ACT Health

ACT Government Submission

Standing Committee Inquiry in to the ownership and management of

Calvary Public Hospital

November 2010

Background

The negotiations surrounding the management and ownership of Calvary Public Hospital have been extremely complex and sensitive. The process throughout negotiations has been conducted with the aim to ensure that the ACT's public health system is equipped to provide the best possible services to the community.

Projected activity demand is continuing to grow and the Territory is reaching the physical capacity limits of its public hospitals and therefore there is a need to heavily invest in additional bed capacity over the next decade to meet this demand.

Investing hundreds of millions of dollars into building new facilities on the Calvary Hospital site would have resulted in the Government gifting the facilities to the Little Company of Mary Health Care (LCMHC) and not being able to capitalise on the investments made. The process with the Little Company of Mary Health Care was about protecting the Territory's investment by obtaining ownership of the Calvary Public Hospital which would have enabled the Territory to capitalise on investments made on this site.

The Government entered into negotiations about the transfer of Calvary Public Hospital with LCMHC based on the accounting advice at that time about the ownership of the Hospital. However, the accounting on which the negotiations were based changed dramatically in April 2010. As such, it would have been negligent to try and rush a solution without being fully aware of all the implications of the proposed new accounting standard. The Government is now carefully analysing and seeking advice on the best way forward for the Territory's future provision of public hospital services.

Through this whole period, the Government has been committed to ensuring that the ACT public health system is equipped to provide the best possible services to the community and a fully integrated hospital system is a critical element to this. It has been the Government's intention to have services working together across Canberra under one single governance structure, enabling ACT Health to better provide services to meet current and projected needs.

The Territory entered into negotiations with LCMHC in an attempt to bring the public hospital, operated by Calvary Health Care ACT, within ACT Health's direct management. In October 2009, the Government and LCMHC announced in-principle agreement to a proposal for the ACT Government to purchase Calvary Public Hospital from LCMHC and for the ACT Government to operate the hospital. This agreement included proposals to enable LCMHC to retain land on the Calvary Hospital campus at Bruce for a private hospital to be built and operated by LCMHC.

The agreement also included a proposal for LCMHC to purchase Clare Holland House from the ACT Government on the strict condition that the Clare Holland House site continue to be used solely for the purpose of providing a public palliative care service.

This proposal was subject to extensive public consultation and the Territory received opposition from stakeholders within the Catholic Church surrounding this proposal.

Following the public consultation, the LCMHC announced in February 2010 that it would not be able to proceed within the original proposal. Following this announcement the Government held extensive discussions with LCMHC to explore alternative options. The Government representatives met with LCMHC on a number of occasions to discuss possible options to enable a proposal to be developed and carried out.

It was outlined to LCMHC that the ACT Government's preferred way forward, under the circumstances would be for the Territory to purchase Calvary Public Hospital and for Calvary Health Care ACT to continue to operate the hospital under a re-negotiated Operating Agreement. The Government agreed, as part of this way forward, that new legislation would be introduced to the Assembly which would entrench the role of Calvary Health Care ACT under the operating agreement with annual funding performance agreements. Extensive negations on this proposal occurred and the Chief Minister and Minister for Health met with the Archbishop and other representatives from the Catholic Church and LCMHC to further discuss an appropriate way forward, suitable for all parties.

Before proceeding to the formal signature stage with this proposal, the Territory sought advice, through Treasury, from PriceWaterhouseCoopers on the accounting treatment of the draft Operating Agreement (called the "Network Agreement") that had been developed through negotiations.

In April 2010 the Australian Accounting Standards Board released an exposure draft (ED 194) of a proposed international public sector standard which proposed that that the Government apply the same principles as private operators when accounting for service concession arrangements.

In May 2010 PriceWaterhouseCoopers provided accounting advice to the Territory on the proposed arrangement. In this advice, the Territory was informed that the proposed Calvary Network Agreement if signed, would result in a service concession arrangement which would mean that the Territory would have been able to register the Calvary Hospital on ACT Government accounting books as an asset and would not need to buy the asset in order to achieve this. This advice was obviously significant and changed the course of negotiations for both the Government and LCMHC.

Given the changes that this advice posed, Treasury then engaged PriceWaterhouseCoopers to provide accounting advice on the existing Calvary Public Hospital arrangements. PriceWaterhouseCoopers advised that within the existing arrangements there is currently a service concession arrangement and the Territory could recognise the Calvary Public Hospital as a Territory asset.

Given this information and the changes it posed the office of the Auditor General was contacted to provide a view on the current arrangements. The Audit Office engaged a major accounting firm, which was not PriceWaterhouseCoopers, to provide them with the advice on these issues and also to review the advice provided by PriceWaterhouseCoopers.

ACT Health and Treasury met with the Audit Office and reviewed the accounting firm's draft report, which confirmed PriceWaterhouseCoopers' advice that the Territory can recognise a service concession asset. A final report was provided in early July 2010, which gave final confirmation that the Territory could choose to recognise a service concession asset.

A meeting was held with LCMHC to discuss this matter in detail with them. This meeting was arranged to ensure that the LCMHC Board was aware of the advice available to the ACT Government and the implications of this advice. LCMHC have advised that they do not support or agree with the Government's interpretation that the current Agreements constitute a service concession arrangement and as expected, LCMHC sought their own legal and accounting advice and remain unsupportive with the Government's interpretation.

There was no way of knowing that the course of the negotiations with LCMHC would change this dramatically and the Government's intention continued throughout the entire process to be about protecting the investments made by the Territory.

Based on the circumstances, the Government felt that there were four options available and presented these options to the Assembly in August 2010. These included:

Option 1

The first option available to the Government was to proceed with the Service Agreement in its current form. This option was considered by the Government, in the event that the other options were not viable.

Option 2

LCMHC advised that their preferred option was to maintain Crown Lease for the land, with a lease purpose clause that the land was to be used for hospital and ancillary purposes. The wording of this proposal outlined that the Crown Lease would not be linked to any requirement for Calvary Health Care to provide public hospital services under an agreement.

As part of this option, a new Activity Funding Agreement (AFA) for the funding of public hospital services between Calvary Health Care and the Territory would be agreed or developed. On commencement of the AFA, all existing Agreements would be terminated. The specific details for the funding agreement were proposed as follows:

- The AFA would be for a fifteen year term. Finalisation of any negotiation for a renewal of the AFA must occur no later than two years before it expires.
- The AFA would contain an Annual Service Annexure which would provide for agreed service level targets and caps and the resultant total funding.
- Calvary Health Care would be responsible for the maintenance, repair or development of the Public Hospital assets (both external and new), and the Territory will provide Calvary Health Care funding for this purpose.
- The Agreement would contain an independent dispute resolution clause.

In relation to new buildings required while an AFA was in place, Calvary Health Care would sub-lease to the Territory the portion of the Crown Lease upon which the buildings will be constructed. The sub-lease would be for 30 years, with the land reverting back to Calvary Health Care after that time. The Territory would not pay to receive the sub-lease. The Territory would

lease the newly constructed buildings to Calvary Health Care under a building lease of 30 years and at the end of the 30 years the building belongs to Calvary Health Care for a "peppercorn" amount. Calvary Health Care would not pay for the lease so long as the building was used for public hospital purposes.

This was not considered a viable option for the Territory as the short term of the AFA, at fifteen years, provided uncertainty regarding assets created by public investment and would require the Territory to transfer the assets to LCMHC before the end of their useful life without adequate compensation. Further, the option of gaining access on a sub-lease and then sub sub-leasing it back to LCMHC appeared to be developed to only serve the purpose of avoiding a service concession arrangement and there was no benefit for the Territory in supporting this complex arrangement. The proposal also lacked specific details to establish the accounting treatment with a reasonable degree of certainty.

Option 3

LCMHC expressed a view that it did not believe that Calvary Private Hospital was viable in its current form whereby it is imbedded within the public hospital. This arrangement, according to LCMHC, has created a number of inefficiencies which will ultimately render the private hospital unviable.

The Territory therefore could consider assisting LCMHC in developing a stand alone private hospital as a public good investment. This would have resulted in a private hospital being available on the north side of Canberra that did not have the same operating issues as the existing Calvary Private Hospital and free up all existing beds at Calvary (Private) Hospital for public hospital use.

If the Territory did consider this option, it would need to consider that the cessation of the Calvary Private Hospital has an open timeframe and it is likely that in the interim the Territory would still need to purchase the additional beds required to service the public health needs of the community.

The issue of the jeopardy around the operation of the public hospital and the recognition of the asset was not resolved in this option. It was possible to conclude that there may be a public benefit over a 10 year period to the ACT Government having a private hospital operating on a different site.

Option 4

The fourth option was for the Government and LCMHC to continue operating under the Service Agreement in its current form and for the Government to explore the option of meeting the additional demand by developing a new hospital on the north side of Canberra.

Under option 4, the Territory could maximise the opportunities for rational role delineation between facilities and create networked, cross territory services. It is possible that a network of three clearly delineated public hospitals could exist including:

- Canberra Hospital – this could remain as the central tertiary referral facility for the ACT and region with a capacity of around 860 beds;
- A third hospital situated on the north side of Canberra;
- Operation of sub/non acute beds for public patients from Calvary Hospital.

Current Status

The Government acknowledges the time and effort that has been put into the negotiations over the future governance and ownership arrangements at Calvary Public Hospital by LCMHC. The Government's preferred option remains to own and operate the hospital as this is considered the best way to allow for an integrated and more efficient and effective health system across the ACT. However, the Government accepts that various factors have meant that this proposal will not proceed.

Following careful consideration of the issues raised by LCMHC, the Government decided the best way forward at this stage was to continue to operate Calvary Public Hospital in accordance with current agreements.

A stakeholder briefing meeting was held in early September 2010 to discuss the four options available to the ACT Government as well as the necessity for the Territory to carefully review the requirements for north side public hospital services and the need for the Territory to continue to negotiate with LCMHC on the most financially appropriate way forward to deliver the best health system for the people of the ACT and surrounding region.

Conclusion

In summary the Government has, throughout this entire process aimed to develop a sustainable strategy to meet the pressures of increasing demand for services and an increasing and ageing population. The Government recognises that the physical capacity of the current buildings and infrastructure is close to full utilisation, and as such ACT Health will shortly exhaust the possibilities of increasing supply through small additions to current buildings.

The negotiations with LCMHC have been extremely complex and whilst the negotiations have taken time, the ACT Government did not rush decisions which have in turn resulted in protection of Government funds whilst the accounting unexpectedly changed. There was no way of anticipating such significant changes in accounting on which negotiations were commenced.

The Government is committed to identifying the most financially responsible way forward and believes strongly that the negotiations with LCMHC were conducted in good faith, with unavoidable and unexpected factors being the cause of the cessation of the negotiations.

The Government remains committed to discussing the future health service delivery arrangements with all interested parties.