

Organ Donors and Related Matters Bill

Government Bill

Explanatory note

General policy statement

The Bill is an omnibus Bill. The Bill will enable the implementation of a number of recommendations set out in *Increasing Deceased Organ Donation and Transplantation: A national strategy* (2017) (the **Strategy**) that are aimed at increasing New Zealand's deceased organ donation and transplantation rates.

The Strategy is aimed at encouraging and making it easier for New Zealanders to make their organ donation wishes known to family/whānau and to help those involved to make the most appropriate decisions with the best possible support and confidence.

A national organ donation agency is needed to oversee and lead implementation of the Strategy. The national agency will have a role in—

- raising the profile of organ donation:
- supporting effective clinical governance:
- working with the health sector to co-ordinate donation and transplantation processes:
- providing expert advice and information to the sector, Government, media, and public.

The national agency will be established within an existing Crown entity. The most suitable entity is the New Zealand Blood Service. To enable this, the Bill broadens the functions of the New Zealand Blood Service that are provided for under the New Zealand Public Health and Disability Act 2000.

The Bill also amends the Compensation for Live Organ Donors Act 2016 in relation to compensation to be paid to live organ donors while they recuperate from donor surgery. The Bill provides for those who are not currently eligible for compensation under the Act but who clearly fall within its purposes.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=117>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill, once enacted, comes into force 2 years after it receives the Royal assent, unless an earlier date is fixed by Order in Council. Commencement is delayed to allow the New Zealand Blood Service sufficient time to prepare for their new functions conferred by this Bill.

Part 1

Amendments to Compensation for Live Donors Act 2016

Clause 3 provides that *Part 1* amends the Compensation for Live Organ Donors Act 2016.

Clause 4 amends section 4, which relates to the interpretation of terms, by inserting definitions of reduced hours and usual hours.

Clause 5 amends section 9, which sets out criteria for qualifying donors. Section 9(1)(b) requires the donor surgery and organ implantation surgery to be carried out in New Zealand and section 9(1)(c) requires the organ recipient to be eligible to receive services funded under New Zealand Public Health and Disability Act 2000. Section 9 is amended to provide that section 9(1)(b) and (c) does not apply if the donor surgery is undertaken as part of an approved overseas organ exchange programme.

Clause 6 amends section 10, which entitles a qualifying donor who undergoes donor surgery to earnings compensation for 12 weeks immediately after surgery. The entitlement ceases if the donor returns to work during the 12-week period. Section 10 is amended to enable a donor to receive earnings compensation if, within the 12-week period,—

- the donor returns to work on reduced hours; or
- the donor returns to work on usual hours, but then works reduced hours because of the effects of the surgery.

Clause 7 amends section 29 to enable regulations to be made approving an overseas organ exchange programme on the Minister of Health's recommendation. Before making a recommendation, the Minister must be satisfied, for each overseas country participating in the programme, that—

- the programme has been agreed between 2 or more central government agencies of that country; and
- the country has ratified—
 - the United Nations Convention against Transnational Organized Crime; and
 - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Clause 8 relates to transitional matters in Schedule 1. *Clause 8* enables previous donors to apply for compensation in certain circumstances under section 10 as amended by this Bill.

Clause 9 inserts *new clause 3A* into Schedule 2. *New clause 3A* gives the Director-General of Health a discretion to decrease the rate of earnings compensation for a qualifying donor if, during the payment period, the donor returns to employment on reduced hours. The Director-General must exercise that discretion in accordance with *new clause 3A(2)*.

Part 2

Amendment to New Zealand Public Health and Disability Act 2000

Clause 10 states that *Part 2* amends the New Zealand Public Health and Disability Act 2000.

Clause 11 amends section 55, which provides for the functions of the New Zealand Blood Service. Those functions are expanded to include oversight and clinical governance of the organ donation and transplantation system and related matters.

Hon David Clark

Organ Donors and Related Matters Bill

Government Bill

Contents

	Page
1 Title	1
2 Commencement	2
Part 1	
Amendments to Compensation for Live Organ Donors Act 2016	
3 Amendments to Compensation for Live Organ Donors Act 2016	2
4 Section 4 amended (Interpretation)	2
5 Section 9 amended (Who are qualifying donors)	2
6 Section 10 amended (Qualifying donors entitled to earnings compensation for up to 12 weeks while recuperating)	2
7 Section 29 amended (Regulations)	3
8 Schedule 1 amended	3
9 Schedule 2 amended	4
Part 2	
Amendment to New Zealand Public Health and Disability Act 2000	
10 Amendment to New Zealand Public Health and Disability Act 2000	4
11 Section 55 amended (Functions of NZBS)	4

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Organ Donors and Related Matters Act **2019**.

2 Commencement

This Act comes into force on the earlier of—

- (a) a date appointed by the Governor-General by Order in Council; and
- (b) the date that is 2 years after the day on which it receives the Royal assent.

5

Part 1

Amendments to Compensation for Live Organ Donors Act 2016

3 Amendments to Compensation for Live Organ Donors Act 2016

This Part amends the Compensation for Live Organ Donors Act 2016.

4 Section 4 amended (Interpretation)

10

In section 4, insert in their appropriate alphabetical order:

reduced hours, in relation to a qualifying donor, means the total hours of employment that the donor works over a week that are less than the donor's usual hours

usual hours means a qualifying donor's average weekly hours of employment as at the application date

15

5 Section 9 amended (Who are qualifying donors)

After section 9(2), insert:

- (3) Subsection (1)(b) and (c) does not apply if the donor surgery is undertaken as part of an overseas organ exchange programme approved by regulations.

20

6 Section 10 amended (Qualifying donors entitled to earnings compensation for up to 12 weeks while recuperating)

- (1) In section 10(1)(b), replace “his or her employment” with “employment, or, if the donor returns to employment on reduced hours, the date that the donor resumes employment on usual hours”.

25

- (2) After section 10(4), insert:

- (5) **Subsection (6)** applies if, within the 12 weeks after the date of the donor surgery, the donor—

- (a) returns to employment on usual hours; and
- (b) is subsequently unable to continue working those hours because of the effects of the surgery; and
- (c) continues to work, but on reduced hours.

30

- (6) If this subsection applies, the Director-General must pay a qualifying donor earnings compensation for the period that the donor worked reduced hours within the 12 weeks after the date of the donor surgery.

35

- 7 Section 29 amended (Regulations)**
- (1) In section 29(2), replace “the recommendation” with “a recommendation under subsection (1)”.
- (2) After section 29(2), insert:
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister of Health, make regulations approving an overseas organ exchange programme. 5
- (4) Before making a recommendation under **subsection (3)**, the Minister must be satisfied, for each overseas country participating in the programme, that— 10
- (a) the programme has been agreed between 2 or more central government agencies of the country; and
- (b) the country has ratified— 10
- (i) the United Nations Convention against Transnational Organized Crime; and
- (ii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. 15

8 Schedule 1 amended

In Schedule 1, after clause 5, insert:

- Part 2**
- Provisions relating to Act as amended by Organ Donors and Related Matters Act 2019** 20
- 6 Meaning of amendment Act in this Part**
- In this Part,—
- amendment Act** means the Organ Donors and Related Matters Act **2019**
- former section 10** means section 10 of this Act immediately before it was amended by the amendment Act 25
- new section 10** means section 10 of this Act as amended by the amendment Act.
- 7 Application of new section 10 to previous qualifying donors**
- (1) New section 10 applies to a person who,— 30
- (a) before the commencement of the amendment Act, had received compensation under former section 10 as a qualifying donor; and
- (b) during the payment period,—
- (i) returned to employment on reduced hours; or

- (ii) after returning to employment on usual hours, worked reduced hours because of the effects of the surgery.
- (2) The person may apply to the Director-General for additional compensation under new section 10 for the period during which the person worked those reduced hours. 5

9 Schedule 2 amended

- (1) In Schedule 2, clause 2(b), after “clause 3”, insert “or **3A**”.
- (2) In Schedule 2, after clause 3, insert:

3A Discretion to decrease amount calculated

- (1) The Director-General may decrease the rate of earnings compensation for a qualifying donor if, during the payment period, the qualifying donor returns to employment on reduced hours. 10
- (2) In setting a rate under **subclause (1)**, the Director-General must—
- (a) take into account the additional income received by the qualifying donor as a result of the donor returning to employment on reduced hours; and 15
- (b) be satisfied that the qualifying donor’s financial position is the same—
- (i) immediately before the start of the payment period; and
- (ii) during the payment period; and
- (c) have regard to the evidence available of the donor’s earnings.

Part 2 20

Amendment to New Zealand Public Health and Disability Act 2000

10 Amendment to New Zealand Public Health and Disability Act 2000

This Part amends the New Zealand Public Health and Disability Act 2000.

11 Section 55 amended (Functions of NZBS)

After section 55(1)(b), insert: 25

- (ba) to provide oversight and clinical governance of the organ donation and transplantation system and to manage any related or incidental matters, in accordance with its statement of intent (including the statement of forecast service performance) and (subject to section 65) any directions given under the Crown Entities Act 2004; and 30