



**Rachel Stephen-Smith MLA**  
Minister for Health  
Minister for Families and Community Services  
Minister for Aboriginal and Torres Strait Islander Affairs  
  
Member for Kurrajong

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Mr Peter Cain MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny)  
Legislative Assembly for the ACT  
[scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

Dear Mr Cain *Peter*

Thank you for providing Scrutiny Report No. 29 (the Report) of 23 May 2023 and the Standing Committee on Justice and Community Safety's (the Committee) comments on the Health Infrastructure Enabling Bill 2023 (the Bill).

I thank the Committee for its consideration of the Bill and offer the following information as requested in relation to the matters that the Committee has raised in its report.

*Do any provisions of the Bill amount to an undue trespass on personal rights and liberties? – Committee Resolution of Appointment paragraph (10)(a)(i)*

***Report under section 38 of the Human Rights Act 2004***  
*Right to privacy and reputation (section 12 HRA)*  
*Right to work and other work-related rights (section 27B)*

Section 12 of the Bill provides that public patient health records, personal information and other records necessary for the effective transition of the Calvary Public Hospital Bruce (CPHB) from Calvary to the Territory are to be provided to the Territory to facilitate the safe and efficient transfer of those operations. Pursuant to s 22, any public hospital health records and personal information to be transferred must be dealt with in accordance with existing territory privacy laws.

In response to the concern raised in [1.47] of the Report, s 22(3) of the Bill operates to confirm that territory privacy laws apply to that material in the hands of the Territory, once provided by Calvary. Likewise, Calvary's obligations in respect of Territory privacy laws will continue in relation to any information it holds.

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ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601



+61 2 6205 2661



[stephen-smith@act.gov.au](mailto:stephen-smith@act.gov.au)



[@RachelSS\\_MLA](https://twitter.com/RachelSS_MLA)



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Although it is likely that a transfer of information would be possible without the inclusion of s 22, the provision has been included to put it beyond doubt and to provide reassurance that any information or records that are provided will be protected.

In response to the Committee's query at [1.46]-[1.47], about the continued operation of the Territory Records Act 2002, and principle 4.1 of Schedule 1 of the Health Records (Access and Privacy) Act 1997, those laws will continue to apply in relation to the holding of the information and records, once the acquisition is complete. In response to the query raised by the Committee, the use of the term "security" in s 22(3) encompasses the holding of the information.

*Do any provisions of the Bill make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers? – Committee Resolution of Appointment paragraph (10)(a)(iii)*

In response to the query raised at [1.50] of the Scrutiny Report, it is uncertain at this stage the circumstances in which a body corporate may be nominated under s 21(2) as being subject to the requirements of the Act.

As the Territory is unaware of the internal governance arrangements that Calvary and its associated entities may have in place, s 21 exists as a matter of prudence to address a contingency where Calvary itself does not have the ability to deliver the requested material, to allow the entity that has that material to deliver it.

*Do any provisions of the Bill inappropriately delegate legislative powers? – Committee Resolution of Appointment paragraph (10)(a)(iv)*

#### *Breadth of Regulations*

In response to [1.54] of the Scrutiny Report, the validity of the Bill is not dependent on the provisions in the Regulation. Of course, the Regulation must provide for just terms.

The Bill provides for an acquisition of property, and it provides that any such acquisition must be on just terms. Noting the information requested in [1.55] of the Scrutiny Report, the identification of those just terms and the matter of their determination is provided for in the draft Regulation, which enables any person who claims that an interest has been acquired to seek compensation.

The Committee may be interested to note that an amendment to s 10(3) of the Bill has been proposed to make it clear that a Regulation may provide for any acquisition of property.

In response to [1.54b] of the Scrutiny Report, ss 8(3) and 9(4) of the Bill provide for matters to be dealt with differently in the event that further information comes to hand that means the subject matter should be dealt with differently to the matter addressed in the relevant sections (ss 8(2) and 9(2)). The provisions are there as precaution to ensure that the interests mentioned in subsections 8(2) and 9(2) are dealt with fairly and appropriately.

#### *Henry VIII clauses*

A "Henry VIII" clause is not a provision that is lightly included in the drafting of a bill. The circumstances of the proposed acquisition and associated activities leading to the Territory assuming conduct of CPHB involves a range of variable and presently uncertain issues, the

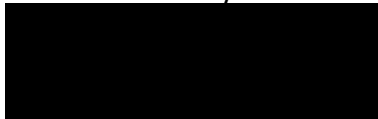
clarification of which will depend heavily on the information and associated documents that are gathered during the transition period.

Government Amendments to the Regulation


I can advise that the ACT Government will be putting forward additional amendments to the Bill, in advance of the Bill being debated on 31 May 2023. These are considered minor and technical, including addressing Scrutiny comments, and will be circulated at the earliest opportunity.

I trust the information provided has been of assistance.

Yours sincerely



Rachel Stephen-Smith MLA

 May 2023