



Compensation for Live Organ Donors Act 2016

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Compensation for Live Organ Donors Act 2016.

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 first anniversary of the date on which this Act receives the Royal assent.

Part 1**Preliminary provisions****3 Purpose**

The purpose of this Act is to remove a financial deterrent to the donation of organs by live donors.

4 Interpretation

In this Act, unless the context otherwise requires,—

application date—

- (a) means the date on which an application under Part 3 is made; and
- (b) for the purposes of Schedule 2, includes a more recent date determined by the Director-General under section 18(2)

collect, in relation to a qualifying organ, means to remove or take that organ from a person

Director-General means the Director-General of Health

donor surgery means surgery to collect a qualifying organ for the purpose of donating it to another person

earnings has the meaning given by section 5

employment—

- (a) means work engaged in or carried out for the purposes of pecuniary gain or profit; and
- (b) in relation to an employee, includes a period of paid leave, other than paid leave on the termination of employment

foreign-sourced amount has the meaning given by section YA 1 of the Income Tax Act 2007

health practitioner has the meaning given by section 5(1) of the Health Practitioners Competence Assurance Act 2003

medical practitioner means a health practitioner who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand as a practitioner of the profession of medicine; and
- (b) holds a practising certificate

number of weeks means—

- (a) the number of full weeks plus any part week (expressed as a portion of a week), if the period is 1 week or more; and
- (b) a part week (expressed as a portion of a week), if the period is less than 1 week

payment period means the number of weeks for which earnings compensation is payable under section 10 or 12

practising certificate has the meaning given by section 5(1) of the Health Practitioners Competence Assurance Act 2003

qualifying donor means a person who is a qualifying donor under section 9

qualifying organ means the whole or a part of any of the following types of human organ:

- (a) kidney;
- (b) liver;
- (c) any other type of human organ declared by regulations to be a qualifying organ.

5 **Meaning of earnings**

In this Act, **earnings** has the meaning given by section 6(1) of the Accident Compensation Act 2001, except that,—

- (a) for the purpose of defining the term, sections 9 to 15 of that Act must be read with the necessary modifications, including that references to the Corporation must be read as references to the Director-General; and
- (b) the term includes a foreign-sourced amount that the Director-General is satisfied would be earnings if it were treated as having a source in New Zealand under section YD 4 of the Income Tax Act 2007.

6 **Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

7 **Act binds the Crown**

This Act binds the Crown.

Part 2

Earnings compensation and protection of benefits during recuperation

8 Outline of Part

- (1) This Part is divided into 2 subparts.
- (2) Subpart 1—
 - (a) sets out the criteria that the prospective donor of a qualifying organ must meet in order to be a qualifying donor; and
 - (b) gives qualifying donors an entitlement to compensation for earnings forgone while they recuperate from their donor surgery; and
 - (c) gives the Director-General a discretion, in limited circumstances, to compensate qualifying donors for earnings forgone in the lead-up to their donor surgery.
- (3) Subpart 2 provides for donors of qualifying organs who are beneficiaries to be exempted from certain obligations under the Social Security Act 1964 while they recuperate from their donor surgery.
- (4) This section is intended only as a guide to the general scheme and effect of this Part.

Subpart 1—Earnings compensation for qualifying donors: entitlement and discretionary earnings compensation

9 Who are qualifying donors

- (1) A person is a qualifying donor in relation to a donor surgery if, on application under Part 3, the Director-General is satisfied that—
 - (a) the person will forgo earnings as a result of taking unpaid leave or otherwise ceasing employment to allow for his or her recuperation from the surgery; and
 - (b) both the donor surgery and the surgery to implant the organ will be carried out in New Zealand; and
 - (c) the recipient of the organ is eligible to receive services funded under the New Zealand Public Health and Disability Act 2000; and
 - (d) the organ will be collected, implanted, and dealt with lawfully.
- (2) For the purposes of subsection (1)(d), the Director-General may assume the organ will be collected, implanted, and dealt with lawfully in the absence of information to the contrary.

Entitlement to earnings compensation while recuperating

10 Qualifying donors entitled to earnings compensation for up to 12 weeks while recuperating

- (1) The Director-General must pay a qualifying donor earnings compensation for a period that starts on the date of the donor surgery and ends immediately before the earlier of—
 - (a) the end date set by the Director-General; and
 - (b) the date that the donor returns to his or her employment.
- (2) The Director-General—
 - (a) must set as the end date the date on which the Director-General considers the donor will have recuperated sufficiently to safely return to his or her employment; and
 - (b) may, on request or on his or her own initiative, extend the end date if the Director-General considers the donor needs more time to recuperate.
- (3) However, an end date set or extended under subsection (2) must be no later than 12 weeks after the date of the donor surgery.
- (4) The Director-General may—
 - (a) set or extend an end date at any time before the end of 12 weeks after the date of the donor surgery (but *see* section 20(2)(b)(i)); and
 - (b) rely on the certificate of a medical practitioner when setting or extending an end date.

11 Rate and payment of entitlement

For earnings compensation payable under section 10, the Director-General must—

- (a) set the rate of compensation in accordance with Schedule 2; and
- (b) make the payments in arrears on a weekly, fortnightly, monthly, or other regular basis determined by the Director-General.

Discretionary earnings compensation for periods before donation

12 Qualifying donors may receive discretionary earnings compensation in limited circumstances

- (1) The Director-General may, on application under Part 3, pay a qualifying donor earnings compensation for a period (determined by the Director-General) that is before the date of the donor surgery if the Director-General is satisfied that—
 - (a) the donor will forgo earnings during that period in order to undertake 1 or more activities in preparation for the surgery; and
 - (b) the donor would not reasonably be able to undertake the activities without taking leave from employment for that period; and

- (c) the donor would not undertake the activities unless earnings compensation were paid; and
 - (d) the activities are medically necessary if the surgery is to be carried out.
- (2) The Director-General may rely on the certificate of a medical practitioner when deciding whether an activity is medically necessary for the purposes of subsection (1)(d).

13 Rate and payment of discretionary earnings compensation

For earnings compensation payable under section 12, the Director-General must—

- (a) set the rate of compensation in accordance with Schedule 2; and
- (b) make the payment no later than 30 days after the end of the payment period.

Subpart 2—Exemptions under Social Security Act 1964 for donors who are beneficiaries

14 Donors of qualifying organs exempt from certain obligations under Social Security Act 1964 while recuperating

- (1) This section applies to a person (whether or not a qualifying donor) who—
- (a) has donor surgery; and
 - (b) is a beneficiary who is subject to work test obligations or obligations under section 60Q, 170, or 171 of the Social Security Act 1964.
- (2) The person must be treated as having an exemption from the obligations under section 105(2) of that Act for a period that starts on the date of the donor surgery and ends immediately before the end date set by the chief executive.
- (3) The chief executive must set as the end date the date on which the chief executive considers the donor will have recuperated sufficiently to safely comply with the relevant obligations (but the date must be no later than 12 weeks after the date of the donor surgery).
- (4) Section 105(3) to (7) of the Social Security Act 1964 applies to the exemption with the necessary modifications.
- (5) In this section, **beneficiary**, **chief executive**, and **work test obligations** have the meanings given by section 3(1) of the Social Security Act 1964.

15 Appeal to medical board

A person to whom section 14 applies may appeal against a decision under that section as if it were a decision described in section 10B(1) of the Social Security Act 1964 (which relates to rights of appeal to the medical board appointed under that Act).

Part 3

Administration and other matters

Applications

16 Applications to be qualifying donor or for discretionary earnings compensation

- (1) A person must apply to the Director-General in writing if the person wishes to—
 - (a) be a qualifying donor; or
 - (b) receive discretionary earnings compensation.
- (2) An application to be a qualifying donor must be made at least 60 days before the date scheduled for the donor surgery.
- (3) However, the Director-General may accept an application made after that deadline if the Director-General considers there is sufficient time to decide the application before the scheduled date.

17 Decisions on applications

- (1) As soon as practicable after receiving an application and any information provided under section 19, the Director-General must—
 - (a) approve the application and set the rate of earnings compensation payable; or
 - (b) decline the application if,—
 - (i) for an application to be a qualifying donor, the Director-General is not satisfied that all of the conditions set out in section 9(1) are met; or
 - (ii) for an application for discretionary earnings compensation, the Director-General is not satisfied that all of the conditions set out in section 12(1) are met; or
 - (iii) for either kind of application,—
 - (A) the Director-General is not satisfied that the information provided for use in setting the rate of earnings compensation is accurate; or
 - (B) section 19(2)(a) (which relates to an applicant's failure to provide requested information) applies.
- (2) If the related donor surgery has not occurred, a decision to approve an application to be a qualifying donor expires—
 - (a) 3 months after the date on which the applicant receives notice of the decision; or

- (b) on a later date notified in writing to the applicant by the Director-General.

18 When Director-General may revoke or revise decisions

- (1) Before the start of a payment period, the Director-General may do 1 or more of the following:
 - (a) revoke a decision to approve an application if,—
 - (i) for an application to be a qualifying donor, the Director-General considers that 1 or more of the conditions set out in section 9(1) are no longer satisfied due to a change in the applicant's circumstances since the application date; or
 - (ii) for an application for discretionary earnings compensation, the Director-General considers that 1 or more of the conditions set out in section 12(1) are no longer satisfied due to a change in the applicant's circumstances since the application date:
 - (b) revise a decision on the rate of an applicant's earnings compensation by substituting a new rate, if the Director-General considers that—
 - (i) the rate originally set is significantly different from the rate at which the applicant will actually forgo earnings during the payment period; and
 - (ii) the difference is due to a change in the applicant's circumstances since the application date:
 - (c) revise any decision regarding an application by substituting a new decision, if the Director-General considers the decision was made in error.
- (2) For a revision under subsection (1)(b), the Director-General must set the new rate of earnings compensation using, where the application date is referred to in Schedule 2, a date—
 - (a) that is more recent than the application date; and
 - (b) that the Director-General considers is appropriate.
- (3) Before revoking or revising a decision, the Director-General must notify the applicant in writing of the proposed revocation or revision.
- (4) A revocation or a revision is a fresh decision.

19 Applicants must provide information requested by Director-General

- (1) An applicant must provide the Director-General with any information that the Director-General requests in writing for the purpose of assisting him or her to—
 - (a) decide the application; or
 - (b) decide whether to revoke or revise a decision under section 18.

- (2) If the applicant does not provide the information within a reasonable time notified in writing by the Director-General, the Director-General may—
- (a) decline the application, if the information was requested under subsection (1)(a); or
 - (b) revoke or revise the decision on the basis of the information available to the Director-General, if the information was requested under subsection (1)(b) and the Director-General considers that he or she has sufficient information to revoke or revise the decision.

20 Notice of decisions

- (1) The Director-General must give an applicant written notice of—
- (a) a decision on an application; and
 - (b) the reasons for the decision if it is a decision to—
 - (i) decline an application; or
 - (ii) revoke or revise a decision.
- (2) If the Director-General approves an application, he or she must also give the applicant written notice of—
- (a) each decision relating to the setting of the donor's rate of earnings compensation; and
 - (b) as applicable,—
 - (i) the end date of the payment period determined under section 10 a reasonable time before that date; or
 - (ii) the payment period determined under section 12 a reasonable time before that period starts.

Dispute resolution

21 Who may apply for review

An applicant under section 16 may apply to the Director-General for review of—

- (a) any decision made by the Director-General in relation to the application, including decisions relating to—
 - (i) how the rate of earnings compensation is set; or
 - (ii) the payment period; or
- (b) any delay in processing the application that the applicant believes is an unreasonable delay.

22 Contents of applications for review

An application for review must—

- (a) be written; and

- (b) identify each decision or delay in respect of which it is made; and
- (c) state the grounds on which it is made; and
- (d) state the relief sought (if known by the applicant).

23 Applicants have 30 days to apply for review against decision

- (1) An application for review under section 21(a) must be made no later than 30 days after the date on which notice of the decision is received by the applicant.
- (2) However, the Director-General must accept an application made after the deadline if the Director-General failed to notify the applicant of the deadline.

24 Review process and right of appeal

An application for review must be resolved in accordance with Schedule 3.

25 Effect of review or appeal on decisions

A decision that is the subject of an application for review or to another proceeding continues to be of full effect until—

- (a) the review or proceeding is resolved and all rights of appeal are exhausted; or
- (b) the applicant and the Director-General agree to vary the decision for the benefit of the applicant.

Miscellaneous

26 Deemed receipt of notices

- (1) A person is to be treated as having received a notice sent by the Director-General—
 - (a) on the date of transmission, if it is sent by email; or
 - (b) at the time at which the notice would have been delivered in the ordinary course of post, if it is sent by post.
- (2) However, subsection (1) applies only if the notice is sent to the address for the person last known by the Director-General.

27 Recovery of overpayments

- (1) A sum paid under this Act is a debt due to the Director-General if the sum was—
 - (a) paid to a person in excess of the amount to which the person is entitled under this Act; or
 - (b) paid to a person who has no entitlement to the sum under this Act.
- (2) The Director-General may—
 - (a) recover the debt by way of proceedings; or

- (b) deduct all or part of the debt from any amount payable to the person under this Act.
- (3) However, the Director-General may not recover the debt if the sum was paid as a result of an error not intentionally contributed to by the person, and the person—
 - (a) received the payment in good faith; and
 - (b) has altered his or her position in reliance on the validity of the payment in a way that would make it inequitable to require repayment.

28 ACC claims not affected

Except as provided by the Accident Compensation Act 2001, an entitlement or a payment under this Act does not affect any claim that a qualifying donor may have under that Act in relation to the donor surgery or any activity undertaken in connection with the surgery.

29 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Health, make regulations declaring a type of human organ to be a qualifying organ for the purposes of this Act.
- (2) Before making the recommendation, the Minister—
 - (a) must have regard to—
 - (i) the efficacy and safety of the procedures related to the collection and implantation of the organ; and
 - (ii) the anticipated benefit to recipients of the organ; and
 - (iii) the anticipated cost of providing earnings compensation to qualifying donors who donate the organ; and
 - (b) may have regard to any other matter that the Minister considers relevant.

Amendments

30 Amendments to other Acts

Amend the enactments specified in Schedule 4 as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to Act as enacted

*Earnings compensation for persons who donate qualifying organs before, on,
or shortly after commencement*

1 Donations made before commencement

This Act applies with the following modifications to a person who has donor surgery before the commencement of this Act:

- (a) the person may be a qualifying donor in respect of that surgery if—
 - (i) the person applies to the Director-General no later than 120 days after the commencement of this Act; and
 - (ii) the person's donor surgery is no earlier than 12 weeks before the date on which this Act receives the Royal assent:
- (b) if the donor surgery was on or before the date of Royal assent, the payment period under section 10 starts on the day after the date of Royal assent:
- (c) earnings compensation payable for a period ending on or before the date on which the person receives notice that his or her application is approved must be paid no later than 30 days after that date:
- (d) section 12 does not apply to the person:
- (e) any other necessary modifications.

2 Donations made on or shortly after commencement

This Act applies with the following modifications to a person who has donor surgery in the period of 60 days beginning on the commencement of this Act:

- (a) the person may be a qualifying donor in respect of that surgery if the person applies to the Director-General no later than 120 days after the date of the surgery:
- (b) earnings compensation payable for a period ending on or before the date on which the person receives notice that his or her application is approved must be paid no later than 30 days after that date:
- (c) section 12 applies to the person only if the person receives notice that his or her application is approved before the date of the donor surgery:
- (d) any other necessary modifications.

Abatement if payments made under existing welfare programme

3 Abatement if qualifying donor receives payments under existing welfare programme

- (1) This clause applies to a qualifying donor who—
 - (a) is entitled to earnings compensation under this Act; and
 - (b) has received or is entitled to receive income assistance under the welfare programme.
- (2) The amount of income assistance paid or to be paid under the welfare programme must be deducted from the amount of earnings compensation (net of tax) otherwise payable under this Act.
- (3) In this clause, **welfare programme** means the welfare programme published in the *Gazette* on 3 February 2005, at pp 774 to 776.

Application of section 14

4 Section 14 applies only if donor surgery on or after commencement

Section 14 (donors of qualifying organs exempt from certain obligations under Social Security Act 1964 while recuperating) applies only to a person who has donor surgery on or after the commencement of this Act.

References to District Court

5 References to District Court

Before section 7 of the District Court Act 2016 comes into force,—

- (a) references in this Act to the District Court must be read as references to a District Court; and
- (b) references in this Act to the District Court Rules 2014 must be read as references to the District Courts Rules 2014.

Schedule 2

Setting rate of earnings compensation

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1 Interpretation

(1) In this schedule, unless the context otherwise requires,—

earnings as a self-employed person has the meaning given by section 6(1) of the Accident Compensation Act 2001

earnings as a shareholder-employee has the meaning given by section 6(1) of the Accident Compensation Act 2001

earnings as an employee has the meaning given by section 6(1) of the Accident Compensation Act 2001

employee means a person who receives, or is entitled to receive,—

- (a) any amount that is treated as income from employment; or
- (b) any salary, wages, or other income to which section RD 3(2) to (4) of the Income Tax Act 2007 applies

employer—

- (a) means a person, other than a person acting for an employer as a PAYE intermediary (as defined in section YA 1 of the Income Tax Act 2007), who pays, or is liable to pay,—
 - (i) any amount that, in relation to any other person, is treated as income from employment; and
 - (ii) any salary, wages, or other income to which section RD 3(2) to (4) of the Income Tax Act 2007 applies; but
- (b) does not include a person who is an employer solely by reason of any of section RD 5(1)(b)(iii), (6)(b) to (c), and (7) of the Income Tax Act 2007

income from employment has the meaning given by paragraph (a) of the definition of income from employment in section YA 1 of the Income Tax Act 2007

most recently completed tax year, in relation to a self-employed person or a shareholder-employee, means the most recent year ending with the balance date (whether 31 March or another date) of the self-employed person or shareholder-employee before the payment period

parental leave has the meaning given by section 2(1) of the Parental Leave and Employment Protection Act 1987 (including the meaning given by paragraph (b) of that definition)

registered bank has the meaning given by section 2(1) of the Reserve Bank of New Zealand Act 1989

shareholder-employee has the meaning given by section 6(1) of the Accident Compensation Act 2001

tax year has the meaning given by section YA 1 of the Income Tax Act 2007.

- (2) For the purpose of defining the terms earnings as an employee, earnings as a self-employed person, and earnings as a shareholder-employee, sections 9 to 15 of the Accident Compensation Act 2001 must be read with the necessary modifications, including that references to the Corporation must be read as references to the Director-General.

Part 1

Setting rate of earnings compensation

2 How Director-General must set rate of earnings compensation

The Director-General must set as the rate of earnings compensation for a qualifying donor—

- (a) the donor's weekly earnings calculated in accordance with Part 2; or
- (b) a rate of earnings compensation set under clause 3.

3 Discretion to increase amount calculated

- (1) This clause applies if the Director-General considers that the weekly earnings calculated for a qualifying donor are significantly less than the rate at which the donor will actually forgo earnings during the payment period.
- (2) The Director-General may increase the rate of earnings compensation payable to a level that the Director-General considers represents the rate at which the donor will forgo earnings during the period.
- (3) In making a decision under subclause (1) and setting a rate under subclause (2), the Director-General must have regard to—
 - (a) the evidence available of the donor's earnings; and
 - (b) the anticipated nature of the donor's employment immediately before the start of the payment period.

Part 2

Calculation of weekly earnings for use as rate of earnings compensation

4 Outline of Part

- (1) This Part is divided into 3 subparts, as follows:
 - (a) subpart 1 provides for the calculation of weekly earnings for qualifying donors who have earnings as employees;
 - (b) subpart 2 provides for the calculation of weekly earnings for qualifying donors who have earnings as self-employed persons or shareholder-employees;
 - (c) subpart 3 provides for matters relating to qualifying donors who—
 - (i) have earnings from multiple sources; or
 - (ii) have earnings that include a foreign-sourced amount; or
 - (iii) do not have earnings from employment immediately before the application date; or
 - (iv) are on parental leave immediately before the application date.
- (2) This clause is intended only as a guide to the general scheme and effect of this Part.

Subpart 1—Calculations for employees

5 Weekly earnings if qualifying donor has earnings as employee

- (1) This clause applies to a qualifying donor who has earnings as an employee from employment immediately before the application date.
- (2) The qualifying donor's weekly earnings are calculated as follows:
$$a \div b$$
where—
 - a is the donor's earnings from the employment referred to in subclause (1) in the 52 weeks immediately before the application date
 - b is the number of weeks during which the donor earned those earnings.
- (3) For the purposes of this clause, the following must be disregarded in calculating the donor's weekly earnings:
 - (a) any period during which the donor was entitled to weekly compensation (as defined in section 6(1) of the Accident Compensation Act 2001); and
 - (b) any earnings in respect of that period.
- (4) If the donor has employment with more than 1 employer immediately before the application date, the donor's weekly earnings in respect of each employment must be calculated under this clause and aggregated under clause 13.

Subpart 2—Calculations for self-employed persons and shareholder-employees

Use of income tax returns

6 Use of income tax returns in calculating earnings

The Director-General must take an income tax return into account when calculating earnings under this Part if the qualifying donor—

- (a) is a self-employed person or a shareholder-employee; and
- (b) has given the return to the Director-General.

Self-employed persons

7 Weekly earnings if qualifying donor has earnings as self-employed person: application of clause 8

- (1) Clause 8 applies to a qualifying donor who has earnings as a self-employed person immediately before the application date.
- (2) For the purposes of clause 8, if the donor's income tax return for the most recently completed tax year is not available, the income tax return for the next previous year must be used for the calculation of weekly earnings until the earlier of the following:
 - (a) the income tax return for the most recently completed tax year is available;
 - (b) the payment period ends.
- (3) Subclause (4) applies if the Director-General—
 - (a) applies subclause (2); and
 - (b) pays earnings compensation; and
 - (c) subsequently finds that the earnings compensation paid is greater than he or she would have paid if the donor's income tax return for the most recently completed tax year had been available.
- (4) The difference between the 2 amounts referred to in subclause (3)(c) is a debt due to the Director-General to which section 27 (recovery of overpayments) applies.

8 Weekly earnings if qualifying donor has earnings as self-employed person: calculations

- (1) The qualifying donor's weekly earnings are calculated as follows:

$$(a \div c) + (b \div d)$$

where—

- a is the donor's total earnings as an employee in the 52 weeks immediately before the application date

- b is the donor's earnings as a self-employed person in the most recently completed tax year
- c is 52
- d is the number of weeks in the most recently completed tax year.
- (2) However,—
- (a) if the most recently completed tax year was the first year during which the donor received earnings as a self-employed person, the donor's weekly earnings are calculated as follows:
- $$(a + b) \div c$$
- where—
- a is the donor's total earnings as an employee in the 52 weeks immediately before the application date
- b is the donor's earnings as a self-employed person in the most recently completed tax year
- c is the total (up to 52 weeks or the number of weeks in the most recently completed tax year if it is more than 52 weeks) of—
- (i) the number of weeks during which the donor earned those earnings as an employee; and
- (ii) the number of weeks that the Director-General considers fairly and reasonably represents the number of weeks during which the donor earned those earnings as a self-employed person in the most recently completed tax year:
- (b) if the donor first commenced receiving earnings as a self-employed person in the tax year in which the application date falls, the donor's weekly earnings are calculated as follows:
- $$a \div b$$
- where—
- a is the total of the donor's earnings as an employee in the 52 weeks immediately before the application date
- b is the number of weeks during which the donor earned those earnings as an employee.
- (3) The donor is eligible for the greater of—
- (a) the amount calculated under this clause with the inclusion of earnings as an employee in the calculation; and
- (b) the amount calculated under this clause with the exclusion of earnings as an employee from the calculation.
- (4) If the donor's weekly earnings are calculated with the inclusion of his or her earnings as an employee, the donor is not eligible to also have his or her weekly earnings calculated under clause 5 and aggregated under clause 13.

- (5) If the donor's weekly earnings are calculated with the exclusion of his or her earnings as an employee, the donor is eligible to also have his or her weekly earnings calculated under clause 5 and aggregated under clause 13.

9 Weekly earnings if self-employed qualifying donor had earnings as shareholder-employee in most recently completed tax year

- (1) This clause applies if the qualifying donor—
- (a) has earnings as a self-employed person immediately before the application date; and
 - (b) did not have earnings as a self-employed person in the most recently completed tax year; and
 - (c) had earnings as a shareholder-employee in the most recently completed tax year; and
 - (d) has been employed continuously even though the donor changed from receiving earnings as a shareholder-employee to receiving earnings as a self-employed person.
- (2) The donor's weekly earnings must be calculated under clause 8 using the donor's earnings as a shareholder-employee as if they were the donor's earnings as a self-employed person in the most recently completed tax year.

Shareholder-employees

10 Weekly earnings if qualifying donor has earnings as shareholder-employee

- (1) The weekly earnings of a qualifying donor who has earnings as a shareholder-employee immediately before the application date are the greater of the following:
- (a) the amount calculated under clause 5:
 - (b) the amount calculated under this clause.
- (2) The qualifying donor's weekly earnings are calculated as follows:

$$(a \div c) + (b \div d)$$

where—

- a is the donor's total earnings as an employee in the 52 weeks immediately before the application date
 - b is the donor's earnings as a shareholder-employee in the most recently completed tax year
 - c is 52
 - d is the number of weeks in the most recently completed tax year.
- (3) However,—

- (a) if the most recently completed tax year was the first year during which the donor received earnings as a shareholder-employee, the donor's weekly earnings are calculated as follows:

$$(a + b) \div c$$

where—

- a is the donor's total earnings as an employee in the 52 weeks immediately before the application date
- b is the donor's earnings as a shareholder-employee in the most recently completed tax year
- c is the total (up to 52 weeks or the number of weeks in the most recently completed tax year if it is more than 52 weeks) of—
- (i) the number of weeks during which the donor earned those earnings as an employee; and
 - (ii) the number of weeks that the Director-General considers fairly and reasonably represents the number of weeks during which the donor earned those earnings as a shareholder-employee in the most recently completed tax year:
- (b) if the donor first commenced receiving earnings as a shareholder-employee in the tax year in which the application date falls, the donor's weekly earnings are calculated as follows:

$$a \div b$$

where—

- a is the total of the donor's earnings as an employee in the 52 weeks immediately before the application date
- b is the number of weeks during which the donor earned those earnings as an employee.
- (4) The donor is eligible for the greater of—
- (a) the amount calculated under this clause with the inclusion of earnings as an employee in the calculation; and
 - (b) the amount calculated under this clause with the exclusion of earnings as an employee from the calculation.
- (5) If the donor's weekly earnings are calculated with the inclusion of his or her earnings as an employee, the donor is not eligible to also have his or her weekly earnings calculated under clause 5 and aggregated under clause 13.
- (6) If the donor's weekly earnings are calculated with the exclusion of his or her earnings as an employee, the donor is eligible to also have his or her weekly earnings calculated under clause 5 and aggregated under clause 13.

11 Weekly earnings if qualifying donor as shareholder-employee had earnings as self-employed person in most recently completed tax year

- (1) This clause applies if the qualifying donor—
 - (a) has earnings as a shareholder-employee immediately before the application date; and
 - (b) did not have earnings as a shareholder-employee in the most recently completed tax year; and
 - (c) had earnings as a self-employed person in the most recently completed tax year; and
 - (d) has been employed continuously even though the donor changed from receiving earnings as a self-employed person to receiving earnings as a shareholder-employee.
- (2) The donor's weekly earnings must be calculated under clause 10 using the donor's earnings as a self-employed person as if they were earnings as a shareholder-employee in the most recently completed tax year.

*Estimated earnings***12 Interim estimation of weekly earnings that cannot be ascertained**

- (1) This clause applies to a qualifying donor who, immediately before the application date, has earnings as—
 - (a) a self-employed person; or
 - (b) a shareholder-employee.
- (2) This clause applies while the Director-General cannot readily ascertain the donor's actual weekly earnings.
- (3) For the purposes of clauses 8 and 10, in order to calculate the donor's weekly earnings, the Director-General may estimate an amount that represents reasonable remuneration for the donor until the earlier of the following:
 - (a) the income tax return for the most recently completed tax year is available;
 - (b) the payment period ends.
- (4) In estimating the remuneration, the Director-General must have regard to—
 - (a) the evidence available of the donor's earnings; and
 - (b) the nature of the donor's employment immediately before the application date.
- (5) Subclause (6) applies if the Director-General—
 - (a) applies subclause (3); and
 - (b) pays earnings compensation; and

- (c) subsequently finds that the earnings compensation paid is greater than he or she would have paid if the donor's income tax return for the most recently completed tax year had been available.
- (6) The difference between the 2 amounts referred to in subclause (5)(c) is a debt due to the Director-General to which section 27 (recovery of overpayments) applies.

Subpart 3—Matters relating to certain qualifying donors

Qualifying donors with multiple sources of earnings

13 Calculations aggregated if multiple sources of earnings

- (1) This clause applies if a qualifying donor—
 - (a) has more than 1 amount of weekly earnings from different employment situations because of the operation of clause 5, 8, or 10; and
 - (b) is not prohibited from aggregating those weekly earnings by clause 8(4) or 10(5).
- (2) The donor's weekly earnings must be calculated by doing the relevant calculations under clauses 5, 8, and 10 separately and then aggregating the results.
- (3) However, a donor's weekly earnings calculated under clause 5 must not be aggregated with the donor's weekly earnings under clause 10 if the donor's weekly earnings under clause 10 are his or her earnings under clause 5.

Qualifying donors with overseas earnings

14 Exchange of earnings from overseas

- (1) This clause applies if a qualifying donor has earnings that are a foreign-sourced amount denominated in a currency other than New Zealand currency.
- (2) For the purpose of calculating the donor's weekly earnings, the Director-General must convert the foreign-sourced amount to the equivalent in New Zealand currency at a fair rate of exchange determined by the Director-General.
- (3) The Director-General is to be treated as complying with subclause (2) if the Director-General relies on the rate of exchange available from a registered bank at the start of the application date.

15 Modifications if earnings from overseas

In relation to a foreign-sourced amount that is earnings,—

- (a) references in this Part to the most recently completed tax year must be treated as references to the income period or periods of the relevant country that the Director-General considers most appropriately correspond to the equivalent New Zealand period; and
- (b) this Part must be read with any other necessary modifications.

Qualifying donors without earnings from employment immediately before application date

16 Weekly earnings if donor does not have earnings from employment immediately before application date

- (1) This clause applies if—
 - (a) a qualifying donor does not have earnings from employment immediately before the application date; but
 - (b) the Director-General is satisfied that the donor would have earnings from employment on the date of the donor surgery but for the surgery.
- (2) For the purposes of determining which clause or clauses in this Part apply, the donor is deemed to have had earnings from his or her most recent employment immediately before the application date.

Qualifying donors on parental leave

17 Weekly earnings if donor on parental leave

- (1) This clause applies if a qualifying donor is on parental leave immediately before the application date.
- (2) For the purposes of calculating the donor's weekly earnings, the date on which the donor commenced parental leave is deemed to be the application date.
- (3) The payment period for the donor—
 - (a) starts on the day after the last day of the parental leave; and
 - (b) ends at the time determined under section 10 or 12.

Schedule 3 Dispute resolution

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1 Outline of dispute resolution process

- (1) This schedule sets out the following process for resolving an application for review under section 21:
- (a) the Director-General conducts an internal review of each decision challenged or delay complained about;
 - (b) the applicant may then seek an independent review of a decision made by the Director-General on the internal review;
 - (c) the applicant or the Director-General may then appeal to the District Court against a decision of the independent reviewer.
- (2) This clause is intended only as a guide to the general scheme and effect of this schedule.

Internal review

2 Internal review

- (1) As soon as practicable after receiving an application for review, the Director-General must—
- (a) reconsider each decision identified in the application; or

- (b) if the application is made under section 21(b), decide—
 - (i) whether there is an unreasonable delay as contemplated by that section; and
 - (ii) if so, set a new time frame for making the relevant decision.
- (2) In conducting a review under subclause (1), the Director-General must have regard to—
 - (a) the grounds stated in the application for review; and
 - (b) any other relevant information provided with the application.
- (3) If the decision being reviewed was made by a delegate of the Director-General, the decision must be reconsidered by someone other than that delegate.

3 Notice of decision

The Director-General must notify an applicant in writing of—

- (a) the decision made on an internal review; and
- (b) the reasons for the decision.

Independent review

4 Application for independent review

- (1) An applicant may apply for an independent review of a decision made by the Director-General on an internal review.
- (2) The application must be made—
 - (a) no later than 30 days after the applicant receives notice of the decision under clause 3; and
 - (b) in accordance with section 22.

5 Director-General to engage reviewer

As soon as practicable after receiving an application under clause 4, the Director-General must engage a person to review the decision being challenged.

6 Conduct of review

- (1) The reviewer must conduct the review on the papers.
- (2) In conducting the review, the reviewer must—
 - (a) act independently; and
 - (b) conduct the review in a timely manner.

7 Review decisions: formalities

- (1) A review decision must—
 - (a) be written; and

- (b) contain the reasons for the decision; and
 - (c) contain information about the right of appeal.
- (2) The reviewer must give a copy of the decision to the applicant and the Director-General.

8 Review decisions: substance

- (1) In making a review decision, the reviewer must—
- (a) put aside the Director-General’s decision and look at the matter afresh on the basis of—
 - (i) the grounds stated in the application for review; and
 - (ii) the information considered by the Director-General in the internal review; and
 - (iii) any other relevant information provided by the applicant or the Director-General to the reviewer; and
 - (b) put aside any policy or procedure followed by the Director-General and decide the matter only on the basis of its substantive merits under this Act.
- (2) The reviewer must—
- (a) dismiss the application; or
 - (b) modify the Director-General’s decision; or
 - (c) quash the Director-General’s decision; or
 - (d) if the reviewer decides that there has been an unreasonable delay as contemplated by section 20(b),—
 - (i) direct the Director-General to make a decision within a time frame specified by the reviewer; or
 - (ii) make the decision for the Director-General.
- (3) If the reviewer quashes the Director-General’s decision, the reviewer must—
- (a) substitute the reviewer’s decision for that of the Director-General; or
 - (b) require the Director-General to make the decision again in accordance with directions given by the reviewer.

9 Effect of review decisions

A review decision is binding on the applicant and the Director-General.

Appeal to District Court

10 Appeal to District Court

- (1) An applicant or the Director-General may appeal to the District Court against the decision of an independent reviewer.

- (2) An appeal under this clause is dealt with in accordance with the District Court Rules 2014, as modified by clauses 11 and 12.

11 Who is entitled to be heard

- (1) The applicant and the Director-General are entitled to appear at the hearing of the appeal and to be heard, either personally or by a representative.
- (2) This clause does not affect rule 18.18 of the District Court Rules 2014.

12 Director-General to make records available

- (1) As soon as practicable after filing, or being served with a copy of, the notice of appeal, the Director-General must give the Registrar—
- (a) a copy of the decision appealed against; and
 - (b) all documents relating to the independent review and the preceding internal review that are in the custody of the Director-General or the reviewer.
- (2) If the applicant requests, the Director-General must provide the applicant with any of the documents described in subclause (1).
- (3) In this clause, **Registrar** means a Registrar of the District Court, and includes a Deputy Registrar.

Schedule 4 Amendments to other Acts

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Accident Compensation Act 2001 (2001 No 49)

In section 6(1), definition of **earner**, paragraph (b), replace “clause 43 or clause 44” with “clause 43, 44, or 44A”.

After section 11(1)(aa), insert:

- (ab) any payment paid under the Compensation for Live Organ Donors Act 2016; or

In section 100(1)(a), replace “clause 32 or clause 44” with “clause 32, 44, or 44A”.

After section 100(1), insert:

- (1A) If a claimant is eligible for weekly compensation under clause 44A of Schedule 1 because of the operation of clause 43 of that schedule, the Corporation must determine whether the claimant is incapacitated within the meaning of section 105(2).

In the heading to section 103, replace “**was earner or on unpaid parental leave**” with “**was earner, on unpaid parental leave, or recuperating organ donor**”.

After section 103(1)(b), insert:

- (c) a claimant who was within a payment period under the Compensation for Live Organ Donors Act 2016 at the time he or she suffered the personal injury.

After section 223(6), insert:

- (7) A person who is within a payment period under the Compensation for Live Organ Donors Act 2016 (or who is within 1 month of that period ceasing and not otherwise in employment) is regarded as being still in employment for the purposes of subsection (2) and, for the purposes of subsection (3)(c), the person’s weekly earnings are to be calculated as if the period of incapacity was before the commencement of the payment period.

In Schedule 1, after clause 36(3)(b), insert:

- (ba) any period during which the claimant was within a payment period under the Compensation for Live Organ Donors Act 2016:

In Schedule 1, clause 36(3)(d), after “(b),”, insert “(ba),”.

In Schedule 1, clause 38(2)(c), formula, item c, after “52”, insert “or such smaller number, if an adjustment is required under subclause (3A)”.

In Schedule 1, clause 38(2)(c), formula, item d, after “year”, insert “or such smaller number, if an adjustment is required under subclause (3A)”.

In Schedule 1, after clause 38(3), insert:

Accident Compensation Act 2001 (2001 No 49)—continued

(3A) The numbers referred to in items c and d of the formula in subclause (2)(c) must be adjusted by deducting any period during which the claimant was within a payment period under the Compensation for Live Organ Donors Act 2016.

In Schedule 1, clause 39(2)(c), formula, item c, after “52”, insert “or such smaller number, if an adjustment is required under subclause (2A)”.

In Schedule 1, clause 39(2)(c), formula, item d, after “year”, insert “or such smaller number, if an adjustment is required under subclause (2A)”.

In Schedule 1, after clause 39(2), insert:

(2A) The numbers referred to in items c and d of the formula in subclause (2)(c) must be adjusted by deducting any period during which the claimant was within a payment period under the Compensation for Live Organ Donors Act 2016.

In Schedule 1, after clause 44, insert:

Claimant who is recuperating organ donor

44A Weekly earnings if claimant receiving earnings compensation as organ donor immediately before his or her incapacity commenced

- (1) This clause applies to a claimant who is within a payment period under the Compensation for Live Organ Donors Act 2016 immediately before his or her incapacity commenced.
- (2) The claimant’s incapacity is deemed to have commenced on the date on which the payment period started—
 - (a) for the purposes of calculating the claimant’s weekly compensation, if the claimant had earnings immediately before that date; or
 - (b) for the purposes of applying clause 43, if the claimant did not have earnings immediately before that date.
- (3) For the purposes of determining the commencement date of entitlement to compensation for loss of earnings under this Act, the date that falls immediately after the payment period ends is deemed to be the date his or her incapacity commenced.
- (4) Unless the personal injury is a motor vehicle injury, a work-related personal injury, or a treatment injury, payments under this clause come from the Earners’ Account.
- (5) If this clause applies, the claimant is entitled to the greater of the following:
 - (a) weekly compensation for loss of earnings arising from the application of this clause:
 - (b) weekly compensation for loss of earnings arising from an entitlement under any other provision of this schedule.

Accident Compensation Act 2001 (2001 No 49)—*continued*

Employee who has consecutive periods of unpaid parental leave and recuperation from organ donation

44B Weekly earnings if employee has consecutive periods of unpaid parental leave and earnings compensation as organ donor

- (1) This clause applies if a claimant is an employee and either—
- (a) clause 44 applies to the claimant and the claimant's unpaid parental leave is immediately before or after a payment period under the Compensation for Live Organ Donors Act 2016; or
 - (b) clause 44A applies to the claimant and the claimant's payment period is immediately before or after a period of unpaid parental leave.
- (2) The claimant's incapacity is deemed to have commenced—
- (a) on the earlier of the dates described in clauses 44(2) and 44A(2), for the purposes of calculating the claimant's weekly compensation; and
 - (b) on the later of the dates described in clauses 44(3) and 44A(3), for the purposes of determining the commencement date of entitlement to compensation for loss of earnings.

In Schedule 1, after clause 49(5), insert:

- (6) In clause 51(2), **earnings** includes payments of earnings compensation under the Compensation for Live Organ Donors Act 2016.

Income Tax Act 2007 (2007 No 97)

After section CF 1(1)(f), insert:

- (fb) a payment of earnings compensation under the Compensation for Live Organ Donors Act 2016:

After section MA 7(2)(b), insert:

- (bb) a person who has a payment period under the Compensation for Live Organ Donors Act 2016 and is employed at the start of the period is treated as being employed during the period for the hours for which the person would have been employed during the period but for the organ donation:

After section RD 5(1)(b)(iii), insert:

- (iiib) a payment of earnings compensation under the Compensation for Live Organ Donors Act 2016; and

KiwiSaver Act 2006 (2006 No 40)

After section 14(1)(a)(i), insert:

- (ia) section RD 5(1)(b)(iiib) (which relates to payments paid under the Compensation for Live Organ Donors Act 2016):

Legislative history

25 June 2015	Introduction (Bill 39–1)
26 August 2015	First reading and referral to Health Committee
21 September 2016	Reported from Health Committee (Bill 39–2)
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9 November 2016	Committee of the whole House (Bill 39–3)
30 November 2016	Third reading
5 December 2016	Royal assent

This Act is administered by the Ministry of Health.