sector and is funded by the taxpayer. It would be natural and necessary to include the community in the consultation process. But the community was not engaged in the lead-up to the decision – indeed, by all indications it was never intended to be included. Instead, the announcement was made on Wednesday, 10 May 2023, and the Health Infrastructure Enabling Bill 2023 was introduced into the Legislative Assembly the week after on Thursday, 18 May.⁴

2.2 Lack of Stakeholder Consultation

In any major decision-making process, stakeholder consultation is a given. It is startling that there was no stakeholder consultation with Calvary Hospital, its staff or its board.⁵ Nor was there consultation with “stakeholders like the Australian Medical Association, who support the idea”.⁶

The ACT Government and Calvary Hospital stakeholders were already in ongoing discussions last year. The government had proposed to reduce Calvary’s contract down to 25 years, “but then abruptly ended discussions.”⁷ Calvary Hospital’s board was then notified only two days prior to the public announcement about the compulsory acquisition.

Among the varied criticisms of the lack of stakeholder consultation, the following open letter from “Concerned Senior Nurses” puts it as well as anyone:

The way in which this has been done reflects poorly on the highest levels of leadership within the territory. To allow the majority of Calvary’s 1800 staff to find out about this via social media was absolutely disgraceful. Clearly this had been in covert planning for quite some time. The level of complicity in this deception speaks to a somewhat disturbing ethical code and leaves us with many questions related to your [Rachel Stephen-Smith] party’s ideology.⁸

⁴ Harry Frost, “The ACT government has been attacked over its takeover of Calvary Public Hospital, but insists it’s not about religion”, *ABC News*, 13 May 2023, <<https://www.abc.net.au/news/2023-05-13/why-act-government-taking-over-calvary-public-hospital/102340442>> (11 July 2023).

⁵ “Petition to Save Calvary Hospital Bruce”, *Catholic Voice*, <<https://www.catholicvoice.org.au/petition-to-save-calvary-hospital-bruce>> (12 July 2023).

⁶ Frost, “The ACT government has been attacked over its takeover of Calvary Public Hospital, but insists it’s not about religion”.

⁷ Kevin Andrews, “Calvary on a Cross”, *Kevin’s Columns*, 3 June 2023, <<https://www.kevinandrews.com.au/kevins-columns/calvary-on-a-cross>> (12 July 2023).

⁸ Concerned Senior Nurses, Calvary Public Hospital, “Nurses write open letter re acquisition of Calvary Public Hospital”, *Canberra Weekly*, 27 May 2023, <<https://canberraweekly.com.au/nurses-write-open-letter-on-acquisition-of-calvary-public-hospital>> (12 July 2023).

2.3 Rushed Legislation

The legislation was rushed through the single-chamber ACT Legislative Assembly. Despite a public statement by Health Minister Stephen-Smith that the “decision about the northside hospital hasn’t been easy and it’s not one that we’ve taken quickly or lightly,”⁹ the fact remains that the legislation was introduced on 18 May and passed as expected on 2 June, 2023. By anyone’s standard, a two-week timeframe for a significant piece of legislature, with a proposed \$1 billion cost, is certainly one that was “taken quickly”, contrary to the minister’s claim.

Further, the takeover process was implemented only one month after the passing of the Bill, on 3 July 2023. This is an extraordinarily short time frame, which strongly suggests the government willed the legislation take to effect with the smallest possible opportunity for any challenge.

2.4 Lack of a Committee Inquiry

When making a significant decision, a committee inquiry is established as a part of the standard democratic process. There was no committee inquiry into the government’s proposal. Significantly, this was outlawed by “a motion – which passed – *suspending the requirement for any committee inquiry into the bill* to table a report before the proposal is debated.”¹⁰ It is quite something to deliberately avoid a committee inquiry and to shrewdly prevent it.

2.5 Improper Land Acquisition Process

The takeover of Calvary Hospital by Canberra Health Services broke a contract with Calvary Hospital which was initiated by the Commonwealth Government in 1979. Calvary had 76 years left to run on its 120-year contract. The fact that this contract was so lightly brushed aside as of no consequence is highly concerning.

Further, the process entirely ignored all standard procedures. Like any state or territory, the ACT’s Land Acquisitions Act 1994 sets out the process by which the government is able to make compulsory acquisitions.

⁹ Roberts, “ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital”.

¹⁰ Frost, “The ACT government has been attacked over its takeover of Calvary Public Hospital, but insists it’s not about religion”.

But instead of following the Land Acquisition Act, the government chose to ignore it entirely. Deliberately avoiding the very pieces of legislation put in place for precisely this purpose is of grave concern for all who care about the rule of law. Former Prime Minister John Howard stated it was “about as blatant an assault on the principle of private ownership that I’ve seen in this country for many, many years.”¹¹

2.6 Conclusion

The whole process was entirely unsatisfactory from start to finish, and it has rightly faced severe criticism. Acting ACT Liberal opposition leader Jeremy Hanson was particularly scathing about “this undemocratic, unprincipled, deceitful, and destructive bill”,¹² labelling it “outrageous thuggery by the chief minister and health minister.”¹³ He went on to say:

We oppose it on health grounds, we oppose it legally, and we oppose it ethically. This bill tramples over staff; it tramples over trust; it tramples over our democratic principles and over common sense. It is an appalling example of a government acting without consideration for due process and without concern for the harm that they will cause. Most of all, it is a breach of trust – of staff, of patients, of all the people of the ACT, and for any business doing work with the ACT Government.¹⁴

We conclude with words from the speech by federal independent senator for the ACT David Pocock, who has given his support for an ACT-level inquiry.¹⁵ In his 15 June speech in the Federal Senate, he stated:

I want to thank the number of people who have... spoken to me around Canberra or sent emails... both in support of this move by the ACT Government, and many others raising concerns. About what this means for health care; the lack of consultation with doctors;

¹¹ Marilyn Rodrigues, “John Howard attacks ACT Government over Calvary takeover: ‘Blatant assault’”, *Catholic Outlook*, 23 June 2023, <<https://catholicoutlook.org/john-howard-attacks-act-government-over-calvary-takeover-blatant-assault>> (11 July 2023).

¹² Nick Fuller, “Calvary acquisition bill passes, Calvary approaches court”, *CanberraWeekly*, 1 June 2023, <<https://canberraweekly.com.au/calvary-acquisition-bill-passes-legal-action-begins>> (11 July 2023).

¹³ Roberts, “ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital”.

¹⁴ Fuller, “Calvary acquisition bill passes, Calvary approaches court”.

¹⁵ David Pocock, “On Calvary Hospital: Speech given in the Senate on 15th June 2023”, *DavidPock.com.au*, <https://www.davidpocock.com.au/on_calvary_hospital2> (10 July 2023).

what this potentially means for other religious-based organisations here in the ACT.
*These are all valid concerns.*¹⁶

The deliberate avoidance of all proper procedures is a significant red flag and raises the important question of why such a move was deliberately planned and executed.

3.0 Documented Historical Tension with and Criticism of Calvary Hospital's Pro-Life Stance

Whilst there are many issues that could be highlighted for valid criticism surrounding the takeover process, this section will focus on the ACT Government's substantial history of criticism towards Calvary Hospital for its pro-life ethics. There is strong evidence the ACT Government has desired for some time to remove Calvary Hospital because of its pro-life stance that it finds unpalatable. The official line from the ACT Government is that the takeover had nothing to do with the Catholic religion. The well-known ongoing tensions between the government and Calvary suggest otherwise. Further, the recent report into 'reproductive health' in the ACT reveals severe bias, raising concerns about the objectivity of an ACT-level inquiry.

3.1 Ongoing Tension Between Calvary Hospital and the ACT Government

Prior discussions about the acquisition of Calvary Hospital date back more than a decade to 2009. Faced with a growing population and the need to increase the capacity of Canberra's public health system, the government saw the need to plan for the future. One proposal was for the government to purchase Calvary Public Hospital. As reported by the ABC in 2009, the "hospital's policies on [a] matter like abortion... would probably be overturned if the sale goes ahead",¹⁷ indicating that this was an issue of concern in the discussion.

In 2011 a different arrangement was proposed by Health Minister Katy Gallagher. The stated purpose of the new "compromise" arrangement was so that "the latest offer will ensure a legal dispute is avoided",¹⁸ again indicating tension between the government and the key

¹⁶ Ibid. Emphasis added.

¹⁷ "ACT Govt plans to take over Calvary Hospital", *ABC News*, 21 April 2009, <<https://www.abc.net.au/news/2009-04-21/act-govt-plans-to-take-over-calvary-hospital/1657880>> (11 July).

¹⁸ "Calvary offered a hospital upgrade", *ABC News*, 29 April 2011, <<https://www.abc.net.au/news/2011-04-29/calvary-offered-a-hospital-upgrade/2701198>> (12 July 2023).

Calvary Hospital stakeholders. Once again, the issue over the provision of abortion was flagged, indicating that this continued to be an area of dispute.¹⁹

3.2 Inquiry into Abortion and ‘Reproductive Choice’ in the ACT

On 1 July 2022 an “Inquiry into Abortion and Reproductive Choice in the ACT” was commissioned. On 18 April 2023 – one month before the decision was made to take over Calvary Hospital – the Standing Committee on Health and Community Wellbeing handed down their report.²⁰

This report betrays a deeply entrenched bias, an unbalanced presentation, and inflammatory accusations against Calvary Hospital. It is entirely reasonable to conclude that the ongoing tension between the ACT Government and Calvary over the issue of abortion, which has existed for more than a decade and is laid bare in this report, has played a significant role in the government’s decision to compulsorily acquire it.

The report makes the following claim in paragraph 3.44:

Following the legality of abortion, societal *punitive responses* may have ended from [the] State but *still they prosper at the hands of the Church* (see sections in this report ‘Calvary Hospital’ and ‘Stigma and Harassment’).²¹

The claim that “punitive responses” for abortions “still... prosper at the hands of the Church” is a very serious allegation. It is one thing to claim that a rare punitive response has occurred. It is another to claim that such responses “prosper” ongoingly. As will be documented, both allegations are entirely baseless and prove that entrenched bias against Calvary Hospital is expressed in this report.

As a starting point, the highly ambiguous reference to “the Church” is initial evidence that the inquiry will suffer from a lack of objective analysis. To what is the report referring when it references ‘the Church’? The Catholic Church? Christian churches in general? Which ones?

¹⁹ Adrienne Francis, “Calvary offer may end hospital debate”, *ABC News*, 29 April 2011, updated 2 May 2011, <<https://www.abc.net.au/news/2011-04-29/calvary-offer-may-end-hospital-debate/2701330>> (12 July 2023).

²⁰ “Inquiry into Abortion and Reproductive Choice in the ACT”, Legislative Assembly for the Australian Capital Territory, Standing Committee on Health and Community Wellbeing, available at <https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-ACT.pdf>.

²¹ “Inquiry into Abortion and Reproductive Choice in the ACT”, 12–13.

The report simply does not define its terms, which is utterly unacceptable when levelling such a grave accusation.²²

As for the accusation of punitive responses, the report refers to two pieces of evidence to substantiate this claim: (1) the section on Calvary Hospital and (2) the section on stigma and harassment. However, the section on stigma and harassment documents no such “punitive” responses and does not mention Calvary Hospital nor the ‘Church’.²³

The chief piece of evidence put forward in the section on Calvary Hospital is the testimony reported from Submission 1.²⁴ The inquiry states in paragraph 3.91:

The Committee learned of a distressing experience of a patient at Calvary Public Hospital in Canberra who was refused critical medical treatment following a miscarriage.²⁵

The report clearly claims that a patient was denied life-saving treatment by Calvary Hospital. Such a scenario – where a patient is denied life-saving treatment at a hospital established for precisely that reason – would be a serious breach of medical responsibility. However, the claim in the inquiry about a patient at Calvary Hospital turns out to be false and misleading. What Submission 1 actually stated was that after a heartbreaking and tragic miscarriage, the miscarriage was incomplete, and a dilation and curettage (D&C) procedure was required to remove the remaining foetal tissue.²⁶ Submission 1 reports that she “was advised that Calvary Public Hospital refused to perform D&Cs” – not by the hospital *but by the patient’s specialist*.²⁷ The inquiry grossly misinterpreted and consequently, misrepresented Submission 1.

²² Joanna Howe, “The ACT’s takeover of Calvary Hospital overrides conscientious objection and threatens religious freedom”, *ABN News*, 17 May 2023, <<https://www.abc.net.au/religion/act-takeover-of-calvary-hospital-overrides-freedom-of-conscience/102356586>> (12 July 2023).

²³ “Inquiry into Abortion and Reproductive Choice in the ACT”, 21–22. Cf. Howe, “The ACT’s takeover of Calvary Hospital overrides conscientious objection and threatens religious freedom”.

²⁴ Tamara, Submission 1, available at <https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/2056134/Submission-01-Tamara.pdf>.

²⁵ “Inquiry into Abortion and Reproductive Choice in the ACT”, 24. Emphasis added.

²⁶ Tamara, Submission 1, 2.

²⁷ Claire Fenwicke, “Correction to abortion report issued after Committee admits testimonies weren’t ‘accurately’ reflected”, *Riotact*, 23 June 2023, <<https://the-riotact.com/correction-to-abortion-report-issued-after-admission-witness-testimony-wasnt-accurately-reflected/675489>> (12 July 2023).

Moreover, the patient's specialist – who claimed Calvary Hospital would not perform this critical medical care – was also incorrect. Calvary National CEO Martin Bowles refuted the claim when he issued this statement:

Calvary does respond in situations when a mother (and/or the unborn child she carries) suffers an urgent, life-threatening condition during pregnancy.

In these instances, and with informed patient consent, our clinicians provide medically indicated treatment, even if this treatment poses a risk to the foetus or may result in the unintended death of the unborn child.²⁸

Why did the inquiry so grossly misinterpret a submitter's report? Why did they make a serious accusation against Calvary Hospital on the basis of this misinterpretation? And further, why did the report do so when it was public knowledge that abortion is provided at "Calvary Public Hospital, only in cases of emergency"?²⁹ The report contradicts itself by stating that abortion is provided at Calvary Hospital in instances where the mother's life is at risk, but then turns around and falsely accuses Calvary Hospital of not providing a critically important, non-abortive medical procedure after a miscarriage.

As a result of refutations by Calvary Hospital to these accusations, a corrigendum was released which includes this statement:

... following correspondence from Calvary Health Care that there is no evidence that the author of Submission 1 to the inquiry was refused treatment as a result of direct advice from Calvary Hospital Bruce.³⁰

The corrigendum consequently redacted the entire paragraph 3.91 from Submission 1 (quoted above).

The initial inquiry also made the following accusation in paragraph 3.98:

²⁸ Claire Fenwicke, "Calvary Hospital slams claims 'religious ethos' influences healthcare, calls for government redaction", *Riotact*, 3 May 2023, <<https://the-riotact.com/calvary-hospital-slams-claims-religious-ethos-influences-healthcare-calls-for-government-redaction/657909>> (12 July 2023).

²⁹ "Inquiry into Abortion and Reproductive Choice in the ACT", 2.

³⁰ "Corrigendum: Inquiry into Abortion and Reproductive Choice in the ACT", Legislative Assembly for the Australian Capital Territory, Standing Committee on Health and Community Wellbeing, 1.

The medical care limited by Calvary's Catholic ethos has implications for life-saving reproductive care...³¹

And, in paragraph 3.99:

This section opened with the Committee's observation of a patient's distressing experience at Calvary and is detailed below. This incident parallels, locally, the international concerns at governments' outsourcing public health care to Catholic organisations.

Both paragraphs 3.98 and 3.99 have now been redacted. The fact that these false claims were initially included and then, on being proven false, were redacted without apology or explanation, demonstrates an obvious bias against Calvary Hospital. The accusation of "punitive" measures by Calvary Hospital was based on the Committee's own sloppy management and contradictory handling of the data. This is entirely unacceptable and suggests a smear campaign was underfoot to publicly undermine trust in Calvary Hospital.

Further evidence of bias against Calvary Hospital exists in Recommendation 14, where the inquiry requests "that the ACT Government advocate Calvary Hospital to provide full reproductive health services in accordance with human rights."³² It is curious why the report singles out Calvary Hospital as the culprit but makes no such criticism for Canberra Public Hospital, which according to the inquiry's report likewise restricts its abortion services "to severe foetal abnormality".³³ As was noted by former MP and Minister Kevin Andrews:

Given the same report notes that abortions are day procedures undertaken by other providers in the ACT, and not done (except in emergency situations) at either Calvary or the Canberra Hospital, the prejudice and sectarianism of the government is glaring. Providing 'a full suite of fertility services' was also the reason given for an attempted takeover in 2010.³⁴

The corrigendum represents an apparent attempt to backtrack this 'glaring prejudice' by acknowledging in revised paragraph 3.100:

³¹ "Inquiry into Abortion and Reproductive Choice in the ACT", 25.

³² *Ibid.*, 26.

³³ *Ibid.*, 2.

³⁴ Andrews, "Calvary on a Cross".

*There is not such a disconnect there between Calvary and Canberra Hospital because neither of them specifically provide surgical abortions.*³⁵

A further piece of evidence that exhibits the entrenched bias against Calvary Hospital is redacted paragraph 3.102³⁶ in the report, which stated:

It is the Committee's view that it is problematic that one of the ACT's major hospitals is, due to an overriding religious ethos, restricted in the services that can be delivered to the Canberra community.³⁷

It is abundantly clear that this remains the position of the ACT's Standing Committee on Health and Community Wellbeing. Why, then, the redaction of this paragraph? We put it to the Senate Committee that the answer is plainly obvious: paragraph 3.102 overtly and embarrassingly spelt out in April 2023 that the ACT's Standing Committee on Health and Community Wellbeing found the Catholic religious ethos of Calvary Hospital Bruce "problematic". It was a religious ethos problem that was resolved by the government in record time (approximately six weeks). If this is not an open-and-shut case of religious discrimination, what is?

3.3 Conclusion

It is clear that an anti-Catholic bias over the issue of abortion runs deep in the ACT Government. The tension between the government and Calvary Hospital was unresolved for over a decade and has been brought to light by the evidence-free, false, misleading, accusatory and now redacted sections of the 2023 inquiry report.

4.0 A Case of Religious Discrimination

4.1 Introduction

The ACT Government's stated reason for acquiring Calvary Hospital is that it will create a health system that is more efficient and that the site of Calvary Hospital was the best one for a hospital in the north of Canberra.³⁸

³⁵ "Corrigendum: Inquiry into Abortion and Reproductive Choice in the ACT", 1. Emphasis added.

³⁶ Ibid.

³⁷ "Inquiry into Abortion and Reproductive Choice in the ACT", 24.

³⁸ Roberts, "ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital".

This is an acknowledgement that it is not over issues that Calvary Hospital was poorly run or financially mismanaged. If the running of the Calvary Hospital was at issue, it would be surprising indeed that the solution would be to replace the hospital with Canberra Health Services. It is Canberra Health Services that has been in the spotlight for its poor work environment, especially after the 2019 independent review into workplace culture within ACT public health services report.³⁹ Then Health Minister Ms Fitzharris stated:

The report released today provides difficult reading, and I'm sorry that there are people who work within our health services who have experienced bullying, intimidation and harassment... This is not acceptable, and we will need to work together to stamp it out.⁴⁰

The decision also cannot be due to financial mismanagement. The Calvary network was able to finance and build a new, 344-bed private hospital in Adelaide at a cost of \$345 million, opening in 2020.⁴¹

The ACT Government's claim that they acquired Calvary Hospital in order to bring the territory's health services under one banner is likewise difficult to defend. The Calvary network in its private and public capacities accounts for about 10% of the nation's healthcare. There is no indication that this is a problematic arrangement. Other jurisdictions are able to manage various medical services with no overarching disjunction in health service provision. The Commonwealth Government certainly saw no difficulty in inviting Calvary Hospital to be the public healthcare provider in 1979.

³⁹ Independent Review into Workplace Culture with ACT Public Health Services, available at <<https://health.act.gov.au/sites/default/files/2019-03/Final%20Report%20Independent%20Review%20into%20Workplace%20Culture.pdf>>. Cf. Lottie Twyford, "Bullying declining at Canberra Health Services as some staff shown the door", *Riotact*, 21 December 2021, <<https://the-riotact.com/bullying-declining-at-canberra-health-services-as-some-staff-shown-the-door/522640>> (13 July 2023) who records the following after a review in workplace culture: "This review showed that while reform was underway and instances of bullying or inappropriate behaviour had decreased at ACT Health and Calvary Public Hospital, *little had changed at Canberra Health Services*." Emphasis added. Cf. also "Nurses write open letter re acquisition of Calvary Public Hospital": "It has certainly convinced us that *the culture of CHS – described as toxic, even by its own employees* – is a direct reflection of the values and behaviours that stems all the way to the top, and that the culture review was nothing but a box-ticking exercise." Emphasis added.

⁴⁰ Ian Bushnell, "Review prescribes long-term treatment plan for ailing ACT health system", *Riotact.com*, 1 February 2019, <<https://the-riotact.com/review-prescribes-long-term-treatment-plan-for-ailing-act-health-system/284993>> (11 July 2023).

⁴¹ "New \$345 million hospital in the heart of Adelaide", *Hospital and Healthcare*, 9 April 2020, <<https://www.hospitalhealth.com.au/content/design-in-health/article/new-345-hospital-in-the-heart-of-adelaide-1279433662>> (11 July 2023).

4.2 ACT Government's Denial of Concerns of the Catholic Ethos

The ACT Government has repeatedly and emphatically denied that the takeover of Calvary Hospital is “about Calvary being a faith-based service”, instead insisting that it is “about efficiency”.⁴² Echoing these sentiments, Walter Abheyeratna, the ACT president of the Australian Medical Association, told ABC radio that it was important “to design a healthcare system in an efficient way”.⁴³

4.3 Acquisition Ideologically and Religiously Motivated

Section 3.2 above records the ACT Inquiry Committee's own deliberation on Calvary Hospital's “problematic” Catholic ethos. Although the ACT Government states that this (now redacted) statement has nothing to do with the takeover, such a claim appears completely incredulous.

Professor Walter Abheyeratna, ACT president of the Australian Medical Association, appears to have said the quiet part out loud when in an ABC radio interview, he stated his approval of the government's decision “because it was important to deliver public healthcare services *without being bound by ideology*”.⁴⁴

The irony that “the decision to compulsorily acquire Calvary Hospital is driven by ideology”⁴⁵ in an effort to remove ideology has not gone unnoticed. Kevin Andrews writes:

Others have noticed the irony of referring to a need not to be bound by “ideology”, when it seems fairly clear that it was precisely the government's ideological commitment to abortion on demand (and arguably to expansion of euthanasia in the future) was driving the decision.⁴⁶

This submission finds it highly significant that Professor Walter Abheyeratna is echoing the government line in precisely two ways: (1) stating that it is about healthcare system

⁴² Frost, “The ACT government has been attacked over its takeover of Calvary Public Hospital, but insists it's not about religion”.

⁴³ Georgia Roberts, “Catholic church 'dismayed' by ACT government takeover of Calvary Public Hospital, but peak medical body backs plan”, ABC News, <https://www.abc.net.au/news/2023-05-11/catholic-church-reacts-to-act-gov-hospital-plan/102331172> (10 July 2023).

⁴⁴ Roberts, “Catholic church 'dismayed' by ACT government takeover of Calvary Public Hospital, but peak medical body backs plan”. Emphasis added.

⁴⁵ Howe, “The ACT's takeover of Calvary Hospital overrides conscientious objection and threatens religious freedom”.

⁴⁶ Neil Foster, “Is taking over Calvary Hospital a religious freedom breach?”, *Law and Religion Australia*, 4 July 2023, <<https://lawandreligionaustralia.blog/2023/07/04/is-taking-over-calvary-hospital-a-religious-freedom-breach>> (11 July 2023).

efficiency, and (2) replicating the sentiment previously articulated in the ACT Government's inquiry of the need to unhitch the public hospital from its Catholic Christian ethos.

We find it incredible that the public is being asked to believe that Professor Abheyeratna was echoing the ACT Government's position on point 1 (improving efficiency) but not point 2 (removing Catholic ideology).

The 'glaring ideological prejudice' is obvious. Consequently, Peter Dutton stated:

I'm just not aware of an action like it elsewhere in the country or, frankly, around the world, where a government has taken a decision based on their opposition to a religion, or to compulsorily acquire a hospital in these circumstances, a facility that's working well, and in the greater public interest, and good in a local community, and just for ideological reasons.⁴⁷

This is a very troubling conclusion. The ACT Government has effectively asserted there can be "no plurality of opinion on life issues like abortion and euthanasia."⁴⁸ The ACT Government's statements and actions do not bode well for a supposedly pluralistic and tolerant society.

4.4 Human Rights and Constitutional Implications

The ACT Government's takeover of Calvary Hospital due to the hospital's Catholic ethos has the following possible (and likely) severe ramifications.

In removing the Catholic "ethos", the ACT Government is in breach of the Constitution – specifically, Section 116 which reads:

Commonwealth not to legislate in respect of religion.

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for *prohibiting the free exercise of any religion*, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

⁴⁷ Adam Wesselinoff, "Updated: Opposition Leader Peter Dutton slams hospital grab as an 'attack on religion'", *Catholic Weekly*, 12 May 2023, <<https://www.catholicweekly.com.au/updated-opposition-leader-peter-dutton-slams-hospital-grab-as-an-attack-on-religion>> (12 July 2023).

⁴⁸ Andrews, "Calvary on a Cross".

Australia is also bound by its international human rights commitments. Australia was a founding member of the United Nations and an original signatory of the Universal Declaration of Human Rights (UDHR). Article 18 of the UDHR states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁴⁹

As outlined above, there is sufficient and substantial evidence that a reason for terminating Calvary Hospital included the express motivation of “prohibiting the free exercise of any religion” – specifically the Roman Catholic belief in the sanctity of life as that applies to its practice of health services. The Catholic Calvary network has the right, in public and in community, to manifest their religion and conscience in their provision and practice of health services. It might be noted that this is not just a Catholic view but a biblical and Christian view.

While Section 116 of the Constitution refers to the Commonwealth, it also has application to the Australian Capital Territory. Associate Professor Neil Foster, a leading legal expert on the implications of this constitutional provision, argues that:

In my view the case for the application of s 116 to the territories is very strong. The ACT Legislative Assembly only gains its power to legislate from the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*, an Act of the Commonwealth Parliament which is clearly limited by s 116. If the Commonwealth does not have the power to enact an undue interference with religious freedom, it cannot pass on that power to a subordinate body in the ACT.⁵⁰

Since religious freedom is a constitutional right, the ACT Government should not be adopting an approach that ultimately fails to protect this right. The Australian Human Rights Commission (AHRC) has elaborated further on this basic right that is equally found in the International Covenant on Civil and Political Rights (ICCPR). In ‘General Comments No. 22 – The Right to Freedom of Thought, Conscience and Religion’, the AHRC recommends a broad interpretation of the words ‘belief’ and ‘religion’, stating:

⁴⁹ United Nations, “Universal Declaration of Human Rights”, Article 18. Emphasis added.

⁵⁰ Foster, “Is taking over Calvary Hospital a religious freedom breach?”.

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. ... The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason.⁵¹

This goes without saying that religious hospitals in Australia have long contributed to the delivery of important health services to the community. Such faith-based initiatives are key components of a free, healthy, and diverse democratic society. Considering that a significant number of Australians identify themselves as ‘Christian’ and make substantial contributions as taxpayers to the funds available to the government, they should not expect a devaluing of their religious values and beliefs as compared to non-religious values and beliefs in a way that cannot be reasonably justified. Since the government funds activities which are directed to assignments on the basis of other norms, there is no reason for singling out religiously-based hospitals as somehow needing to become monochrome in their service delivery.

4.5 Conclusion

We put it to the Committee that the ACT Government is in breach of the Australian Constitution, the Universal Declaration of Human Rights, and the International Convention on Civil and Political Rights. At the very least, this allegation deserves serious consideration. It is little wonder that the ACT Government has felt the need to repeatedly deny their actions have anything to do with Calvary’s Hospital’s Catholic ethos.

5.0 An Inquiry is Inadequate

This submission endorses the need for scrutiny of the ACT Government’s decision to forcibly acquire Calvary Hospital. An ACT-level inquiry would be a bare-minimum step in the right direction.

However, in light of the severe documented bias evidenced against Calvary Hospital in the ACT Government’s own April 2023 inquiry, we put it to the Senate Committee that it is entirely unsatisfactory that an inquiry is undertaken by the ACT Government.

Instead, we recommend to the Committee that a Royal Commission is far more suited to the situation. We endorse the view of Liberal MP Jeremy Hanson, who has said:

⁵¹ *Australian Human Rights Commission*, ‘Freedom of Thought, Conscience and Religion’ (undated) <<https://www.humanrights.gov.au/freedom-thought-conscience-and-religion-or-belief>>.

What this highlights is that a royal commission into ACT health services is a necessity and this acquisition needs to be in the terms of reference.⁵²

6.0 Conclusions and Recommendations

This submission has made a strong case that the process which the ACT Government undertook to forcibly acquire Calvary Hospital was invalid. It lacked community and stakeholder engagement, rushed through legislation, deliberately avoided a committee, and brushed aside the established law for property acquisition. Understandably, the process has attracted strong community backlash.

This submission has also documented the hostility of the government against Calvary's Catholic position on the sanctity of life. This hostility culminated in a poorly written and wildly accusatory inquiry report targeting Calvary Hospital in April 2023. Only weeks later, the public announcement to acquire the hospital was made. We made a strong case that these events were not only closely related to each other in time, but were evidenced by the views expressed by the ACT Government.

Finally, we brought forward the case that the ACT Government is guilty of religious discrimination and is in breach of Australia's Constitution and Australia's international human rights obligations.

In concluding, we strongly recommend that:

- The Committee recognise the process to compulsorily acquire Calvary Public Hospital in Canberra was invalid.
- The Committee carefully consider the evidence that the ACT Government's long-held hostility towards Calvary played a significant role in the acquisition of the hospital.
- The Committee carefully consider the ramifications of such an ideologically motivated acquisition with regard to religious discrimination. This must include full attention to the application of Section 116 of the Constitution, the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights.
- The Committee support the Bill for an inquiry as a bare minimum requirement.
- The Committee carefully consider whether an ACT-level inquiry is adequate to address the above concerns, or whether a Royal Commission is a more appropriate and proportionate response. We strongly endorse the latter.

⁵² Roberts, "ACT government to take over Calvary Public Hospital to make way for new \$1b northside hospital".