



Judgment Summary

Full Court of the Supreme Court
Australian Capital Territory

Friday, 23 June 2023

Calvary Health Care ACT Ltd v Australian Capital Territory [2023] ACTSCFC 1

McCallum CJ, Mossop and Baker JJ

Today, the Full Court of the Supreme Court gave its reasons for the orders that it made on 9 June 2023 dismissing an application by Calvary Health Care challenging the validity of the *Health Infrastructure Enabling Act 2023* (ACT) (the Act), which would acquire the leased land upon which Calvary Hospital is run. The Act would acquire the land with a view to building a new public hospital and takes various steps including terminating the agreement for the provision of hospital services between Calvary and the Territory and allowing the Territory to enter the hospital land prior, during and after the acquisition to further the process.

Calvary's challenge was that the Act would acquire property of Calvary without providing for "just terms" (compensation). The legislative power of the Legislative Assembly is limited by s 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth), such that laws which acquire property otherwise than on just terms are beyond its power.

While Calvary challenged the validity of both the Act and the regulations made under it (the *Health Infrastructure Enabling Regulations 2023*) the orders made on 9 June 2023 and the reasons given today only relate to the validity of the Act. The challenge to the validity of the Regulations remains on foot and will be determined by the Court at a later date.

The reasons of the court focussed on s 10(1) of the Act, which states that the Territory "must provide just terms" for an acquisition made under the Act. Calvary alleged that this provision was merely "aspirational" and that it did not create a right for an affected person to sue for just terms. In determining the meaning and operation of this provision, the Court had regard to ordinary principles of statutory interpretation and the requirements of the *Legislation Act 2001* (ACT). The Court concluded that s 10(1) did create a right for an affected person to sue for just terms, which, if not otherwise enforceable would be enforceable in a court of general jurisdiction such as the ACT Supreme Court.

Following this conclusion, the Court turned to consider the various arguments made by Calvary to the effect that different provisions of the Act had the effect that Calvary's property would be acquired other than on just terms. Calvary's arguments related to the manner in which the Act permits the Territory to take and do various things, including requiring Calvary to divulge information, allowing the Territory to enter the land and to make offers to hospital

staff affected by the acquisition. In each case, the Court concluded that, even if the provisions involved “acquisitions of property” by the Territory, Calvary would be entitled to just terms pursuant to s 10(1) of the Act.

The Court also considered the argument that there was a failure to provide just terms because the Act deals with just terms in a manner different to the procedure for the provision of just terms as set out in the *Lands Acquisition Act 1994* (ACT). The Court found that the adoption of different procedures in the *Lands Acquisition Act* did not demonstrate that the procedures in the Act did not involve just terms.

Therefore, the challenge to the validity of the Act was dismissed.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court’s judgment.

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