



Legislative Assembly for the Australian Capital Territory  
Standing Committee on Health, Community, and Social Services  
Inquiry into Calvary Public Hospital Options

**A submission of Calvary Health Care ACT**

19 November 2010



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## Executive Summary

Little Company of Mary Health Care (LCMHC) is one of Australia's largest not for profit organisations providing health, aged, and community care services.

With locations in the ACT as well as NSW, Victoria, Tasmania, South Australia and the Northern Territory, LCMHC employs more than 9,000 staff in its hospitals, residential aged care homes, and community care services.

Annually, LCMHC provides services totalling 566,000 hospital days. 164,000 inpatients are cared for each year, 6,000 babies are delivered across seven maternity units, and 75,000 people are treated in emergency departments. 5,000 people are cared for in palliative care services, and 700 aged care beds are provided in residential services for older Australians. In addition Calvary Silver Circle provides over 1.2 million community care hours or in excess of 800,000 home visits per annum.

LCMHC, through Calvary Health Care ACT (Calvary) has operated the public hospital at Bruce continuously for 31 years. In 1971, the Commonwealth entered into an agreement with the then Corporation of the Little Company of Mary to build and operate a 300 bed public hospital. That relatively simple agreement (attached at **Appendix 1**) has been honoured by LCMHC. It is the intention of LCMHC to continue to honour that agreement, by continuing to operate Calvary and expand the public hospital services at the Bruce site in the years to come.

Particularly since February 2009, a very public discourse the future ownership of Calvary Public Hospital has created uncertainty for patients, staff, and community members.

That discourse followed an offer in August 2008 by the government to buy the public hospital. At all times discussions with the government were on the basis that the consideration to be paid by the government would be on the basis of the valuation of the land and buildings on a Depreciated Replacement Cost basis. In June this year the government advised that it no longer wished to proceed with acquisition on that basis.

It is the clear intention of Calvary to remain as the owner and operator of the public hospital at Bruce. It is the clear intention of Calvary to expand public services at Bruce, and develop additional private health care services at the site in years to come. It is also the aspiration of Calvary to continue to work productively with ACT Health and the Government, a working relationship that has achieved a great deal in the past and has the potential to continue to do so in the future.

The Terms of Reference of the Inquiry focus on four options for the future of Calvary. In response to these four options, Calvary seeks the Committee's consideration of the following:

- **In response to Option 1** – Following the government's withdrawal of its offer to buy, Calvary does not intend to relinquish its crown lease, and remains fully committed to providing current and expanded public health services from the Bruce Campus. A new activity based funding framework to underpin Calvary's future public health service delivery would be welcomed by Calvary, and deliver benefit to both the Government and ACT community.



- **In response to Option 2** - Proceeding with the network agreement in its current form would be inconsistent with the existing Government-Calvary agreements dating back to 1971 that underpin Calvary's tenure as a long term leaseholder and mostly autonomous owner and operator of public and private health services on the Bruce Campus. Calvary would not be party to the network agreement in its current form. However, Calvary has proposed a series of options that would enable a mutually agreeable network agreement to be designed, predicated on appropriate consideration. Calvary remains committed to working with the Government and ACT Health in reaching an agreement in order to improve access to healthcare for all Canberra residents.
- **In response to Option 3** – On the assumption that an acute public hospital operates on the site, government assistance for expanded not-for-profit private health services on the Bruce campus would benefit access to health care for all Canberra residents. It would ease the burden on existing public services, and prepare for growing future demand. There are many forms that assistance for the establishment of expanded private health services could take. Services that could be established with the support of government assistance should ideally focus on identified areas of current and future demand for which Calvary has expertise, which include elective surgery, palliative care, oncology, cardiology and mental health care.
- **In response to Option 4** - Health planning of the Government within the Territory has previously determined that there is no need for the establishment of a third Canberra hospital. In raising this option the government has not indicated, in public or private, any intention or desire to walk away from current agreements with Calvary. We are therefore confident that the government has no such intention. It must follow that the building of a new hospital will result in the Territory funding three public hospitals. While Calvary strongly welcomes increased investment, this should be made considering the best "value for money" and avoiding duplication and inefficient fragmentation of hospital services, particularly across a relatively small system.



## Calvary as part of the Canberra Community

*"What is Calvary anyhow? Isn't it just another hospital? After all many hospitals care for the sick and comfort the dying. Is there something about Calvary, in what it is and what it must do that makes it different, special? I think there is." Dr Jim Keaney (2004)*

Calvary Public Hospital has operated continuously at Bruce for thirty one years. It is today an integral part of the Canberra community. Many thousands of people have been born at Calvary, many thousands more have been cared for at Calvary. Thousands of people have also worked and volunteered at Calvary in its 31 years of existence. This outcome, whereby Calvary has played an important role in the lives of thousands upon thousands of Canberra residents was one of the reasons the Commonwealth Government entered into an agreement with the Little Company of Mary to found, build, and operate a public hospital in the first place.

Calvary is now a key part of the communities of Belconnen, Gungahlin, North Canberra and inner South Canberra. Calvary remains well positioned organisationally and geographically to continue to serve these communities, both tomorrow and for many years to come.

Since commencing operations at Bruce, Calvary has grown in size, expanded its services, and introduced advances in service provision to meet community need. This growth in services in response to changing community need has been undertaken with financial and other support of generous members of the local community, the Commonwealth and Territory Governments, and Little Company of Mary Health Care.

As a values-based organisation with a clear mission of service, Calvary offers its staff and volunteers the opportunity to excel and genuinely assist people in need. This is supported by the dedication and works of a broad cross section of medical, clinical, administrative and support staff, many of whom have long standing service with Calvary and also share Calvary's commitment to both the local community and the communities adjacent to the ACT.

Calvary has worked to be a responsible and wise steward of the funding it receives for the provision of public health and hospital services. In the thirty one years of operation, Calvary has sought to be accountable and transparent in its operations consistent with Calvary's values of Hospitality, Healing, Stewardship and Respect.

Calvary has successfully provided the community with an option for faith-based clinical services while still integrating and aligning its services with ACT Health policies and the services of The Canberra Hospital and other community health programs. The services of Calvary have always and will always be available to every person in the community, with no exception.

Calvary draws on the thinking and experience of not only public health services but also the other 26 hospital facilities operated across Australia by Little Company of Mary Health Care. The ACT health system benefits directly from this experience and will continue to do so for many years to come.



The Calvary Bruce campus has expansive scope for further development as identified in the ACT Health *'Your health – our priority'* Capital Asset Development Program. The existing infrastructure on the site was developed in accordance with the thinking of the 1960s and 1970s. In a contemporary context, the site has potential to accommodate expanded public health and hospital services to serve community needs for decades to come. This potential includes options to offer both the community and healthcare professional the choice to access or provide public and private health services on a single integrated health campus.

Indeed, formal agreements in place with the Territory assure Calvary of a central and continuing role in the ACT health system. As has always been the case, Calvary remains open and receptive to evolution and advancement in response to the changing health needs of the community including new models of service delivery, whilst remaining fully committed to wishing to continue to serve the ACT's health needs for many years to come.



## Option 1 – Calvary maintains a crown lease, with a new Activity Based Funding agreement

### Summary of LCMHC's response to Term of Reference One

Following the government withdrawing its offer to purchase, Calvary does not intend to relinquish its crown lease, and remains fully committed to providing current and expanded public health services from the Bruce Campus. A new activity based funding framework to underpin Calvary's future public health service delivery would be welcomed by Calvary, and deliver benefit to both the Government and ACT community.

Calvary is funded, in large part<sup>1</sup>, by ACT Health and owned and managed by LCMHC. The role of Calvary and the services it provides reflect both the long heritage of health service development in the ACT and a commitment of ACT Health and Calvary to respond to the ever changing health and social needs of the ACT Community, particularly that community resident in North Canberra.

The Corporate Governance Statement<sup>2</sup> issued by ACT Health 4 January 2009 reflects this sentiment. The Corporate Governance Statement confirms:

*“Calvary Public Hospital provides a wide range of public acute care services on an admitted and non-admitted basis. The level and nature of these services is based on government priorities, clinical need, service demand and cost-effectiveness. Calvary Health Care also manages a co-located private hospital and a palliative care facility, Clare Holland House, located on the shores of Lake Burley Griffin. Calvary Public Hospital is an associate teaching hospital of the Australian National University.”*

Calvary provides a wide range of public acute services on an admitted and non admitted basis. Again, the Corporate Governance Statement<sup>3</sup> says that Calvary:

*“Deliver[s] an extensive range of inpatient, ambulatory and outreach services and facilities, including specialist services in the following areas:*

- *Anaesthetics, cardiology, dental, ear, nose and throat, gastroenterology, general medicine, general surgery, gynaecology, head & neck surgery, intensive care unit /coronary care unit, maternity, medical imaging, mental health, neonatology, oncology, ophthalmology, orthopaedics, palliative care, rheumatology, respiratory, urology, and vascular;*
- *Provide[s] emergency care 24 hours a day 7 days a week;*
- *Deliver supportive services and care to people with a life threatening illness and their carers through the management of Clare Holland House, a palliative care facility;*
- *Provide care to people with a mental illness;*

<sup>1</sup> In the 2009/10 FY operational funding from ACT Health constituted 89% of Calvary Public Hospital's operational funding . Other funding was sourced from private health funds, private patients, DVA, the Federal Government and donations. From 2012, 60% of Calvary's operational funding will be sourced from the Federal Government.

<sup>2</sup> ACT Health Corporate Governance Statement Jan 2009: Role of Calvary (refer Chapter 12.19 pp1)

<sup>3</sup> ACT Health Corporate Governance Statement Jan 2009: Role of Calvary (refer Chapter 12.19 pp2)



- *Work closely with the Capital Region Cancer Service and the Aged Care and Rehabilitation Service to deliver comprehensive and seamless services to patients and their carers, including early intervention, treatment, rehabilitation and palliative care.”*

There exists an opportunity to build on the services Calvary provides, and to benefit from the regard for which Calvary is held within the Canberra community. Indeed to unwind or dismantle this heritage and foundations poses significant risk.

The Territory and Calvary have a long term health planning partnership aimed at identifying and responding to the health service requirements of the Canberra community. This formal and extensive process has resulted in three key recent milestones, documented in the completion of three key reference documents.

### **Planning milestone 1 - ACT Health Clinical Services Plan 2005-2011 (December 2005)**

The ACT Clinical Services Plan describes in detail the proposed models of care and direction for clinical services across ACT Health. It articulates the strategic importance of Calvary to the delivery of public health services in the ACT, and builds on or is consistent with other planning exercises that have included the:

- ACT Health Workforce Plan 2005-2010: *Building a sustainable health workforce for the people of the ACT*, November 2005.
- ACT Health Draft Surgical Services Plan 2008-12, May 2008.
- ACT Health ACT Palliative Care Strategy 2007-2011.
- Capital Asset Development Plan, *Think Health*<sup>4</sup>

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<sup>4</sup> ACT Health - Capital Asset Development Plan: THE CALVARY HOSPITAL CAMPUS PROJECT DEFINITION PLANNING PROCESS, Version 0.2 May 2009



The ACT Clinical Services Plan allocates the following roles and responsibilities to the Calvary and Canberra Hospitals:

Calvary Hospital	The Canberra Hospital
<p><b>Primarily Level 3 / 4 services</b></p> <ul style="list-style-type: none"><li>• Emergency Department</li><li>• Coronary Care and Intensive Care Unit (Level 4/5)</li><li>• Surgical (Breast surgery Level 4/5)</li><li>• Medical</li><li>• Satellite Cancer Centre</li><li>• Maternity Service</li><li>• Mental Health</li><li>• Medical Imaging</li><li>• Pathology</li></ul>	<p><b>Primarily Level 5 / 6 services</b></p> <ul style="list-style-type: none"><li>• Major Trauma Centre including Aeromedical Retrieval Service</li><li>• Emergency Department</li><li>• Intensive Care and Coronary Care Units</li><li>• Renal Regional Centre</li><li>• Paediatric Regional Centre</li><li>• Cancer Regional Centre</li><li>• Complex Surgery</li><li>• Complex and Invasive Cardiology</li><li>• Obstetrics &amp; Neonatal Services including Neonatal Intensive Care (NICU)</li><li>• Acute Rehabilitation Regional Centre</li><li>• Aged Care Inpatient Unit</li><li>• Canberra Sexual Health Centre</li><li>• Mental Health</li><li>• Pathology &amp; Medical Imaging</li></ul>

The Clinical Service plan<sup>5</sup> explains :

*“Calvary Public Hospital, managed on behalf of the ACT Government by Calvary Health Care ACT, also provides a wide range of acute care services. Calvary currently undertakes the majority of planned elective surgery work, such as the provision of elective ophthalmology work and will increase its elective surgery capacity, particularly in orthopaedic surgery, over the life of the Plan. Opportunities will be explored for greater throughput in areas such as ear, nose and throat, orthopaedics and ophthalmology. Calvary will also play a major role in the provision of rehabilitative and psycho-geriatric care through the operation of a 60 bed Subacute Service to be established on the Calvary campus. **The ACT’s two public hospitals will retain their current role delineations.** The Canberra Hospital as a provider of Level 5/6 services and Calvary Hospital as generally a Level 3 / 4 service provider, with some Level 4/5 services in specified areas, such as ICU.”*

The outcome of these planning processes affirm the retention of Calvary’s current role and place in healthcare delivery is a foundational component of the public health system in the ACT. Any change to the current health structures could not be undertaken without a major impact on the delivery of public health services.

<sup>5</sup> ACT Health – Clinical Services Plan 2005-2011, December 2005. pp 31-33.



## Planning Milestone 2 - Calvary 15 Year Capital Investment Strategy (January 2008)

The Calvary Hospital Capital Investment Strategy outlines the proposed capital investment requirements at Calvary Hospital for the period 2007 to 2021/22. This process was undertaken by Calvary in response to a request from ACT Health. The plan recommended development of the current site to provide expanded public services, and to further develop private services at Bruce. The areas that were identified for development in the plan include:

1. *Expanded car parking (currently subject to an ACT Health submission to ACT Treasury).*
2. *Upgrading of inadequate facilities, improvement of intensive care and the high dependency unit (since completed).*
3. *Expanded capacity for the emergency department, cardiology service, theatres, ambulatory care, inpatient beds, ambulatory care and patient accommodation.*
4. *The need for provision of an adequate number of single rooms and isolation rooms as per current planning guidelines.*
5. *Several areas within the hospital being listed for refurbishment including the upgrade or replacement of old central plant components.*
6. *Upgrade of information technology facilities (currently underway).*

An assessment of projected demand for inpatient services supported the need for the proposed capital improvement projects. The projected demand assessment demonstrated a number of clinical areas would experience significant growth (percentage change of more than 100%) between 2005-06 and 2021-22. Major clinical areas identified as being expected to grow at Calvary included specific surgical interventions (ophthalmology, gastroenterology, orthopaedics), as well as services relating to cardiology, rehabilitation, obstetrics, mental health and cancer services.

## Planning Milestone 3 - *Your Health: Our Priority* (2008/09)

In seeking to create a new health care system, the ACT Government announced *Your Health - Our Priority*<sup>6</sup> (YHOP). YHOP considered the history of strategic development by ACT Health of public services at Calvary. It formalised decisions of master planning for the Calvary Bruce campus that include:

1. *Diagnostic and treatment and acute inpatient services to be developed in the existing and expanded Xavier Building;*
2. *A new private hospital acute service, to include inpatient units, to be developed in a new building to the south-west of, and linked to, the Xavier Building;*
3. *Ambulatory Care and Women's services to be developed in the existing and expanded Marian Building;*
4. *A sub-acute services precinct to the north of the Marian Building;*
5. *Administration in the existing O'Shannassy Building;*
6. *Education, training and research in the existing Lewisham Building;*
7. *A public mental health precinct to the north;*
8. *A private services precinct to the east, incorporating the private mental health facility and medical centre.*

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<sup>6</sup> YHOP Stage 2 Booklet: <http://www.health.act.gov.au/c/health?a=sendfile&ft=p&fid=1217202366&sid=>



A pictorial of the YHOP master plan is provided at **Appendix 2**.

The conclusion of these three key milestone planning processes is that Calvary has been assessed as playing a central and continuing role in the delivery of public health services.

The data and evidence relied on to conclude these three key milestone planning outcomes have not changed. The case for major capital investment in public health care infrastructure on the Bruce site remains strong.

### **Activity Based Funding**

The potential to establish a new activity based funding agreement to underpin the operation of Calvary represents a significant opportunity, not just for Calvary but also for the ACT health system. This is driven by:

- The need to properly account for the management of increased activity levels in ACT hospitals.
- The Commonwealth reforms moving payments systems to Activity Based Funding.
- The opportunity to imbed and align incentives for purchasers and providers of health care services.

At this stage, and as evidenced during the recent negotiations of a network agreement, ACT Health has not been in a position to move to the adoption of an activity based funding structure for Calvary. An agreement based on this structure is one that Calvary supports and ACT Health has acknowledged.

The potential establishment of an activity based funding agreement could well be informed by LCMHC's experience of different funding systems in its public and private health services in other States. The design of an activity based funding system should also consider:

- The obligations of the Territory and ACT Health under existing agreements;
- The method by which the provision of capital should be treated.

Regardless of the speed by which an activity based funding system could be established, capital development of The Canberra Hospital and Bruce campuses, as identified in recent planning, will contribute to increasing throughput and improving efficiency in response to increasing demand for public health services in the ACT.

The potential bringing together of this required capital development and new activity based funding has a sense of being inevitable. Such an outcome is also opportune because:

- It would allow ACT Health and Calvary to take a long term view in relation to service and capital planning and delivery
- Planning for and investment in capital development has already taken place, and:
  - Calvary has a strong history of successful capital development, planning and delivery on the Bruce campus, demonstrated by completion of major developments to services and infrastructure in the past decade. This has included Older Persons



Mental Health, Operating Theatre and Intensive Care facilities, the latter recently commission at a capital cost in excess of \$16 million.

- LCMHC also has significant experience with the smooth delivery of major public hospital capital developments, for example, being a partner in the circa \$250 million rebuild of Calvary Mater Newcastle, which remained operating throughout the rebuilding process (officially opened in 2009).
- Activity based funding for Calvary would have no actual impact on Canberra Hospital in a circumstance where activity based funding may not be adopted across both hospitals. Each hospital would remain a provider of public health services.
- The current role delineation for Calvary as described in the current Clinical Services Plan suits funding by way of activity based funding.
- Performance measurement would be enhanced, and made more transparent than is possible under current funding arrangements.
- Activity based funding places a focus on measuring outputs not inputs. Under such an arrangement, Calvary believes as part of the broader LCMHC group it would be able to demonstrate transparently benefit to the Government arising from:
  - a. Management expertise of capital development and activity based funding itself.
  - b. Economies of scale resulting from the operation of acute and sub acute hospital care across Australia.
  - c. Access to operational systems to produce high quality health outcomes for patients.
  - d. A long history in applying donations<sup>7</sup> and community benefit.

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<sup>7</sup> \$6.3 million donations accrued and applied from 1979 to 2009, not including in kind community benefit.



## Option 2 – Proceed with network agreement in current form

### Summary of LCMHC's response to Term of Reference two

Proceeding with the network agreement in its current form would be inconsistent with the existing Government-Calvary agreements dating back to 1971 that underpin Calvary's tenure as a long term leaseholder and mostly autonomous operator of public and private health services on the Bruce Campus. Calvary would not be party to the network agreement in its current form.. However, Calvary has proposed a series of options that would enable a mutually agreeable network agreement to be designed, predicated on appropriate consideration. Calvary remains committed to working with the Government and ACT Health in reaching an agreement in order to improve access to healthcare for all Canberra residents.

Agreements are in place between the Territory and Calvary which govern the relationship, rights and obligations of the parties. These are as follows:

- Original Agreement (22 October 1971) [for the construction and establishment of the hospital] which is attached at **Appendix 1**.
- First Supplementary Agreement (9 April 1979) [key changes about budget and role]
- Second Supplementary Agreement (9 May 1991) [changes relating to employees]
- Private Hospital Agreement (26 April 1988) [permission to operate a private hospital]
- Private Hospital Supplementary Agreement (21 December 1994) [expansion of the private hospital]
- Private Hospital Second Supplementary Agreement (24 November 1997) [construction of Hyson Green, private mental health]

The key principles flowing from these agreements can be summarised as follows:

- Calvary was engaged by the Territory to build and operate a public hospital at Bruce. The First Supplementary agreement provides that Calvary will "operate with a high degree of autonomy but as an integral part of the over-all public hospital service to the people in the Territory."
- The appointment was not for a fixed period, and there is a long term lease from the Territory to Calvary.
- The agreements do not provide for ongoing major capital repair and maintenance.
- Calvary and the Territory have an annual budget process to set the budget for the public hospital.
- Calvary also operates a private hospital from the site.
- Most of the staff employed in the public hospital are employed under the *Public Sector Management Act 1994* (ACT).
- Calvary cannot be required to perform services which are inconsistent with its medico moral principles.



In recent years Calvary has worked with the territory to apply other tools to managing the current agreements such as an annual performance plan and protocols for the cross charging of services between the public and private hospitals.

The nature of the relationship between the Territory and Calvary as a result of these agreements and their resultant application is akin to that of a joint venture relationship. The Territory and Calvary have mutual obligations and a mutual interest in ensuring services meet the needs of the people of Canberra in a way that assures the Territory of good practice and financial transparency. Calvary is not aware of any breach of these agreements as a result of any of its actions.

There is no ability to change the current agreements other than by mutual agreement between the parties. However, there is merit in seeking ways in which the current agreements can be streamlined, made contemporary, and position both the Territory and Calvary to benefit to the maximum extent possible from the strengths of each party; as one would anticipate the intention of any joint venture relationship would seek to do.

Any change in the current agreements should remain true to these outcomes and moreover not leave either party in a diminished position without appropriate financial consideration.

The current network agreement was negotiated in the context of the Government's offer to pay full consideration for Calvary Public Hospital. The Government has now withdrawn that offer. As a result of that withdrawal, Calvary concluded that the Government no longer seeks fundamental changes to the governance of the joint venture it has with Calvary. That was confirmed by the Minister in her discussion paper on the Local Health Networks<sup>8</sup> which refers to the Government's current objective:

*To retain the strengths of the relationship between ACT Health and Calvary Public Hospital.*

This position of Calvary has been formed against a backdrop of advice received by Calvary from Deloitte and Neil Young QC. These advices, provided at **Appendix 3 and 4** give definition to the nature of the relationship between the Territory and Calvary.

The key aspects of the Deloitte advice are:

- Calvary is obliged to retain the land and building assets of the public hospital on its balance sheet, because the arrangements between Calvary and the Territory do not fall within Interpretation 12 *Service Concession Arrangements*. Calvary is not operating and managing the hospital on the Territory's behalf.
- Calvary has autonomy in relation to the private hospital services it operates from the site.

The key aspects of advice of Neil Young QC are:

- Calvary does not operate the hospital under a service concession arrangement.
- Calvary has broad control over how it operates the public hospital. Calvary has exclusive possession and ongoing use of the buildings under a 99 year lease which is renewable.

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<sup>8</sup> *A Local Hospital Network for the Australian Capital Territory* (November 2010)



- While the Territory has the right under clause 7 of the First Supplementary Agreement to give broad directions about the “integration, rationalisation and efficient management of health services in the Territory”, this does not give the territory the right to control Calvary’s operating and financial policies relating to the hospital.
- Calvary retains the power to control and manage the type and volume of clinical services it delivers in the hospital.

Following the termination of discussions regarding the sale of Calvary Public Hospital to the Territory in February 2010, Calvary proposed to the Territory and ACT Health alternative investment structures that would satisfy the requirement of the Territory to recognise new investments in their accounts while retaining a continuity of the strategy for service improvement on the north side of Canberra.

As such the key areas that could be considered in a network agreement are as follows:

1. Introduction of a mechanism by which capital development can take place on the current crown lease.
2. Negotiation of an activity based funding structure.
3. Clarification of roles and responsibilities, including clinical role delineation.
4. Processes for relationship management, reflecting the fact that Calvary is an essential part of the ACT health system.

With a full understanding of these issues that should inform the design of a new network agreement, an opportunity does exist to end uncertainty and begin investing in services on the north side of Canberra. Calvary encourages the Territory, through ACT Health, to work through to a conclusion a modernisation of existing agreements that lead to a legal, commercial and operational structure that will benefit the Canberra community. Such a structure would be framed around a long term view of health and hospital needs of a growing population and contributions both ACT Health and Calvary can make to address these needs for the benefit of the health of all Canberra residents.



### Option 3 - Government assists LCMHC develop a public good private hospital

#### Summary of LCMHC's response to Term of Reference three

Assuming the acute public hospital remains located on the site, government assistance for expanded not-for-profit private health services on the Bruce campus would benefit access to health care for all Canberra residents. It would ease the burden on existing public services, and prepare for growing future demand. There are many forms that assistance for the establishment of expanded private health services could take. Services that could be established with the support of government assistance should ideally focus on identified areas of current and future demand for which Calvary has expertise, which include elective surgery, palliative care, oncology, cardiology and mental health care.

Calvary would welcome the support of the ACT Government in assisting Calvary to develop a standalone private hospital as a public-good investment at the Bruce Campus. In current circumstances, it is extremely unlikely that a business case could be made to fully privately fund expanded private services at Bruce.

A range of health services can be provided through public and private sector partnership, and the structures to achieve sound health outcomes are many and varied. The introduction of private services on the Calvary campus in 1991 recognised this fact. The opportunity to build on this legacy, recognising this model of public private sector partnership has faced challenges in recent times, remains as strong as ever.

The Government has previously stated:

*"The ACT Government would also like to see a new co-located private hospital constructed on the site. This facility would be operated by LCMHC and replace the current Calvary Private Hospital. This arrangement would see private health services continued on the site and provide a wider choice of hospital services for patients."*<sup>9</sup>

Calvary's Private Hospital on the Bruce campus is a major contributor to the health needs of Canberra's north side. For the 2009/10 financial year the private hospital saw:

- A total of 8,913 admissions.
- A total of 25,433 bed days.
- Over 6,500 surgical procedures.
- Over 800 births.

The contribution of this volume of work is supplemented by a number of other strategic and operational contributions of Calvary Private Hospital to the Canberra community:

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<sup>9</sup> Future ownership and governance of *Calvary Public Hospital & Clare Holland House* An ACT Government Information Paper, October 2009, pp 5



- The option of staff being able to work in the private health care sector in the north of Canberra.
- Training of nursing graduates and other professional staff.
- Training of medical staff registrars.
- Participation in community benefit activities, complimenting those that Calvary Public Hospital provides funding to, including:
  - The Calvary Refugee Mentoring Program.
  - The Marymead Child and Family Counselling Program.
  - St Vincent De Paul Society Night Patrol.
- Capital investment in facilities and equipment, noting significant recent investments in obstetrics and gastroenterology as examples.

Should existing private hospital services cease, a significant volume of private hospital care would be transferred to public hospitals, at a new cost to the ACT Health budget. The cost of the services currently undertaken at Calvary Private Hospital should they be undertaken at Calvary Public Hospital based on existing ACT Health funding levels would be circa \$37 million per annum. Patients seeking care in the private sector would also have a more limited choice. The imposition of this additional financial, operational and wait list burden on the public sector is unnecessary, and can be avoided assuming a public and private partnership approach is taken to the development of the Bruce campus in response to the health and hospital needs of north Canberra.

It is also worth considering the impact on certain specialties, such as obstetrics and ophthalmology, should the public and private components of these services be separated to different locations. The existing co-location of such public and private care results in efficient service delivery and enhanced clinical effectiveness that could not otherwise be achieved by operating them separately. Indeed from a Calvary Private Hospital perspective, they would not be replicated separately if they were forced to. As such there would be a loss of the choice of these services to the residents of the north side of Canberra and a corresponding increased cost to the public health purse.

Calvary recognises that over time, public and private hospital services in the ACT will assume more workload. Such a trend could influence how the Territory might efficiently grow capacity in the health and hospital system in North Canberra. Private services have the potential to make a growing contribution. In day surgery alone HARDS data modelling show a projected increase of 73% in private day only separations between 2005 and 2022, or 11,165 separations. The three major growth areas in procedural work are ophthalmology, orthopaedics and gastroenterology. An investment in growing the Calvary public private sector partnership to meet the growing challenges to treat patients is worth making. It should be considered in the best interests of access to health and hospital services for both public and private patients. Further development of the public and private partnership gains leverage from the historical contribution of colocated public and private services on the Bruce campus, including efficient utilisation of the campus. Growing the partnership is underpinned by new and robust cross charging protocols developed and implemented following the 2006 Report by the ACT Auditor General,



There are several areas of specialty that lend themselves to being considered appropriate for a public good investment in private services by government:

### **A - Oncology**

The ACT Cancer Services Plan 2008-2012 (CSP) highlights the increasing need for oncology services. Cancer incidence in the ACT alone, that is, not including an equivalent quantum in the Capital Region, is estimated to rise 55% from 2006 to 2021. The establishment of a comprehensive cancer centre at Canberra Hospital is well underway and a recent Commonwealth budget announcement commits further funding to this. Past discussions with the former CEO of ACT Health indicated that he did not foresee private sector involvement in this particular service but would welcome a proposal to establish private radiation oncology services on the Bruce campus. This would potentially incorporate existing chemotherapy, haematology outpatient and other diagnostic services. The latter is already called for in the Cancer Services Plan.

### **B - Cardiology**

Recent statistics show that cardiology overnight admissions to Calvary Public Hospital rank second behind those of obstetrics. In contrast, cardiology admissions do not figure with any significance at Calvary Private or at Calvary John James Hospital. Public admissions are mainly through the Emergency Department unit, rather than outpatient clinics. It would be desirable for interventional cardiology and vascular services to be established at Bruce in a more comprehensive way, properly networked across the ACT health system.

### **C - Mental Health**

Calvary Private Hospital through its Hyson Green operation has a strong position in the provision of private inpatient psychiatric services and is the only private inpatient mental health service in the region. The expansion of these services as a whole has been limited mainly by capital and numbers of admitting specialists resident in the ACT. This staff shortage contrasts with the significant future demand profile showing there will be a need for an additional 30 inpatient beds alone by 2022. Calvary has the ability to make a contribution through expanded private mental health services to the lives of people affected by mental health conditions and to the ACT Health's strategy of doing so particularly for residents of North Canberra.

The benefits of investment in expanded private health care services at the Bruce campus to support the growing health care needs of the resident of North Canberra include those shown in the **Table 1**, over the page.



**Table 1: Purchaser/Provider analysis**

<b>Benefit to Calvary as the Provider</b>	<b>Benefit to ACT Health as the Purchaser</b>
Creating a better critical mass of work in new private facilities from both an infrastructure and operational viewpoint.	Freeing space in the public hospital for the provision of other medical/surgical services.
Retaining a proven model for medical and nursing care and avoiding the potential for dual or competing interests on the same campus.	Ensuring there is a focus on service delivery rather than managing inputs to that service.
Public and private services mean that choice is available to patients and doctors alike, and for doctors this provides an attractive recruitment benefit to both the public and private sector at a time when Canberra faces a medical recruitment challenge.	Public funding remains focussed on funding for critical public services rather than being unnecessarily burdened by volume that could otherwise be adequately and appropriately provided for in the private sector.
Long term commitments to funding would be needed to justify capital investments by either the public or private sector in services but planning for this on the Bruce campus has a “head start”.	Integration of planning across the health sector avoiding the risk of capital investment duplication.



#### Option 4 - New acute public hospital on Canberra's north side

##### Summary of LCMHC's response to Term of Reference four

Health planning of the Government within the Territory has previously determined that there is no need for the establishment of a third Canberra hospital. In raising this option the government has not indicated, in public or private, any intention or desire to walk away from current agreements with Calvary. We are therefore confident that the government has no such intention. It must follow that the building of a new hospital will result in the Territory funding three public hospitals. While Calvary welcomes increased investment this should ideally occur considering the best "value for money" and avoiding the potential for duplication and inefficient fragmentation of hospital services.

Investments in new health facilities are ultimately a matter for Government, based on planning undertaken in consultation with various health service providers including. It has long been the policy of Governments of different political persuasion to invest in the existing facilities and services on the Bruce campus. This was confirmed recently:

*"Through the Capital Asset Development Plan (CADP), the ACT Government will then invest in a total redevelopment of the public hospital assets at Bruce. At the same time LCMHC intends to build a new private facility to complement the expanded public hospital. Thus Canberra's north will be much better served by an expanded, state-of-the-art health precinct. This will enable us to attract and retain the nation's best health professionals and deliver for our community a special health facility. It will complement and network with the major developments at the Canberra Hospital site".<sup>10</sup>*

Calvary supports this proposition. Little has changed since this Plan was published to give rise to the need for an alternative policy approach.

Moreover, all health service planning information available to Calvary results in the following conclusion with respect to the option of a new third hospital for Canberra:

*"ACT Health considered the possibility of a third hospital following the Minister's request to assess the current capacity of the health system and future demand projections. This planning exercise involved an analysis of current health infrastructure as well as service planning for the future and spatial planning to determine how future growth could be accommodated. This analysis concluded that a significant increase in capacity would be needed with a projected increase in public hospital overnight admissions of up to 49 per cent by 2022. However, an assessment of ACT Health infrastructure demonstrated that the additional capacity requirements could be met by utilising the existing hospital campuses and therefore, a third hospital was not required at this stage. In order to achieve this additional capacity, however, the decision was taken that major investment, involving rebuilding and refurbishing all existing health infrastructure, was required. This fed in to the development of CADP."<sup>11</sup>*

<sup>10</sup> Future ownership and governance of *Calvary Public Hospital & Clare Holland House* An ACT Government Information Paper, October 2009, pp 5.

<sup>11</sup> Future ownership and governance of *Calvary Public Hospital & Clare Holland House* An ACT Government Information Paper, October 2009, pp9.



The current agreements in place between the Territory and Calvary (in respect to the operation of Calvary Public Hospital) would not remove the obligation of the Territory to fund a hospital of 300 bed capacity, based on utilisation<sup>12</sup> if the ACT were to build a new acute public hospital elsewhere in Canberra. As such, any new acute public hospital would be a third hospital, not a “replacement” hospital for Calvary Public Hospital. The potential for future inefficient duplication of service and facilities would be unavoidable, should a third hospital be established.

The location of Calvary in central north Canberra with significant road access to the south of Canberra gives the current public hospital a significance that can be analysed at a number of levels:

- Patient and patient family access is good, via the nearby Gungahlin Drive Extension and public transport into the Bruce precinct which includes retail, academic and sporting hubs.
- The campus is proximate to existing urban areas and the new urban development in the north of Canberra and in particular, the Molonglo Valley and Gungahlin.
- There is good access along the Gungahlin Drive Extension to The Canberra Hospital. Current staff are advantaged by access to the existing location. 61% (versus 14%) have an assessed preferred residential to work access to the existing Bruce campus, rather than a possible Gungahlin Town Centre location.
- Feedback from doctors indicates strong support for development of the existing Bruce campus for public and private hospital services as opposed to the creation of a new location.

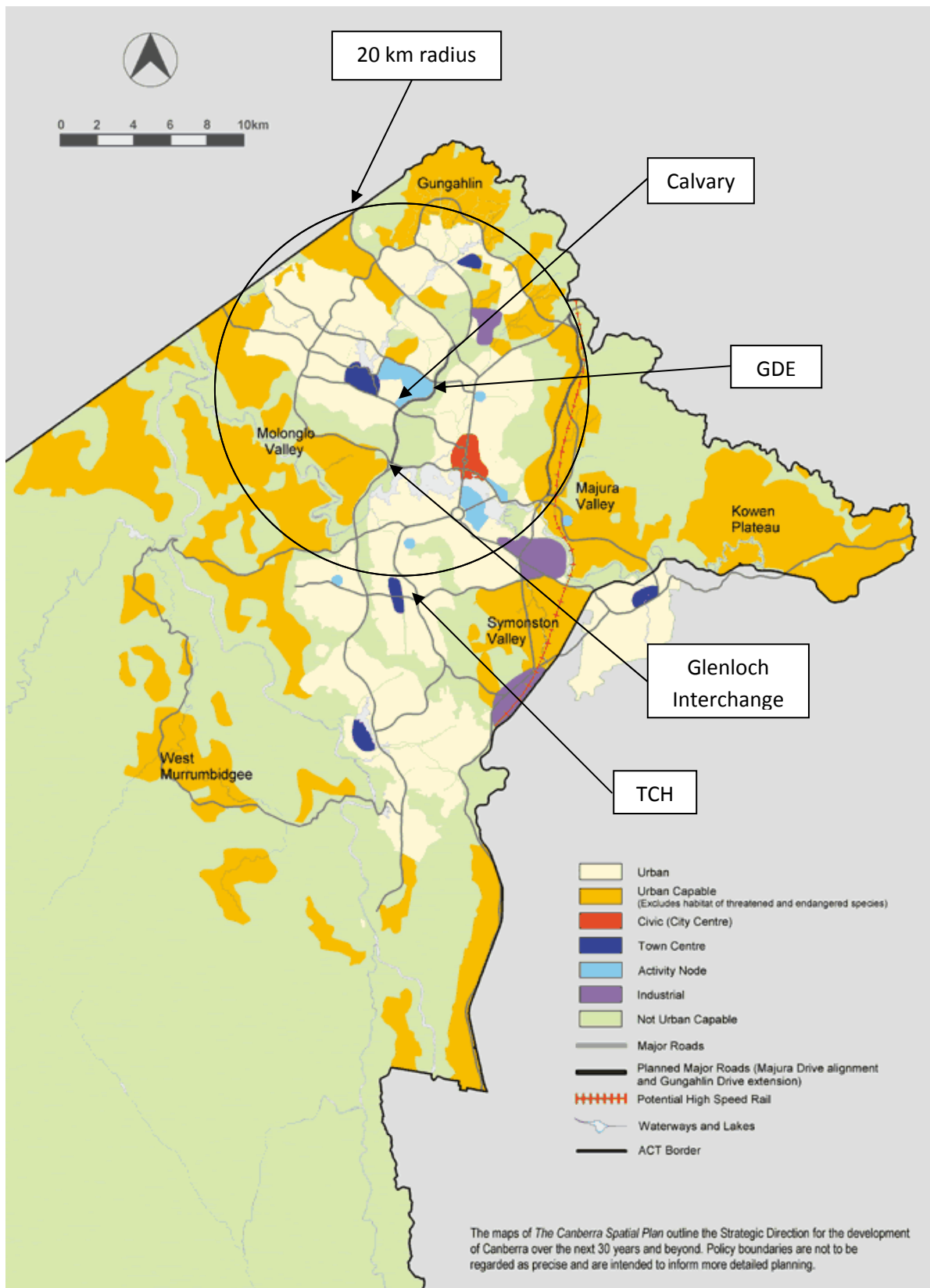
There is nothing known to Calvary which would provide a reason based on health service planning or health needs of the community for the ACT Government to move away from its already announced investment plans for the Bruce Campus. Uncertainty would be created by changing this strategy to develop a third hospital that would give rise to the potential for inefficient duplication of services.

In the absence of such evidence investment and development of the existing Calvary Bruce campus offers a sensible, low risk and “value for money” proposition for the people of North Canberra, who have been well served by Calvary for the last 31 years.

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<sup>12</sup> Original Calvary hospital Agreement, 1971.

**Map 1: Greater Canberra (source: Canberra Spatial Plan 2004) and Calvary**



## List of Appendices

Appendix 1 1971 Agreement - Commonwealth / Corporation of the Little Company of Mary

Appendix 2 YHOP Master Plan

Appendix 3 Deloitte advice

Appendix 4 Neil Young QC opinion

*Original held by  
Murphy + Moloney  
Refer Sir John O'Neill*

AGREEMENT

between

LITTLE COMPANY OF MARY  
PROVINCIAL ARCHIVES  
KOCARAH

COPY

THE CORPORATION OF THE LITTLE COMPANY OF MARY

and

THE COMMONWEALTH OF AUSTRALIA

in relation to

CONSTRUCTION OF CALVARY HOSPITAL IN THE  
AUSTRALIAN CAPITAL TERRITORY

R.B. HUTCHISON, Esq., O.B.E.,  
Commonwealth Crown Solicitor,  
CANBERRA. A.C.T. 2600

AN AGREEMENT made the *2nd* day of

*October*

One thousand nine hundred and seventy-one

BETWEEN THE CORPORATION OF THE LITTLE COMPANY OF MARY a company incorporated in the State of Victoria and having its principal office in the State of New South Wales at Calvary Hospital, Rocky Point Road, Kogarah in the said State (hereinafter called "the Order") of the one part AND THE COMMONWEALTH OF AUSTRALIA (hereinafter called "the Commonwealth") of the other part.

WHEREAS -

- (a) the Order is desirous of conducting a hospital in the Australian Capital Territory (hereinafter called "the Territory");
- (b) the Commonwealth has allocated all that parcel of land being Block 1 Section 1 Division of Bruce, Canberra City District as delineated in Deposited Plan Number 2360 in the Office of the Registrar of Titles at Canberra in the Territory for the purpose of a hospital;
- (c) the Commonwealth is prepared to pay certain of the costs of erecting and conducting on the said land a hospital in the manner hereinafter appearing;
- (d) the Order is agreeable to establish and conduct a hospital on the said land and the Commonwealth has agreed to pay to the Order certain of the costs of establishing and conducting a hospital; and

(e) the parties have agreed that a hospital of three hundred beds capacity is now appropriate in all the circumstances and the Commonwealth has agreed to meet certain of the costs incurred by the Order in connexion with an earlier proposal for the establishment of a hospital of two hundred bed capacity:

NOW IT IS HEREBY AGREED as follows:-

1. In this agreement, unless the contrary intention appears -

"clause" means clause of this agreement;

"the Director-General of Health" means the Director-General of Health of the Commonwealth and includes a person for the time being performing the duties of that office;

"the Director-General of Works" means the Director-General of Works of the Commonwealth and includes a person for the time being performing the duties of that office;

"the Hospital" means the hospital to be established under this agreement, and, except where the context otherwise requires, includes such buildings and other improvements as are at any time erected on the premises and the fittings, furnishings and equipment thereon and therein;

"the lease" means the lease referred to in clause 2 and includes any lease granted in substitution for that lease;

"the premises" means the land for the time being comprised in the lease;

"the Territory" means the Australian Capital Territory;

"year" means financial year ending 30 June.

2. This agreement is conditional upon the grant and continuance in force of a lease by the Commonwealth to the Order under the Leases Ordinance 1918-1966 of the Territory of the land described in, and upon and subject to the covenants and conditions set out in, the form of lease set out in the Schedule to this agreement.

3.-(1.) The Order shall, in accordance with its covenant to build in the lease and in compliance with the laws of the Territory, build, establish and maintain a Hospital. The Order shall commence to build the Hospital during 1974.

(2.) The contract entered into by the Order for the construction of the Hospital shall -

- (i) contain such conditions of contract as are approved by the Director-General of Works;
- (ii) require the Hospital to be built in accordance with plans and specification approved by the Director-General of Works; and
- (iii) provide for the construction of the Hospital to be supervised as provided in this clause.

(3.) Public tenders shall be invited for the construction of the Hospital and the Order shall obtain the prior approval of the Director-General of Works for -

(i) the selection of prospective tenderers;

(ii) the conditions under which the successful tender is to be accepted; and

(iii) the acceptance of the successful tender

(4.) The Order shall obtain the prior approval of the Director-General of Works for the letting of each contract for any work to be performed and supplies to be provided in connexion with the construction of the Hospital. Each such contract shall be let at the lowest tender price acceptable to the Director-General of Works and the Order shall furnish to the said Director-General such information concerning the contract as he requires.

(5.) The Order and the Commonwealth agree in respect to the construction of the Hospital that -

(i) The Department of Works of the Commonwealth shall provide all necessary supervision during the construction of the Hospital and for that purpose shall act through a person or persons from time to time appointed by the Director-General of Works to represent the Department;

5.

- (ii) the Order shall ensure that the representatives of the Department of Works are given access to the site at all times and are provided with all facilities reasonably required for the supervision of the construction of the Hospital;
- (iii) each progress payment certificate in respect of the construction shall be prepared by a representative of the Department and countersigned by the Order before payment is made to the contractor; and
- (iv) the agreement of the Order will be obtained to all variations of the plans and specifications arising during the course of construction.

4. The Order shall proceed in consultation and by arrangement with and subject to the accord of the Director General of Health, who in this respect shall act on behalf of the Commonwealth, to obtain, furnish and install such fittings, furnishings and equipment as are essential and requisite for the proper conduct of the Hospital as a public hospital of 300 bed capacity, having due regard to the practicability of utilisation by this hospital in common with other hospitals of external facilities and services that are for the time being available for use by the Hospital.

5. The building and other improvements erected as provided in clause 3 and the fittings, furnishings and equipment obtained, furnished and installed as provided in clause 4 shall together hereinafter be referred to as "the Capital Assets" provided that this expression -

(a) shall include such further fittings, furnishings and equipment other than replacements as from time to time the Order and the Director-General of Health agree shall be provided for the Hospital on the basis that the cost thereof is to be met directly or indirectly by the Commonwealth;

(b) shall not include -

(i) any adjunctive buildings or improvements predominantly of an ecclesiastical character or function; or

(ii) any fittings, furnishings or equipment obtained, furnished or installed at the instance of the Order,

the cost of which have not been met in any part by the Commonwealth.

6.-(1.) Subject to the Order complying with the provisions of clauses 3 and 4 the Commonwealth shall contribute to the costs (including architects' and consultants' fees) duly and properly incurred by the Order in, for and in relation to the provision as aforesaid of the Capital Assets in the manner as follows:-

- (a) Accounts received by the Order for payment for services performed or materials supplied in connexion with the construction and establishment of the Hospital shall be produced by the Order to the Commonwealth.
- (b) The Commonwealth shall contribute to the Order for pro tanto payment of each such account an amount being three-quarters of the sum payable of that account.
- (c) The Order shall pay each account and for this purpose shall provide the balance one-quarter of the sum payable of the account from loans moneys raised by the Order.
- (d) The Commonwealth shall meet the commitments of the Order for payment of the instalments of principal and interest (up to but not exceeding the rate of interest charged by the Commonwealth Trading Bank for long term loans current at the time the said loan is made or, if the said loan is not made at a firm rate of interest, the rate of interest actually being paid by the Order in respect of the loan from the Commonwealth Trading Bank) of all loans raised and expended by the Order for the purpose of making payments of the balance of accounts in accordance with paragraph (c) of this sub-clause.

(e) The Order shall give to the Commonwealth appropriate notice of the amount of each instalment and of the due date for payment of each payment to be made by the Commonwealth in accordance with paragraph (d) of this sub-clause.

(2.) In addition to the contribution provided for by sub-clause (1.) of this clause, the Commonwealth will pay to the Order such amounts as may from time to time be agreed between the parties relating to costs properly incurred by the Order in connexion with the establishment of the Hospital.

(3.) In addition to the contributions provided for by sub-clauses (1.) and (2.) of this clause the Commonwealth has reimbursed the Order for those costs properly incurred by the Order in arranging for the establishment of a hospital of 200 bed capacity as agreed between the parties prior to the signing hereof and has also reimbursed the Order for interest paid by it to the Commonwealth Trading Bank in respect of the Order's borrowing to pay its one quarter share of expenses already incurred.

(4.) The Order shall from time to time at the request of the Director-General of Health furnish estimates of and proposals for expenditure in connexion with the establishment and construction of the Hospital.

7. The Order shall maintain the Capital Assets in good order and condition, fair wear and tear excepted,

and, except with the prior consent of the Commonwealth, will not use otherwise than for the purposes of the Hospital, or dispose of or part with possession of, any of the Capital Assets.

8. The Order shall conduct the Hospital as a hospital of 300 bed capacity available irrespective of creed or individual ability to pay and shall charge patients fees in accordance with the scale of fees determined by the Commonwealth from time to time to be then the scale of fees applicable in the Territory at hospitals which provide comparable services and which are controlled by the Commonwealth. The Order shall provide such other medical and ancillary services as may be agreed between the Order and the Director-General of Health.

9. The Order shall control and manage the Hospital in accordance with sound hospital practices and the laws for the time being in force in the Territory applicable to the Hospital. The Order shall ensure that the Hospital is controlled and managed in accordance with Government policy from time to time relating to the integration rationalization and efficiency of hospital services in the Territory.

10. The Order shall afford inspection of the Hospital at all reasonable times to Officers duly appointed by the Director-General of Health in the performance of their duties.

11.-(1.) Subject to the succeeding sub-clauses of this clause the Commonwealth shall pay in respect of each year a maintenance subsidy to the Order in respect of

operating costs incurred by the Order in the conduct of the Hospital equal to the excess over the income (excluding the maintenance subsidy) of the Hospital for that year.

(2.) For the purposes of assessing the maintenance subsidy and deficit, the costs incurred by the Order in the conduct of the Hospital shall exclude depreciation and interest associated with the provision of Capital Assets but shall include replacement of fittings, furnishings and equipment and those expenses incurred for the board and lodging of those members of the Order conducting the Hospital plus such other amounts as the Director-General of Health determines to be reasonable in the particular circumstances.

(3.) The amount of maintenance subsidy payable to the Order shall not exceed the amount calculated by multiplying the total adjusted days of bed occupation for the Hospital during that year by the least rate of subsidy payable to Commonwealth-owned general hospitals in the Territory for that year less the amount of income receivable by the Hospital during that year plus the additional costs incurred by the Hospital in providing services to other hospitals less the savings to the Hospital by using services provided by another hospital or hospitals in the Territory. The Director-General of Health shall determine what constitute the said additional costs and savings after prior consultation with the Order.

(4.) For the purposes of the last preceding sub-clause -

- (a) 'total adjusted days of bed occupation'  
 $= D + \left(\frac{A}{700} \times N\right)$  where D = the total number of days of bed occupation by in-patients during the year, A = the total number of days in the year and N = the total number of out-patients treated during the year; and
- (b) 'the rate of subsidy' =  $\frac{S - D + C}{B}$  where S = the total amount of the operating costs of the Commonwealth-owned hospital during that year, D = the notional costs incurred by that Commonwealth-owned hospital in providing services used by other hospitals in the Territory in that year, C = the notional savings to that Commonwealth-owned hospital in costs by using services provided by another hospital or hospitals in the Territory in that year and B = the total adjusted days of bed occupation for that Commonwealth-owned hospital during that year.

(5.) During each year the Order shall prepare and submit to the Commonwealth monthly statements of the estimated cash receipts and payments and cash balance in relation to the operation of the Hospital and the actual results of the previous month and the Commonwealth shall promptly pay to the Order interim maintenance subsidy amounts determined by the Commonwealth in the light of these statements.

(6.) As soon as reasonably practicable after the end of each year the Order shall prepare and submit to the Commonwealth a statement of revenue and expenditure (excluding capital repayments and interest associated with the provision of Capital Assets), a statement of loan fund operations in relation to the provision of Capital Assets and balance sheet of the Hospital for that year. The amount of maintenance subsidy payable by the Commonwealth for that year shall be calculated by the Commonwealth and any necessary reconciliation and adjustment shall be made having regard to the aggregate amount of the payments of interim maintenance subsidy paid by the Commonwealth for that year.

(7.) The Order shall keep full management records and proper books of account in a form approved by the Director-General of Health, of all transactions pertaining to the conduct of the Hospital and these shall be audited progressively by a licensed Auditor to be duly appointed by the Order and approved by the Commonwealth and shall be open to inspection at all reasonable times by the Commonwealth and the Auditor-General of the Commonwealth or his representatives

(8.) The estimate of revenue and expenditure, including capital expenditure, on revenue and cash accounting bases shall be submitted by the Order to the Commonwealth as requested by the Director-General of Health.

12. The Order shall submit to the Commonwealth accurate statements of affairs and reports of activities of the Hospital annually and as may be required by the Director-General of Health from time to time.

13. If at any time for any reason the Order is unable to complete the construction and establishment of the Hospital the management thereafter of the affairs of the Hospital will vest in the Commonwealth and in that event:

- (a) The Commonwealth shall be entitled to assume control of the Hospital and for this purpose to have full possession and custody of the Hospital, and the Order will take all necessary steps (including, when so required by the Commonwealth, the surrender of the lease) to enable this to be done.
- (b) The Commonwealth will assume obligations under all contracts for the setting up of the Capital Assets and will repay and settle all loans obtained by the Order pertaining to those contracts and pay interest payable thereunder (except so much of the interest as exceeds the interest that the Commonwealth is bound to meet under paragraph (d) of sub-clause (1.) of clause 6 of this agreement). The Order shall assign such rights to the Commonwealth as may be necessary for the Commonwealth to carry out its obligations under this paragraph.
- (c) The Order shall not be entitled to compensation for the value of any buildings improvements fittings furnishings or equipment which have been wholly paid for directly or indirectly by the Commonwealth. In respect of all other

buildings improvements fittings furnishings and equipment, the Order may be paid such compensation as determined by the Minister for the Interior having regard to the financial contribution made by the Order in the construction or purchase of those buildings improvements fittings furnishings and equipment provided that the amount or amounts payable as compensation shall not exceed the value or values of such buildings improvements fittings furnishings and equipment at the time of the expiration surrender or determination (not being determination upon default) of the lease.

14.-(1.) If the Order at any time decides to discontinue the conduct of the Hospital, the Order will give to the Commonwealth not less than twelve months notice of its intention so to do.

(2.) At the expiration of that period or such shorter period as may be determined by the Director-General of Health the management of the affairs of the Hospital will vest in the Commonwealth and the provisions of sub-paragraphs (a), (b) and (c) of clause 13 shall apply.

15. The Order shall arrange and maintain such insurance cover in respect of the Hospital, its employees and the persons and property of third parties as the Director-General of Health shall request.

16. In the event that the Order breaches or fails to comply with any of the terms and conditions of this Agreement or any of the covenants of the lease or any applicable law of the Territory, the Commonwealth, without prejudice to any other remedy, may give the Order thirty days (30) 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 Commonwealth may determine the lease as terminated and in that event the Order shall not be entitled to claim or receive any compensation whatsoever.

17. Any notice or other communication to be given by the Commonwealth to the Order in relation to this agreement shall be deemed to have been duly given if it is in writing signed by or on behalf of the Director-General of Health and is delivered or sent by prepaid post addressed to the Provincial Superior, Calvary Hospital, Rocky Point Road, Kogarah, N.S.W. and any such notice or other communication to be given by the Order to the Commonwealth shall be deemed to have been given if it is in writing signed by or on behalf of the Order and is delivered or sent by prepaid post addressed to the Director-General of Health, Canberra, A.C.T.

THE SCHEDULE HEREINBEFORE REFERRED TO.

THE COMMONWEALTH OF AUSTRALIA  
AUSTRALIAN CAPITAL TERRITORY  
THE LEASES ORDINANCE 1918-1966

COPY

LEASE GRANTED pursuant to the Leases Ordinance 1918-1966 and the Regulations thereunder on the

day of One thousand nine hundred and

WHEREBY the Commonwealth of Australia (hereinafter called "the Commonwealth") grants to THE CORPORATION OF THE LITTLE COMPANY OF MARY a company incorporated in the State of Victoria whose registered office is situated at 476 Kooyong Road, Caulfield in the said STATE (hereinafter called "the lessee") ALL THAT piece or parcel of land situated in the said Territory containing an area of 31 acres 1 rood  $17\frac{3}{4}$  perches or thereabouts and being Block 1 Section 1 Division of Bruce, Canberra City District as delineated in Deposited Plan Number 2360 in the office of the Registrar of Titles at Canberra in the said Territory and being the land shown by pink colour on the plan endorsed hereon RESERVING unto the Commonwealth all minerals TO HOLD unto the lessee for the term of ninety-nine years commencing on the date hereof to be used by the lessee for the purpose of a hospital YIELDING AND PAYING THEREFOR during the said term rent at the rate of ten cents per annum if and when demanded.

1. The lessee covenants with the Commonwealth as follows:-

- (a) That in accordance with an agreement between the Commonwealth and the lessee dated
- the lessee will within four years from the date hereof or within such further time as may be approved in writing by the Commonwealth or the Minister on behalf of the Commonwealth for that purpose commence to erect a hospital on the said land at a cost not less than the sum of eight million dollars and in accordance with plans and specification prepared by the lessee and previously submitted to and approved in writing by the Commonwealth or the Minister on behalf of the Commonwealth;
- (b) That the lessee will within seven years from the date hereof or within such further time as may be approved in writing by the Commonwealth or the Minister on behalf of the Commonwealth complete the erection of the said hospital at a cost not less than the said sum of eight million dollars and in accordance with the said plans and specifications and in accordance with every Statute Ordinance or Regulation applicable thereto;
- (c) That the lessee will 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 Minister;

- (d) That the lessee will not without the previous approval in writing of the Commonwealth or the Minister on behalf of the Commonwealth erect any building or structure other than a hospital or make any structural alterations to any building or erections on the said land;
- (e) To use the said land only for the purposes 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 Order of the Little Company of Mary who are conducting the hospital;
- (f) If and whenever the lessee fails to repair or keep in repair any building or erection on the said land the Commonwealth or the Minister on behalf of the Commonwealth 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 Commonwealth or the Minister on behalf of the Commonwealth may in writing allow the lessee has not effected the said repairs or removed the building or erection the Minister or any person or persons duly authorised by the Commonwealth or the Minister in that behalf with or without vehicles

may enter upon the said land and effect the said repairs or (if the Minister is of opinion the building or erection is beyond reasonable repair) may demolish and remove the building or erection and all expenses incurred by the Commonwealth or the Minister in effecting such repairs or in demolishing and removing the building or erection shall be paid by the lessee to the Commonwealth on demand and from the date of such demand until paid shall for all purposes of this lease be deemed to be rent payable under this lease and unpaid by the lessee;

- (g) Not to assign sub-lease or part with possession of any or all of the said land or buildings, erections or improvements thereon;
- (h) To permit any person or persons authorised by the Commonwealth or the Minister on behalf of the Commonwealth in that behalf to enter upon the said land at all reasonable times and in a reasonable manner and inspect the said land and any buildings erections and improvements there

2. 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 Commonwealth.

3. IT IS MUTUALLY COVENANTED AND AGREED as follows:-

- (a) In the event of the expiration surrender or determination of the lease (not being determination arising under the next succeeding paragraph), 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 Commonwealth. In respect of all other buildings and other improvements the lessee may be paid such compensation as determined by the Minister 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 determination;
- (b) In the event that the lessee breaches or fails to comply with any of the terms and conditions of the said Agreement or any of the covenants of this lease or any applicable law of the said Territory, the Commonwealth, 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 Commonwealth may forthwith determine the lease and in that event the lessee shall not be entitled

- to claim or receive any compensation whatsoever;
- (c) If at the expiration of this lease the Minister shall have decided not to sub-divide the said land and that it is not required for any Commonwealth purpose and shall have declared the said land to be available for lease 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;
- (d) That in this lease the expression "Minister" shall mean the Minister of State of the Commonwealth for the time being administering the Leases Ordinance 1918-1966 including any amendments thereof or any Statute or Ordinance substituted therefor or the member of the Executive Council of the Commonwealth for the time being performing the duties of such Minister and shall include the authority or person for the time being authorised by the Minister or by law to exercise the powers and functions of the Minister under the Leases Ordinance 1918-1966 including any amendments thereof or any Statute or Ordinance substituted therefor;
- (e) That any notice requirement demand consent or other communication to be given to or served upon the lessee by the Commonwealth or the Minister under this lease shall be deemed to

have been duly given or served if signed by or on behalf of the Minister and delivered to or sent in a prepaid letter addressed to the lessee at its registered office.

IN WITNESS whereof this lease has been executed in the name of the Commonwealth of Australia by the Minister and by the lessee.

SIGNED SEALED AND DELIVERED  
by  
delegate of the Minister of  
State for the Interior of  
the Commonwealth of Australia  
in the presence of -

THE COMMON SEAL OF THE  
CORPORATION OF THE LITTLE  
COMPANY OF MARY was affixed  
hereto by authority of the  
Provincial Superior and in  
the presence of -

---

IN WITNESS whereof the parties hereto have executed this agreement the day and year first above written.

THE COMMON SEAL OF THE  
CORPORATION OF THE LITTLE  
COMPANY OF MARY was affixed  
hereto by authority of the  
Provincial Superior and in the  
presence of -

(Sgd) M. John O'Neill  
Solicitor  
Sydney

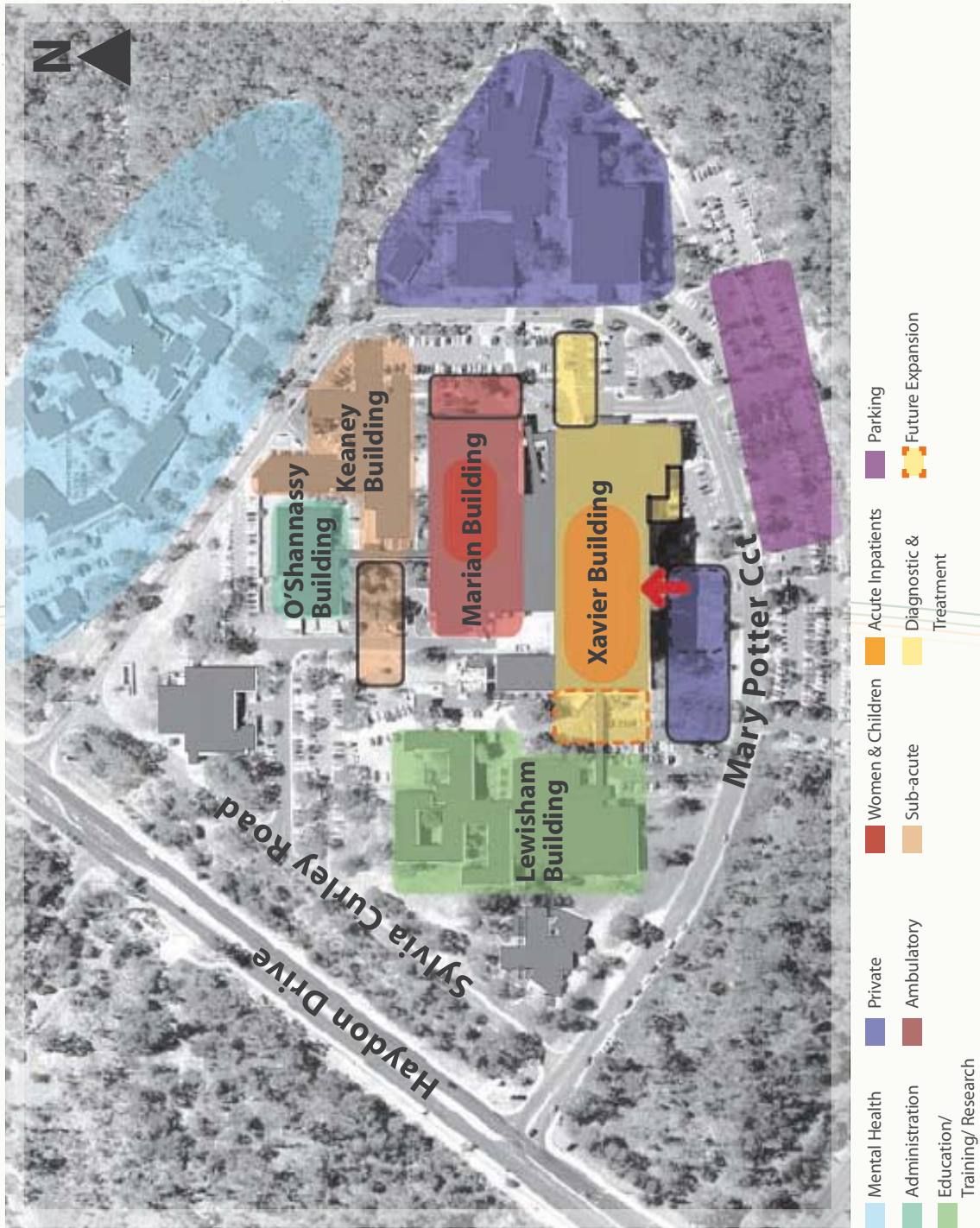
C.S.  
(Signed) Zita Lake

SIGNED for and on behalf of  
THE COMMONWEALTH OF AUSTRALIA  
by The Honourable KENNETH McCOLL  
ANDERSON, the Minister of  
State for Health of the  
Commonwealth of Australia,  
in the presence of -

(Sgd) D.T. Dunlop  
First Assistant Director  
General of Health.

(Sgd) Ken Anderson

Calvary precinct plan





Deloitte Touche Tohmatsu  
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Mr Mark Doran  
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21 September 2010

Dear Mark

### **ACT Public Hospital Transaction**

In accordance with our engagement letter dated 12 July 2010 (Engagement Letter) we set out below our conclusion regarding your current accounting treatment in respect of the existing agreements between Calvary Health Care ACT, referred to as “Calvary” throughout this document, and Capital Territory Health Commission subsequently replaced by the Australian Capital Territory, referred to as “the Territory” throughout this document.

This letter will primarily contemplate the accounting treatment from Calvary’s point of view.

The accounting assistance presented in this report is described in the context of Australian accounting pronouncements in application at the date of issue of our report. This report should be read in conjunction with our Engagement Letter.

### **Conclusion**

Calvary currently recognises the ACT Public Hospital and related assets on its balance sheet. Based on our understanding of the series of agreements currently in operation and our interpretation of the relevant accounting pronouncements, in our opinion, the accounting treatment adopted by Calvary with respect to the recognition of the ACT Public Hospital under the existing agreement complies with current Australian accounting pronouncements.

The relevant background provided to us by management as well as management’s conclusion on the adopted accounting treatment with respect to the recognition of the ACT Public Hospital and related assets on its balance sheet are set out below.

## Overview

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## 1. Background

We understand that the Territory is currently considering the purchase of the land on which the ACT Public Hospital is located and the re-negotiation of the service agreements which govern the operations of the public hospital.

We understand that the Territory has the intention to further develop the hospital and would like to capitalise those costs on its balance sheet. Our understanding is that at present, the Territory does not show the public hospital as an asset on its balance sheet.

Calvary currently accounts for both the land and the buildings of the ACT Hospital on its balance sheet.

Our opinion is based on the review of the following agreements and on discussions with management of Calvary and their legal advisors:

- Original Construction Agreement dated 22 October 1971 – this sets out the agreement for the construction and operation of the hospital.
- First Supplementary Agreement dated 9 April 1979 – this agreement revises the original agreement in relation to the construction, operation and maintenance of the hospital
- Calvary Private Agreement dated 26 April 1988 – this agreement allows Calvary to operate a private hospital on two floors of the public hospital building.
- Second Supplementary Agreement dated 9 May 1991 – this revises the previous two agreements dated 22 October 1971 and 9 April 1979.
- Deed to vary the Calvary Private Agreement, variation dated 24 November 1994 – this deed of variation provides Calvary with a change in the rates the private operations of Calvary are required to pay the public hospital for the use of certain area of the public hospital.
- Deed to vary the Calvary Private Agreement, variation dated 24 November 1997 – This deed of variation allows Calvary to build and operate a Psychiatric Unit, “Hyson Green” on the Crown Lease.
- Calvary Hospital Performance Plan 2009-2010
- Memorandum of Advice from Mr Neil Young, QC dated 23 August 2010
- Calvary Decision Making Framework – current version as at the date of this report (attached as an appendix to this letter)

Management are not aware of any changes to the facts, circumstances, assumptions or their conclusions relevant to the transaction.

## 2. Detailed discussion and opinion

The following pronouncements have been considered and referred to in reaching our conclusion in this report:

- Interpretation 12 *Service Concession Arrangements* (currently in application)
- Exposure Draft 194 *Service Concession Arrangements: Grantor* (open for comments until 30 June 2010)
- AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*

### Applicability of Interpretation 12

The discussion below looks at the applicability of Interpretation 12 *Service Concession Arrangements* (“Interpretation 12”) to the ACT Public Hospital and at the implication of the terms and conditions within the agreements in light of the requirements of Interpretation 12.

The applicability of Interpretation 12 is defined in paragraph Aus27 of the Interpretation:

*“ This Interpretation applies to:*

- a) each entity that is required to prepare financial reports in accordance with Part 2M.3 of the Corporations Act 2001 and that is a reporting entity;*
- b) general purpose financial statements of each other reporting entity; and*
- c) financial statements that are, or are held out to be, general purpose financial statements.*

*This Interpretation applies to annual reporting periods beginning on or after 1 January 2008.”*

Calvary Health Care ACT Limited which operates the Public Hospital in the ACT is set up as a company limited by guarantee and prepares General Purpose Financial Statements in accordance with the Corporations Act 2001. Interpretation 12 was applicable to the entity for its financial year ended 30 June 2009 onwards.

Interpretation 12 paragraph 3 provides a broad discussion about the types of arrangements covered by the Interpretation. Prima facie, the public hospital arrangement between the Territory and Calvary appears to fit the scenario presented in paragraph 3.

#### *Paragraph 3*

*“ A feature of these service arrangements is the public service nature of the obligation undertaken by the operator. Public policy is for the services related to the infrastructure to be provided to the public, irrespective of the identity of the party that operates the services. The service arrangement contractually obliges the operator to provide the services to the public on behalf of the public sector entity. Other common features are:*

- a) the party that grants the service arrangement (the grantor) is a public sector entity, including a governmental body, or a private sector entity to which the responsibility for the service has been devolved;*
- b) the operator is responsible for at least some of the management of the infrastructure and related services and does not merely act as an agent on behalf of the grantor;*

- c) *the contract sets the initial prices to be levied by the operator and regulates price revisions over the period of the service arrangement;*
- d) *the operator is obliged to hand over the infrastructure to the grantor in a specified condition at the end of the period of the arrangement, for little or no incremental consideration, irrespective of which party initially financed it.*"

More specifically, Interpretation 12 applies to the following service concession arrangements:

*Paragraph 5*

*"This Interpretation applies to public-to-private service concession arrangements if:*

- a) *the grantor controls or regulates what services the operator must provide with the infrastructure, to whom it must provide them, and at what price; and*
- b) *the grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the infrastructure at the end of the term of the arrangement.*"

Based on our understanding of the agreements and the detailed discussion below, we are of the view that both elements of paragraph 5 may apply to the transaction and need to be considered closely before being able to conclude on the possible application of Interpretation 12 to the arrangement.

## **2.1 The Building – Public Hospital area only**

### **Cost of the building:**

The construction, operation and maintenance of the Public Hospital is guided by the Original Construction Agreement and the First Supplementary Agreement between the Corporation of the Little Company of Mary, the Commonwealth of Australia, Calvary Hospital ACT Incorporated and Capital Territory Health Commission, dated 9 April 1979.

The original construction agreement specifies the following:

*" Calvary shall conduct the hospital as a hospital of 300 bed capacity available irrespective of creed or individual capacity to pay and shall charge patients fees in accordance with the scale of fees determined by the Commonwealth from time to time to be then the scale of fees applicable to the Territory at hospitals which provide comparable services and which are controlled by the Commonwealth. Calvary shall provide such other medical and ancillary services as may be agreed between Calvary and the Director General of Health. "*<sup>1</sup>

The cost of the original building was funded primarily by the Territory (initially the responsibility of the Commonwealth). The building is located on a 99 year Crown lease discussed later on in this letter.

The original construction agreement specifies that the Commonwealth is prepared to pay certain of the costs of erecting and conducting on the Crown lease a hospital and Calvary is agreeable to establish and conduct a hospital on the land and the Commonwealth has also agreed to pay Calvary certain of the costs of establishing and conducting a hospital.<sup>2</sup>

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<sup>1</sup> Section 8 on page 9 of the original construction agreement

<sup>2</sup> Original Construction Agreement – page 1

The agreement specifies that the construction of the buildings and further fittings, furnishing and equipment as from time to time the Association (now referred to as Calvary) and the Territory agree shall be provided for the hospital on the basis that the cost thereof is to be met directly or indirectly by the commonwealth.<sup>3</sup>

Calvary shall maintain the Capital Assets in good order and condition, fair wear and tear excepted, and except with the prior consent of the Commonwealth, will not use otherwise than for the purposes of the Hospital or dispose of or part with possession of, any of the Capital Assets.<sup>4</sup> A maintenance subsidy forms part of the annual funding received from the Government.<sup>5</sup>

The funding model whereby the Territory funded only part of the building costs is in the form of a capital grant and therefore can be accounted for within the framework provided by AASB 1004 *Contributions*.

### Use of the building:

Block funding is received from the ACT government each year for a set number of cases and based on a budget submitted at the start of the year and adjusted from time to time based on the provision of actual cost presented to the government on a cash accounting basis.<sup>6</sup>

*“The Association shall conduct the Hospital in accordance with sound hospital practices and the laws of the time being in force in the Territory applicable to the Hospital. The Association shall ensure that the Hospital is controlled and managed in accordance with directions given from time to time by the Commission, relating to the integration, rationalisation and efficient management of hospital services [...] the Commission will in the normal course of events make reasonable efforts to consult with the Association in the implementation of those policies as they affect the Hospital.”<sup>7</sup>*

The block funding received each year to fund the operations of the public hospital are more akin to a service income to be recognised in accordance with AASB 118 *Revenue* and accounted for as earned. Any surplus/deficit would likely be payable/receivable from the Territory and Calvary would require the Territory’s approval prior to being able to roll forward any surplus funds into the overall funding of the public hospital for the following year.

Clause 3(a) of the Crown Lease provides that the land is only used for hospital and ancillary services and therefore restricts the services able to be offered by Calvary to hospital services. The scope of services offered within the public hospital is agreed with the Territory each year as part of the performance plan for the year.<sup>8</sup>

Clause 16 of the Supplementary agreement provides that *“Calvary shall conduct the Hospital in such a manner as to make it available to all persons irrespective of creed or individual ability to pay”*.

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<sup>3</sup> First Supplementary Agreement page 3, section 1

<sup>4</sup> First Supplementary Agreement – Clause 6

<sup>5</sup> First Supplementary Agreement page 7, section 14 (ii)

<sup>6</sup> First Supplementary Agreement, page 7, section 14

<sup>7</sup> First Supplementary Agreement page 4, section 7

<sup>8</sup> Calvary Hospital Performance Plan 2009-2010

The First Supplementary Agreement states that the Territory regulates the prices Calvary is to charge for the service it provides to the public hospital patients.<sup>9</sup>

Calvary's legal advisor, Lucinda Smith of Thomson Playford Cutlers confirmed that while the Territory ultimately approves variation of the services provided and the prices<sup>10</sup>, Calvary has significant autonomy over the services provided and is able to vary the level/types of services it offers so long as it complies with the broad regulatory framework of the Territory. Further, we have reviewed Calvary's Decision Making Framework which confirms that while the Territory's approval is required in some instances, the level of decision making exercised by Calvary over the operations of the public hospital is broad and comprehensive.

It can be argued that the agreements in place simply provide an overall regulatory framework for the hospital to operate within the Territory health practices and regulations. This framework is not sufficient to evidence the existence of the Territory's control over the running of the hospital. The generic regulations in place apply to all operators of both public and private hospitals and are more akin to a right to run and operate a public hospital as noted by Mr Young, QC in section 4 f) of his advice.

The Decision Making Framework prepared by Calvary confirms that with the exception of consent of the Territory required in some instances, the majority of the decision making lies within Calvary's hands.

#### Discontinuation or Termination of the operations:

Other than in the event of a breach of contract by Calvary, which may confer on the Government a right to terminate the agreements, Calvary has the right to cease operating the hospital providing it gives a 12 month notice of its intention to the Territory or Commonwealth. In this instance, the management of the affairs of the hospital will vest in the Territory. If deemed required by the Territory, Calvary may need to surrender the Crown lease. This 12 month notice period applies to the termination of the private hospital as well and is further discussed in section 2.2 of our discussion.<sup>11</sup> This shows that Calvary has ultimate control of this aspect of the operations. Calvary can decide if and when it will terminate the agreement. It also confirms that Calvary is in a position to ensure compliance with rules and regulation and prevent a breach of contract which should it arise, lead to the automatic termination of the agreement.

The Territory on the other hand has no contractual ability to terminate the Public Hospital Agreements or the Crown lease in the absence of a breach by Calvary of either the Agreement or the Crown Lease or the termination of the running of the public hospital.<sup>12</sup>

We further considered the likelihood of Calvary being in breach of the set of agreements reviewed. The lack of prescriptive requirements contained in the agreements means that it is difficult to actually be in breach of a particular requirement of an agreement. Some examples of breaches would be for instance if Calvary decided to use the site for activities other than the provision of hospital services or if they did not comply with the health and safety regulatory framework of the Territory. Instances of possible breach identified that would result in the Territory taking operational control of the hospital are all within the control of Calvary and would require for them

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<sup>9</sup> First Supplementary Agreement, page 9, section 16

<sup>10</sup> First Supplementary Agreement – Clause 6

<sup>11</sup> The Calvary Private Agreement - Paragraph 9 Section (ii) on page 6

<sup>12</sup> First Supplementary Agreement, page 10, section 19 a)

to intentionally choose to breach them. This was further discussed with Mr Neil Young, QC on Monday 30 August 2010. A similar conclusion was reached.

We believe that Calvary retains sufficient control to ensure they comply with the regulatory framework and therefore prevent a breach from happening.

It is therefore difficult to argue that paragraph 5 b) of Interpretation 12 would apply as it would only apply in the event of a breach which as noted above is not deemed probable and is within Calvary's control.

## **2.2 The Building – Private Hospital**

Under the private hospitals agreement 1988, the Territory consented to part of the capital assets being used in the conduct of the Private Hospital.

The private hospital is operating within the premises of the public hospital. As such the cost of construction of the premises used to operate the private hospital formed part of the original cost of the public hospital which was essentially funded by way of capital grants from the Territory. The accounting treatment with regards to the section of the public hospital operated as private is consistent with the treatment suggested in section 2.1 above applying to the public hospital building.

## **2.3 Leasehold improvement and other buildings – Hyson Green, Calvary Clinic, Convents and Chapels**

Our analysis further considered the various leasehold improvements located on the site to assess whether a different treatment should be applied to some of these assets.

Through a series of agreements, Calvary has obtained the right to operate a private clinic (Calvary Clinic) along with a psychiatric facility (Hyson Green) on the site. Both operations are run by Calvary Health Care ACT Limited independently in a private sector capacity.

The Private Hospital Second Supplementary Agreement 1997 provided for the construction of a freestanding building comprising a private psychiatric unit "Hyson Green". This unit was paid for by Calvary and does not form part of the capital assets (as defined in the series of agreements entered into) and outlined previously. In addition, if Calvary is to cease to be the lessee of the land, the Territory is to pay fair and reasonable compensation for the value of the Hyson Green improvements.

No agreement was made for the construction of the Calvary Clinic. However, the cost of construction of the clinic was paid by Calvary and it is assumed that a similar level of compensation to Hyson Green could be negotiated in the event of a termination of the Crown lease.

To the extent that the Convent and Chapels are part of the building funded by the Territory and in which the public hospital services are being offered, these elements of the site are not separately identified and form part of the public hospital building. On the other hand, Convents and Chapels located outside of the public hospital sites, paid for and maintained by Calvary would follow a

similar treatment to the Hyson Green and Calvary Clinic buildings whereby the Territory would be expected to pay a fair and reasonable compensation for the value of these improvements.<sup>13</sup>

While laws and regulations with regards to the operations of the facilities are to be complied with, Calvary is able to set the types of services offered and prices charged without consultation with the Territory. Should the Territory terminate the Crown lease over which these leasehold improvements have been built, Calvary would be able to obtain compensation from the Territory.

This likely compensation and the autonomy Calvary retains with regards to the running of the operations of the Calvary clinic and the Hyson Green facility provides support for the recognition of these two separately identifiable assets on the balance sheet of Calvary.

## 2.4 The Land

The land on which the hospital is located is a 99-year Crown lease which is standard in the ACT. The ACT Government website provides the following guidance:

*“the registered proprietor (or Crown lessee) is granted certain rights in relation to that leased land. One of those rights is the exclusive use and enjoyment of the leased land for the duration of the lease. However, the Territory may acquire the whole or part of the leased land for public purposes. In addition, if the lease has a withdrawal clause, the Territory may withdraw the whole or part of the leased land, where such withdrawal does not have to be for a public purpose. Provided that the land is not required by either the Territory or Commonwealth, the Territory will grant a new residential lease towards the end of the 99 years, to the person holding the old residential lease, without payment (other than an administrative fee). This gives the lessee continuing security of tenure”.*<sup>14</sup>

The above terms are consistent with the details presented in the lease:

*“If at the expiration of the lease, the Minister shall have decided not to subdivide the said land and that it is not required for any Commonwealth purpose and shall have declared that the said land to be available for the lease, the lessee shall be entitled to a further lease of the said land of such further term and at such rent and subject to such conditions as may then be provided or permitted by statute ordinance or regulation”.*<sup>15</sup>

The First supplementary agreement includes the following restriction:

*“The Association shall not assign, sublease or part with the possession of any part or all of the land without the prior written approval of the Commonwealth and the commission.”*<sup>16</sup>

The 99 year lease was initially signed in 1970. It was replaced by a new lease granted to Calvary on 16 November 1999 for a term of 99 years. As is common in ACT, Calvary is entitled to the grant for a further lease on the expiration of the current Crown lease.

Under the Crown lease, Calvary may only use the land for the purposes of “hospital and ancillary services thereto and accommodation facilities for employees of the hospital and a residence and ancillary services for members of Calvary who are conducting the hospital”.<sup>17</sup>

<sup>13</sup> First Supplementary Agreement – Clause 19 c)

<sup>14</sup> From ACT Planning and Land Authority website: [http://www.actpla.act.gov.au/http://www.ors.act.gov.au/landtitles/pdfs/Land\\_Titles\\_Practice\\_Manual.pdf](http://www.actpla.act.gov.au/http://www.ors.act.gov.au/landtitles/pdfs/Land_Titles_Practice_Manual.pdf)

<sup>15</sup> 99 year lease – section 3 c)

<sup>16</sup> First Supplementary agreement, Page 6 section 12

<sup>17</sup> Section 3 of the Crown lease dated 16 November 1999

For the duration of the Crown lease and subject to the approval of the Territory, Calvary controls the Crown lease and is allowed to operate other facilities on land under the Crown lease. However, the right to use the Crown lease is subject to the running of the public hospital on the site. Indeed, whether Calvary decides to discontinue the conduct of the public hospital or is removed from the contract of the hospital because of a breach of contract, the restrictions attached to the use of the land are such that Calvary will not be able to retain its control over the land unconditionally.

*“The Territory shall be entitled to assume control of the Hospital and for this purpose to have full possession and custody of the Hospital, and Calvary will take all necessary steps including, if so required by the Territory, the surrender of the lease of the land to enable this to be done.”<sup>18</sup>*

In section 4 a) and b) of his Memorandum of Advice, Mr Neil Young QC explains that legally a 99-year lease (with option to renew) is to be treated the same way freehold land is generally treated. As such, the buildings and other improvements on the land remain an integral part of Calvary’s land until the leases come to an end.

Other than in the event of a breach of conduct, which has been assessed in section 2.1 of this letter to be remote, Calvary controls the Crown lease. Our view is therefore that it remains appropriate for Calvary to account for the land as an asset on its balance sheet. However, because of the restrictions attached to the use of the land, the measurement of the land remains highly judgemental and should be considered in light of the principles presented in AASB 116 Property, Plant and Equipment and AASB 136 Impairment of Assets.

## 3. Conclusion

### 3.1 Conclusion for Calvary

Under the current set of agreements, our view of the appropriate accounting treatments is as follows:

	Recognition on the balance sheet of:	
	The Territory	Calvary
Land		✓ subject to the use of the land remaining unchanged
Public Hospital Building		✓
Private Hospital Area		✓
Other improvements to the land: Calvary Clinic and Hyson Green		✓
Other assets – furniture/fitings and equipment (to the extent that Calvary funded these assets)		✓

<sup>18</sup> First Supplementation agreement, section 19 (a)

In our opinion the arrangements are not within the scope of Interpretation 12 because the overall scope of the decision making and control over the daily operations and the management of the public hospital remains within Calvary's decision making framework. This conclusion is further supported by the letter produced by Mr Neil Young, QC, in his advice dated 23 August 2010.

### 3.2 Considerations for the Territory

Our detailed discussion makes particular reference to Interpretation 12. However, it is important to note that should ED 194 come in application, the corresponding principle would apply to the Territory in its capacity as the grantor of the asset.

ED 194 mirrors Interpretation 12 and provides specific application from the Grantor's point of view. This Standard requires the grantor to recognise assets used in service concession arrangements as service concession assets when specified conditions for recognition are met and to recognise certain liabilities and expenses associated with the service concession arrangement.

#### *Paragraph 7*

*“ To be within the scope of this Standard, an arrangement must be binding on the parties to the arrangement and oblige the operator to provide the public services related to the service concession asset to the public on behalf of the grantor. ”*

Whilst the existing agreement provides a certain level of autonomy, the Territory prescribes the services to be provided as well as their price with services being performed on behalf of the government as discussed previously.

We understand that at present the Territory does not account for the public hospital on its balance sheet. If the Territory's reporting framework is compliant with A-IFRS, it is likely that they will review the application of ED 194 when it becomes mandatory. Their interpretation, as per the letter of advice issued to the Territory by PWC may differ from the one we have highlighted in this letter. We believe that, without a direct engagement and brief from the Territory, we are not in a position to further comment on the implication of the Exposure Draft on the Territory's financial statements in this letter.

## 4. Limitations on our report and statement of responsibility

The ultimate responsibility for the determination of the appropriate accounting treatment of the existing agreements between Calvary and the Territory rests with the Board of Directors of the Little Company of Mary Health Care Ltd.

This report is intended solely for the internal use of Little Company of Mary Health Care Ltd's management and the Board of Directors for the purpose of evaluating the appropriate accounting treatment of the existing agreements. It should only be used in accordance with the terms of use set out in our Engagement Letter. We do not accept any responsibility to any party other than Little Company of Mary Health Care Ltd for our work or our conclusion.

Our report has not addressed any tax, regulatory, or other matters other than the specific accounting treatment described above.

We have drawn our conclusion based solely on the facts and other information provided to us by Little Company of Mary Health Care Ltd and Thompson Playford Cutlers, as outlined in the

background section of this report and our interpretation of the relevant accounting pronouncements. If the facts, circumstances, assumptions or other information outlined in this report prove to be different from those described, our conclusion may change. We have not audited, tested or otherwise verified any of the information provided to us by Little Company of Mary Health Care Ltd or Thompson Playford Cutlers and we have assumed that all such information is accurate, complete and not misleading in any way.

Our conclusion is based on our interpretation of Australian accounting pronouncements currently in issue. In the event that new or revised Australian Accounting Standards or Interpretations are issued in the future, our conclusion should be reconsidered in light of such changes and/or new requirements. We are under no obligation however to update our evaluation of the accounting treatment adopted by Little Company of Mary Health Care Ltd and for information provided further to the date of this report, or for other future events.

The interpretation of Australian accounting pronouncements involves the exercise of professional judgement. In particular, many issues relating to Australian Equivalents to International Financial Reporting Standards presently remain subject to professional interpretation in the absence of relevant authoritative interpretations. Accordingly, the facts, circumstances, assumptions and conclusions described in this report may be viewed differently by others including the Australian Securities and Investments Commission (ASIC). In addition, due to the evolution of professional interpretation of Australian accounting pronouncements, the facts, circumstances, assumptions and conclusions described in this report may subsequently be viewed differently by us and/or others including ASIC. We are under no obligation to update our evaluation of the accounting treatment adopted by the Little Company of Mary Health Care Ltd for changes in our interpretation of Australian accounting pronouncements.

Please do not hesitate to contact me if you require any further assistance.

Yours faithfully



Deloitte Touche Tohmatsu



Helen Hamilton-James  
Partner



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# Appendix A - Calvary Decision Making Framework

Reference	Function	AUTHORITY	custom & practice	EXAMPLES
	<b>A. STRATEGIC DELEGATIONS</b>			
A 1.	Philosophy, mission, vision or values	Calvary	<b>ACT HEALTH NOT REQUIRED TO BE ENGAGED</b>	<p>The Code of Ethical Standards for Catholic Health and Aged Care Services documents the approach to both management and service delivery within Catholic health care services. Calvary upholds the Code and operates in accordance with it in conducting the hospital.</p> <p>November 2009 –Calvary developed a new mission and values in action statement for organisation.</p> <p>ACT Health or Territory approval not sought nor required for:</p> <ul style="list-style-type: none"> <li>• Calvary Code of Conduct (however, consistent with Public Service Management Act ), and ‘Standards of Behaviour’</li> <li>• Job descriptions / selection criteria – specifically relating to Mission &amp; Values and Ethical Conduct</li> </ul> <p>Calvary has not implemented ACT Health or ACT Public Service values.</p>
A 2.	Opening or closure or a change in the principal role and services or name of any Service	Calvary Closure or change to the principal role of operating a hospital would constitute a breach of main Agreements if done without ACT approval		
A 3.	Change the level of service being provided	Calvary Calvary & ACT Health as per Performance Plan	The 2009-2010 Performance Plan states Calvary must not change the number and/or type of outpatient services without ACT Health’s approval.	<p>Implementation of new model of care in the ICU Department. Easter and Christmas closure of elective surgery based on operational requirements.</p> <p>July 2010 - ACT requests that Calvary have an extra 20 urology lists. Calvary is unable to complete the lists as requested, however the hospital is able to complete 12 extra lists.</p>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
			<p>Calvary has the ability to change services based on operational requirements.</p> <p>ACT Health is informed regarding service changes, permission or approval is not required.</p> <p>ACT Health can't direct Calvary to undertake extra theatre work for waiting list reduction. Calvary reserves the right to operate the business within its own operational requirements;</p>	<p>Calvary operates within a legislative framework including ACT Government policy and the ownership, leasing arrangements and medico-moral principles of the Little Company of Mary (refer Calvary Performance Plan 2009-10 p3).</p> <p>Calvary is responsible for the specific service related aspects of the Clinical Streams and Networks in consultation with relevant Territory wide clinical stream Directors.</p> <p>Calvary chooses when to go on Emergency Department bypass, following consultation with The Canberra Hospital but is not on direction from ACT Health.</p> <p>Calvary is currently planning new models of care in medicine and emergency medicine. This does not require any approval from ACT Health. If the model requires additional funding or staffing from The Canberra Hospital-seconded doctors, Calvary will apply for funding to ACT Health.</p> <p>In 2006, Calvary reduced bed numbers on 4<sup>th</sup> floor, closing 4 East, ACT Health was informed of change and was not asked or required to approve change.</p>
A 4.	Name buildings, units, wards, streets and services	Calvary	ACT Health is not required to be engaged, however are informed.	<p>Buildings: named to reflect the heritage of Little Company of Mary (LCM) Keaney Building; Mark Maher Building; O'Shannassy Centre, Zita Mary Clinic, Lewisham Building, Marion Building, Hyson Green Unit.</p> <p>Placement of statues and icons:</p> <ul style="list-style-type: none"> <li>-statue of Madonna and Child at front of building;</li> <li>- illuminated Calvary Cross on front of building;</li> <li>- statue in viewing room in mortuary;</li> </ul> <p>Roads: Mary Potter Circuit; Hyson Place; Sylvia Curley Road.</p>
A 5.	Calvary strategic direction and corporate strategy	Calvary	ACT Health is not required to be engaged.	<p>Calvary 15 year strategic direction was developed independent of but aligned to ACT Health CADP.</p> <p>Calvary has developed its own planning principles which reflect Calvary's Mission and Values.</p> <p>ACT Health developed its own 15 year PDP plan – Calvary was not</p>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
A 6.	Appointment of external auditors	Calvary	ACT Auditor General has separate rights to review certain items under Current Agreements	initially included. Calvary undertakes an annual planning process aligning its strategic plan with LCMHC.  Calvary has independent auditors; ACT Health utilises ACT Auditor General's Office.
<b>B. Operational Delegations</b>				
B 1.	Ratify Policies and Procedures	Calvary	Calvary has its own Clinical Governance and complies with all legislative and regulatory requirements.  Where ACT legislation or standard is the basis of a directive then Calvary adopt the policy	<p>Examples of the approach utilised;</p> <p>Calvary only policies – “Annual Leave &amp; LSL Planning &amp; Approval”; “Accommodation”; “Privacy &amp; Confidentiality”; “Essential &amp; Mandatory Training”; “Redeployment, Permanent &amp; Temporary Transfers, &amp; Temporary Secondment”; “Dress Code &amp; Presentation”</p> <p>Adapted ACT Health / Public Service policy – “Use of screen-based equipment”</p> <p>Incorporated ACT Health / Public Service policy – “Elimination Bullying &amp; Harassment”; “Medical Education Expenses”</p> <p>Rejected / ignored ACT Health / Public Service policy – ‘Whistleblower’ protocol; “Equity &amp; Diversity” framework</p> <p>Calvary generally develops its own policies, procedures, guidelines, Statement of Priorities (SOP), fact sheets, flow charts, pathways, manuals and patient information.</p> <p>At present there are 925 documents residing on the Calvary policy document tool.</p> <ul style="list-style-type: none"> <li>- 2 are direct ACT Health policies with no change,</li> <li>- 7 have the ACT document behind with a Calvary template front sheet,</li> <li>- 1 is SOPs that have been developed by the Emergency Department network.</li> <li>- Mental Health has 25 out of 84 documents that are Calvary</li> </ul>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
B 2.	Media relations	Calvary	Calvary determines how it responds to the media and Ministerial request for information.	<p>specific the rest pertain to more corporate areas of Mental Health. They are all in the ACT Health template.</p> <p>Where ACT Health has developed policy that is to be Territory wide, the policy is reviewed for veracity to Calvary and if necessary modified.</p> <p>Reasons for not accepting ACT Health policy directly could be due to Catholic ethical standards, contact points that are outside of Calvary, or contrary to LCMHC directives.</p>
B 3.	Litigation - Instigate and Settle <ul style="list-style-type: none"> <li>• Medical malpractice</li> <li>• other</li> </ul>	Calvary, in accordance with ACTIA ( Statutory Authority that acts as broker and insurer for ACT governments)	ACT Health Insurance and Legal Unit are kept informed of legal and insurance issues	<p>ACTIA (public insurer) and GSO (Government Solicitor General) act for Calvary Public Hospital. GSO will advise on settlement and it will be the insurer and Calvary who instruct on settlement or legal requests. Within Calvary Public the delegation for settlement is per the LCMHC policy.</p> <p>Instigation of legal matters is per the LCMHC delegation policy however if GSO is used then ACT Health Insurance and Legal Unit must be kept informed.</p> <p>GSO will only accept requests for legal advice that are clinical or related to clinical in nature. They do not undertake commercial work for Calvary Public.</p> <p>In one clinical case where there is conflict of interest i.e. the GSO represents ACT Health and Calvary, we have been able to obtain, with ACTIA approval, our distinct legal advice.</p> <p>Calvary seeks commercial legal advice from non government sources.</p>
B 4.	Settlement of insurance claims where : <ul style="list-style-type: none"> <li>• LCMHC is the defendant in the claim; and</li> </ul>	Calvary, in accordance with terms of insurance.		<p>Settlement of claims under our excess is dealt with by Calvary entirely, but cognisant of our LCMHC delegation.</p> <p>Over our excess then ACTIA and GSO will also instruct with cc information to ACT Health Insurance and Legal Unit, but cognisant</p>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
	<ul style="list-style-type: none"> <li>the proposed settlement is not setting an undesirable precedent or creating a reputational risk for LCMHC.</li> </ul>			<p>of our LCMHC delegation.</p> <p>GSO provides advice on clinical matters only. All commercial advice is obtained from independent legal advisors.</p>
	<b>C. Financial and Contractual Delegations</b>			
	<b>Property related transactions</b>			
C 1.	Purchase or sell real estate	Purchase: Calvary Sale/assignment: Territory consent required		<p>Calvary is currently applying for additional land at the main site.</p> <p>Any transactions that require alteration to the current lease are submitted to ACTPLA (ACT Planning and Land Authority) with a letter of support from ACT Health.</p>
C 2.	Enter into/ exit property leases	Entry: Calvary, Territory consent required Exit: Calvary	Calvary enters into property leases in its own right	<p>Calvary has leased commercial premises to commercial operators (ie café to Zouki)</p> <p>Calvary rents properties for staff accommodation.</p> <p>ACT Health services such as Central Sterilising Department, Pathology and Older Persons Mental Health and Community teams occupy space on the campus but Calvary has provided 'quiet enjoyment' of the property to these tenants.</p>
	<b>Budgets &amp; Accounts</b>			
C 3.	Annual Operating and Capital Budgets, Local Service Plans, Service Agreements with governments	Territory and Calvary	An annual Performance Plan is negotiated between Calvary CEO and ACT Health Deputy CEO	<p>Risk resides entirely with Calvary.</p> <p>Annual operating budget: Under the First Supplementary Agreement (1979) a budget of expenditure is required to be submitted and the Territory must pay the maintenance subsidy. This process has been replaced by the Performance Plan process which is outlined below.</p> <p>Capital budget: All capital works proposals are consistent with Calvary's Master Plan</p> <p>Service plans: 15 year Capital Investment Strategy completed in January 2008</p> <p>Performance Plan: This is an agreement for each financial year with ACT</p>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
C 4.	Variations to approved budgets	Calvary	Calvary and Territory discuss and negotiate changes to agreed budget.	<p>Health. The Performance Agreement sets the budget Calvary has to operate the services and also sets performance indicators. The Territory prepares the initial budget allocation and sends it to Calvary. Calvary and the Territory then engage in a negotiation about the budget and the service KPIs for that budget. The budget is based on historical funding: for example the funding allocation will state the previous year's amounts, and then set out adjustments for any new services, escalations, wage changes etc. The Territory has never decreased the overall level of activity being funded at Calvary.</p> <p>The Performance Plan is not usually signed until well into the new financial year (for example the 2009/10 agreement was signed on 21 November 2009). Until the plan is finalised, the Territory continues to fund Calvary based on the prior year's payments and then a catch up occurs once the plan is finalised.</p>
C 5.	Unbudgeted expenditure/contract over-runs	Calvary		<p>Risk resides entirely with Calvary. If ACT Health requires more services be provided, or there is a major change to operating assumptions underlying the budget, the parties will negotiate for a change to the agreed budget.</p> <p>ACT Health is the majority funder, however Calvary has other revenue sources external to ACT Health and does not require ACT Health approval; ACT Health is under no obligation to provide extra funding to Calvary irrespective of the quantum of services provided.</p> <p>Risk resides entirely with Calvary.</p>
<b>Income items</b>				
C 6.	Submit Expressions of Interest and Tenders for revenue generating purposes	Calvary	Calvary request tenders independent of ACT Health	<p>Calvary tenders for:</p> <ul style="list-style-type: none"> <li>• Waiting list reduction activities</li> <li>• Veteran Affairs activity</li> <li>• Clare Holland House Palliative Care Education Project</li> <li>• Calvary receives grants from NGOs – not through ACT Health</li> </ul>
C 7.	Specific purpose fund raising	Calvary	Calvary has the ability to lend/borrow/access trust money	<p>Calvary undertakes its own grant and research applications and manages</p>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
	projects		as it sees fit.	them accordingly e.g. Mölnlycke, clinical trials. Calvary receives bequests/donations and applies as it sees fit. Calvary reports amounts below the line to ACT Health.
<b>Expenditure items</b>				
C 8.	Payroll expenditure (gross \$, per pay period)	Calvary		Calvary has its own delegations and seeks to comply with the agreements under which staff are employed. There are some provisions and core conditions in the awards that have been directed from Government or the Chief Minister. Calvary must have these in policy eg maternity leave, long service leave etc
C 9.	Capital expenditure (incl. donated funds)	Calvary for donated funds Calvary in accordance with Territory capital plan		Calvary is required to report expenditure. Needs LCM HC Board approval for projects such as the new ICU development. Calvary ICU – All tendering and procurement undertaken by Calvary; LCMHC investments – have the ability to borrow, apply and loan as LCMHC sees fit.
C 10.	Enter into non-property related leases, contracts, supplier and service agreements	Calvary	Do not need ACT Health approval – totally at Calvary discretion	Calvary is not bound by ACT procurement guidelines or contracts. Calvary out –sources services such as linen, food, cleaning and maintenance contracts back for pharmacy services.
C 11.	Approve operational expenditure – single item (excl. payroll)	Calvary	Calvary nominates delegations. ACT Health is not required to be engaged.	Calvary sets limits on single expenditure made by Executive.
C 12.	IT software and hardware	Calvary	ACT Health is not required to be engaged with the majority of Calvary ICT projects, however both hospitals work co-operatively together. Calvary does purchase where possible hardware consistent with that of ACT	Calvary has its own on-site ICT Department funded using recurrent funds with the ICT Manager reporting directly to the CFO. Calvary owns and operates its infrastructure eg communications and computer networks although connected to ACT Health's network for such items as pathology and radiology results. ACT Health has no direct access to Calvary's network. Calvary sets its own equipment standards and purchases from its own ICT



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
C 13.	Engage consultants, Legal advice and outsourced services	Calvary, with the requirement to provide information to the Territory about legal expenditure	<p>Health.</p> <p>In past Calvary have participated in ACT wide projects to implement software such as Oracle Financials and EDIS (Emergency Department Information Systems). Whilst Calvary participated in these projects it has since have since made the decision, without ACT Health's approval to implement alternative systems.</p>	<p>suppliers</p> <p>All of the major corporate applications used are Calvary or LCMHC's such as internet, intranet, payroll, finance, and Patient Administration System (PAS).</p> <p>Calvary are considering a move to ACT Health's PAS to facilitate future e-health projects.</p> <p>In 2005 all ACT government agencies were directed to use a new ACT Government agency called InTACT. All ICT support staff were transferred from their respective agency to InTACT. Every ACT government agency is now supported by InTACT. Calvary was and still is totally separate from this Territory wide change.</p> <p>Calvary ICT staff liaise with InTACT staff for operational and project reasons but there is no agreement in place between Calvary and InTACT.</p> <p>Calvary engages its own legal firms to obtain advice.</p>
C 14.	Pay taxation and duty	Calvary:	<p>ACT Health approval not required – totally at Calvary discretion</p> <p>Calvary is a company limited by guarantee, a deductible gift recipient and income tax exempt entity</p>	<p>Salary-packaging policy for Calvary is markedly different from ACT Health and ACT Public Service. LCMHC uses its own provider of packaged services</p>
C 15.	Approve work-related overseas travel expenditure	Calvary	<p>ACT Health approval not required – totally at Calvary discretion</p>	<p>Approval for overseas travel for medical staff (part of the medical staff Collective Agreement) is through the Calvary CEO without reference to ACT Health</p>
C 16.	Write-off bad debt (single debtor)	Calvary	<p>ACT Health approval not required – totally at Calvary discretion</p>	
C 17.	Write-off, write-down or dispose of assets (WDV per item)	Calvary	<p>ACT Health approval not required – totally at Calvary discretion</p>	<p>No reference to ACT Health</p>
C 18.	Engage debt recovery services	Calvary	<p>ACT Health approval not required – totally at Calvary</p>	



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
C 19.	Amendments to existing contracts	Calvary (other than contracts with Territory which would require Territory consent)	discretion ACT Health approval not required – totally at Calvary's discretion	There is a VMO Territory wide contract, which has a Calvary schedule within and is controlled by Calvary. Calvary has its own contracts with linen, pathology and radiology. Construction contracts are entered into in Calvary's name. Calvary has own procurement policies.
<b>D. Financing and Investment Delegations</b>				
D 1.	Grant mortgages, charges or encumbrances over real property	Calvary, with the consent of the Territory under the lease		
D 2.	Arrange external borrowings, establish overdraft or other financing facilities	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 3.	Invest or lend any money	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 4.	Open and close bank accounts	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 5.	Establish and amend cheque signatories	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 6.	Issue credit cards and set limits	Calvary	ACT Health approval not required – totally at Calvary discretion	
<b>E. Human Resources Delegations</b>				



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
E 1.	CEO – appointment / transfer/ termination, remuneration, conditions of employment, position evaluation, re-grading (FTE salary \$k pa)	Calvary	ACT Health approval not required – totally at Calvary discretion	Executives are engaged in private and costs cross charged to the public.
E 2.	Other staff – appoint / transfer/ terminate	Calvary [within PSMA legislative framework – not policy framework ]		PSMA will govern largely. However, there is a policy providing for recognition of prior service and/or transfer of entitlements from public to private (but not vice versa)
E 3.	Appointment , management and organisation of Visiting Medical Officers ( VMOs) and staff specialists	Calvary	Calvary participates in Territory wide process for credentialing of medical practitioners but retains discretion as to who it appoints to work at Calvary	<p>VMOs are generally appointed separately when working exclusively at Calvary, and jointly when working across both hospitals. The contract is an ACT Health contract which contains a Schedule of working duties for each hospital. The duties at Calvary are defined by the Director of Medical Services at Calvary, independent of any advice, influence or direction from ACT Health.</p> <p>Some Staff Specialists have Special Employment Arrangements specifically for their work at Calvary Hospital and signed off by the CEO of Calvary Hospital.</p> <p>Career Medical Officers and a number of Junior Medical Officers have contracts with Calvary to work in the public hospital. This is entirely independent to ACT Health with regard to HR issues, cover for sick leave, conference leave etc.</p> <p>Calvary has its own By Laws which require a specific level of approvals by LCMHC for accreditation of medical staff based in compliance with these By Laws.</p> <p>The Medical Staff Council of Calvary is appointed in accordance with these By laws.</p>
E 4.	Approve redundancies	Calvary [within PSMA legislative framework – not policy framework ]		
E 5.	Undertake disciplinary action	Calvary [within PSMA legislative framework – not policy framework ]		
E 6.	Set and amend remuneration	Calvary [within PSMA		



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
E 7.	policy Arrange employment enterprise agreements	legislative framework – not policy framework ] Calvary [subject to Territory rights in Fair Work Australia]		Currently Chief Minister’s Department obliges Calvary to apply “ACT Public Service Core Provisions” on the basis that Calvary is an Agency. However, Calvary is not an agency, PSMA provides that the CEO of Calvary has power over employment (C 26 of PSMA).  Within the Collective Agreements that are ‘common’ to ACT Health and Calvary there are differences of interpretation. Some of which are challenged from time to time by unions or the Territory. Eg. Payment of post-graduate qualifications, Annual Leave & Personal Leave.  There are ‘Special Employment Arrangements’ that differ between ACT Health & Calvary. ACT Health’s SEAs apply only by Calvary consent. Calvary Special Employee Arrangement do not apply to ACT Health.
E 8.	Deal with industrial relations matters	Calvary [within PSMA legislative framework – not policy framework ]		There are currently provisions which require Calvary participation in an “Agency Consultative Committee” which obliges that matters not resolved within Calvary to be escalated to this Committee (ie. escalated to CE of ACT Health).  Currently Chief Minister’s Department obliges Calvary to apply “ACT Public Service Core Provisions” on the basis that Calvary is an Agency. However, Calvary is not an Agency, PSMA provides that CEO of Calvary has power over employment (C1 26 of PSMA).
E 9.	Approve position titles	Calvary	Calvary has full control	
E 10.	Education and Training	Calvary	For reasons of efficiency ACT Health manages the program, but LCMHC manage the students in terms of timing and placement.	Currently all Deeds of Agreement ( DoA) with Universities for student placements are with ACT Health, and students are received at Calvary via ACT Health .  There is nothing precluding Calvary from having its own DoAs.
E 11.	Workers’ compensation insurance	Calvary		Currently use “Territory” insurer (ie. COMCARE) Calvary can choose its own workers compensation insurer if it chooses.
<b>F. Clinical Governance</b>				
F 1	Clinical Governance	Calvary	ACT Health and Calvary work cooperatively in case of joint	Medical and nursing governance under control and management of DMS and DCS at Calvary respectively. Calvary has its own Medical Staff



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
F 2	Ethics	Calvary	<p>appointees. Calvary controls governance for issues relating to Calvary staff or VMOs</p> <p>Calvary has its own Clinical Governance and complies with all legislative and regulatory requirements.</p>	<p>Council, own privileging and admitting rights process through LCM HC Board. Performance review and performance management is run through the Calvary DMS. For medical staff and DCS for nursing staff</p> <p>Significant complaints (significant incidents briefs (SIB) or sentinel events) are required to be passed on to a Territory Committee but lesser Safety issues are resolved exclusively by Calvary's Quality Safety and Risk and Clinical Review Committee, reporting to Calvary's Patient Safety Committee.</p> <p>Calvary operates its own independent Ethics Committee. All researchers must apply to Calvary via a full NHMRC National Ethic Application Form to access our records and or undertake research in our facility. ACT Health approval does not indicate acceptance.</p> <p>The Catholic ethical tradition is founded on a particular view of what it is to be human and how that understanding affects how we care for ourselves, how we treat others, how we participate in society and our care of the environment. It is a centuries old tradition that has continued to evolve as a body of ethical wisdom. Rather than enumerating things that cannot be done, it is a framework that affirms respect, care, concern, cooperation and collaboration as integral to every aspect of the health care service. It recognises that health care treats the whole person – mind, body and spirit.</p> <p>In Australia, the Code of Ethical Standards for Catholic Health and Aged Care Services documents the approach to both management and service delivery within Catholic health care services. In that it endorses the delivery of care in keeping with Australian Council on Health Care Standards (ACHS) accreditation; is the foundation for transparent and effective risk management; and requires service delivery of a high standard of quality to meet the needs of the community served. Occasionally, it is the impetus for the Catholic service to require an exemption from the provision of some services from funding bodies, such as a Health department, whose job is to ensure what they, but not we, judge to be the correct practice of medicine.</p>
F 3	External review of clinician	Calvary	<p>Calvary has its own Clinical Governance approach whilst being compliant with all legislative and regulatory requirements.</p>	<p>Calvary has undertaken an external review of a VMO clinician's practice, despite ACT Health having a process in place.</p>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
F 4	Incident (RiskMan) notifications	Calvary		<p>All public RiskMan incident notifications go into the public RiskMan. When RiskMan first commenced we had no control over any back end functions. This has increased mainly due to our insistence of being able to control our own incidents.</p> <p>All complaints for public are placed into the private LCMHC RiskMan</p> <p>All public risk registers are placed into the private LCMHC RiskMan</p>
F5	The manner and scope of clinical services provided	Calvary by reference to The Code of Ethical Standards for Catholic Health and Aged Care Services		<p>Clinical services that are most often regulated by review of the Code pertain to:</p> <ul style="list-style-type: none"> <li>• Issues of human sexuality and beginning of life               <ul style="list-style-type: none"> <li>○ Contraception, termination, management of at risk pregnancy</li> </ul> </li> <li>• End of life care               <ul style="list-style-type: none"> <li>○ Quality of care</li> <li>○ Effective management of pain</li> <li>○ Right of the competent patient to refuse treatment</li> <li>○ Right of involvement in decision-making of the patient, or legal guardian</li> </ul> </li> <li>• The consideration of cessation of treatment and the patients right to refuse treatment in intensive care situations</li> <li>• Resource allocation               <ul style="list-style-type: none"> <li>○ The provision of services matched to the needs of the community but with the recognition of the needs of the human person</li> <li>○ Use of expensive therapies or provision of intensive care</li> </ul> </li> <li>• Research design and methodology               <ul style="list-style-type: none"> <li>○ Research involving human beings must serve and protect the personal dignity of the research participant, should meet all professional, scientific and legal requirements and be conducted with a clear defined intent of benefit to the human person.</li> <li>○ Research</li> </ul> </li> </ul>



Reference	Function	AUTHORITY	custom & practice	EXAMPLES
				<ul style="list-style-type: none"> <li>• How the service works within the ethical framework and cooperates with other health care providers and funders.</li> <li>○ Partnerships with others, funding agreements and joint ventures can only occur where the Catholic ethical tradition is adhered to and defined as an integral aspect of the agreement</li> <li>○ No partnership or joint activity can act to compromise the witness of the service to Catholic tradition.</li> </ul>
	<b>G. Corporate Governance</b>			
G 1	<b>Corporate Governance</b>	Calvary	Separate Board governs the legal entity, Calvary Health Care ACT Ltd	Board may choose to consult with Territory on decisions as part of its stakeholder management processes.
	<b>H. Other Issues</b>			
H 1	Identity	Calvary	Calvary has total control over reputational risk	Calvary has own distinct website.
	Patient, Doctor, Staff satisfaction surveys	Calvary	Calvary doesn't participate in an ACT – wide surveys	Calvary retains its rights with respect to intellectual property.
H 2	Intellectual property	Calvary	Calvary doesn't participate in an ACT – wide surveys	Calvary retains its rights with respect to intellectual property
H 3	Service Performance Review	N/A	Calvary and Territory meet monthly to discuss activity and performance under Performance Plan	

4 <sup>TH</sup> FLOOR OR 4 EAST	MEDICAL FLOOR CALVARY HOSPITAL
ACTIA	AUSTRALIAN CAPITAL TERRITORY INSURANCE AUTHORITY
CADP	CADP CAPITAL ASSET DEVELOPMENT PLAN
CALVARY	CALVARY HEALTH CARE ACT LIMITED
CAREER MEDICAL OFFICERS	SENIOR SALARIED MEDICAL OFFICERS
CFO	CHIEF FINANCE OFFICER CALVARY ACT
CLARE HOLLAND HOUSE	ACT HEALTH HOSPICE - MANAGED BY CALVARY
COMCARE	WORKERS COMPENSATION INSURANCE
DCS	DIRECTOR OF CLINICAL SERVICES
DMS	DIRECTOR OF MEDICAL SERVICES
DOAS	DEEDS OF AGREEMENT
ED NETWORK	EMERGENCY DEPARTMENT NETWORK
EDIS	EMERGENCY DEPARTMENT INFORMATION SYSTEM
GSO	GOVERNMENT SOLICITORS OFFICE
HR / IR	HUMAN RESOURCES / INDUSTRIAL RELATIONS
ICT DEPARTMENT	INFORMATION AND COMMUNICATION DEPARTMENT
ICU	INTENSIVE CARE UNIT
JUNIOR MEDICAL OFFICERS	SALARIED REGISTRARS AND INTERNS (MEDICAL OFFICERS)
LCM HCS NETWORK	LITTLE COMPANY OF MARY HEALTH CARE – COMPUTER NETWORK
LCMHC	LITTLE COMPANY OF MARY HEALTH CARE LIMITED
LSL PLANNING	LONG SERVICE LEAVE PLANNING
MOINLYCKE	MEDICAL SUPPLY COMPANY – PROVIDED A GRANT TO CALVARY – TO CONDUCT A CLINICAL TRIAL (PRESSURE ULCERS).
NEAF	NATIONAL ETHICS APPLICATION FORM
NHMRC	NATIONAL HEALTH MEDICAL RESEARCH COUNCIL
ORACLE FINANCIALS	FINANCE INFORMATION SYSTEM
PAS	PATIENT ADMINISTRATION SYSTEM
PDP	PROJECT DEFINITION PLAN
PSMA	PUBLIC SERVICE MANAGEMENT ACT
QSR	CALVARY HOSPITAL'S QUALITY, SAFETY AND RISK DEPARTMENT
RISKMAN	WEB BASED INCIDENT REPORTING SYSTEM
SEAs	SPECIAL EMPLOYMENT ARRANGEMENTS
SIB	SIGNIFICANT INCIDENT BRIEF
SOPs	STANDARD OPERATING PROCEDURE
STAFF SPECIALISTS	SENIOR SPECIALISTS EMPLOYED BY CALVARY
Territory	GOVERNMENT OF THE AUSTRALIAN CAPITAL TERRITORY INCLUDING ITS AGENCIES SUCH AS ACT HEALTH
VETERAN AFFAIRS	DEPARTMENT OF VETERAN AFFAIRS
VMOs	VISITING MEDICAL OFFICERS (CONTRACTED SERVICE TO CALVARY HOSPITAL ACT)

**IN THE MATTER OF  
CALVARY HEALTH CARE ACT LIMITED  
(ACN 105 304 989)**

**and**

**AUSTRALIAN CAPITAL TERRITORY**

**MEMORANDUM OF ADVICE**

- 1 We have been asked to advise on the application of Interpretation 12 – Service Concession Arrangements (**Interpretation 12**), which is an interpretation compiled by the Australian Accounting Standards Board (**AASB**). Interpretation 12 is only capable of applying if the contractual arrangements between the Australian Capital Territory (**Territory**) and Calvary Health Care ACT Ltd (**Calvary**) constitute a service concession arrangement, and that largely turns on the extent to which the Territory controls Calvary in its operation of the Calvary Public Hospital at Bruce in Canberra (**Hospital**).
- 2 In the course of our advice, we consider the letter of advice from PricewaterhouseCoopers (**PWC**) to the ACT Department of Treasury dated 13 May 2010 (**PWC advice**). In doing so, our focus has been to determine whether the views expressed in the PWC advice are logically and legally sound, and whether there are any further facts or instructions that may be relevant to the issue.
- 3 Interpretation 12 will not apply unless it can be said, as a matter of substance, that Calvary is operating and managing the Hospital on the Territory's behalf. This depends on whether the Territory controls or regulates what services Calvary must provide, to whom it must provide them and at what price, and whether the Territory will control any significant residual interest in the Hospital at the end of the term of the service arrangement. Consequently, the control issue is a matter of first priority for Calvary. It is central to its negotiations with the Territory over the new operating agreement and the proposal that the Territory should purchase the public hospital assets. It lies at the heart of the opinions expressed by PWC.

### **Executive Summary**

- 4 In our view, Calvary does not operate the Hospital under a service concession arrangement. Amongst other reasons, this is because:
- (a) Calvary has a 99 year Crown lease which is renewable;
  - (b) the buildings and other improvements are an integral part of the land so that Calvary “effectively” owns the buildings and improvements until the lease comes to an end;
  - (c) Calvary has exclusive possession and ongoing use of the buildings;
  - (d) in the ordinary course, the Territory has no contractual ability to terminate the lease or the agreements that provide for Calvary’s operation of the Hospital;
  - (e) Calvary operates its own private hospital facilities on the land; and
  - (f) the relationship between the parties commenced by an arrangement akin to a joint venture whereby the Territory’s predecessor contributed three quarters of the cost to build the Hospital and Calvary’s predecessor contributed the remaining one quarter of its construction costs (conditional on the Territory paying Calvary’s principal and interest commitments).

Given these factors, it would require a far-reaching application of Interpretation 12 to hold that Calvary must remove the land and buildings from its balance sheet, and that those assets should be recorded instead on the Territory’s balance sheet.

- 5 It is also strongly arguable that the Hospital assets must be included in Calvary’s financial statements in order to give a true and fair view of its financial position. This view is supported by legal, accounting and factual considerations.

### **The Agreements between Calvary and the Territory**

- 6 Calvary conducts the Hospital pursuant to an agreement made on 22 October 1971 and two supplementary agreements. The 1971 agreement was between Calvary’s predecessor

and the Commonwealth of Australia. The agreement provided for the grant of a Crown lease on which the Hospital would be constructed and operated, the funding of the construction by the Commonwealth and Calvary's predecessor in the proportions of three quarters to one quarter (with the Commonwealth meeting the principal and interest commitment on the one quarter contribution) and contained an undertaking by Calvary's predecessor to conduct a public hospital of 300 beds on the land. In relation to the operation of the Hospital, the 1971 agreement simply provided that Calvary's predecessor would control and manage the Hospital in accordance with sound hospital practices and the laws in force in the Territory for the time being. There was also a provision that Calvary's predecessor would ensure that the Hospital was controlled and managed in accordance with Government policy relating to the integration, rationalisation and efficiency of hospital services in the Territory: see in particular clauses 8 and 9 of the 1971 agreement.

- 7 The 1979 Supplementary Agreement contains similar provisions about the conduct of the Hospital: see clauses 7 and 16 which are extracted below.
- 8 Since 1988, Calvary has conducted a private hospital on two levels within the Hospital pursuant to an agreement between itself and the ACT health authority. Subsequently, the Territory consented to Calvary expanding its private hospital operations by building a new private mental health facility, Hyson Green, on the land.
- 9 Calvary has also constructed another building on the land. Known as Calvary Clinic, it comprises medical suites which are leased out to doctors and other service providers by a wholly owned subsidiary of Calvary.
- 10 The Territory occupies certain areas of the land covered by the Crown lease, from which it operates businesses which supply services to the Hospital. Those services include pathology. The Territory does not pay any rent to Calvary for the occupation of these premises.
- 11 The foregoing facts suggest that the arrangements between Calvary and the Territory have some of the features of a joint venture arrangement. Certainly, the arrangement

does not appear to be merely an arrangement for the provision of services, utilising public infrastructure facilities.

- 12 Appendix "A" to this memorandum sets out the pertinent recitals, clauses and annexure to the agreements which comprise the current contractual arrangements between Calvary and the Territory.

### **The Crown Lease**

- 13 From a legal viewpoint, a solid starting point for the analysis of the Crown lease is found in the letter of advice from the Peter Garrisson, Chief Solicitor, Australian Capital Territory Government Solicitor, to ACT Health dated 30 October 2009 (**Garrisson's advice**) (see Appendix "B").
- 14 Garrisson's advice identifies features of the relationship between the Territory and Calvary which point strongly against the conclusions reached in the PWC advice. These features include the following:
- (a) A new Crown lease was granted to Calvary on 16 November 1999 for a term of 99 years with an entitlement to a further lease, so the lease is effectively perpetual;
  - (b) The lease is at a peppercorn rental, and the Territory has no ability to terminate the lease in the absence of breach or surrender (which are both improbable);
  - (c) The Crown lease contains compensation provisions that take effect when the Crown lease ends, whereby the Territory must compensate Calvary for buildings and other improvements on the land in accordance with the level of financial contribution Calvary has made to the construction and purchase of those buildings or improvements provided the amount payable does not exceed the value(s) of those buildings or improvements at the time the Crown lease ends;
  - (d) The general position in the Territory is that one does not legally separate the land from the buildings and improvements in the case of 99 year leases. The practical effect of the Crown lease is that, until it expires or is terminated or surrendered,

Calvary effectively “owns” the buildings and improvements on the land, regardless of who paid for those works.

In these circumstances, Calvary has a Crown lease which continues indefinitely and which gives it exclusive possession of the land and buildings and the right to operate the Hospital. Nor can it be said that, on termination or surrender, the entire assets will revert to the Territory in such a way that the whole residual benefit of the assets vests in the Territory. There is a significant compensation value at the time of the expiration, surrender or termination of the Crown lease that must be paid to Calvary.

### **AASB 1048 and Interpretation 12**

- 15 Calvary’s annual financial reports for each financial year must comply with the Australian accounting standards: see s. 296(1) of the *Corporations Act 2001 (the Act)*. The relevant standards are those made under s. 334 of the Act, and are commonly denoted by the acronym AASB followed by a number. Standards made under s. 334 must not be inconsistent with the Act or the regulations thereunder.
- 16 Annual financial statements must give a true and fair view of the financial position and performance of the company.<sup>1</sup> In addition, annual financial statements must contain a declaration by the directors that they comply with the accounting standards and give a true and fair view of the financial position and performance of the company for the relevant financial year.<sup>2</sup>
- 17 Courts have considered the interpretation of accounting standards on relatively few occasions, but all indications are that they will adopt the same approach to the construction of an accounting standard as they adopt to the construction of a statute.<sup>3</sup> This is not to suggest that the courts will treat the views of accountants or auditors as

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<sup>1</sup> Section 297 of the Act.

<sup>2</sup> Section 295(4) of the Act.

<sup>3</sup> See s. 337 and cases such as *Stanilite Pacific Ltd (in Liq.) v. Seaton* (2005) 55 ACSR 460; *QBE Insurance Group Ltd v. Australian Securities Commission* (1992) 38 FCR 270; *Soloman Pacific Resources NL v. Acacia Resources Ltd (No. 2)* (1996) 19 ACSR 677 and *Allstate Exploration NL v. Beaconsfield Gold NL* (1996) 20 ACSR 165.

irrelevant,<sup>4</sup> but in our opinion, the proper interpretation of any applicable standards, and their consistency with the requirements of the Act, is ultimately a matter of law.

- 18 Interpretation 12 does not have the status of an accounting standard; rather it is described by the Standards themselves as “an external document”.<sup>5</sup> In other words, Interpretation 12 does not have legal force of and by itself; the question is always whether another Standard refers to Interpretation 12 in such a way as to incorporate it within that Standard so that it has binding force for the purposes of that other Standard. It is also relevant to note that this kind of incorporation by reference will only pick up the Interpretation in the form that existed when the principal Standard was issued.
- 19 We have not attempted to review all of the Australian Standards to determine which, if any, Standards specifically refer to Interpretation 12. That is something on which Calvary might take accounting advice. We note, however, that AASB 1048 describes the general role played by Interpretations such as Interpretation 12. Relevantly, the function of AASB 1048 is simply to ensure that references in AASB Standards to any of the AASB Interpretations will be effective to incorporate the Interpretation within the Standard.<sup>6</sup> Otherwise, AASB 1048 simply lists the currently approved Australian Interpretations, which include Interpretation 12 (conforming to the international IASB interpretation).
- 20 Turning to Interpretation 12, the first thing to note is that the Interpretation only “*gives guidance on the accounting by operators for public-to-private service concession arrangements*” (our emphasis); it does not apply to the way in which public sector grantors must account for service concession rights.<sup>7</sup>
- 21 No equivalent Interpretation applies to the grantor’s treatment of service concession arrangements. The corresponding Interpretation is currently in the form of an AASB Exposure Draft known as ED194. ED194 says that it is intended to “*mirror*

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<sup>4</sup> See *Deputy Commissioner of Taxes v Executor Trustee and Agency Co of South Australia Ltd* (Carden’s case) (1938) 63 CLR 108 at 153 and *QBE Insurance Group Ltd*, supra.

<sup>5</sup> See AASB 1048; see also the *Acts Interpretation Act 1901* (Cth) and the *Legislative Instruments Act 2003* (Cth).

<sup>6</sup> See clause 1 of AASB 1048.

<sup>7</sup> See clauses 4 and 9 of Interpretation 12.

*Interpretation 12*"; i.e. it will apply where the grantor retains control of the asset and "*the operator is only managing the asset on the grantor's behalf - even though, in many cases, it may have wide managerial discretion*".<sup>8</sup> Thus, at the present time, the accounting treatment of the Hospital by the Territory is not governed by any Interpretation. There is only an analogy based on ED194, and perhaps a view that the accountancy treatment of the Hospital assets by the Territory and Calvary should be consistent, and should reflect the appropriate accounting treatment by the party on the other side of the transaction.

22 Interpretation 12 does not contain any precise definition of a "*service concession arrangement*". Rather, clause 5 of Interpretation 12 identifies the kind of public-to-private service concession arrangements that fall within the scope of Interpretation 12. Later paragraphs of the document explain the way in which clause 5 is to be read and applied.

23 Clause 5 of Interpretation 12 states:

5. *This Interpretation applies to public-to-private service concession arrangements if:*
  - (a) *the grantor controls or regulates what services the operator must provide with the infrastructure, to whom it must provide them, and at what price; and*
  - (b) *the grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the infrastructure at the end of the term of the arrangement.*

24 The rationale that underpins Interpretation 12 in general, and clause 5 in particular, can be summarised as follows: infrastructure should not be recognised as property, plant and equipment of the operator, appropriate to be included in its balance sheet, where the operator only has a contractual service arrangement that does not give it the right to control the use of the infrastructure; in such a case, the operator only has access to operate the infrastructure to provide the public service on behalf of the grantor in

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<sup>8</sup> See paragraphs AG3 and AG10 of ED194.

accordance with the contractual terms.<sup>9</sup> The importance of control is emphasised by paragraph AG5 of Interpretation 12. It states that if the grantor retains the extensive control described in clause 5(a) and a significant residual interest in the infrastructure, then it can be said that the operator is only managing the infrastructure on the grantor's behalf. Provided that such control rests with the grantor, the operator can have wide managerial discretions.

- 25 Under clause 5(a), the grantor's control must be far-reaching. Clause 5(a) assumes that all important decision-making powers rest with the Government and that the "operator" is only given access to the infrastructure. It therefore requires an analysis of the practical situation that exists in respect of the Hospital's operations. To satisfy clause 5(a) here, the Territory must have actual control over the determination of what services the Hospital provides; how the Hospital provides the services; to whom the Hospital provides services; and what prices apply to services. If the Territory merely controls the general regulatory framework within which services are provided or prices are set, and most management controls are retained by the Hospital itself, the case would seem to fall outside the scope of Interpretation 12.<sup>10</sup>
- 26 This concept of control would be consistent with the approach adopted generally within the Standards. The Standards tend to define "control" in terms of the capacity of an entity to dominate the decision-making of another entity, whether directly or indirectly, in relation to financial and operating policies.<sup>11</sup> This approach also reflects the definition of "control" in s. 50AA of the Act. It defines "control" in terms of the capacity to determine the outcome of decisions about another entity's financial and operating policies.
- 27 Section 337 of the Act provides that, in interpreting an accounting or auditing standard, unless the contrary intention appears, expressions used in the Standard have the same meanings as they have in Chapter 2M of the Act, which would incorporate s. 50AA.

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<sup>9</sup> See clause 11 of Interpretation 12.

<sup>10</sup> Clause 16 of the First Supplementary agreement provides that Calvary is to charge in accordance with a scale of fees determined by ACT Health as the scale of fees applicable in the Territory at hospitals which provide comparable services and which are controlled by the Commission.

<sup>11</sup> See Ford's Principles of Corporation Law, paragraph 10.100.

There is no definition of “control” in Interpretation 12, so ss. 50AA and 337 would seem to apply.

- 28 The requirement in clause 5(b) of Interpretation 12 is that the grantor must control any significant residual interest in the infrastructure at the end of the term of the arrangement (our emphasis). Interpretation 12 seems to contemplate a service concession arrangement that has a defined or at least finite term. We doubt that it is contemplating a 99 year lease that is effectively perpetual, just like other land tenure in the Territory.
- 29 Clause AG4 of Interpretation 12 states that, for the purpose of clause 5(b), the grantor’s control over any significant residual interest should both restrict the operator’s practical ability to sell or pledge the infrastructure and give the grantor a continuing right of use throughout the period of the arrangement. Further, clause AG4 describes the residual interest mentioned in clause 5(b) as being “*the estimated current value of the infrastructure as if it were already at the age and in the condition expected at the end of the period of the arrangement*”. This suggests that clause 5(b) contemplates that the whole of the infrastructure, at its depreciated value, will be returned to the grantor at the end of the arrangement.
- 30 We will come to the application of these provisions, but it is helpful to foreshadow the difficulties that arise in trying to apply clause 5(b) here. First, since Calvary’s lease is effectively perpetual, there is no finite period for the arrangement. Secondly, the Territory’s right at the end of the lease is to take back those assets which it financed itself without payment, but its ability to resume the other assets is subject to making a substantial compensation payment to Calvary at the prevailing market value.
- 31 There is also a broader legal question that impinges upon the proper interpretation and application of Interpretation 12. The fundamental principle that must be applied in finalising Calvary’s accounts is that they must give a true and fair view of its financial position. The questions that Calvary’s directors must consider are whether that true and fair view requires Calvary to recognise all of the Hospital assets (public and private) on its balance sheet; and would any contrary interpretation of the requirements of

Interpretation 12 produce a result that is inconsistent with the requirements of the Act?  
We will return to these issues.

### **PWC Advice**

- 32 The PWC advice was provided to the Territory at its request. It concerns the accounting approach that should be adopted by the Territory in its governmental accounts. It specifically states that PWC is not commenting on the accounting treatment that should properly be applied by Calvary.
- 33 The PWC advice also recognises the limitations of Interpretation 12. In particular, PWC notes that it does not apply to the grantor, and that ED194 is not in force and merely provides an analogy. PWC points out that the question for the Territory is whether, in the absence of an applicable accounting standard, management should use its judgment to develop an accounting policy that treats the current arrangements between the Territory and Calvary as having the characteristics of a service concession arrangement of the kind referred to in Interpretation 12 and ED194. The adoption of accounting policies is addressed in AASB 108, paragraphs 10 to 11.
- 34 We do not agree with PWC's analysis of the contractual arrangements between Calvary and the Territory or their conclusion that those contractual arrangements have the characteristics of a service concession agreement.
- 35 The PWC advice relies on clause 7 of the 1979 Supplementary Agreement as the basis for concluding that the requirements of clause 5(a) of Interpretation 12 are met. Clause 7 provides as follows:

*The Association shall conduct the Hospital in accordance with sound hospital practices and the laws from the time being in force in the Territory applicable to the Hospital. The Association shall ensure that the Hospital is controlled and managed in accordance with directions given from time to time by the Commission, relating to the integration, rationalisation and efficient management of hospital services in the Territory provided that in the planning for the integration, rationalisation and efficient management of hospital services in the Territory, the Commission will in the normal course of events make reasonable efforts to consult with the Association in the implementation of those policies as they affect the Hospital.*

- 36 In our view, clause 7 merely provides that the broad framework that applies to all hospitals in the Territory will apply to the Hospital. Thus, it acknowledges that the Territory may give broad directions about the “*the integration, rationalisation and efficient management of hospital services in the Territory*”. This provision does not give the Territory the right to control Calvary’s financial and operating policies in relation to the Hospital. Calvary retains the power to control and manage the type and volume of clinical services it delivers in the Hospital. Calvary could also refuse to provide medical services that are contrary to its medico-moral principles such as sterilisation and abortions (see below). Further, the PWC advice does not take into account the Health Minister’s policy statement at annexure A to the 1979 Supplementary Agreement which provides that the Hospital “will operate with a high degree of autonomy”.
- 37 On 11 August 2010, our instructors provided us with a table entitled “Calvary Decision Making Framework” (see Appendix “C”) which indicates that Calvary exercises control over the following matters:
- (a) strategic delegations (save for the change in level of service being provided which is negotiated between Calvary and the Territory pursuant to the annual Performance Plan);
  - (b) operational delegations (save for litigation in which Calvary has regard to ACTIA requirements, the statutory authority that acts as broker and insurer for Territory government);
  - (c) financial and Contractual Delegations (save for Territory consent in relation to sale/assignment of the land/lease);
  - (d) budgets and accounts (save for Calvary and the Territory negotiating budgets pursuant to the annual Performance Plan);
  - (e) income items;

- (f) expenditure items (save for Calvary and the Territory negotiating capital expenditure pursuant to the Territory capital plan);
- (g) financing and investment delegations (save for Territory consent under the lease to encumber the land);
- (h) human resources (subject to *Public Sector Management Act 1994* (ACT) legislative framework and rights under Fair Work Australia);
- (i) clinical governance; and
- (j) corporate governance.

38 PWC also relies on clause 16 of the 1979 Supplementary Agreement to satisfy the requirements of clause 5(a). Clause 16 states:

*The Association shall conduct the Hospital in such a manner as to make it available to all persons irrespective of creed or individual ability to pay and shall charge patients fees in accordance with the scale of fees determined by the Commission from time to time to be the then scale of fees applicable in the Territory at hospitals which provide comparable services and which are controlled by the Commission. The Association shall provide such other medical and ancillary services as may be agreed between the Association and the Commission. The Association shall not be required to conduct the hospital or to provide other health services otherwise than in accordance with the medico-moral principles set out in the Association's Articles of Association.*

39 In our opinion, clause 16, when properly construed, amounts to a non-discrimination provision. A negative prohibition on discrimination on religious or pecuniary grounds does not allow the Territory to control the persons to whom services are provided. Interpretation 12 envisages a deeper version of "control". PWC does not refer to the entirety of clause 16. Its final sentence confirms that the Hospital is free to determine that certain health services shall not be provided because of Calvary's medico-moral principles.

40 As for the price at which services are provided at the Hospital, the Hospital charges patients in accordance with the scale set by the Territory. This is part of an overall

regulatory scheme that applies generally to all hospitals. It is not a matter of the Territory controlling particular fees for particular work for this particular hospital, pursuant to its contractual powers under a service concession agreement.

41 PWC refers to paragraph 3 of Interpretation 12 which describes some common features of service concession arrangements. They include the fact that the contract sets the initial prices to be levied by the operator and regulates price revisions over the period of the service arrangement. The contracts between Calvary and the Territory did not set initial prices, and the contracts do not provide for price revisions. Price regulation in the Territory is a matter governed by the general legislative and regulatory requirements that the Government has put in place for all hospitals and other health services. It is not a product of any service concession arrangement.

42 In dealing with clause 5(b) of Interpretation 12, PWC refers to paragraph 3(a) of the Interpretation. It says that another common feature of service concession arrangements is that the operator is obliged to hand over the infrastructure to the grantor in a specified condition at the end of the period of the arrangement for little or no incremental consideration, irrespective of which party initially financed it. Plainly, that feature is not present in the arrangements between Calvary and the Territory. Indeed, PWC seems to assume that on eventual termination the ownership, use and full benefit of the assets will revert to the Territory. This does not reflect the actual compensation provisions of the lease.

43 More generally, we note that PWC does not specifically consider the nature of the Crown lease. Nor does PWC undertake a detailed analysis of the operations of the Hospital. In our opinion, such analysis must be undertaken to understand the extent to which fundamental controls over operating and financial decisions and policies rest with Calvary.

#### **True and Fair View**

44 PWC does not identify any particular accounting standard that incorporates Interpretation 12 by reference and makes it applicable to the preparation of Calvary's financial

statements. Nonetheless, we will assume that one or more relevant accounting standards do incorporate Interpretation 12, so that it would apply to Calvary if its terms are satisfied.

45 However, on our instructions and after carefully considering the proper construction of Interpretation 12, we do not consider that it applies to the arrangements between Calvary and the Territory.

46 The directors of Calvary must ask themselves whether the Hospital assets must be included in Calvary's financial statements in order to give a true and fair view of its financial position. We note that for many years Calvary has included those assets in its financial statements. There is no conflict between this view and the requirements of the accounting standards because, on our factual instructions and on the proper interpretation of Interpretation 12, it does not apply.

#### **Conclusion**

47 Interpretation 12 is not satisfied in the present case. Calvary is entitled to retain the items on its balance sheet.

DATED: 28 September 2010



NEIL J. YOUNG



SHARON A. BURCHELL

**APPENDIX A****ORIGINAL AGREEMENT – PART 1**

Agreement between The Corporation of the Little Company of Mary and The Commonwealth of Australia in relation to the Construction of Calvary Hospital; in the Australian Capital Territory dated 22 October 1971.

**Recitals**

- (b) the Commonwealth has allocated all that parcel of land being Block 1 Section 1 Division of Bruce, Canberra City District as delineated in Deposited Plan Number 2360 in the Office of the Registrar of Tittles at Canberra in the Territory for the purpose of a hospital;
- (d) the Order is agreeable to establish and conduct a hospital on the said land and the Commonwealth has agreed to pay to the Order certain of the costs of establishing and conducting a hospital;

**Clauses**

- 8. The Order shall conduct the Hospital as a hospital of 300 bed capacity available irrespective of creed or individual ability to pay and shall charge patients fees in accordance with the scale of fees determined by the Commonwealth from time to time to be then the scale of fees applicable in the Territory at hospitals which provide comparable services and which are controlled by the Commonwealth. The Order shall provide such other medical and ancillary services as may be agreed between the Order and the Director-General of Health.
- 9. The Order shall control and manage the Hospital in accordance with sound hospital practices and the laws for the time being in force in the Territory applicable to the Hospital. The Order shall ensure that the Hospital is controlled and managed in accordance with Government policy from time to time relating to the integration rationalization and efficiency of hospital services in the Territory.

## FIRST SUPPLEMENTARY AGREEMENT – PART 2

Supplementary Agreement between The Corporation of the Little Company of Mary, The Commonwealth of Australia; Calvary Hospital ACT Incorporated and Capital Territory Health Commission in relation to the Construction Operation and Maintenance of the Calvary Hospital in the Australian Capital Territory dated 9 April 1979

### Recitals

- (a) The Order and the Commonwealth entered into an agreement dated the 22<sup>nd</sup> day of October 1971 (hereinafter called “the original agreement”) whereby it was agreed that the Order would establish, conduct, control and manage a public hospital (hereinafter referred to as “the hospital”) of three hundred beds capacity in accordance with Government policy specified from time to time relating to the integration, rationalization and efficient management of hospital services in the Territory subject to the conditions appearing therein, the said hospital to be established on Block 1, Section 1, Division of Bruce, Canberra City District (hereinafter referred to as “the land”).
- (b) The Minister of State for Health caused to be issued on 28<sup>th</sup> February 1979 a Statement of Policy of the Government of the Commonwealth relating to the role of the hospital in the Territory (hereinafter called “the role of the hospital”) a copy of which statement is annexed hereto and marked with the letter “A”.

### Clauses

1. (1) In this agreement, unless the contrary appears:  
“capital assets” means the buildings and other improvements constituting the Hospital, together with the fittings, furnishings and equipment contained therein, provided that is expression:
- (a) shall include such further fittings, furnishings and equipment as from time to time the Association and the Commission agree shall be provided for the Hospital on the basis that the cost thereof is to be met directly or indirectly by the Commonwealth or the Commission;
- (b) shall not include:

- (i) any adjunctive buildings or improvements predominantly of an ecclesiastical character or function; or
- (ii) any fittings, furnishing or equipment obtained, furnished or installed at the instance of the Order or the Association

the cost of which has not been met in any part by the Commonwealth or the Commission.

- 6. The Association shall maintain the Capital Assets in good order and condition in accordance with directions which may be given by the Commission from time to time fair wear and tear excepted, and, except with the prior consent of the Commission [sic], will not use otherwise than for the purposes of the Hospital or lease, grant licence or in any other way dispose of or part with possession of any of the Capital Assets.
- 7. The Association shall conduct the Hospital in accordance with sound hospital practices and the laws from the time being in force in the Territory applicable to the Hospital. The Association shall ensure that the Hospital is controlled and managed in accordance with directions given from time to time by the Commission, relating to the integration, rationalisation and efficient management of hospital services in the Territory provided that in the planning for the integration, rationalisation and efficient management of hospital services in the Territory, the Commission will in the normal course of events make reasonable efforts to consult with the Association in the implementation of those policies as they affect the Hospital.
- 14(ii) Subject to the provisions of this clause, the Commission shall pay to the Association in respect of each year a maintenance subsidy in respect of the operating costs incurred by the Association in the conduct of the Hospital equal to the excess over the income (excluding the maintenance subsidy) of the Hospital for that year, provided that the maintenance subsidy shall not exceed the approved budget

determined for the year, unless the Commission so approves. Any monies payable by the Commission under this agreement for the operation of the Hospital shall form part of the maintenance subsidy, unless otherwise specified by the Commission.

- 14(vi) The Association shall keep full management records including a register of assets, and proper books of account in a form approved by the Commission of all transactions pertaining to the conduct of the Hospital and these shall be audited progressively by a licensed Auditor to be duly appointed by the Association and approved by the Commission and shall be open to inspection at all reasonable times by the Commission and the Auditor-General of the Commonwealth or his representatives.
15. The Association shall submit to the Commission an accurate statement of affairs and reports of activities of the Hospital annually and as may be required by the Commission from time to time.
16. The Association shall conduct the Hospital in such a manner as to make it available to all persons irrespective of creed or individual ability to pay and shall charge patients fees in accordance with the scale of fees determined by the Commission from time to time to be the then scale of fees applicable in the Territory at hospitals which provide comparable services and which are controlled by the Commission. The Association shall provide such other medical and ancillary services as may be agreed between the Association and the Commission. The Association shall not be required to conduct the hospital or to provide other health services otherwise than in accordance with the medico-moral principles set out in the Association's Articles of Association.
- 19 If at any time for any reason the Association is unable to complete the construction and establishment of the Hospital, the management thereafter of the affairs of the Hospital shall vest in the Commission in that event:

- 19(a)** The Commission shall be entitled to assume control of the Hospital and for this purpose to have full possession and custody of the Hospital, and the Association will take all necessary steps including, if so required by the Commonwealth, the surrender of the lease of the land to enable this to be done.
- 19(c) The Association shall not be entitled to compensation for the value of any building, improvements, fittings, furnishing or equipment which have been wholly paid for directly or indirectly by the Commonwealth or the Commission. In respect of all other building, improvements, fittings furnishing or equipment, the Association may be paid such compensation as is determined by the Commonwealth and the Commission, having regard to the financial contribution in the construction or purchase of those buildings, improvements, fittings, furnishings or equipment at the time of the expiration surrender or determination (not being determination upon default) of the lease.

#### **Annexure – Statement of Policy**

**“A”** The Capital Territory Health Commission is responsible for the general administration of public health and hospital services in the Australian Capital Territory. The Commission is responsible to the Commonwealth Government through the Minister for Health.

Calvary Hospital will be run by Calvary Hospital A.C.T, Inc. It will operate with a high degree of autonomy but as an integral part of the over-all public hospital service to the people in the Territory.

The Calvary Hospital will be subject to necessary budgetary constraints and to any directions given by the Territory in accordance with the laws for the time being affecting the operation of public hospitals in the Territory. The Hospital's control and management will be conducted in accordance with the policy from time to time relating to the integration, rationalisation and efficient management of hospital services in the Territory.

Subject to these constraints, Calvary will provide an alternative form of care to that available in the other public hospitals in the Australian Capital Territory.

### **SECOND SUPPLEMENTARY AGREEMENT – PART 3**

Second Supplementary Agreement Relating to Calvary Hospital between Calvary Hospital ACT Incorporated and Australian Capital Territory dated 9 May 1991

#### **Recitals**

- B.** The Order, the Commonwealth, the association and the Capital Territory Health Commission (“the Commission”) entered into a supplementary agreement dated 9 April 1979 (“the first supplementary agreement”) whereby the original agreement was varied and, inter alia, the Association took over the rights, obligations and liabilities of the Order, including the right to conduct, control and manage Calvary Hospital and to perform the original agreement as so varied in substitution for the Order.
- E.** Under the Territory’s plans for the redevelopment of public hospitals, Calvary Hospital is to be upgraded to a public hospital of approximately 300 beds under a program that includes making employment under the terms and conditions of the Public Service Act 1922 (C’t) (“Public Hospitals Service Act”) applicable or available at public hospitals, including Calvary Hospital.

#### **Clauses**

- 3(ii)** Future employees (including employees transferring to Calvary Hospital from other public hospitals within the Territory) of Calvary Hospital shall be appointed under the Public Service Act by the Chairman or by persons authorised by the Chairman pursuant to the delegation (except for future employees engaged solely to work in that portion of Calvary Hospital known as “Calvary Private Hospital” who shall be appointed by the Association).

Our Reference  
615013

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30 October 2009

**By email:** mark.cornack@act.gov.au

Mr Mark Cornack  
Chief Executive  
ACT Health  
GPO Box 825  
CANBERRA ACT 2601

Dear Mr Cornack

**Relationship between the Australian Capital Territory and Calvary Health Care ACT Limited**

You have requested advice regarding particular aspects of the relationship between the Australian Capital Territory (**Territory**) and Calvary Health Care ACT Limited (**Calvary**).

**A. Current contractual arrangements**

1. The relationship between the Territory and Calvary is governed by a suite of agreements encompassing the conduct, control and management of the public hospital and in relation to the establishment and operation of Calvary Private Hospital, entered into over a period of some 25 years commencing in 1971.

***Public Hospital***

2. The Agreements providing for the operation of Calvary Public Hospital, including the financial arrangements between the Territory and Calvary.
3. Calvary may at any time discontinue the conduct of Calvary Public Hospital on giving the Territory 12 months' notice. Management of the Hospital's affairs will vest in the Territory on the expiration of the notice period.
4. The Territory may only terminate the arrangements in relation to the public hospital if Calvary has either breached the key Agreement, the Crown lease or a Territory law. The Territory must first give Calvary 30 days notice to rectify the breach or omission. A failure by Calvary to rectify the breach or omission will entitle the Territory to terminate the Crown lease upon which management of the affairs of the public hospital will vest in the Territory.

5. Accordingly, in the absence of a breach of contract by Calvary, the Territory cannot terminate the arrangements in relation to Calvary's operation of Calvary Public Hospital without the consent of Calvary.

***Private Hospital***

6. The Agreements relating to the management and operation of the Private Hospital, including the financial arrangements, permit Calvary to establish and conduct the Private Hospital.
7. Calvary may at any time discontinue the conduct of Calvary Private Hospital by giving 12 months notice. The Territory may terminate the Calvary Private Agreement by giving Calvary 3 years notice.
8. On termination, the operation of that part of the hospital comprising Calvary Private Hospital would revert to a public hospital and then be governed by the Public Hospital Agreements. If they were also terminated, operation of the hospital facilities would revert to the Territory.

**B. Crown Lease and occupation of the land**

***The Crown lease***

1. Pursuant to the original Agreements the Little Company of Mary was granted a Crown lease by the Commonwealth over the land on which Calvary Hospital was subsequently constructed.
2. A new lease was granted to Calvary on 16 November 1999 for a term of 99 years. Calvary is entitled to the grant of a further lease on the expiration of the current Crown lease.
3. Under the Crown lease Calvary may only use the land 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 [Calvary] who are conducting the hospital".
4. There are further restrictions on the use of the land and improvements under the Current Agreements. Calvary may only use the land and improvements for the purposes of a public hospital subject to the authorisation under other agreements allowing Calvary to use part of the Calvary Campus for the purposes of the Private Hospital.
5. Calvary is restricted from transferring the Crown lease under the terms of Territory land laws. Calvary may only transfer the lease to another party with the consent of the Australian Capital Territory Planning and Land Authority if certain eligibility criteria are met.

*The buildings and improvements*

6. The buildings or other improvements on the Calvary land are, in accordance with usual principles of law, an integral part of the land on which the buildings or improvements are situated. As the Crown lessee, Calvary has an exclusive right of possession (subject to any agreement to the contrary) in respect of the buildings or improvements on the Calvary land. This is so irrespective of whether the construction or purchase of the building or improvement was funded by the Commonwealth or the Territory.
7. Ultimately, ownership of the land and all buildings and improvements on the land vests in the Crown. If the Crown lease expires or is terminated or surrendered then the land and improvements reverts to the Territory (on behalf of the Commonwealth).
8. Until the Crown lease expires or is terminated or surrendered, Calvary effectively "owns" the buildings and improvements on the land.
9. Subject to any other agreement, if the Crown lease expires or is surrendered or terminated, Calvary will not be entitled to remove and will not be entitled to any compensation for the value of any buildings or other improvements on the land which have been wholly paid for directly or indirectly by the Territory (including the Commonwealth).
10. The Territory must, however, compensate Calvary for all other buildings and other improvements on the land in accordance with the level of financial contribution Calvary has made to the construction or purchase of those buildings and other improvements provided that the amounts payable as compensation may not exceed the value or values of those buildings or other improvements at the time of the expiration, surrender or termination of the Crown lease.

**C. Acquisition of the land, buildings and assets**

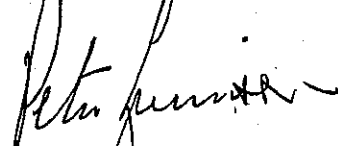
1. To regain possession and control of the Calvary land, buildings and improvements, the Territory would have to terminate the Crown lease. The Territory, however, has no contractual ability to terminate the Public Hospital Agreements or the Crown lease, in the absence of a breach by Calvary of the Agreements or the Crown Lease.
2. Calvary may elect to surrender the Crown Lease, however, the Territory cannot compel it to do so. If the Crown Lease is surrendered then, in the absence of agreement to contrary, the compensation provisions outlined above will apply.
3. A fundamental issue for the Territory, therefore, in terms of any consideration of the contractual relationship is that, short of Calvary's breach or surrender, Calvary will remain the Crown lessee of the hospital site.

4. Calvary holds an interest, namely the balance of the term of the 99 year lease, the right to occupy and use the land, building and assets during that period, and the right to renew the lease. That is an interest to which a value is attributable, even if at the conclusion of the lease Calvary would receive no compensation for those assets paid for by the Commonwealth or the Territory.
5. It is axiomatic that if the Territory wishes Calvary to surrender its rights, then the surrender or acquisition of those rights – the right to use the Public Hospital and its assets – is a right that can be valued and for which a payment may be required.
6. For the purposes of the Territory and Calvary agreeing for Calvary to give up its existing rights to occupy and use the land, building and assets comprising the Public Hospital it is irrelevant that the assets were effectively provided by the Commonwealth and Territory at no cost to Calvary.
7. What is being acquired is Calvary's unexpired portion of its Crown Lease and its rights to occupy and use the land building and assets over that term.

I trust that this advice is sufficient for your present purposes.

Yours sincerely

**ACT Government Solicitor**



Peter Garrison  
Chief Solicitor



# Calvary Decision Making Framework

Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
	<b>A. Strategic Delegations</b>			
A 1.	Philosophy, mission, vision or values	Calvary	ACT Health not required to be engaged	<p>The Code of Ethical Standards for Catholic Health and Aged Care Services documents the approach to both management and service delivery within Catholic health care services. Calvary upholds the Code and operates in accordance with it in conducting the hospital.</p> <p>November 2009 –Calvary developed a new mission and values in action statement for organisation.</p> <p>ACT Health or Territory approval not sought nor required for:</p> <ul style="list-style-type: none"> <li>Calvary Code of Conduct (however, consistent with Public Service Management Act ), and 'Standards of Behaviour'</li> <li>Job descriptions / selection criteria – specifically relating to Mission &amp; Values and Ethical Conduct</li> </ul> <p>Calvary has not implemented ACT Health or ACT Public Service values.</p>
A 2.	Opening or closure or a change in the principal role and services or name of any Service	Calvary Closure or change to the principal role of operating a hospital would constitute a breach of main Agreements if done without ACT approval		
A 3.	Change the level of service being provided	Calvary Calvary & ACT Health as per Performance Plan	<p>The 2009-2010 Performance Plan states Calvary must not change the number and/or type of outpatient services without ACT Health's approval.</p> <p>Calvary has the ability to change services based on</p>	<p>Implementation of new model of care in the ICU Department. Easter and Christmas closure of elective surgery based on operational requirements.</p> <p>July 2010 - ACT requests that Calvary have an extra 20 urology lists. Calvary is unable to complete the lists as requested, however the hospital is able to complete 12 extra lists.</p> <p>Calvary operates within a legislative framework including ACT</p>



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
			<p>operational requirements.            ACT Health is informed regarding service changes, permission or approval is not required.            ACT Health can't direct Calvary to undertake extra theatre work for waiting list reduction. Calvary reserves the right to operate the business within its own operational requirements;</p>	<p>Government policy and the ownership, leasing arrangements and medico-moral principles of the Little Company of Mary (refer Calvary Performance Plan 2009-10 p3).            Calvary is responsible for the specific service related aspects of the Clinical Streams and Networks in consultation with relevant Territory wide clinical stream Directors.            Calvary chooses when to go on Emergency Department bypass, following consultation with The Canberra Hospital but is not on direction from ACT Health.            Calvary is currently planning new models of care in medicine and emergency medicine. This does not require any approval from ACT Health. If the model requires additional funding or staffing from The Canberra Hospital-seconded doctors, Calvary will apply for funding to ACT Health.            In 2006, Calvary reduced bed numbers on 4<sup>th</sup> floor, closing 4 East, ACT Health was informed of change and was not asked or required to approve change.</p>
A 4.	Name buildings, units, wards, streets and services	Calvary	ACT Health is not required to be engaged, however are informed.	<p>Buildings: named to reflect the heritage of Little Company of Mary (LCM) Keane Building; Mark Maher Building; O'Shannassy Centre, Zita Mary Clinic, Lewisham Building, Marion Building, Hyson Green Unit.            Placement of statues and icons:            -statue of Madonna and Child at front of building;            - illuminated Calvary Cross on front of building;            - statue in viewing room in mortuary;            Roads: Mary Potter Circuit; Hyson Place; Sylvia Curley Road.</p>
A 5.	Calvary strategic direction and corporate strategy	Calvary	ACT Health is not required to be engaged.	<p>Calvary 15 year strategic direction was developed independent of but aligned to ACT Health CADP.            Calvary has developed its own planning principles which reflect Calvary's Mission and Values.            ACT Health developed its own 15 year PDP plan – Calvary was not initially included.</p>

Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
A 6.	Appointment of external auditors	Calvary	ACT Auditor General has separate rights to review certain items under Current Agreements	Calvary undertakes an annual planning process aligning its strategic plan with LCMHC.  Calvary has independent auditors;  ACT Health utilises ACT Auditor General's Office.
B 1.	Ratify Policies and Procedures	Calvary	Calvary has its own Clinical Governance and complies with all legislative and regulatory requirements.  Where ACT legislation or standard is the basis of a directive then Calvary adopt the policy	<p>Examples of the approach utilised;</p> <p>Calvary only policies – "Annual Leave &amp; LSL Planning &amp; Approval"; "Accommodation"; "Privacy &amp; Confidentiality"; "Essential &amp; Mandatory Training"; "Redeployment, Permanent &amp; Temporary Transfers, &amp; Temporary Secondment"; "Dress Code &amp; Presentation"</p> <p>Adapted ACT Health / Public Service policy – "Use of screen-based equipment"</p> <p>Incorporated ACT Health / Public Service policy – "Elimination Bullying &amp; Harassment"; "Medical Education Expenses"</p> <p>Rejected / ignored ACT Health / Public Service policy – 'Whistleblower' protocol; "Equity &amp; Diversity" framework</p> <p>Calvary generally develops its own policies, procedures, guidelines, Statement of Priorities (SOP), fact sheets, flow charts, pathways, manuals and patient information.</p> <p>At present there are 925 documents residing on the Calvary policy document tool.</p> <ul style="list-style-type: none"> <li>- 2 are direct ACT Health policies with no change,</li> <li>- 7 have the ACT document behind with a Calvary template front sheet,</li> <li>- 1 is SOPs that have been developed by the Emergency Department network.</li> <li>- Mental Health has 25 out of 84 documents that are Calvary</li> </ul>
	<b>B. Operational Delegations</b>			

Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
				<p>specific the rest pertain to more corporate areas of Mental Health. They are all in the ACT Health template.</p> <p>Where ACT Health has developed policy that is to be Territory wide, the policy is reviewed for veracity to Calvary and if necessary modified.</p> <p>Reasons for not accepting ACT Health policy directly could be due to Catholic ethical standards, contact points that are outside of Calvary, or contrary to LCMHC directives.</p>
B 2.	Media relations	Calvary	Calvary determines how it responds to the media and Ministerial request for information.	<p>Calvary responds to ACT Health/Government requests for information on the basis of maintaining good relationships with the Government.</p> <p>Calvary has its own Communications and Marketing Officer. Calvary issues its own media releases without Territory consent.</p>
B 3.	Litigation - Instigate and Settle <ul style="list-style-type: none"> <li>• Medical malpractice</li> <li>• other</li> </ul>	Calvary, in accordance with ACTIA ( Statutory Authority that acts as broker and insurer for ACT governments)	ACT Health Insurance and Legal Unit are kept informed of legal and insurance issues	<p>ACTIA (public insurer) and GSO (Government Solicitor General) act for Calvary Public Hospital. GSO will advise on settlement and it will be the Insurer and Calvary who instruct on settlement or legal requests. Within Calvary Public the delegation for settlement is per the LCMHC policy.</p> <p>Instigation of legal matters is per the LCMHC delegation policy however if GSO is used then ACT Health Insurance and Legal Unit must be kept informed.</p> <p>GSO will only accept requests for legal advice that are clinical or related to clinical in nature. They do not undertake commercial work for Calvary Public.</p> <p>In one clinical case where there is conflict of interest i.e. the GSO represents ACT Health and Calvary, we have been able to obtain, with ACTIA approval, our distinct legal advice.</p> <p>Calvary seeks commercial legal advice from non government sources.</p>
B 4.	Settlement of insurance claims where : <ul style="list-style-type: none"> <li>• LCMHC is the defendant in the claim; and</li> </ul>	Calvary, in accordance with terms of insurance.		<p>Settlement of claims under our excess is dealt with by Calvary entirely, but cognisant of our LCMHC delegation.</p> <p>Over our excess then ACTIA and GSO will also instruct with cc information to ACT Health Insurance and Legal Unit, but cognisant</p>

Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
	<ul style="list-style-type: none"> <li>the proposed settlement is not setting an undesirable precedent or creating a reputational risk for LCMHC.</li> </ul>			of our LCMHC delegation. GSO provides advice on clinical matters only. All commercial advice is obtained from independent legal advisors.
	<b>C. Financial and Contractual Delegations</b>			
	<b>Property related transactions</b>			
C 1.	Purchase or sell real estate	Purchase: Calvary Sale/assignment: Territory consent required		Calvary is currently applying for additional land at the main site. Any transactions that require alteration to the current lease are submitted to ACTPLA (ACT Planning and Land Authority) with a letter of support from ACT Health.
C 2.	Enter into/ exit property leases	Entry: Calvary, Territory consent required Exit: Calvary	Calvary enters into property leases in its own right	Calvary has leased commercial premises to commercial operators (ie cafe to Zouki) Calvary rents properties for staff accommodation. ACT Health services such as Central Sterilising Department, Pathology and Older Persons Mental Health and Community teams occupy space on the campus but Calvary has provided 'quiet enjoyment' of the property to these tenants.
	<b>Budgets &amp; Accounts</b>			
C 3.	Annual Operating and Capital Budgets, Local Service Plans, Service Agreements with governments	Territory and Calvary	An annual Performance Plan is negotiated between Calvary CEO and ACT Health Deputy CEO	Risk resides entirely with Calvary. Annual operating budget: Under the First Supplementary Agreement (1979) a budget of expenditure is required to be submitted and the Territory must pay the maintenance subsidy. This process has been replaced by the Performance Plan process which is outlined below. Capital budget: All capital works proposals are consistent with Calvary's Master Plan Service plans: 15 year Capital Investment Strategy completed in January 2008



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
C 4.	Variations to approved budgets	Calvary	Calvary and Territory discuss and negotiate changes to agreed budget.	<p>Performance Plan: This is an agreement for each financial year with ACT Health. The Performance Agreement sets the budget Calvary has to operate the services and also sets performance indicators. The Territory prepares the initial budget allocation and sends it to Calvary. Calvary and the Territory then engage in a negotiation about the budget and the service KPIs for that budget. The budget is based on historical funding: for example the funding allocation will state the previous year's amounts, and then set out adjustments for any new services, escalations, wage changes etc. The Territory has never decreased the overall level of activity being funded at Calvary.</p> <p>The Performance Plan is not usually signed until well into the new financial year (for example the 2009/10 agreement was signed on 21 November 2009). Until the plan is finalised, the Territory continues to fund Calvary based on the prior year's payments and then a catch up occurs once the plan is finalised.</p>
C 5.	Unbudgeted expenditure/ contract over-runs	Calvary		<p>Risk resides entirely with Calvary. If ACT Health requires more services be provided, or there is a major change to operating assumptions underlying the budget, the parties will negotiate for a change to the agreed budget.</p> <p>ACT Health is the majority funder, however Calvary has other revenue sources external to ACT Health and does not require ACT Health approval.</p> <p>ACT Health is under no obligation to provide extra funding to Calvary irrespective of the quantum of services provided.</p>
<b>Income items</b>				
C 6.	Submit Expressions of Interest and Tenders for revenue generating purposes	Calvary	Calvary request tenders independent of ACT Health	<p>Calvary tenders for:</p> <ul style="list-style-type: none"> <li>• Waiting list reduction activities</li> <li>• Veteran Affairs activity</li> <li>• Clare Holland House Palliative Care Education Project</li> <li>• Calvary receives grants from NGOs – not through ACT</li> </ul>



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
C 7.	Specific purpose fund raising projects	Calvary	Calvary has the ability to lend/borrow/access trust money as it sees fit.	Health Calvary undertakes its own grant and research applications and manages them accordingly e.g. Moinlycke, clinical trials. Calvary receives bequests/donations and applies as it sees fit. Calvary reports amounts below the line to ACT Health.
<b>Expenditure items</b>				
C 8.	Payroll expenditure (gross \$, per pay period)	Calvary		Calvary has its own delegations and seeks to comply with the agreements under which staff are employed. There are some provisions and core conditions in the awards that have been directed from Government or the Chief Minister. Calvary must have these in policy eg maternity leave, long service leave etc
C 9.	Capital expenditure (incl. donated funds)	Calvary for donated funds Calvary in accordance with Territory capital plan		Calvary is required to report expenditure. Needs LCM HC Board approval for projects such as the new ICU development. Calvary ICU – All tendering and procurement undertaken by Calvary; LCMHC investments – have the ability to borrow, apply and loan as LCMHC sees fit.
C 10.	Enter into non-property related leases, contracts, supplier and service agreements	Calvary	Do not need ACT Health approval – totally at Calvary discretion	Calvary is not bound by ACT procurement guidelines or contracts. Calvary out –sources services such as linen, food, cleaning and maintenance contracts back for pharmacy services.
C 11.	Approve operational expenditure – single item (excl. payroll)	Calvary	Calvary nominates delegations. ACT Health is not required to be engaged.	Calvary sets limits on single expenditure made by Executive.
C 12.	IT software and hardware	Calvary	ACT Health is not required to be engaged with the majority of Calvary ICT projects, however both hospitals work co-operatively together.	Calvary has its own on-site ICT Department funded using recurrent funds with the ICT Manager reporting directly to the CFO. Calvary owns and operates its infrastructure eg communications and computer networks although connected to ACT Health's network for such items as pathology and radiology results.



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
C 13.	Engage consultants, Legal advice and outsourced services	Calvary, with the requirement to provide information to the Territory about legal expenditure	<p>Calvary does purchase where possible hardware consistent with that of ACT Health.</p> <p>In past Calvary have participated in ACT wide projects to implement software such as Oracle Financials and EDIS (Emergency Department Information Systems). Whilst Calvary participated in these projects it has since have since made the decision, without ACT Health's approval to implement alternative systems.</p>	<p>ACT Health has no direct access to Calvary's network.</p> <p>Calvary sets its own equipment standards and purchases from its own ICT suppliers</p> <p>All of the major corporate applications used are Calvary or LCMHC's such as internet, intranet, payroll, finance, and Patient Administration System ( PAS).</p> <p>Calvary are considering a move to ACT Health's PAS to facilitate future e-health projects.</p> <p>In 2005 all ACT government agencies were directed to use a new ACT Government agency called InTACT. All ICT support staff were transferred from their respective agency to InTACT. Every ACT government agency is now supported by InTACT. Calvary was and still is totally separate from this Territory wide change.</p> <p>Calvary ICT staff liaise with InTACT staff for operational and project reasons but there is no agreement in place between Calvary and InTACT.</p>
C 14.	Pay taxation and duty	Calvary:	ACT Health approval not required – totally at Calvary discretion	Calvary engages its own legal firms to obtain advice.
C 15.	Approve work-related overseas travel expenditure	Calvary	Calvary is a company limited by guarantee, a deductible gift recipient and income tax exempt entity	Salary-packaging policy for Calvary is markedly different from ACT Health and ACT Public Service. LCMHC uses its own provider of packaged services
C 16.	Write-off bad debt (single debtor)	Calvary	ACT Health approval not required – totally at Calvary discretion	Approval for overseas travel for medical staff (part of the medical staff Collective Agreement) is through the Calvary CEO without reference to ACT Health
C 17.	Write-off, write-down or dispose	Calvary	ACT Health approval not required – totally at Calvary	No reference to ACT Health

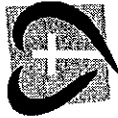


Reference	FUNCTION of assets (WDV per item)	AUTHORITY	CUSTOM & PRACTICE discretion	EXAMPLES
C 18.	Engage debt recovery services	Calvary	ACT Health approval not required – totally at Calvary discretion	
C 19.	Amendments to existing contracts	Calvary (other than contracts with Territory which would require Territory consent)	ACT Health approval not required – totally at Calvary's discretion	There is a VMO Territory wide contract, which has a Calvary schedule within and is controlled by Calvary. Calvary has its own contracts with linen, pathology and radiology. Construction contracts are entered into in Calvary's name. Calvary has own procurement policies.
<b>D. Financing and Investment Delegations</b>				
D 1.	Grant mortgages, charges or encumbrances over real property	Calvary, with the consent of the Territory under the lease		
D 2.	Arrange external borrowings, establish overdraft or other financing facilities	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 3.	Invest or lend any money	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 4.	Open and close bank accounts	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 5.	Establish and amend cheque signatories	Calvary	ACT Health approval not required – totally at Calvary discretion	
D 6.	Issue credit cards and set limits	Calvary	ACT Health approval not required – totally at Calvary discretion	



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
<b>E. Human Resources Delegations</b>				
E 1.	CEO – appointment / transfer/ termination, remuneration, conditions of employment, position evaluation, re-grading (FTE salary \$k pa)	Calvary	ACT Health approval not required – totally at Calvary discretion	Executives are engaged in private and costs cross charged to the public.
E 2.	Other staff – appoint / transfer/ terminate	Calvary [within PSMA legislative framework – not policy framework ]		PSMA will govern largely. However, there is a policy providing for recognition of prior service and/or transfer of entitlements from public to private (but not vice versa)
E 3.	Appointment , management and organisation of Visiting Medical Officers ( VMOs) and staff specialists	Calvary	Calvary participates in Territory wide process for credentialing of medical practitioners but retains discretion as to who it appoints to work at Calvary	<p>VMOs are generally appointed separately when working exclusively at Calvary, and jointly when working across both hospitals. The contract is an ACT Health contract which contains a Schedule of working duties for each hospital. The duties at Calvary are defined by the Director of Medical Services at Calvary, independent of any advice, influence or direction from ACT Health.</p> <p>Some Staff Specialists have Special Employment Arrangements specifically for their work at Calvary Hospital and signed off by the CEO of Calvary Hospital.</p> <p>Career Medical Officers and a number of Junior Medical Officers have contracts with Calvary to work in the public hospital. This is entirely independent to ACT Health with regard to HR issues, cover for sick leave, conference leave etc.</p> <p>Calvary has its own By Laws which require a specific level of approvals by LCMHC for accreditation of medical staff based in compliance with these By Laws.</p> <p>The Medical Staff Council of Calvary is appointed in accordance with these By laws.</p>
E 4.	Approve redundancies	Calvary [within PSMA legislative framework – not policy framework ]		

Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
E 5.	Undertake disciplinary action	Calvary [within PSMA legislative framework – not policy framework ]		
E 6.	Set and amend remuneration policy	Calvary [within PSMA legislative framework – not policy framework ]		
E 7.	Arrange employment enterprise agreements	Calvary [subject to Territory rights in Fair Work Australia]		<p>Currently Chief Minister's Department obliges Calvary to apply "ACT Public Service Core Provisions" on the basis that Calvary is an Agency. However, Calvary is not an agency, PSMA provides that the CEO of Calvary has power over employment (C 26 of PSMA).</p> <p>Within the Collective Agreements that are 'common' to ACT Health and Calvary there are differences of interpretation. Some of which are challenged from time to time by unions or the Territory. Eg. Payment of post-graduate qualifications, Annual Leave &amp; Personal Leave.</p> <p>There are 'Special Employment Arrangements' that differ between ACT Health &amp; Calvary. ACT Health's SEAs apply only by Calvary consent. Calvary Special Employee Arrangement do not apply to ACT Health.</p>
E 8.	Deal with industrial relations matters	Calvary [within PSMA legislative framework – not policy framework ]		<p>There are currently provisions which require Calvary participation in an "Agency Consultative Committee" which obliges that matters not resolved within Calvary to be escalated to this Committee (ie. escalated to CE of ACT Health).</p> <p>Currently Chief Minister's Department obliges Calvary to apply "ACT Public Service Core Provisions" on the basis that Calvary is an Agency. However, Calvary is not an Agency, PSMA provides that CEO of Calvary has power over employment (CI 26 of PSMA).</p>
E 9.	Approve position titles	Calvary	Calvary has full control	
E 10.	Education and Training	Calvary	For reasons of efficiency ACT Health manages the program, but LCMHC manage the students in terms of timing and placement.	<p>Currently all Deeds of Agreement ( DoA) with Universities for student placements are with ACT Health, and students are received at Calvary via ACT Health .</p> <p>There is nothing precluding Calvary from having its own DoAs.</p>



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
E 11.	Workers' compensation insurance	Calvary		Currently use "Territory" insurer (ie. COMCARE) Calvary can choose its own workers compensation insurer if it chooses.
<b>F. Clinical Governance</b>				
F 1	Clinical Governance	Calvary	ACT Health and Calvary work cooperatively in case of joint appointees. Calvary controls governance for issues relating to Calvary staff or VMOs	<p>Medical and nursing governance under control and management of DMS and DCS at Calvary respectively. Calvary has its own Medical Staff Council, own privileging and admitting rights process through LCM HC Board. Performance review and performance management is run through the Calvary DMS. For medical staff and DCS for nursing staff</p> <p>Significant complaints (significant incidents briefs (SIB) or sentinel events) are required to be passed on to a Territory Committee but lesser Safety issues are resolved exclusively by Calvary's Quality Safety and Risk and Clinical Review Committee, reporting to Calvary's Patient Safety Committee.</p>
F 2	Ethics	Calvary	Calvary has its own Clinical Governance and complies with all legislative and regulatory requirements.	<p>Calvary operates its own independent Ethics Committee. All researchers must apply to Calvary via a full NHMRC National Ethical Application Form to access our records and/or undertake research in our facility. ACT Health approval does not indicate acceptance.</p> <p>The Catholic ethical tradition is founded on a particular view of what it is to be human and how that understanding affects how we care for ourselves, how we treat others, how we participate in society and our care of the environment. It is a centuries old tradition that has continued to evolve as a body of ethical wisdom. Rather than enumerating things that cannot be done, it is a framework that affirms respect, care, concern, cooperation and collaboration as integral to every aspect of the health care service. It recognises that health care treats the whole person – mind, body and spirit.</p> <p>In Australia, the Code of Ethical Standards for Catholic Health and Aged Care Services documents the approach to both management and service delivery within Catholic health care services. In that it endorses the delivery of care in keeping with Australian Council on Health Care Standards (ACHS) accreditation, is the foundation for transparent and effective risk management; and requires service delivery of a high standard of quality to meet the needs of the</p>



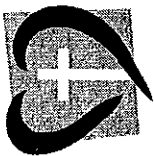
Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
F 3	External review of clinician	Calvary	Calvary has its own Clinical Governance approach whilst being compliant with all legislative and regulatory requirements.	<p>community served. Occasionally, it is the impetus for the Catholic service to require an exemption from the provision of some services from funding bodies, such as a Health department, whose job is to ensure what they, but not we, judge to be the correct practice of medicine.</p> <p>Calvary has undertaken an external review of a VMO clinician's practice, despite ACT Health having a process in place.</p>
F 4	Incident (RiskMan) notifications	Calvary		<p>All public RiskMan incident notifications go into the public RiskMan. When RiskMan first commenced we had no control over any back end functions. This has increased mainly due to our insistence of being able to control our own incidents.</p> <p>All complaints for public are placed into the private LCMHC RiskMan</p> <p>All public risk registers are placed into the private LCMHC RiskMan</p>
F5	The manner and scope of clinical services provided	Calvary by reference to The Code of Ethical Standards for Catholic Health and Aged Care Services		<p>Clinical services that are most often regulated by review of the Code pertain to:</p> <ul style="list-style-type: none"> <li>• Issues of human sexuality and beginning of life               <ul style="list-style-type: none"> <li>○ Contraception, termination, management of at risk pregnancy</li> </ul> </li> <li>• End of life care               <ul style="list-style-type: none"> <li>○ Quality of care</li> <li>○ Effective management of pain</li> <li>○ Right of the competent patient to refuse treatment</li> <li>○ Right of involvement in decision-making of the patient, or legal guardian</li> </ul> </li> <li>• The consideration of cessation of treatment and the patients right to refuse treatment in intensive care situations</li> <li>• Resource allocation               <ul style="list-style-type: none"> <li>○ The provision of services matched to the needs of the</li> </ul> </li> </ul>



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
				<p>community but with the recognition of the needs of the human person</p> <ul style="list-style-type: none"> <li>○ Use of expensive therapies or provision of intensive care</li> <li>• Research design and methodology</li> <li>○ Research involving human beings must serve and protect the personal dignity of the research participant, should meet all professional, scientific and legal requirements and be conducted with a clear defined intent of benefit to the human person.</li> <li>○ Research</li> <li>• How the service works within the ethical framework and cooperates with other health care providers and funders.</li> <li>○ Partnerships with others, funding agreements and joint ventures can only occur where the Catholic ethical tradition is adhered to and defined as an integral aspect of the agreement</li> <li>○ No partnership or joint activity can act to compromise the witness of the service to Catholic tradition.</li> </ul>
	<b>G. Corporate Governance</b>			
G 1	Corporate Governance	Calvary	Separate Board governs the legal entity, Calvary Health Care ACT Ltd	Board may choose to consult with Territory on decisions as part of its stakeholder management processes.
	<b>H. Other Issues</b>			
H 1	Identity	Calvary	Calvary has total control over reputational risk	Calvary has own distinct website.
	Patient, Doctor, Staff satisfaction surveys	Calvary	Calvary doesn't participate in an ACT – wide surveys	Calvary retains its rights with respect to intellectual property.



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
H 2	Intellectual property	Calvary	Calvary doesn't participate in an ACT – wide surveys	Calvary retains its rights with respect to intellectual property
H 3	Service Performance Review	N/A	Calvary and Territory meet monthly to discuss activity and performance under Performance Plan	



# Calvary Decision Making Framework

4 <sup>TH</sup> FLOOR OR 4 EAST	Medical Floor Calvary Hospital	LSL PLANNING	Long Service Leave Planning
ACTIA	Australian Capital Territory Insurance Authority	MOINLYCKE	Medical Supply Company – Provided A Grant To Calvary – To Conduct A Clinical Trial (Pressure Ulcers).
CADP	CADP Capital Asset Development Plan		
Calvary	Calvary Health Care ACT Limited	NEAF	National Ethics Application Form
CAREER MEDICAL OFFICERS	Senior Salaried Medical Officers	NHMRC	National Health Medical Research Council
CFO	Chief Finance Officer Calvary ACT	ORACLE FINANCIALS	Finance Information System
CLARE HOLLAND HOUSE	ACT Health Hospice - managed by Calvary	PAS	Patient Administration System
COMCARE	Workers Compensation Insurance	PDP	Project Definition Plan
DCS	Director of Clinical Services	PSMA	Public Service Management Act
DMS	Director of Medical Services	QSR	Calvary Hospital's Quality, Safety and Risk Department
DOAs	Deeds of Agreement		
ED NETWORK	Emergency Department Network	RISKMAN	Web based Incident Reporting System
EDIS	Emergency Department Information System	SEAS	Special Employment Arrangements
GSO	Government Solicitors Office	SIB	Significant Incident Brief
HR / IR	Human Resources / Industrial Relations	SOPS	Standard Operating Procedure
ICT DEPARTMENT	Information and Communication Department	STAFF SPECIALISTS	Senior Specialists Employed By Calvary
ICU	Intensive Care Unit	TERRITORY	Government of the Australian Capital Territory including its agencies such as ACT Health
JUNIOR MEDICAL OFFICERS	Salaried Registrars and Interns (medical officers)	VETERAN AFFAIRS	Department Of Veteran Affairs
LCM HCs NETWORK network	Little Company of Mary Health Care – computer	VMOS	Visiting Medical Officers (Contracted Service to Calvary Hospital ACT)
LCMHC	Little Company of Mary Health Care Limited		