

**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.¹ 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.²
- 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.³ This is not to suggest that the courts will treat the views of accountants or auditors as

¹ Section 297 of the Act.

² Section 295(4) of the Act.

³ 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,⁴ 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”.⁵ 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.⁶ 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.⁷
- 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*

⁴ 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.

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

⁶ See clause 1 of AASB 1048.

⁷ 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*".⁸ 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

⁸ See paragraphs AG3 and AG10 of ED194.

accordance with the contractual terms.⁹ 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 12.¹⁰
- 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.¹¹ 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.

⁹ See clause 11 of Interpretation 12.

¹⁰ 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.

¹¹ 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 22nd 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 28th 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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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

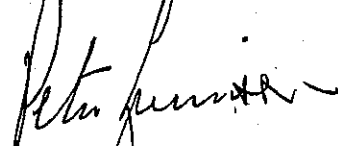
1. To regain possession and control of the Calvary land, buildings and improvements, the Territory would have to terminate the Crown lease. The Territory, however, has no contractual ability to terminate the Public Hospital Agreements or the Crown lease, in the absence of a breach by Calvary of the Agreements 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
	A. Strategic Delegations			
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"> Calvary Code of Conduct (however, consistent with Public Service Management Act), and 'Standards of Behaviour' Job descriptions / selection criteria – specifically relating to Mission & Values and Ethical Conduct <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 4th 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 & LSL Planning & Approval"; "Accommodation"; "Privacy & Confidentiality"; "Essential & Mandatory Training"; "Redeployment, Permanent & Temporary Transfers, & Temporary Secondment"; "Dress Code & Presentation"</p> <p>Adapted ACT Health / Public Service policy – "Use of screen-based equipment"</p> <p>Incorporated ACT Health / Public Service policy – "Elimination Bullying & Harassment"; "Medical Education Expenses"</p> <p>Rejected / ignored ACT Health / Public Service policy – 'Whistleblower' protocol; "Equity & 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"> - 2 are direct ACT Health policies with no change, - 7 have the ACT document behind with a Calvary template front sheet, - 1 is SOPs that have been developed by the Emergency Department network. - Mental Health has 25 out of 84 documents that are Calvary
	B. Operational Delegations			

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"> • Medical malpractice • other 	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"> • LCMHC is the defendant in the claim; and 	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"> the proposed settlement is not setting an undesirable precedent or creating a reputational risk for LCMHC. 			of our LCMHC delegation. GSO provides advice on clinical matters only. All commercial advice is obtained from independent legal advisors.
	C. Financial and Contractual Delegations			
	Property related transactions			
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.
	Budgets & Accounts			
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>
Income items				
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"> • Waiting list reduction activities • Veteran Affairs activity • Clare Holland House Palliative Care Education Project • Calvary receives grants from NGOs – not through ACT



Reference	FUNCTION	AUTHORITY	CUSTOM & PRACTICE	EXAMPLES
				Health
C 7.	Specific purpose fund raising projects	Calvary	Calvary has the ability to lend/borrow/access trust money as it sees fit.	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.
	Expenditure items			
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
			<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 13.	Engage consultants, Legal advice and outsourced services	Calvary, with the requirement to provide information to the Territory about legal expenditure	ACT Health approval not required – totally at Calvary discretion	Calvary engages its own legal firms to obtain advice.
C 14.	Pay taxation and duty	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 15.	Approve work-related overseas travel expenditure	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 16.	Write-off bad debt (single debtor)	Calvary	ACT Health approval not required – totally at Calvary discretion	
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.
D. Financing and Investment Delegations				
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
	E. Human Resources Delegations			
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 & Personal Leave.</p> <p>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.</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.
F. Clinical Governance				
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"> • Issues of human sexuality and beginning of life <ul style="list-style-type: none"> ○ Contraception, termination, management of at risk pregnancy • End of life care <ul style="list-style-type: none"> ○ Quality of care ○ Effective management of pain ○ Right of the competent patient to refuse treatment ○ Right of involvement in decision-making of the patient, or legal guardian • The consideration of cessation of treatment and the patients right to refuse treatment in intensive care situations • Resource allocation <ul style="list-style-type: none"> ○ The provision of services matched to the needs of the



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"> ○ Use of expensive therapies or provision of intensive care • Research design and methodology ○ 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. ○ Research • How the service works within the ethical framework and cooperates with other health care providers and funders. ○ 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 ○ No partnership or joint activity can act to compromise the witness of the service to Catholic tradition.
	G. Corporate Governance			
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.
	H. Other Issues			
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 TH 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		