



National Blood Authority Act 2003

No. 29, 2003

**An Act to enhance the management of Australia's
blood supply, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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National Blood Authority Act 2003

No. 29, 2003

An Act to enhance the management of Australia's blood supply, and for related purposes

[Assented to 15 April 2003]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Blood Authority Act 2003*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

| Commencement information | | |
|--|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent | 15 April 2003 |
| 2. Sections 3 to 45 | Either: (a) if this Act receives the Royal Assent before 1 July 2003—1 July 2003; or (b) in any other case—a single day to be fixed by Proclamation, subject to subsection (3) | 1 July 2003 |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table has not commenced on 1 July 2003, and does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Definitions

In this Act, unless the contrary intention appears:

blood products and services means:

- (a) products (**blood products**) that are used or intended for use for human therapeutic or diagnostic purposes and that:

- (i) consist of human blood or components of human blood;
or
- (ii) are derived from human blood; or
- (b) products (***blood-related products***) that are used or intended for use for human therapeutic or diagnostic purposes and that:
 - (i) are alternative or complementary to the use of blood products; and
 - (ii) are regarded as blood-related products for the National Blood Agreement; or
- (c) services, equipment or procedures that are regarded as blood-related services for the National Blood Agreement and that:
 - (i) are used in the collection, supply or use of blood products or blood-related products; or
 - (ii) are alternatives to the use of blood products or blood-related products; or
 - (iii) reduce the need for blood products or blood-related products; or
 - (iv) otherwise affect the demand or supply of blood products or blood-related products.

blood-related information has the meaning given by subsection 10(4).

Board means the NBA Board established by section 12.

Chair means the Chair of the Board.

covered Territories means the following:

- (a) the Australian Capital Territory;
- (b) the Northern Territory;
- (c) the Territory of Christmas Island;
- (d) the Territory of Cocos (Keeling) Islands;
- (e) the Australian Antarctic Territory;
- (f) the Jervis Bay Territory.

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General Manager means the General Manager (described in Part 4) of the NBA.

Ministerial Council has the same meaning as in the National Blood Agreement.

National Blood Agreement means the national blood agreement that:

- (a) relates to matters in this Act (in particular the supply of blood products and services); and
- (b) is between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory; and
- (c) is in force from time to time.

national blood arrangements means arrangements in, or referred to in, the National Blood Agreement.

NBA means the National Blood Authority established by section 7.

NBA staff means the staff described in section 36.

4 Main purpose of this Act

The main purpose of this Act is to establish the NBA as part of the coordinated national approach to policy setting, governance and management of the Australian blood sector as agreed in the National Blood Agreement.

5 This Act binds the Crown

This Act binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

6 Application to the external Territories

This Act extends to each external Territory except Norfolk Island.

Part 2—The National Blood Authority

7 Establishment

- (1) The National Blood Authority is established by this section.
- (2) The NBA consists of the General Manager and the NBA staff.

Note: The NBA does not have a legal identity separate from the Commonwealth.

8 Functions

- (1) The NBA's functions are as follows:
 - (a) to liaise with, and gather information from, governments, suppliers and others about matters relating to blood products and services;
 - (b) to carry out national blood arrangements relating to annual plans and budgets for the production and supply of blood products and services;
 - (c) to carry out national blood arrangements to ensure that there is a sufficient supply of blood products and services in all the States and covered Territories;
 - (d) to carry out national blood arrangements relating to the funding of:
 - (i) the supply of blood products and services; and
 - (ii) the NBA's operations;
 - (e) to enter and manage contracts and arrangements for the collection, production and distribution of the blood products and services necessary to ensure a sufficient supply of blood products and services in all the States and covered Territories;
 - (f) to carry out national blood arrangements relating to safety measures, quality measures, contingency measures and risk mitigation measures for the supply of blood products and services;

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- (g) to provide information and advice to the Minister and the Ministerial Council about matters relating to blood products and services;
 - (h) to carry out national blood arrangements relating to the facilitation and funding of research, policy development and other action about matters relating to blood products and services;
 - (i) to provide assistance:
 - (i) in accordance with national blood arrangements, to a committee referred to in those arrangements; and
 - (ii) to the Board; and
 - (iii) to the advisory committees (if any) established under section 38;
 - (j) such other functions (if any) as are determined by the Ministerial Council and specified in a written notice given by the Minister to the NBA.
- (2) A notice given under paragraph (1)(j) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

9 Policy principles about the NBA's functions

- (1) The Minister may, in accordance with the National Blood Agreement, give written policy principles to the NBA about the performance of its functions.
- (2) The Minister must cause a copy of the policy principles to be presented to each House of the Parliament within 15 sitting days of that House after the day on which they were given to the NBA.
- (3) The NBA must comply with the policy principles (if any) when performing its functions.

10 General Manager's power to obtain information and documents

Requirements to give information

- (1) The General Manager may, by written notice, require a person described in subsection (3) whom the General Manager reasonably believes is capable of giving blood-related information, to give that

information to the General Manager by giving the General Manager either or both of the following:

- (a) written answers to questions specified in the notice;
- (b) such documents, or copies of documents, as are described in the notice.

Note 1: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to a notice given under this section.

Note 2: For **document**, see section 25 of the *Acts Interpretation Act 1901*.

- (2) A notice given under subsection (1) must specify:
 - (a) the time by which the information must be given, which must be at least 14 days after the day the notice was given; and
 - (b) how the information must be given.

Who may be required to give information

- (3) A notice may be given under subsection (1) to:
 - (a) the person who has overall responsibility for the provision of hospital services (as defined in section 23E of the *Health Insurance Act 1973*) at a private hospital (as defined in that Act); or
 - (b) a supplier of blood products and services in Australia; or
 - (c) an importer of blood products and services into Australia; or
 - (d) a person specified in the regulations.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

Information that may be required to be given

- (4) **Blood-related information** is information, other than personal information (as defined in the *Privacy Act 1988*), relating to one or more of the following matters:
 - (a) demand for blood products and services;
 - (b) supplying blood products and services (including their receipt by a hospital);
 - (c) forecasting:
 - (i) donations of human blood; or
 - (ii) supplies of blood products and services;

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- (d) benchmarking a person's performance in respect of a matter relating to blood products and services;
- (e) cost of blood products and services;
- (f) safety and quality of blood products and services;
- (g) possible or actual risks to a sufficient supply of blood products and services in all the States and covered Territories.

Offence for failing to comply with a requirement

- (5) A person commits an offence if the person fails to comply with a requirement under subsection (1).

Penalty: 30 penalty units.

Self-incrimination

- (6) A person is excused from complying with a requirement made of the person under subsection (1) if the answer to the question or the production of the document or copy might tend to incriminate the person or expose the person to a penalty or other liability.

Note: A defendant bears an evidential burden in relation to the excuse in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Compensation for giving documents

- (7) A person is entitled to be paid by the NBA reasonable compensation for complying with a requirement covered by paragraph (1)(b).

11 Protecting confidentiality of information

- (1) A person commits an offence if:
- (a) the person discloses a fact or document; and
 - (b) the fact came to the person's knowledge, or the document came into the person's possession, because of the person's official employment; and
 - (c) the disclosure is not made in the course of the person's official employment.

Penalty: Imprisonment for 2 years.

(2) In this section:

official employment means:

- (a) service as the General Manager or as a member of the NBA staff; or
- (b) service as a Board member; or
- (c) the performance of services for the NBA or the Board.

Part 3—The NBA Board

12 Establishment

The NBA Board is established by this section.

13 Functions

- (1) The Board's functions are as follows:
 - (a) to participate in consultation with the Minister about the appointment of the General Manager;
 - (b) to give advice to the General Manager about the performance of the NBA's functions;
 - (c) to liaise with governments, suppliers and others about matters relating to the NBA's functions;
 - (d) such other functions (if any) as are specified in a written notice given by the Minister to the Chair.
- (2) A notice given under paragraph (1)(d) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

14 Membership

The Board consists of:

- (a) a Chair; and
- (b) a person representing the interests of the Commonwealth; and
- (c) 1 or 2 persons representing the interests of the States and Territories; and
- (d) a person representing the community; and
- (e) a person with expertise in public health issues relating to human blood; and
- (f) a person with financial or commercial expertise.

15 Appointing members

- (1) Board members are to be appointed by the Minister by written instrument.
- (2) Before appointing them, the Minister must be satisfied that:
 - (a) they have been selected by the Ministerial Council for appointment; and
 - (b) the person selected to be the Chair is considered by the Ministerial Council to be independent from the interests of:
 - (i) the suppliers of blood products and services; and
 - (ii) the Commonwealth, States and Territories; and
 - (c) the person selected to represent the interests of the Commonwealth was nominated by the Commonwealth; and
 - (d) the person or persons selected to represent the interests of the States and Territories were nominated by a State or Territory.
- (3) A Board member is to be appointed on a part-time basis.

16 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

17 Acting appointments

- (1) The Minister may appoint a Board member to act as the Chair:
 - (a) during a vacancy in the office of Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) The Minister may appoint a person to act as a Board member:
 - (a) during a vacancy in the office of a Board member, whether or not an appointment has previously been made to the office;
or

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- (b) during any period, or during all periods, when a Board member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (3) The Minister may only appoint a person to act as a Board member described in one of paragraphs 14(b) to (f) if the person is qualified to be appointed as the Board member described in the paragraph concerned.
- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

18 Members' remuneration

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is specified in a written determination made by the Minister.
- (2) However, a Board member is not entitled to be paid this remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or
 - (b) a corporation (a *public statutory corporation*) established for a public purpose by a State law, other than a tertiary education institution; or
 - (c) a company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
 - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

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Note: A similar rule applies to a Board member who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) A Board member is to be paid the allowances that are specified in a written determination made by the Minister.
- (4) A determination made under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) This section (except subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

19 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.

20 Resignation

A Board member may resign his or her appointment by giving the Minister a written resignation.

21 Termination of appointment

- (1) The Minister may terminate the appointment of a Board member for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a Board member if the Board member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) is absent, except on leave of absence, from 3 consecutive meetings of the Board; or

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- (c) engages in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office.
- (3) The Minister must terminate the appointment of the Chair if the Ministerial Council considers that the Chair is not independent from the interests of the bodies specified in subparagraphs 15(2)(b)(i) and (ii).

22 Board procedures

- (1) The Minister may determine in writing matters relating to the operation of the Board including, but not limited to, the following:
 - (a) procedures for convening Board meetings;
 - (b) the constitution of a quorum for a Board meeting;
 - (c) procedures for conducting Board meetings, including (but not limited to) the way the Board may resolve matters;
 - (d) disclosure of interests;
 - (e) Board records;
 - (f) reporting requirements, including (but not limited to) reports to the Minister and to the public.
- (2) If no determination is in force for the purposes of a paragraph of subsection (1), the Board may operate in the way it determines in respect of the matters described in that paragraph.
- (3) A determination made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 4—The NBA General Manager, staff and advisory committees

Division 1—The General Manager

Subdivision A—Establishment and role

23 General Manager

There is to be a General Manager of the NBA.

24 Function

The General Manager is responsible for managing the NBA.

25 Working with the Board

- (1) The General Manager must request the Board's advice on strategic matters relating to the performance of the NBA's functions.
- (2) The General Manager must have regard to the advice given to him or her by the Board (whether or not the advice was given in response to a request).
- (3) The General Manager must:
 - (a) keep the Board informed of the NBA's operations; and
 - (b) give the Board such reports, documents and information in relation to those operations as the Chair requires.
- (4) The General Manager may attend Board meetings as an observer (including by telephone or other means).

26 Delegation

- (1) The General Manager may, in writing, delegate all or any of his or her functions or powers to a member of the NBA staff.

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- (2) In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the General Manager.

Subdivision B—Appointing the General Manager

27 Appointing the General Manager

- (1) The General Manager is to be appointed by the Minister by written instrument.
- (2) However, the Minister must first consult the Board about a proposed appointment.
- (3) The General Manager is to be appointed on a full-time basis.

28 Term of appointment

The General Manager holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

29 Acting appointments

- (1) The Minister may appoint a person to act as the General Manager:
 - (a) during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

30 General Manager's remuneration

- (1) The General Manager is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the General Manager is to be paid the remuneration that is specified in a written determination made by the Minister.
- (2) The General Manager is to be paid the allowances that are specified in a written determination made by the Minister.
- (3) A determination made under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

31 Outside employment

The General Manager must not engage in paid employment outside the duties of the General Manager's office without the Minister's approval.

32 Leave of absence

- (1) The General Manager has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the General Manager leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

33 Disclosure of interests

The General Manager must give written notice to the Minister of all interests, pecuniary or otherwise, that the General Manager has or acquires and that could conflict with the proper performance of the General Manager's functions.

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34 Resignation

The General Manager may resign his or her appointment by giving the Minister a written resignation.

35 Termination of appointment

- (1) The Minister may terminate the appointment of the General Manager for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of the General Manager if the General Manager:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (d) fails, without reasonable excuse, to comply with section 33.
- (3) If the General Manager is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;the Minister may, with the consent of the General Manager, retire the General Manager from office on the grounds of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the General Manager is taken to have been retired from office on the grounds of invalidity if:
 - (a) the General Manager is removed or retired from office on the grounds of physical or mental incapacity; and
 - (b) the Commonwealth Superannuation Board of Trustees No. 2 gives a certificate under section 54C of the *Superannuation Act 1976*.

- (5) For the purposes of the *Superannuation Act 1990*, the General Manager is taken to have been retired from office on the grounds of invalidity if:
- (a) the General Manager is removed or retired from office on the grounds of physical or mental incapacity; and
 - (b) the Commonwealth Superannuation Board of Trustees No. 1 gives a certificate under section 13 of the *Superannuation Act 1990*.

Division 2—Staff and consultants

36 Staff

- (1) The staff of the NBA are persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the General Manager and the NBA staff together constitute a Statutory Agency; and
 - (b) the General Manager is the Head of that Statutory Agency.

37 Consultants

The General Manager may, on behalf of the Commonwealth, engage consultants to perform services for the NBA related to the NBA's functions.

Division 3—Advisory committees

38 Advisory committees

- (1) The General Manager may, in writing, establish advisory committees to assist with the performance of the NBA's functions.
- (2) An advisory committee consists of such persons as the General Manager appoints to the committee.
- (3) The General Manager may give an advisory committee written directions as to:
 - (a) the way in which the committee is to carry out its task; and
 - (b) procedures to be followed in relation to its meetings.

39 Committee members' remuneration

- (1) A person appointed to an advisory committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the person is to be paid the remuneration that is specified in a written determination made by the Minister.
- (2) However, such a person is not entitled to be paid this remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or
 - (b) a corporation (a **public statutory corporation**) established for a public purpose by a State law, other than a tertiary education institution; or
 - (c) a company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
 - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

Note: A similar rule applies to a person appointed to an advisory committee who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.

Part 4 The NBA General Manager, staff and advisory committees

Division 3 Advisory committees

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- (3) A person appointed to an advisory committee is to be paid the allowances that are specified in a written determination made by the Minister.
- (4) A determination made under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) This section (except subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

Part 5—The National Blood Account

40 National Blood Account

- (1) The National Blood Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

41 Credits to the Account

There must be credited to the Account the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) amounts that are required to be credited to the Account by the Commonwealth under national blood arrangements described in subparagraph 8(1)(d)(i);
- (c) amounts equal to amounts received by the Commonwealth in connection with the performance of the NBA's functions (including amounts received by the Commonwealth under national blood arrangements described in paragraph 8(1)(d));
- (d) amounts equal to interest received by the Commonwealth from the investment of money from the Account;
- (e) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Account;
- (f) amounts equal to amounts of any gifts given or bequests made for the purposes of the Account.

42 Purposes of the Account

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be expended:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in the performance of the NBA's functions; or

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- (b) in payment of any remuneration and allowances payable to any person under this Act.

Part 6—Miscellaneous

43 Corporate plans

- (1) The NBA must, at all times after its first year of operation, have a corporate plan that sets out its current objectives and business strategies, and that has been approved by the Minister.
- (2) The Minister may approve a corporate plan given to him or her by the NBA if the plan has been endorsed by the Ministerial Council.

44 Annual reports

- (1) The General Manager must, as soon as practicable after 30 June in each year, prepare and give to the Ministerial Council and the Minister a report of the NBA's operations during the year ending on that 30 June.
- (2) The Chair must, as soon as practicable after 30 June in each year, prepare and give to the Ministerial Council and the Minister a report of the Board's operations during the year ending on that 30 June.
- (3) The Minister must cause a copy of each report described in this section to be presented to each House of the Parliament within 15 sitting days of that House after the day the Minister is given the report.

45 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 11 December 2002
Senate on 26 March 2003]*

(286/02)