

# Departmental Disclosure Statement

---

Organ Donors and Related Matters Bill
---------------------------------------

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

John Doyle  
Acting Group Manager  
Ministry of Health

18 February 2019

**Contents**

Contents..... 2

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information ..... 4

Part Three: Testing of Legislative Content..... 6

Part Four: Significant Legislative Features ..... 8

## Part One: General Policy Statement

*Increasing Deceased Organ Donation and Transplantation: A National Strategy 2017* (the Strategy) sets out a number of recommendations to increase New Zealand's deceased organ donation and transplantation rates.

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

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

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

The national agency will be established within an existing crown entity. The most suitable entity is the New Zealand Blood Service.

To enable this, the Bill broadens the functions of the New Zealand Blood Service provided for under the New Zealand Public Health and Disability Act 2000.

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

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>The policy to be given effect by the Bill is part of implementing <i>Increasing Deceased Organ Donation and Transplantation: A National Strategy 2017</i>.</p> <p>The focus of the Strategy is to make it easier for families who have to make the decision about donating organs to know what their loved one wanted, and to make sure the possibility of donation is discussed with families in an effective, sensitive and ethical way. It identifies ways to measure progress and sets out actions to improve:</p> <ul style="list-style-type: none"><li>• public awareness and media engagement</li><li>• systems of registering intent</li><li>• capability and consistency</li><li>• hospital capacity for deceased organ donation.</li></ul> <p>One of the key planks of the Strategy is the establishment of a national agency with a clear mandate to increase donation and transplantation coordination.</p> <p><a href="https://www.health.govt.nz/system/files/documents/publications/increasing-deceased-organ-donation-and-transplantation_.pdf">https://www.health.govt.nz/system/files/documents/publications/increasing-deceased-organ-donation-and-transplantation_.pdf</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<p>Currently, for compensation to be paid under the Compensation for Live Organ Donors Act 2016, both the donor surgery and the transplant surgery has to take place in New Zealand. Further, the recipient must be eligible to receive services funded under the New Zealand Public Health and Disability Act 2000.</p> <p>The Bill will allow compensation to be considered under any future international organ exchange programmes.</p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
<p>The Regulatory Quality Team at Treasury has determined that a Regulatory Impact Analysis was not required for this proposal as it has no or only minor impacts on businesses, individuals or not-for-profit entities</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>N/A</b>

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>N/A</b>

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The change to the New Zealand Public Health and Disability Act will allow the New Zealand Blood Service to take on functions relating to organ donation, but will not require it. Establishing a national agency within an existing crown entity is the most cost effective option. Any actual changes to the Blood Service's existing Output Agreement will be managed through the usual expectation setting process after consultation with the agencies involved and consideration of potential Budget decisions.</p> <p>Additional funding of \$0.100 million in 2018/19 and \$0.225 million in 2019/20 is required to transition existing Organ Donation New Zealand's services from Auckland District Health Board (ADHB) to the Blood Service. In addition, \$0.250 million of ongoing funding from 2019/20 is required for service costs including clinical governance of organ donation services, and marginal increases to the Blood Service's overheads from its expanded functions. There would also be a fiscally neutral baseline funding transfer of \$1.7 million from ADHB and Ministry contracted baselines to the Blood Service in 2019/20 and outyears.</p> <p>Amending the New Zealand Public Health and Disability Act will enable the Blood Service to undertake a wider range of functions than it is currently mandated to do, with a view to increasing donor rates under the <i>Increasing Deceased Organ Donation and Transplantation: A National Strategy 2017</i>.</p> <p>The full implementation of the Strategy would require an estimated additional funding of \$2.7 million a year (\$10.8 million over four years), of which \$0.7 million (\$2.8 million over four years) is required from 2019/20 to continue activity currently supported by time-limited funding.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
--

The Bill will allow compensation to live organ donors to be considered under any future international organ exchange programmes.
--

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
---

<p>The functions of the New Zealand Blood Service are covered under the New Zealand Public Health and Disability Act 2000 which recognises and respects the principles of the Treaty of Waitangi and provides mechanisms for Māori to contribute to decision making in Part 3.</p> <p>Further, in the development of the Strategy, careful consideration was given to ethnic, cultural and religious differences in relation to deceased organ donation, with a focus on Māori.</p> <p>Successful implementation of all the Strategy's priority areas (improving public awareness, improving registration and sharing donation intent, improving training, and increasing capacity) will contribute to improving overall Māori donation rates.</p>
--

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
---	------------

The Ministry of Justice has advised that the Bill appears to be consistent with the New Zealand Bill of Rights Act 1990.
--

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
--	--

<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
--	-----------

<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
---	-----------

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>N/A</b>
---	------------

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
---	-----------

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>The policy to be given effect by the Bill comprises part of the implementation of <i>Increasing Deceased Organ Donation and Transplantation: A National Strategy 2017</i>.</p> <p>The Strategy was informed by a comprehensive review of New Zealand practice, with input from an expert advisory group and a sector working group as well as public consultation. The review also considered overseas jurisdictions, and how they achieved increases in organ donation. The Strategy is widely supported in the donation and transplant sector.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The Ministry of Health has worked closely with the New Zealand Blood Service and with Auckland District Health Board (which provides and funds the services of Organ Donation New Zealand) to estimate the process and cost of establishing and transitioning current services to a national organ donation agency.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO



### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>