MEDIA MONITORS

Canberra Times
Tuesday 13/10/2009
Page: 9
Section: General News
Region: Canberra Circulation: 34,354
Type: Capital City Daily
Size: 329.61 sq.cms.
Published: MTWTFS-

Brief: CALVARY

Need for total public transparency on Calvary sale

The ACT Government should explain why the taxpayer should pay, **PETER O'KEEFFE** writes

The ACT Government has agreed in principle with the board of the Little Company of Mary board to "buy" Calvary Hospital for $77 million. Because the lease was gifted by, and Calvary built almost entirely with, Commonwealth funds, many in Canberra question LCM's moral entitlement to sell and be compensated. But does it have a legal right to "sell" Calvary, and does the taxpayer have any legal obligation to pay for it? Based on documents posted on the Calvary website, the short answer is no.

Under the original agreement between the LCM and the Commonwealth (dated October 22, 1971) the LCM order agreed to build, establish and maintain a hospital, conditional on the grant of a lease and on the Commonwealth paying virtually all construction and establishment costs.

Under the First Supplementary Agreement (dated April 9, 1979) some administrative arrangements were adjusted: the order as such withdrew and a Calvary incorporated body took over (and in due course fell under the control of the LCM board); an ACT Health Commission took over from the Commonwealth; arrangements were made for government-funded operating budgets and staffing; and the first lease was surrendered and a second one granted to the LCM board.

Importantly, clause 20 provided, in effect, that if at any time the LCM board "decides to discontinue the conduct of the hospital", after a period of notice the management of the affairs of the hospital would vest in the Health Commission and paragraphs (a), (b) and (c) of clause 19 would apply. Paragraphs (a) and (b) would allow the commission to assume control of the hospital and take over its contracts, and other rights and liabilities.

But under paragraph (c), the LCM board "shall not be entitled to compensation for the value of any building, improvements, fittings, furnishings or equipment which have been wholly paid for directly or indirectly by the Commonwealth or the Commission".

In respect of other buildings, improvements, etc, the LCM board may be paid such compensation as is determined by the ACT "having regard to the financial contribution in their construction or purchase, provided that the amount payable shall not exceed the value of such buildings, improvements [etc] at the time of the expiration, surrender or determination of the lease".

The lease itself also required that in the event of its expiration, surrender or determination the lessee (the LCM board) should not remove or be entitled to compensation for the value of any buildings or other improvements on the land which had been wholly paid for directly or indirectly by the Commonwealth, the commission or the territory.

For other buildings or improvements, the LCM board may be paid such compensation as determined by the territory on the same basis as mentioned above – "having regard to the financial contribution in their construction or purchase".

The Second Supplemental Agreement, dated May 9, 1991, (following the Private Hospital Agreement, dated April 26, 1988) dealt with staffing arrangements and consequential name and responsibility changes arising from ACT self-government. (Thus, for example, except for what occurred before this agreement, the commission would be read as the territory.)

There have been two subsequent Private Hospital Supplementary Agreements (December 21, 1994, and November 24, 1997), including for the development of the Hyson Green psychiatric unit.

The current lease (dated November 16, 1999), deals expressly with surrender of the lease in terms similar to those in the previous lease, and similar to those in the ongoing agreement with the LCM board.

Clause 5 provides that in the event of the expiration, surrender or termination of the lease, the LCM board shall not remove or be entitled to compensation for the value of any buildings or other improvements on the land which have been wholly paid for directly or indirectly by taxpayers.

There may be other relevant documents, agreements and leases, but on the basis of those that the LCM board has chosen to place on the Calvary website, the LCM board appears to have no legal right to any significant compensation for deciding to discontinue the conduct of Calvary hospital or for surrendering its lease over the parcel of land.

The ACT Government and the LCM board may perhaps claim that what's happening is that the LCM board is "selling" Calvary to the ACT Health Authority, and the authority is "buying" the hospital and the lease on that basis.

But LCM freely agreed that if it "decided to discontinue the conduct of the hospital" and surrendered the lease, it would receive no compensation for what taxpayers had paid for.

Faced with the clear terms of these agreements and leases, Government legal fictions, straw men and other manoeuvres involving the Health Authority will never do.

There must be public transparency to what began in secret and the details of which remain concealed.

Presumably, before embarking on negotiations for the "purchase" and "sale" of Calvary (more than 12 months ago) the Government and LCM sought legal advice on their respective positions and entitlements.

The ACT Government at least owes it to the ACT community to make all legal advice public, the more so now that the community consultation period has just begun.

■ **Peter O'Keeffe is a lawyer with a long-standing interest in the hospice.**

Copyright Agency Limited (CAL) licenced copy