

Organ Donors and Related Matters Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Organ Donors and Related Matters Bill and recommends that it be passed with the amendments shown.

Introduction

This is an omnibus bill that seeks to amend the Compensation for Live Donors Act 2016, the New Zealand Public Health and Disability Act 2000, and the Health Sector (Transfers) Act 1993. It aims to increase New Zealand's organ donation and transplantation rates by enabling the implementation of a number of recommendations set out in the 2017 national strategy.¹

The bill as introduced would create a national organ donation agency within an existing Crown entity. This national agency would oversee and lead the implementation of the strategy. It would have a role in:

- raising the profile of organ donation
- supporting clinical governance
- co-ordinating donation and transplantation processes
- providing advice and information.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

¹ Ministry of Health, Increasing Deceased Organ Donation and Transplantation: A national strategy, June 2017.

Interpretation of “usual hours”

The bill would amend the Compensation for Live Organ Donors Act 2016 in regards to earnings compensation for qualifying donors who are unable to work their usual hours as they recuperate from donor surgery.

As introduced, the bill would insert new subsections 5 and 6 in section 10 of the Act. These new subsections aim to encourage donors to transition to their usual hours of work by allowing compensation for lost earnings if they return to work at reduced hours.

We recommend amending the definition of “usual hours” in clause 4 of the bill, which amends section 4 of the primary Act, to specify how a qualifying donor’s usual hours of work would be calculated. In the bill as introduced, this is defined as the average weekly hours of employment at the date of application. We consider that this is too vague and may not provide a fair representation of a donor’s usual hours.

We recommend including paragraphs (a) and (b) in the definition of “usual hours” to specify that it would be defined as the donor’s hours per week as specified in their employment agreement. If this does not apply to the donor, for example if they are self-employed or a shareholder employee, then the donor’s usual hours would be calculated from the hours worked per week in the 12 weeks prior to the application date. We think this would provide a more fair and consistent approach to the calculation of a qualifying donor’s usual hours of work.

Compensation for overseas organ donors

Clause 5 of the bill would add subsection (3)(a) and (b) to section 9 of the Act. This would amend the Act to allow qualifying donors who donate through an approved overseas organ exchange programme to be eligible for earnings compensation under the Act. We believe the bill may inadvertently enable overseas-based donors to be eligible for earnings compensation when taking part in an overseas organ exchange programme.

We consider that the bill should ensure that overseas donors are not eligible for compensation under the Act if they already receive funding. We recommend including new section 9(3)(a) and (b) to ensure that overseas donors are not eligible for compensation if they are already eligible to receive earnings compensation from their own government.

Overseas organ donation programmes

We recommend including clause 9A in the bill to add a new Schedule 5 in the Act. New Schedule 5 would list the names and details of approved overseas organ exchange programmes.

We also recommend the addition of new section 29(3) in the Act, to set out what changes could be made to new Schedule 5 by an Order in Council issued by the Governor-General as recommended by the Minister of Health.

Australian and New Zealand Paired Kidney Exchange Program

We recommend including the Australian and New Zealand Paired Kidney Exchange Program (ANZKX) in new Schedule 5, as the programme has already commenced. We think this would be more practical than requiring a separate Order in Council to approve the ANZKX programme.

Compensation for ANZKX donors

Because the ANZKX programme has started, we recommend amending clause 2 to bring forward the commencement of Part 1 of the bill. This would allow for donors participating in the ANZKX programme to be eligible for compensation as soon as possible.

In addition, we recommend amending clause 8, which would insert new clauses 6 and 7 in Schedule 1 of the Act. Our amendment would insert a new clause 8 in Schedule 1. This would allow people who have donated under the ANZKX programme before the bill's commencement to be eligible for compensation for loss of earnings.

New Zealand Blood and Organ Service

Part 2 of the bill would amend the New Zealand Public Health and Disability Act, with a consequential amendment to the Health Sector (Transfers) Act.

Clause 11 would expand the functions of the New Zealand Blood Service (NZBS) to include oversight and clinical governance of the organ donation and transplantation system.

We agree that the NZBS would be the most suitable Crown entity to take on functions as the national organ donation agency. However, because this would substantially change the functions of the NZBS, we consider that a change of name would be appropriate. We therefore recommend several amendments (new clauses 10A to 20) to establish a new statutory entity called the New Zealand Blood and Organ Service (NZBOS).

NZBOS would be responsible for the functions of the former NZBS. It would also be responsible for providing oversight and clinical governance of the organ donation system, and providing support to the transplantation system. Our proposed amendments include a number of minor changes to change references from NZBS to NZBOS.

Appendix

Committee process

The Organ Donors and Related Matters Bill was referred to the committee on 2 April 2019. The closing date for submissions was 16 May 2019. We received and considered 16 submissions from interested groups and individuals. We heard oral evidence from 5 submitters at hearings in Wellington.

We received advice from the Ministry of Health.

Committee membership

Louisa Wall (Chairperson)

Hon Maggie Barry (from 22 May 2019)

Dr Liz Craig

Matt Doocey

Hon Ruth Dyson (from 24 July 2019)

Jenny Marcroft

Dr Shane Reti

Hon Nicky Wagner (until 22 May 2019)

Angie Warren-Clark (until 24 July 2019)

Hon Michael Woodhouse

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Clark

Organ Donors and Related Matters Bill

Government Bill

Contents

	Page
1 Title	2
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)	3
6 Section 10 amended (Qualifying donors entitled to earnings compensation for up to 12 weeks while recuperating)	3
<u>6A</u> <u>Section 17 amended (Decisions on applications)</u>	<u>3</u>
<u>6B</u> <u>Section 18 amended (When Director-General may revoke or revise decisions)</u>	<u>4</u>
7 Section 29 amended (Regulations)	4
8 Schedule 1 amended	4
9 Schedule 2 amended	6
<u>9A</u> <u>New Schedule 5 inserted</u>	<u>6</u>
Part 2	
Amendment Amendments to New Zealand Public Health and Disability Act 2000	
10 Amendment <u>Amendments</u> to New Zealand Public Health and Disability Act 2000	7
<u>10A</u> <u>Section 5 amended (Outline)</u>	<u>7</u>
<u>10B</u> <u>Section 6 amended (Interpretation)</u>	<u>7</u>
<u>10C</u> <u>Section 54 replaced (NZBS)</u>	<u>7</u>

	<u>54</u>	<u>NZBOS</u>	<u>7</u>
11		Section 55 amended (Functions of NZBS)	7
12		Section 56 amended (Membership of board)	8
13		Section 60 amended (Interpretation)	8
14		Section 65 amended (Restrictions on directions by Minister)	8
15		Section 66 amended (Pharmac, NZBS, and HPA to operate in financially responsible manner)	8
16		Section 70 amended (Further provisions)	8
17		Section 88 amended (Arrangements relating to payments)	8
18		Section 102 amended (References to dissolved entities to be references to their successors)	8
19		Schedule 6 amended	8
		<i>Consequential amendment</i>	
20		Health Sector (Transfers) Act 1993 amended	8
		Schedule	10
		<u>New Schedule 5 inserted in Compensation for Live Organ Donors Act 2016</u>	

The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) **Part 1** comes into force on the day after the date on which this Act receives the Royal assent. 5
- (2) ~~This Act~~ **Part 2** 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~~ this Act receives the Royal assent. 10

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) 15

In section 4, insert in their appropriate alphabetical order:

approved overseas organ exchange programme means an overseas organ exchange programme listed in **Schedule 5**

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, in relation to a qualifying donor, means a qualifying donor's average weekly hours of employment as at the application date—

- (a) the donor's hours of employment per week as specified in the donor's employment agreement; or
- (b) if **paragraph (a)** does not apply to the donor, or the donor is a shareholder employee or is self-employed, the most common number of hours that the donor works each week as assessed over the 12-week period immediately before the application date

5 Section 9 amended (Who are qualifying donors)

After section 9(2), insert:

- (3) The criteria in subsection (1)(b) and (c) does do not apply if the donor surgery is undertaken as part of an overseas organ exchange programme approved by regulations: the person—
 - (a) has donor surgery as part of an approved overseas organ exchange programme; and
 - (b) complies with any conditions specified in **Schedule 5** in respect of that programme.

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”.
- (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.
- (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.

6A Section 17 amended (Decisions on applications)

In section 17(1)(b)(i), replace “of the conditions set out in section 9(1)” with “of the applicable criteria in section 9”.

6B Section 18 amended (When Director-General may revoke or revise decisions)

In section 18(1)(a)(i), replace “of the conditions set out in section 9(1)” with “of the applicable criteria in section 9”.

7 Section 29 amended (Regulations)

5

(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.~~ 10

(a) approve an overseas organ exchange programme by including it in **Schedule 5**; and

(b) specify in **Schedule 5** any conditions that a donor in that programme must comply with in order to be a qualifying donor; and 15

(c) remove an approved overseas organ exchange programme from **Schedule 5**; and

(d) amend or remove any conditions specified in **Schedule 5**; and

(e) make minor amendments to **Schedule 5**.

(4) ~~Before making a recommendation under recommending that an overseas organ exchange programme be approved under **subsection (3)(a)**, the Minister must be satisfied, for each overseas country participating in the programme, that—~~ 20

(a) the programme has been agreed between a central government agency of the overseas country and the New Zealand Ministry of Health—~~2 or more central government agencies of the country~~; and 25

(b) the overseas country has ratified—

(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. 30

(5) Before recommending an amendment under **subsection (3)(a), (b), or (c)**, the Minister must consult any person or organisation that the Minister considers has an interest in, or will be representative of the interests of people likely to be substantially affected by, the proposed amendment. 35

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

6 ~~Meaning of amendment Act in this Part~~ Interpretation

In this Part,—

amendment Act means the Organ Donors and Related Matters Act **2019**

commencement date means the date of commencement of **Part 1** of the amendment Act

former section 10 means section 10 of this Act immediately before it was amended by the amendment Act

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,—

(a) ~~before the commencement of the amendment Act date~~, 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.

(3) The person must provide the Director-General with any evidence that the Director-General reasonably requests for the purpose of ascertaining the matters referred to in **subclause (1)(b)**.

8 **Compensation for donor who had surgery as part of Australian and New Zealand Paired Kidney Exchange Program before commencement date**

(1) A person may, no later than 120 days after the commencement date, apply to be a qualifying donor if,—

(a) before the commencement date, the person had donor surgery as part of the Australian and New Zealand Paired Kidney Exchange Program; and

(b) the person was registered with the New Zealand Kidney Exchange Programme at the time of the surgery.

(2) This Act applies to the person with all necessary modifications, except that—

(a) section 16(2) and (3) does not apply; and

- (b) when making a decision under section 12(1), the Director-General must (instead of being satisfied of the criteria in section 12(1)(a) to (d)) be satisfied that—
- (i) the donor had to forgo earnings during the period referred to in section 12(1) in order to undertake 1 or more activities in preparation for the surgery; and 5
 - (ii) the donor could not reasonably undertake the activities without taking leave from employment for that period; and
 - (iii) the activities were medically necessary for the surgery to be carried out; and 10
- (c) the Director-General may rely on a certificate of a medical practitioner when deciding whether an activity was medically necessary for the purpose of **paragraph (b)(iii)**; and
- (d) any payment of earnings compensation under section 13(b) must be made no later than 60 days after the person receives notice that the person’s application for compensation is approved. 15

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 20

- (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.
- (2) In setting a rate under **subclause (1)**, the Director-General must—
 - (a) take into account the additional ~~income~~ earnings received by the qualifying donor as a result of the donor returning to employment on reduced hours; and 25
 - (b) be satisfied that the qualifying donor’s ~~financial position is~~ earnings are the same—
 - (i) immediately before the start of the payment period; and 30
 - (ii) during the payment period; and
 - (c) have regard to the evidence available of the donor’s earnings.

9A New Schedule 5 inserted

After Schedule 4, insert the **Schedule 5** set out in the **Schedule** of this Act.

Part 2
**~~Amendment~~ Amendments to New Zealand Public Health and
Disability Act 2000**

- 10 ~~Amendment~~ Amendments to New Zealand Public Health and Disability Act 2000** 5
- This Part amends the New Zealand Public Health and Disability Act 2000.
- 10A Section 5 amended (Outline)**
- Replace section 5(6) with:
- (6) A statutory entity called the New Zealand Blood and Organ Service (NZBOS) is established (sections 54 to 56 and 61 to 69 of Part 4 and Schedule 6). NZBOS’s functions include managing the donation, collection, processing, and supply of blood and controlled human substances, providing oversight and clinical governance of the organ donation system, and providing support to the transplantation system. 10
- 10B Section 6 amended (Interpretation)** 15
- (1) In section 6(1), replace the definition of NZBS with:
NZBOS means the New Zealand Blood and Organ Service established by **section 54**
- (2) In section 6(1), definition of **publicly-owned health and disability organisation**, replace “NZBS” with “NZBOS”. 20
- 10C Section 54 replaced (NZBS)**
- Replace section 54 with:
- 54 NZBOS**
- (1) This section establishes the New Zealand Blood and Organ Service.
- (2) NZBOS is the same organisation that, immediately before the commencement of the Organ Donors and Related Matters Act **2019**, was known as the New Zealand Blood Service. 25
- (3) NZBOS is owned by the Crown.
- (4) The Crown Entities Act 2004 applies to NZBOS except to the extent that this Act provides otherwise. 30
- 11 Section 55 amended (Functions of NZBS)**
- (1) In the heading to section 55, replace “NZBS” with “NZBOS”.
- (2) In section 55(1), replace “NZBS” with “NZBOS” in each place.
- (3) After section 55(1)(b), insert:

- (ba) to provide oversight and clinical governance of the organ donation ~~and transplantation~~ system, to provide support to the 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 5
- 12 Section 56 amended (Membership of board)**
In section 56(1), replace “NZBS” with “NZBOS”.
- 13 Section 60 amended (Interpretation)**
In section 60(b), replace “NZBS” with “NZBOS”. 10
- 14 Section 65 amended (Restrictions on directions by Minister)**
(1) In section 65(4) and (4A)(a), replace “NZBS” with “NZBOS”.
(2) In section 65(4), before paragraph (b), insert:
(a) NZBOS’s role in providing oversight and clinical governance of the organ donation system and in providing support to the transplantation system; or 15
- 15 Section 66 amended (Pharmac, NZBS, and HPA to operate in financially responsible manner)**
In the heading to section 66, replace “NZBS” with “NZBOS”.
- 16 Section 70 amended (Further provisions)** 20
In section 70, replace “NZBS” with “NZBOS”.
- 17 Section 88 amended (Arrangements relating to payments)**
In section 88(4), replace “NZBS” with “NZBOS”.
- 18 Section 102 amended (References to dissolved entities to be references to their successors)** 25
In section 102(c), replace “NZBS” with “NZBOS”.
- 19 Schedule 6 amended**
(1) In the Schedule 6 heading, replace “NZBS” with “NZBOS”.
(2) In Schedule 6, clause 1(b), replace “NZBS” with “NZBOS”.
(3) In Schedule 6, clause 33, replace “NZBS” with “NZBOS”. 30
- Consequential amendment*
- 20 Health Sector (Transfers) Act 1993 amended**
(1) This section amends the Health Sector (Transfers) Act 1993.

- (2) In section 2(1), definition of **publicly-owned health and disability organisation**, replace “NZBS” with “NZBOS”.

Schedule
New Schedule 5 inserted in Compensation for Live Organ Donors
Act 2016

s 9A

Schedule 5
Approved overseas organ exchange programmes

5

s 29(3)

<u>Name of approved overseas organ exchange programme</u>	<u>Conditions (if any) that donor must comply with to be a qualifying donor</u>	<u>Date of approval</u>
<u>Australian and New Zealand Paired Kidney Exchange Program</u>	<u>The donor must be registered with the New Zealand Kidney Exchange Programme</u>	<u>Date of commencement of Part 1 of the Organ Donors and Related Matters Act 2019</u>

Legislative history

13 March 2019
 2 April 2019

Introduction (Bill 117–1)
 First reading and referral to Health Committee