Reprint
as at 30 November 2020

Organ Donors and Related Matters Act 2019

Public Act	2019 No 65
Date of assent	16 November 2019
Commencement	see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Health.

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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.

(2) 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 this Act receives the Royal assent.

Section 2(a): Part 2 brought into force, on 30 November 2020, by clause 2 of the Organ Donors and Related Matters Act 2019 Commencement Order 2020 (LI 2020/192).

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)

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) 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) do not apply if 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.

7 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".

8 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".

9 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,—

(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

(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 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—

(a) the programme has been agreed between a central government agency of the overseas country and the New Zealand Ministry of Health; and

(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.

(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.

10 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 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 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

(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

(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.

11 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.

(2) In setting a rate under subclause (1), the Director-General must—

(a) take into account the additional earnings received by the qualifying donor as a result of the donor returning to employment on reduced hours; and

(b) be satisfied that the qualifying donor's earnings are 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.

12 New Schedule 5 inserted

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

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

13 Amendments to New Zealand Public Health and Disability Act 2000

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

14 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.

15 Section 6 amended (Interpretation)

(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".

16 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.

(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.

17 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 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

18 Section 56 amended (Membership of board)

In section 56(1), replace "NZBS" with "NZBOS".

19 Section 60 amended (Interpretation)

In section 60(b), replace "NZBS" with "NZBOS".

20 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

21 Section 66 amended (Pharmac, NZBS, and HPA to operate in financially responsible manner)

In the heading to section 66, replace "**NZBS**" with "**NZBOS**".

22 Section 70 amended (Further provisions)

In section 70, replace "NZBS" with "NZBOS".

23 Section 88 amended (Arrangements relating to payments)

In section 88(4), replace "NZBS" with "NZBOS".

24 Section 102 amended (References to dissolved entities to be references to their successors)

In section 102(c), replace "NZBS" with "NZBOS".

25 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".

Consequential amendment

26 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 12

Schedule 5
Approved overseas organ exchange programmes

s 29(3)

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

Reprints notes

1 General

This is a reprint of the Organ Donors and Related Matters Act 2019 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Organ Donors and Related Matters Act 2019 Commencement Order 2020 (LI 2020/192)

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