

Financial Assistance for Live Organ Donors Bill

Member's Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Financial Assistance for Live Organ Donors Bill and recommends unanimously that it be passed with the amendments shown.

Introduction

New Zealand has a low rate of live organ donation by international standards. Financial barriers are seen as one reason for this. Organ donors are currently eligible for a sickness benefit and childcare assistance while they recuperate from surgery, but this is seen as insufficient. The Financial Assistance for Live Organ Donors Bill is a member's bill in the name of Chris Bishop. It aims to address New Zealand's low rates of organ donation by removing the financial barriers. The bill as introduced would:

- provide those who donate kidney or liver tissue for altruistic reasons with income assistance while recuperating from surgery
- ensure that beneficiaries retain their benefit while recuperating from surgery and are exempted from work-test obligations
- provide childcare assistance to those donors who require it while recuperating.

Financial assistance, except for beneficiaries, would be provided at the higher of the rate of sickness benefit set out in Schedule 9 of the Social Security Act 1964 or the equivalent of what would be paid under the Accident Compensation Act 2001 if the time off work had been caused by an injury. This equates to 80 percent of lost earnings. The maximum amount of payment under the Accident Compensation Act is \$99,242 per year. Payment under the bill as introduced would be for a maximum of 12 weeks, resulting in a total maximum payment of \$22,902.

Reducing financial barriers to organ donation

We heard from a number of submitters that loss of income while recuperating from donor surgery is a barrier to donation. Donors may also delay the surgery until they have enough savings and leave entitlements to make up for the lost income.

The general policy intent of the bill as introduced is to address the financial barriers to live organ donation. We note that the United Kingdom has a core policy of cost neutrality for live kidney donors. This is based on the idea that donating should neither financially advantage nor disadvantage a person.

We support the principle of cost neutrality for donors, so we believe that donors should be reimbursed at 100 percent of their income rather than the 80 percent recommended in the bill as introduced.

We looked at other jurisdictions to consider whether the income cap should be removed because it does not align with the principle of cost neutrality. We consider that the 12-week maximum would mitigate the financial risk of high payments.

Travel and accommodation costs

Some submitters discussed whether donors' travel and accommodation costs should be covered under this bill. We discussed how these costs could be met. The Ministry of Health noted that travel and accommodation costs are covered by the National Travel Assistance policy. It has undertaken to review this policy and will report back to the committee with its findings.

Proposed amendments

We recommend substantial changes to the bill to provide for cost neutrality for donors. It became clear through the submission process that there were additional complexities in the organ donation regime. This has led us to recommend significant changes to the bill.

This commentary covers the main amendments that we recommend to the bill. It covers the overall bill and does not include standard drafting clauses. The commentary also does not cover minor, technical, or consequential amendments.

Responsibility for the bill

We recommend an amendment to shift responsibility for administering this legislation from the chief executive of the Ministry of Social Development to the Director-General of the Ministry of Health. This is because the bill aims to increase organ donation rates by addressing financial barriers, and the Ministry of Health has the primary interest in organ donation and transplantation rates. We also heard many submissions that noted the difficulty of donors seeking their entitlements through the Ministry of Social Development. This is because there are very few donors each year. We believe that the Ministry of Health is a more appropriate body to deal with organ donors.

Report of the Attorney-General under the New Zealand Bill of Rights Act 1990

On 18 July 2015, the Attorney-General presented a report on the bill to the House of Representatives under section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 265 of the Standing Orders of the House of Representatives. The Attorney-General concluded that the bill was inconsistent with section 19(1) of the Bill of Rights Act. This section supports the right to be free from discrimination on the prohibited grounds of discrimination in the Human Rights Act 1993. Employment status is one of those grounds.

In the bill as introduced, beneficiaries would continue to receive their benefit and be exempt from the usual work-test obligations. However, the Attorney-General considers that the bill disadvantages individuals who receive a benefit and also earn income from working. This is because the bill compensates organ donors for lost work income only if they are not receiving a benefit.

It is possible for a beneficiary to also be in receipt of income from part-time or full-time employment. Beneficiaries who may be affected include recipients of income-tested benefits, New Zealand Superannuation, and the Veterans' Pension.

The proposed amendments to the bill would mean donors would receive reimbursement for 100 percent of forgone employment income, regardless of whether they are a beneficiary. We consider that these changes address the issues raised in the Attorney-General's report and that the bill is no longer inconsistent with section 19(1) of the Bill of Rights Act.

Change to title

We recommend amending the title of the bill to Compensation for Live Organ Donors. This reflects the proposed changes to the bill, which would provide donors with compensation for lost income rather than merely providing financial assistance.

Date of commencement

The commencement date of this legislation will depend on when funding for its implementation, including donor payments, becomes available in the Budget, and on the time required for systems to administer and make payments to be designed and put in place following enactment. Therefore, we recommend amending the date of commencement in new clause 2 to the earlier of a date appointed by the Governor-General by Order in Council or the first anniversary of the date on which the bill receives the Royal assent.

Purpose

In view of the cost-neutrality to donors principle, we recommend inserting new clause 3. This would define the purpose of the bill as removing a financial deterrent to the donation of organs by live organ donors.

Qualifying organs

New clause 4 would define qualifying organs as the whole or a part of any of the following types of human organ:

- kidney
- liver
- any other type of human organ declared by regulations to be a qualifying organ.

Although kidney and liver transplants are the only types of live donor organ transplants carried out in New Zealand at the moment that are suitable for coverage by the bill, other types of potentially suitable live-donor transplant are medically possible and are carried out in other countries. These include small bowel, pancreas, and lobular lung transplants.

To future-proof the bill, we recommend inserting new clause 29 which would allow the Governor-General, by Order in Council on the recommendation of the Minister of Health, to make regulations declaring a type of human organ to be a qualifying organ.

Eligibility for earnings compensation

Qualifying donors

New clause 9 would define a qualifying donor as a person who the Director-General is satisfied will:

- lawfully donate an organ to a person eligible to receive publicly funded health services in New Zealand
- donate a qualifying organ to a person undergoing transplant surgery in New Zealand
- forgo earnings while recuperating from donor surgery.

New clause 4 would define donor surgery as “surgery to collect a qualifying organ for the purpose of donating it to another person” and collect as “to remove or take that organ from a person.”

We recommend inserting new clause 10 to set the length of entitlement for earnings compensation as the earlier of the end date set by the Director-General or the date the donor returns to employment. This date could be extended at the discretion of the Director-General but must be no later than 12 weeks after the donor surgery.

Discretionary earnings compensation

We considered whether potential donors should receive income reimbursement for any time taken off work for the assessment and work-up phase before surgery. We understand that, in most cases, the assessment is done at the donor’s local district health board (DHB) and that the loss of income associated with the assessment phase is not seen as a barrier to potential organ donation. However, there may be some cases where potential donors need to take a substantial amount of time off work before the surgery.

We recommend inserting new clause 12 to enable the Director-General to pay a qualifying donor before surgery in limited circumstances. This payment would be at the discretion of the Director-General on the condition that they are satisfied that:

- the donor would forgo earnings to undertake one or more activities in preparation for the donor surgery
- the donor would not be able to undertake the activities without taking leave from employment
- the donor would not undertake the activities unless earnings compensation were paid
- the activities are medically necessary for the surgery to be carried out.

New clause 13 would set the discretionary earnings compensation rate and require the payment to be made no more than 30 days after the end of the payment period.

Application process for qualifying donors and discretionary earnings compensation

New clause 16 would require a person to apply to the Director-General in writing if they wish to be a qualifying donor or receive discretionary earnings compensation. An application to be a qualifying donor should be made at least 60 days before the date scheduled for the donor surgery. This is to allow for the application to be considered and the applicant advised of the Director-General's decision on their entitlement prior to the surgery. This would enable a donor to have certainty about their assistance before surgery is undertaken, and also to appeal the decision if they considered it was incorrect.

However, the Director-General may accept an application if they believe that there is enough time to make a decision before the donor surgery.

New clause 4 would define "application date" as the date of making an application to be a qualifying donor or to receive discretionary earnings compensation, or a more recent date determined by the Director-General under clause 18(2).

New clause 4 would define "payment period" as the "number of weeks for which earnings compensation is payable under section 10 or 12", with clause 10 covering earnings compensation and clause 12 covering discretionary earnings compensation.

Rights of beneficiaries

We recommend inserting new clause 14 to exempt beneficiaries who have had donor surgery from the work-test and other, similar obligations required under the Social Security Act. This exemption would apply from the date of donor surgery until an end date set by the chief executive of the Ministry of Social Development. This would be the date by which the chief executive considers that the donor has recuperated enough, and must be no later than 12 weeks after the date of donor surgery.

We do not intend this to mean that the chief executive would decide whether a donor had recuperated enough, rather than a medical professional. We received advice from the Ministry of Social Development that the chief executive would delegate the deci-

sion to Work and Income, primarily to case managers. Under the current Assistance to Live Organ Donors programme, case managers rely on the advice of medical practitioners to assess how long an applicant will receive payments.

The medical certificate provided to Work and Income as part of the application for financial assistance specifies the expected recuperation period. This can be extended up to the maximum of 12 weeks if an additional medical certificate is provided. The ministry expects this process to continue under this legislation. We are satisfied with this response.

We recommend inserting new clause 15 to allow beneficiaries to whom clause 14 applies to appeal any decisions made under that clause. Beneficiaries would have the same rights of appeal as they have under the Social Security Act. This Act gives beneficiaries the right to appeal to the Medical Appeal Board about decisions the chief executive has made on medical assessments.

Earnings compensation

Definition of earnings

We recommend inserting new clause 5 to define “earnings”. We note that issues can arise when calculating income, particularly for self-employed people. We believe that using an existing definition would remove confusion and simplify administration. Therefore, we recommend using an existing definition based on the Accident Compensation Act, except that:

- references to the Corporation in sections 9 to 15 of that Act should be read as references to the Director-General of Health
- earnings from overseas should be included.

We note that it may be difficult to assess the income of donors coming from overseas because of different tax systems, different employment arrangements, and difficulty in obtaining information that can be verified by employers and other parties. New clause 5(b) would allow a foreign-sourced amount to count as earnings if the Director-General were satisfied that it would be earnings if it were treated as having a source in New Zealand under section YD 4 of the Income Tax Act 2007. New clause 4 would define a foreign-sourced amount as meaning the same as in section YA 1 of the Income Tax Act.

Setting the rates and payment of earnings compensation

We recommend inserting new clause 11 which would require the Director-General to set the rate of compensation for qualifying donors in accordance with new Schedule 2 and to pay it in arrears on a weekly, fortnightly, monthly, or other regular basis determined by the Director-General.

New clause 2 in Schedule 2 would allow the Director-General to set the rate of earnings compensation for a qualifying donor as the rate calculated in Part 2 of Schedule 2 or at a rate set at the Director-General’s discretion under new clause 3 in Schedule

2. Under that clause, the Director-General could increase the calculated rate to a level that they consider represents the rate of earnings that the donor would forgo.

Definitions for calculating weekly earnings

New clause 1 in Schedule 2 defines a number of terms by adopting definitions from other Acts. They are:

- “earnings as a self-employed person”, “earnings as an employee”, and “shareholder-employee” (Accident Compensation Act)
- “income from employment” and “tax year” (Income Tax Act)
- “parental leave” (Parental Leave and Employment Protection Act 1987)
- “registered bank” (Reserve Bank of New Zealand Act 1989).

Calculation of weekly earnings

New clauses 5 and 8–11 in Schedule 2 would set the formulas for qualifying donors who have received earnings:

- as an employee
- as a self-employed person
- as a shareholder-employee.

New clause 6 in Schedule 2 would require the Director-General to consider an income tax return when calculating earnings if the donor is a self-employed person or a shareholder-employee and has given the tax return to the Director-General.

New clause 12 Schedule 2 would allow the Director-General to estimate an amount that represents reasonable remuneration if the qualifying donor had earnings as a self-employed person or a shareholder-employee and the Director-General could not easily ascertain the donor’s actual weekly earnings. This would apply until the income tax return for the most recently completed tax year is available or until the payment period ends.

If the Director-General pays earnings compensation based on the estimate and subsequently finds that the amount paid is greater than what would have been paid if the income tax return for the most recently completed tax year had been available, the Director-General could use the overpayment provisions in new clause 27 to recover the debt.

New clauses 13 to 17 in Schedule 2 would outline how the other provisions for calculating weekly earnings would apply to qualifying donors:

- with more than one amount of weekly earnings as an employee, self-employed person, or shareholder-employee
- with foreign currency earnings
- with no earnings from employment immediately before the application date, but who the Director-General is satisfied will forgo earnings while they recuperate from surgery

- on parental leave immediately before the application date.

Role of the Director-General of Health

Making decisions on applications

New clause 17 would require the Director-General to either approve and set the rate of earnings compensation, or decline the application as soon as practicable. Applications could be declined if the Director-General was not satisfied that:

- all of the conditions set out for qualifying donors or discretionary earnings compensation had been met
- the information provided for setting the rate of earnings was accurate.

An application could also be declined if the applicant does not provide all of the information requested by the Director-General.

Approved applications would expire three months after the date on which the applicant receives notice of the decision or at a later date notified in writing to the applicant by the Director-General. This would apply only if the donor surgery had not occurred.

Revoking or revising decisions

New clause 18 would outline when the Director-General could revoke or revise decisions. The Director-General would have to notify the applicant in writing before a decision were revoked or revised. A revocation or revision would be considered a new decision.

A decision to approve an application to be a qualifying donor could be revoked if the Director-General were no longer satisfied that 1 or more of the conditions for qualifying donors were met because of a change in the applicant's circumstances. An application for discretionary earnings compensation could be revoked if the Director-General were no longer satisfied that 1 or more of the conditions for discretionary earnings compensation were met because of a change in the applicant's circumstances.

The Director-General could revise a decision on the rate of an applicant's earnings compensation if they believed that the rate initially set was substantially different from the rate at which the applicant would forgo earnings during the payment period, and that this was because the applicant's circumstances had changed since the application date. The Director-General would need to set a new rate of earnings compensation using a more recent date than the application date and that they consider appropriate.

The Director-General could also revise a decision about an application and replace it with a new decision if they believed that the original decision had been made in error.

New clause 19 would require the applicant to provide information requested by the Director-General to help them decide an application or whether to revise or revoke a decision. The Director-General could decline the application, or revoke or revise a decision, if the applicant did not provide the information within a reasonable time. If the

Director-General proposed to revise or revoke a decision, they would need to believe that they had enough information to proceed with the revision or revocation.

Written notice of decisions

New clause 20 would require the Director-General to provide written notice of a decision and, if declining, revoking, or revising a decision, the reasons for that decision. Written notice would also need to be given of the donor's rate of earnings compensation and the end date of payment or the payment period determined under new clause 12 (discretionary earnings compensation).

New clause 26 would deem a notice as having been received by a person either on the date of transmission if the Director-General sends it by email, or the time at which the notice would have been delivered in the ordinary course of the post if sent by post. This clause would apply only if the notice were sent to the address for the person last known by the Director-General.

Recovering overpayments

We recommend inserting new clause 27 to allow the Director-General to recover overpayments. This would occur if a person were paid more than they were entitled to or if the payment were paid to a person with no entitlement.

The Director-General could recover the debt by way of proceedings or deducting all or part of the debt from any amount payable to the person under the legislation. The Director-General could not recover the debt if it had been paid because of an error not intentionally contributed to by the person, the person received the payment in good faith, and it would be unfair to recover the debt because the person had altered their circumstances in reliance on the payment.

Dispute resolution

We recommend that the bill include a clear review and dispute-resolution process, particularly on eligibility and issues associated with determining the income of self-employed people.

New clauses 21 to 25 would:

- Outline that a person who had applied to be a qualifying donor or to receive discretionary earnings compensation may apply to the Director-General for a review of any decision, including how the rate of earnings compensation was calculated, the payment period, or any delays in processing the application that the applicant considers unreasonable.
- Require an application for review to be in writing, identify which decision should be reviewed, contain the reasons for appeal, and state what relief was being sought.
- Require the application for review to be made no later than 30 days after the applicant received the decision being appealed. The Director-General would be required to accept an application made after the deadline if they failed to notify the applicant of the deadline.

- Require that an application for review must be resolved using the process in new Schedule 3.
- Outline that a decision that is being reviewed would “continue to be of full effect” until the review or proceeding is resolved and all rights of appeal are exhausted, or the Director-General and the applicant agree to vary the decision for the benefit of the applicant.

New Schedule 3 would outline the process for the dispute-resolution process. This would consist of:

- internal review (clauses 2 and 3)
- independent review (clauses 4 to 9)
- appeal to District Court (clauses 10 to 12).

Eligibility for Accident Compensation Corporation claims

New clause 28 would ensure that clients who were injured, such as through a treatment injury during donation, and who received an entitlement or payment under this bill, remained eligible for Accident Compensation Corporation payments.

Backdating earnings compensation entitlements

We recommend that the new entitlements be backdated for eligible donors to the date that the bill receives the Royal assent. We believe that, otherwise, there may be a risk that people intending to donate organs would defer the procedure until they become eligible for the new entitlements. This could both delay urgent transplants and complicate management of elective surgery for DHBs.

Donations made before the commencement date

New clause 1 in Schedule 1 would apply to a person who had donor surgery before the commencement date if they applied to the Director-General no less than 120 days after the commencement of the bill and if the donor surgery is no earlier than 12 weeks before the date on which the bill receives the Royal assent.

If the donor surgery were on or before the date of Royal assent, the payment period would not start until the day after the date of assent. The earnings compensation for a period that has already passed when the donor receives notice of their application being approved must be paid no later than 30 days after the date on which that notice is received. Earnings compensation for any remaining part of the payment period must be paid in regular instalments in accordance with clause 11. Qualifying donors under this clause would not be eligible to receive discretionary earnings compensation.

Donations made on or shortly after commencement

New clause 2 in Schedule 1 would apply to a person who had donor surgery in the 60-day period beginning on the commencement of the legislation. The person may be a qualifying donor if they applied to the Director-General no later than 120 days after the date of surgery. The earnings compensation for a period that has already passed

when the donor receives notice of their application being approved must be paid no later than 30 days after the date on which that notice is received. Eligibility for discretionary earnings compensation would apply only if the person received notice that their application had been approved before the date of donor surgery.

Recipients of assistance under the existing welfare programme

New clause 3 in Schedule 1 would apply to a qualifying donor who was eligible for earnings compensation under this bill and had received, or was entitled to receive, income assistance for the existing Ministry of Social Development welfare programme. To ensure that they are not paid more than the income that they have forgone, the income assistance paid under the welfare programme must be deducted from the amount of earnings compensation (net of tax) payable under this legislation.

When exemptions for beneficiaries start to apply

New clause 4 in Schedule 1 would stipulate that the exemption from certain obligations under the Social Security Act that is set out in new clause 14 while recuperating would apply only to a person who has donor surgery on or after the commencement of this legislation.

Appendix

Committee process

The Financial Assistance for Live Organ Donors Bill was referred to the committee on 26 August 2015. The closing date for submissions was 7 October 2015. We received and considered 110 submissions from interested groups and individuals. We heard oral evidence from 14 submitters.

We received advice from the Ministry of Health, the Ministry of Social Development, the Accident Compensation Corporation, and the Ministry of Business, Innovation and Employment.

Committee membership

Simon O'Connor (Chairperson)

Jacqui Dean

Kevin Hague

Hon Annette King

Barbara Kuriger

Dr Shane Reti

Scott Simpson

Barbara Stewart

Poto Williams

Chris Bishop was a member of the committee for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Chris Bishop

Financial Assistance for Live Organ Donors Bill

Member's Bill

Contents

		Page
1	Title	3
2	Commencement	3
<u>2</u>	<u>Commencement</u>	<u>3</u>
3	Interpretation	4
4	Purpose	4
5	Application of Social Security Act 1964	4
	Part 1	
	Income assistance	
6	Income assistance: eligibility	4
7	Amount of income assistance for applicants who forgo income from employment	5
8	Amount of income assistance for applicants in receipt of income- tested benefit	6
9	Work-tested spouses	7
10	Commencement and termination of income assistance	7
	Part 2	
	Childeare assistance	
11	Interpretation	7
12	Childeare assistance: eligibility	7
13	Period for which childeare assistance payable	8
14	Rate of childeare assistance	8
15	Commencement of childeare assistance	8
16	Payment of childeare assistance	9

Part 3
Miscellaneous

17	Ministerial Direction revoked	9
----	-------------------------------	---

Part 1
Preliminary provisions

<u>3</u>	<u>Purpose</u>	<u>9</u>
<u>4</u>	<u>Interpretation</u>	<u>9</u>
<u>5</u>	<u>Meaning of earnings</u>	<u>11</u>
<u>6</u>	<u>Transitional, savings, and related provisions</u>	<u>11</u>
<u>7</u>	<u>Act binds the Crown</u>	<u>11</u>

Part 2
Earnings compensation and protection of benefits during
recuperation

<u>8</u>	<u>Outline of Part</u>	<u>11</u>
	<u>Subpart 1—Earnings compensation for qualifying donors:</u> <u>entitlement and discretionary earnings compensation</u>	
<u>9</u>	<u>Who are qualifying donors</u>	<u>12</u>
	<i>Entitlement to earnings compensation while recuperating</i>	
<u>10</u>	<u>Qualifying donors entitled to earnings compensation for up to 12</u> <u>weeks while recuperating</u>	<u>12</u>
<u>11</u>	<u>Rate and payment of entitlement</u>	<u>13</u>
	<i>Discretionary earnings compensation for periods before donation</i>	
<u>12</u>	<u>Qualifying donors may receive discretionary earnings</u> <u>compensation in limited circumstances</u>	<u>13</u>
<u>13</u>	<u>Rate and payment of discretionary earnings compensation</u>	<u>13</u>
	<u>Subpart 2—Exemptions under Social Security Act 1964 for donors</u> <u>who are beneficiaries</u>	
<u>14</u>	<u>Donors of qualifying organs exempt from certain obligations under</u> <u>Social Security Act 1964 while recuperating</u>	<u>13</u>
<u>15</u>	<u>Appeal to medical board</u>	<u>14</u>

Part 3
Administration and other matters

Applications

<u>16</u>	<u>Applications to be qualifying donor or for discretionary earnings</u> <u>compensation</u>	<u>14</u>
<u>17</u>	<u>Decisions on applications</u>	<u>14</u>
<u>18</u>	<u>When Director-General may revoke or revise decisions</u>	<u>15</u>
<u>19</u>	<u>Applicants must provide information requested by Director-</u> <u>General</u>	<u>16</u>
<u>20</u>	<u>Notice of decisions</u>	<u>16</u>

	<i><u>Dispute resolution</u></i>	
<u>21</u>	<u>Who may apply for review</u>	<u>17</u>
<u>22</u>	<u>Contents of applications for review</u>	<u>17</u>
<u>23</u>	<u>Applicants have 30 days to apply for review against decision</u>	<u>17</u>
<u>24</u>	<u>Review process and right of appeal</u>	<u>17</u>
<u>25</u>	<u>Effect of review or appeal on decisions</u>	<u>17</u>
	<i><u>Miscellaneous</u></i>	
<u>26</u>	<u>Deemed receipt of notices</u>	<u>17</u>
<u>27</u>	<u>Recovery of overpayments</u>	<u>18</u>
<u>28</u>	<u>ACC claims not affected</u>	<u>18</u>
<u>29</u>	<u>Regulations</u>	<u>18</u>
	<i><u>Amendments</u></i>	
<u>30</u>	<u>Amendments to other Acts</u>	<u>19</u>
	<u>Schedule 1</u>	<u>20</u>
	<u>Transitional, savings, and related provisions</u>	
	<u>Schedule 2</u>	<u>22</u>
	<u>Setting rate of earnings compensation</u>	
	<u>Schedule 3</u>	<u>33</u>
	<u>Dispute resolution</u>	
	<u>Schedule 4</u>	<u>37</u>
	<u>Amendments to other Acts</u>	

The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the ~~Financial Assistance~~ Compensation for Live Organ Donors Act **2015**.
- 2 Commencement** 5
- ~~This Act comes into force on the day after the date on which it receives the Royal assent.~~
- 2 Commencement**
- This Act comes into force on the earlier of—
- (a) a date appointed by the Governor-General by Order in Council; and 10
- (b) the first anniversary of the date on which this Act receives the Royal assent.

3 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- applicant** means a person who applies for assistance under this Act, and includes a person granted assistance under this Act
- Chief Executive** means the Chief Executive of the Ministry of Social Development 5
- childcare assistance** means the assistance under Part 2
- employment** means paid employment, and includes self-employment
- income assistance** means the assistance under Part 1
- Regulations** means the Social Security (Childcare Assistance) Regulations 10 2004.
- (2) Terms otherwise defined in section 3(1) of the Social Security Act 1964 or regulation 3(1) of the Regulations have the meanings so defined.

4 Purpose

- The purpose of this Act is to provide financial assistance to people who, for altruistic reasons, donate kidney or liver tissue for transplantation purposes by— 15
- (a) providing income assistance within the limits set by this Act to those who forgo income from employment during their convalescence:
- (b) ensuring that those in receipt of certain income-tested benefits will retain their entitlement to those benefits during their convalescence, notwithstanding they may not fully meet the eligibility criteria during that period: 20
- (c) providing for payment of childcare assistance within the limits set by this Act to those who require it during their convalescence.

5 Application of Social Security Act 1964 25

- (1) Sections 12, 62 to 64, 69G to 70, 71, 74(1)(a), 75 to 77, 80A, 80BD(1), 81, 82 (other than subsection (6)), 83, and 84 of the Social Security Act 1964 apply to this Act and any applicant as if the assistance under this Act were a benefit under Part 1 of the Social Security Act 1964.
- (2) Nothing in **subsection (1)** affects the application to this Act or any applicant of any other provision of the Social Security Act 1964. 30

Part 1 Income assistance

6 Income assistance: eligibility

- (1) The Chief Executive may grant income assistance to an applicant if the Chief Executive is satisfied that the applicant— 35

- (a) is a person who, after an evaluation process, has given his or her free and informed consent to become a live donor of kidney or liver tissue to be transplanted into the body of another person:
 - (b) has made the decision to consent with a full understanding of the nature of the procedure and the possible consequences of becoming a donor: 5
 - (c) has made that decision freely and genuinely and has not been the subject of any coercion to make that decision:
 - (d) has made that decision solely for altruistic reasons:
 - (e) is not a beneficiary (within the meaning of that term in section 61E of the Social Security Act 1964): 10
 - (f) will forgo income from employment during the period of convalescence following the operation to retrieve the tissue.
- (2) Despite **subsection (1)(e) and (f)**, the Chief Executive may grant income assistance to an applicant to whom the Chief Executive is satisfied **subsection (1)(a) to (d)** apply if immediately prior to the operation to retrieve the tissue, the applicant was receiving an income-tested benefit under sections 21, 27B, 27C, 27G, 58, 60F, or 89 of the Social Security Act 1964. 15
- (3) Despite **subsection (1)(f)**, if a person to whom the Chief Executive is satisfied **subsection (1)(a) to (d)** apply—
- (a) has forgone employment for the purpose or the predominant purpose of undergoing an operation to retrieve kidney or liver tissue: 20
 - (b) has left his or her employment for that purpose on or about the date the person received notice that a date for the operation had been allocated:
 - (c) was not in employment on the date of the operation:
- the Chief Executive may, under **section 6(1)(f)**, treat the person as a person who will forgo income from employment during the person's convalescence from the operation. 25
- (4) In reaching a state of satisfaction in respect of the matters in **subsection (1)(a) to (d)**, the Chief Executive may rely on the certificate of a medical practitioner vocationally registered in nephrology or general surgery where the surgeon is specialised in transplant surgery. 30
- 7 Amount of income assistance for applicants who forgo income from employment**
- (1) The weekly amount of income assistance granted under section 6(1) is the greater of the weekly rate of the sickness benefit set out in Schedule 9 of the Social Security Act 1964, or the amount of weekly compensation that would be payable to the applicant under Part 2 of Schedule 1 of the Accident Compensation Act 2001, as if they qualified for that weekly compensation. 35

- (2) ~~Where an applicant is entitled to be paid income assistance at the weekly rate of a sickness benefit set out in Schedule 9 of the Social Security Act 1964 any income test attached to that rate is to be disregarded.~~
- (3) ~~Where an applicant is entitled to be paid income assistance in the amount of weekly compensation that would be payable under Part 2 of Schedule 1 of the Accident Compensation Act 2001, the amount of income assistance payable each week is,—~~ 5
- (a) ~~in the case of an applicant who had earnings as an employee prior to the date of the surgical operation in which the tissue was retrieved, the amount calculated using the formula in clause 34(1) of that schedule:~~ 10
- (b) ~~in the case of an applicant who was self-employed prior to the date of the surgical operation in which the tissue was retrieved, the higher of the amount calculated using the formula in clause 38(2) and the amount in clause 38(3) of that schedule:~~
- (c) ~~in the case of an applicant who had earnings as a shareholder-employee prior to the date of the surgical operation in which the tissue was retrieved, the higher of the amount calculated using the formula in clause 34(1) and the amount calculated using the formula in clause 39(2) of that schedule:~~ 15
- (d) ~~in the case of an applicant who was a shareholder-employee who had earnings as a self-employed person prior to the date of the surgical operation in which the tissue was retrieved, the amount calculated using the formula in clause 39(2) of that schedule.~~ 20
- (4) ~~The maximum amount of weekly income assistance calculated under **subsection (3)** is set out in clause 46 of Schedule 1 of the Accident Compensation Act 2001, whatever amount is calculated under **subsection (3)**.~~ 25
- (5) ~~The period for which income assistance is payable in any case is determined by **section 10(1)**.~~
- 8 Amount of income assistance for applicants in receipt of income-tested benefit** 30
- (1) ~~The weekly amount of income assistance granted under **section 6(2)** is the weekly amount set out in Schedules 3, 9, 16, 17, or 26 of the Social Security Act 1964 relating to the income-tested benefit the applicant was receiving immediately prior to the date of the surgical operation in which tissue was retrieved, for the period of convalescence determined under **section 10(1)**.~~ 35
- (2) ~~The income assistance referred to in **subsection (1)** is payable for the period of convalescence, notwithstanding that the applicant may not be able to fulfil one or more of the eligibility criteria for the relevant income-tested benefit, including work-test obligations, during that period.~~

9 Work-tested spouses

An applicant who is a work-tested spouse and is unable to fulfil one or more of his or her work-test obligations during a period of convalescence determined under **section 10(1)**, is deemed to have good and sufficient reason under section 115(1) of the Social Security Act 1964 for failing to comply with those obligations.

5

10 Commencement and termination of income assistance

- (1) Income assistance commences on the later of the date of application for it or the date of the surgical operation in which the tissue was retrieved from the applicant, and continues for each week (not exceeding 12 weeks) in which the Chief Executive is satisfied the applicant is convalescing from that operation and forgoing income from employment or from an income-tested benefit under sections 21, 27B, 27C, 27G, 58, 60F, or 89 of the Social Security Act 1964, as the case may be.

10

- (2) Despite **subsection (1)**, if the application for it is received within 28 days after the date of the surgical operation, income assistance commences on the date of the operation.

15

Part 2**Childcare assistance****11 Interpretation**

20

In this Part, **qualifying child**, in relation to an applicant, means a dependent child of the applicant—

- (a) who is aged less than 14; and
- (b) in respect of whom the applicant is the principal caregiver.

12 Childcare assistance: eligibility

25

- (1) The Chief Executive may grant childcare assistance in respect of a qualifying child of an applicant if the Chief Executive is satisfied that the applicant—

- (a) is a person to whom **section 6(1)(a) to (d)** apply; and
- (b) requires childcare for the child during the period of convalescence from the operation to retrieve the tissue.

30

- (2) In reaching a state of satisfaction in respect of the matter in **subsection (1)(a)**, the Chief Executive may rely on the certificate of a medical practitioner vocationally registered in nephrology or general surgery where the surgeon is specialised in transplant surgery.

- (3) In reaching a state of satisfaction in respect of the matter in **subsection (1)(b)**, the Chief Executive may rely on the certificate of a medical practitioner vocationally registered in nephrology or general surgery where the surgeon is specialised in transplant surgery or of a registered medical practitioner.

35

- (4) ~~Childecare assistance granted under **subsection (1)** is in addition to—~~
- ~~(a) any childecare assistance granted to the applicant in respect of the child under section 61GA of the Social Security Act 1964 or for which the applicant is eligible under the Regulations; or~~
 - ~~(b) any assistance by way of special benefit or temporary additional support granted to the applicant for childecare costs in respect of the child.~~ 5

13 ~~Period for which childecare assistance payable~~

~~Childecare assistance granted in respect of a qualifying child is payable—~~

- ~~(a) for each week (not exceeding 12 weeks) in which the Chief Executive is satisfied the applicant is convalescing from the operation to retrieve the tissue; and~~ 10
- ~~(b) for—~~
 - ~~(i) the number of hours in the week the child participates in an approved early childhood programme, or as the case requires, one or more OSCAR programmes, not exceeding the maximum number of hours for which a childecare subsidy or, as the case may be, an OSCAR subsidy may be paid for an eligible child under the Regulations; but~~ 15
 - ~~(ii) after deducting the number of hours in the week for which the applicant—~~ 20
 - ~~(A) has been granted a childecare subsidy or an OSCAR subsidy under section 61GA of the Social Security Act 1964 in respect of the child, or would be eligible to be granted a childecare subsidy or OSCAR subsidy in respect of the child under the Regulations; or~~ 25
 - ~~(B) has been granted assistance by way of special benefit or temporary additional support towards his or her childecare costs in respect of the child.~~

14 ~~Rate of childecare assistance~~

~~Childecare assistance granted under section 12 must be paid at the rate per hour for the time being set out in the second column of clause 1(a) of the Schedule of the Regulations.~~ 30

15 ~~Commencement of childecare assistance~~

- ~~(1) Childecare assistance commences on the later of the date of application for it or the date of the surgical operation in which the tissue was retrieved from the applicant.~~ 35
- ~~(2) Despite **subsection (1)**, if the application for it is received within 28 days after the date of the surgical operation, childecare assistance commences on the date of the operation.~~

16 ~~Payment of childcare assistance~~

- (1) ~~Childcare assistance—~~
- (a) ~~payable for a qualifying child's participation in an approved early childhood programme must be paid (as the case may be) to—~~
 - (i) ~~the service providing the programme;~~ 5
 - (ii) ~~the service that arranged the scheme under which the programme is provided; and~~
 - (b) ~~payable for a qualifying child's participation in an OSCAR programme may be paid to the provider of the programme or to the applicant.~~
- (2) ~~Subsection (1)(a) does not prevent the Chief Executive from paying a lump sum of childcare assistance directly to the applicant if—~~ 10
- (a) ~~the sum represents an underpayment of amounts—~~
 - (i) ~~that should have been paid to an approved early childhood service in respect of the child's participation in a programme it provides;~~ 15
 - ~~or~~
 - (ii) ~~that should have been paid to an approved early childhood care arranger in respect of the child's participation in a programme provided under a scheme it arranged; and~~
 - (b) ~~the applicant has already paid to the service or arranger the amount of the underpayment.~~ 20

Part 3

Miscellaneous

17 ~~Ministerial Direction revoked~~

~~This Act revokes the Assistance to Live Organ Donors Programme and Ministerial Direction made on 18 January 2005 pursuant to section 5 and section 124(1)(d) of the Social Security Act 1964 and published in the *Gazette* on 3 February 2005.~~ 25

Part 1

Preliminary provisions

- 3 Purpose** 30
- 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—** 35

- (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

5

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

Director-General means the Director-General of Health

earnings has the meaning given by **section 5**

employment—

10

- (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

15

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

20

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

25

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

30

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.

35

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 5
- (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 10

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 15

**Earnings compensation and protection of benefits during
recuperation**

8 Outline of Part

- (1) This Part is divided into 2 subparts.

(2) Subpart 1— 20

- (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. 25

- (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. 30

- (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— 5
- (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 10
- (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. 15

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— 20
- (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— 25
- (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. 30
- (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 35
- (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. 5

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— 10
 - (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 15
 - (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 **sub-section (1)(d)**. 20

13 Rate and payment of discretionary earnings compensation

For earnings compensation payable under **section 12**, the Director-General must— 25

- (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 30

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. 35

- (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). 5
- (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. 10

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). 15

Part 3

Administration and other matters

Applications

16 Applications to be qualifying donor or for discretionary earnings compensation 20

- (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. 25
- (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. 30

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 35
- (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 5
- (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 10
 - (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 15
 - (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: 20
 - (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 25
 - (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: 30
 - (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 35
 - (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. 5
- (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— 10
- (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— 15
- (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
- 20 Notice of decisions**
- (1) The Director-General must give an applicant written notice of—
- (a) a decision on an application; and 25
 - (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— 30
- (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 35
 - (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— 5
 - (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. 10

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 15
- (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. 20

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— 25

- (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. 30

*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. 5

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 10
 - (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. 15
- (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. 20

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. 25

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. 30
- (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 35
 - (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

s 6

Part 1

Provisions relating to Act as enacted

5

*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:

10

- (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.

15

20

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:

25

- (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.

30

35

*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 5
 - (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. 10
- (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. 15

Schedule 2
Setting rate of earnings compensation

ss 11, 13

Contents

	<u>Page</u>
<u>1</u> <u>Interpretation</u>	<u>23</u>
<u>Part 1</u>	
<u>Setting rate of earnings compensation</u>	
<u>2</u> <u>How Director-General must set rate of earnings compensation</u>	<u>24</u>
<u>3</u> <u>Discretion to increase amount calculated</u>	<u>24</u>
<u>Part 2</u>	
<u>Calculation of weekly earnings for use as rate of earnings compensation</u>	
<u>4</u> <u>Outline of Part</u>	<u>25</u>
<u>Subpart 1—Calculations for employees</u>	
<u>5</u> <u>Weekly earnings if qualifying donor has earnings as employee</u>	<u>25</u>
<u>Subpart 2—Calculations for self-employed persons and shareholder-employees</u>	
<u>Use of income tax returns</u>	
<u>6</u> <u>Use of income tax returns in calculating earnings</u>	<u>26</u>
<u>Self-employed persons</u>	
<u>7</u> <u>Weekly earnings if qualifying donor has earnings as self-employed person: application of clause 8</u>	<u>26</u>
<u>8</u> <u>Weekly earnings if qualifying donor has earnings as self-employed person: calculations</u>	<u>26</u>
<u>9</u> <u>Weekly earnings if self-employed qualifying donor had earnings as shareholder-employee in most recently completed tax year</u>	<u>28</u>
<u>Shareholder-employees</u>	
<u>10</u> <u>Weekly earnings if qualifying donor has earnings as shareholder-employee</u>	<u>28</u>
<u>11</u> <u>Weekly earnings if qualifying donor as shareholder-employee had earnings as self-employed person in most recently completed tax year</u>	<u>30</u>
<u>Estimated earnings</u>	
<u>12</u> <u>Interim estimation of weekly earnings that cannot be ascertained</u>	<u>30</u>

Subpart 3—Matters relating to certain qualifying donors

Qualifying donors with multiple sources of earnings

13	Calculations aggregated if multiple sources of earnings	31
----	---	----

Qualifying donors with overseas earnings

14	Exchange of earnings from overseas	31
----	------------------------------------	----

15	Modifications if earnings from overseas	31
----	---	----

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	32
----	---	----

Qualifying donors on parental leave

17	Weekly earnings if donor on parental leave	32
----	--	----

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 5

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 10

- (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,— 15

- (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 20

- (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 25

- 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) 5
- 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 10
- 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. 15

Part 1

Setting rate of earnings compensation

- 2 How Director-General must set rate of earnings compensation** 20
- 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** 25
- (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. 30
- (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. 35

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: 5
- (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: 10
- (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 15
- (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** 20
- (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— 25
- 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: 30
- (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**. 35

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— 5

- (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 10

- (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: 15
 - (a) the income tax return for the most recently completed tax year is available;
 - (b) the payment period ends. 20
- (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. 25
- (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 30

- (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 35

- 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,— 5
- (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— 10
- 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— 15
- (a) the number of weeks during which the donor earned those earnings as an employee; and
- (b) 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: 20
- (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: 25
- $a \div b$
- 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. 30
- (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. 35
- (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 5

- (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 10
 - (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. 15
- (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 20

- (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. 25

- (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 30
 - 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,— 35

- (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— 5
- 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— 10
- (a) the number of weeks during which the donor earned those earnings as an employee; and
- (b) 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: 15
- (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: 20
- $a \div b$
- 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 25
- (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. 30
- (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**. 35

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 5
 - (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. 10
- (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. 15

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 20
 - (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: 25
- (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— 30
- (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 35
 - (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. 5

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— 10
- (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. 15
- (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

20

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. 25
- (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

30

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 35
- (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) | <u>This clause applies if—</u> | 5 |
| (a) | <u>a qualifying donor does not have earnings from employment immediately before the application date; but</u> | |
| (b) | <u>the Director-General is satisfied that the donor would have earnings from employment on the date of the donor surgery but for the surgery.</u> | |
| (2) | <u>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.</u> | 10 |

Qualifying donors on parental leave

17 Weekly earnings if donor on parental leave

- | | | |
|-----|--|----|
| (1) | <u>This clause applies if a qualifying donor is on parental leave immediately before the application date.</u> | 15 |
| (2) | <u>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.</u> | |
| (3) | <u>The payment period for the donor—</u> | |
| (a) | <u>starts on the day after the last day of the parental leave; and</u> | 20 |
| (b) | <u>ends at the time determined under section 10 or 12.</u> | |

Schedule 3

Dispute resolution

s 24

Contents

		<u>Page</u>
<u>1</u>	<u>Outline of dispute resolution process</u>	<u>33</u>
	<i>Internal review</i>	
<u>2</u>	<u>Internal review</u>	<u>33</u>
<u>3</u>	<u>Notice of decision</u>	<u>34</u>
	<i>Independent review</i>	
<u>4</u>	<u>Application for independent review</u>	<u>34</u>
<u>5</u>	<u>Director-General to engage reviewer</u>	<u>34</u>
<u>6</u>	<u>Conduct of review</u>	<u>34</u>
<u>7</u>	<u>Review decisions: formalities</u>	<u>34</u>
<u>8</u>	<u>Review decisions: substance</u>	<u>35</u>
<u>9</u>	<u>Effect of review decisions</u>	<u>35</u>
	<i>Appeal to District Court</i>	
<u>10</u>	<u>Appeal to District Court</u>	<u>35</u>
<u>11</u>	<u>Who is entitled to be heard</u>	<u>36</u>
<u>12</u>	<u>Director-General to make records available</u>	<u>36</u>

1 Outline of dispute resolution process

- (1) This schedule sets out the following process for resolving an application for re-
view under **section 21**: 5
- (a) the Director-General conducts an internal review of each decision chal-
lenged 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: 10
 - (c) the applicant or the Director-General may then appeal to a 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 15

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— 5
 - (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. 10
- 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 15
- 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 20
 - (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. 25
- 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 30
 - (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** 5
- (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 10
 - (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. 15
- (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 20
 - (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. 25
- (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** 30
- 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 a District Court against the decision of an independent reviewer. 35

- (2) An appeal under this clause is dealt with in accordance with the District Courts 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. 5
- (2) This clause does not affect rule 18.18 of the District Courts 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 10
- (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)**. 15
- (3) In this clause, **Registrar** means a Registrar of the District Court, and includes a Deputy Registrar.

Schedule 4

Amendments to other Acts

s 30

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**”. 5

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**”. 10

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). 15

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. 20

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. 25

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**: 30

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)**”. 35

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— 5
- (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. 10
- (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. 15

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)

20

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: 25

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

30

- (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**); 35

Financial Assistance for Live Organ Donors Bill

Legislative history

25 June 2015
26 August 2015

Introduction (Bill 39–1)
First reading and referral to Health Committee

Wellington, New Zealand:

Published under the authority of the House of Representatives—2016