



# **Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Act 2016**

**No. 83, 2016**

***An Act to amend the *Australian Organ and Tissue  
Donation and Transplantation Authority Act 2008*,  
and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**No. 83, 2016**

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***An Act to amend the *Australian Organ and Tissue  
Donation and Transplantation Authority Act 2008*,  
and for related purposes***

*[Assented to 30 November 2016]*

The Parliament of Australia enacts:

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*No. 83, 2016      Australian Organ and Tissue Donation and Transplantation Authority      1*  
*Amendment (New Governance Arrangements) Act 2016*

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## 1 Short title

This Act is the *Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Act 2016*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 November 2016
2. Schedules 1 and 2	1 July 2017.	1 July 2017

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*

#### **1 Section 3**

Repeal the section, substitute:

#### **3 Simplified outline**

The following is a simplified outline of this Act:

This Act establishes the Australian Organ and Tissue Donation and Transplantation Authority. The Authority has a number of functions relating to organ or tissue donation and transplantation matters.

The Australian Organ and Tissue Donation and Transplantation Board is also established by this Act. The main functions of the Board are:

- (a) to ensure the proper, efficient and effective performance of the Authority's functions; and
- (b) to determine objectives, strategies and policies to be followed by the Authority.

There is to be a Chief Executive Officer of the Authority. The CEO is responsible for the day-to-day administration of the Authority. The CEO is also a member of the Board.

#### **2 Section 4**

Repeal the following definitions:

- (a) definition of *Advisory Council*;
- (b) definition of *Advisory Council member*.

#### **3 Section 4**

Insert:

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***appointed member*** means a Board member other than the CEO.

***Board*** means the Australian Organ and Tissue Donation and Transplantation Board.

***Board member*** means a member of the Board (and includes the Chair, the Deputy Chair and the CEO).

***Chair*** means the Chair of the Board.

***COAG Health Council*** means the body established by the Council of Australian Governments as the COAG Health Council.

***Deputy Chair*** means the Deputy Chair of the Board.

***paid work*** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

#### **4 Section 4 (definition of *vacancy*)**

Repeal the definition.

#### **5 Section 5**

Repeal the section.

#### **6 Paragraph 8(3)(a)**

Repeal the paragraph, substitute:

- (a) the Board; and
- (aa) the CEO; and

#### **7 At the end of section 8**

Add:

- (4) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
  - (a) the Authority is a listed entity; and
  - (b) the Board is the accountable authority of the Authority; and
  - (c) the following persons are officials of the Authority:
    - (i) the appointed Board members;
    - (ii) the CEO;
    - (iii) the staff of the Authority;



- (iv) consultants engaged under section 26;
- (v) persons whose services are made available to the Authority under section 27;
- (vi) an expert advisory committee member; and
- (d) the purposes of the Authority include:
  - (i) the functions of the Authority referred to in section 11; and
  - (ii) the functions of the Board referred to in section 13B; and
  - (iii) the functions of the CEO referred to in section 14B; and
  - (iv) the functions of an expert advisory committee referred to in section 45.

**8 Section 9**

Repeal the section.

**9 Part 3 (heading)**

Repeal the heading.

**10 Division 1 of Part 3 (heading)**

Repeal the heading.

**11 Section 10**

Repeal the section.

**12 Section 11 (heading)**

Repeal the heading, substitute:

**11 Functions of the Authority**

**13 Subsection 11(1)**

Omit “the CEO” (wherever occurring), substitute “the Authority”.

**14 Subsection 11(2)**

Omit “CEO may perform the CEO’s”, substitute “Authority may perform the Authority’s”.

**15 Section 12 (heading)**

Repeal the heading, substitute:

**12 Authority must have regard to certain objectives etc.**

**16 Section 12**

Omit “CEO’s functions under this Act, the CEO”, substitute  
“Authority’s functions under this Act, the Authority”.

**17 Paragraph 12(h)**

Omit “CEO”, substitute “Authority”.

**18 Section 13**

Repeal the section, substitute:

**13 Minister may give directions to the Authority**

- (1) The Minister may, by legislative instrument, give written directions to the Authority about the performance of the Authority’s functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Authority must comply with a direction under subsection (1).

**19 After section 13**

Insert:

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## **Part 2A—Australian Organ and Tissue Donation and Transplantation Board**

### **Division 1—Establishment and functions of the Board**

#### **13A Establishment of the Board**

The Australian Organ and Tissue Donation and Transplantation Board is established by this section.

#### **13B Functions of the Board**

- (1) The functions of the Board are:
  - (a) to ensure the proper, efficient and effective performance of the Authority's functions; and
  - (b) to determine objectives, strategies and policies to be followed by the Authority; and
  - (c) such other functions as are conferred on the Board by this Act or any other law; and
  - (d) such other functions (if any) as are determined in an instrument made under subsection (2) and given by the Minister to the Chair; and
  - (e) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The Minister may, by legislative instrument, determine one or more functions for the purposes of paragraph (1)(d).
- (3) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

#### **13C Delegation by the Board**

- (1) The Board may, in writing, delegate all or any of the Board's powers and functions under section 13B to the CEO.
- (2) In exercising any powers or performing any functions under a delegation, the CEO must comply with any directions of the Board.

### 13D Minister may give directions to the Board

- (1) The Minister may, by legislative instrument, give written directions to the Board about the performance of the Board's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The Board must comply with a direction under subsection (1).
- (3) Subsection (2) does not apply to the extent that the direction relates to the Board's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to the Authority.

## Division 2—Members of the Board

### 13E Membership

The Board consists of:

- (a) the Chair; and
- (b) the Deputy Chair; and
- (c) the CEO; and
- (d) 5 other members.

### 13F Appointment of appointed Board members

- (1) Subject to this section and section 13G, the appointed Board members are to be appointed by the Minister by written instrument, on a part-time basis.

Note: An appointed Board member may be reappointed, see section 33AA of the *Acts Interpretation Act 1901*.

*Eligibility for appointment as the Chair*

- (2) A person is not eligible for appointment as the Chair unless the Minister is satisfied that the person has substantial experience in, or substantial knowledge of, at least one of the following fields:
  - (a) public administration;
  - (b) business;

(c) management.

*Eligibility for appointment as an appointed Board member (other than the Chair)*

- (3) A person is not eligible for appointment as an appointed Board member (other than the Chair) unless the Minister is satisfied that the person meets the requirements of subsection (4).
- (4) A person meets the requirements of this subsection if:
- (a) the person has substantial experience in, or substantial knowledge of, at least one of the following fields:
    - (i) public hospital administration;
    - (ii) community leadership or representation in relation to organ or tissue donation and transplantation matters;
    - (iii) consumer health issues;
    - (iv) promotion of health issues;
    - (v) any other appropriate field of expertise; or
  - (b) the person has substantial clinical expertise in organ or tissue donation; or
  - (c) the person has substantial clinical expertise in organ or tissue transplantation; or
  - (d) the person is a consumer of health services.

*Mix of appointed Board members (other than the Chair)*

- (5) In appointing the appointed Board members (other than the Chair), the Minister must ensure, to the extent practicable, that those appointed Board members are an appropriate mix of persons meeting the requirements of subsection (4).

### **13G Nominations for appointment of certain appointed Board members**

*Deputy Chair*

- (1) Before the Minister (the **Commonwealth Minister**) appoints a person as the Deputy Chair, the Commonwealth Minister must request each of the following to give the Commonwealth Minister

a written notice nominating a person for appointment as the Deputy Chair:

- (a) the Minister of each State who is responsible, or principally responsible, for the administration of matters relating to health in the State;
  - (b) the Minister of the Northern Territory who is responsible, or principally responsible, for the administration of matters relating to health in that Territory;
  - (c) the Minister of the Australian Capital Territory who is responsible, or principally responsible, for the administration of matters relating to health in that Territory.
- (2) A Minister referred to in paragraph (1)(a), (b) or (c) must not give a notice under subsection (1) in relation to a person unless that Minister is satisfied that the person meets the requirements of subsection 13F(4).
- (3) If a Minister referred to in paragraph (1)(a), (b) or (c) gives the Commonwealth Minister a notice under subsection (1), the Commonwealth Minister must consider the notice before appointing a person as the Deputy Chair.

*Appointed Board members (other than the Chair or Deputy Chair)*

- (4) Before the Commonwealth Minister appoints one or more persons as appointed Board members (other than the Chair or Deputy Chair), the Commonwealth Minister must request the COAG Health Council to give the Commonwealth Minister a written notice nominating one or more persons for appointment as appointed Board members (other than the Chair or Deputy Chair).
- (5) The COAG Health Council must not give a notice under subsection (4) in relation to a person unless the COAG Health Council is satisfied that the person meets the requirements of subsection 13F(4).
- (6) If the COAG Health Council gives the Commonwealth Minister a notice under subsection (5), the Commonwealth Minister must consider the notice before appointing one or more persons as appointed Board members (other than the Chair or Deputy Chair).

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**13H Term of appointment**

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

**13J Acting appointment***Acting as the Chair*

- (1) The Minister may, by written instrument, appoint an appointed 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:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

*Acting as an appointed Board member (other than the Chair)*

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

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (3) A person is not eligible for appointment under subsection (2) unless the Minister is satisfied that the person meets the requirements of subsection 13F(4).

### **13K Remuneration**

- (1) An appointed 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 appointed Board member is to be paid the remuneration that is prescribed by the regulations.
- (2) An appointed Board member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **13L 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 appointed Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants an appointed Board member leave of absence for a period that exceeds 3 months.

### **13M Other terms and conditions**

An appointed Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **13N Resignation**

- (1) An appointed Board member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.



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**13P Termination of appointment**

- (1) The Minister may terminate the appointment of an appointed Board member:
  - (a) for misbehaviour; or
  - (b) if the appointed Board member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of an appointed Board member if:
  - (a) the appointed Board member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the appointed Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
  - (c) the appointed Board member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

**Division 3—Meetings of the Board****13Q Convening meetings**

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair must convene at least 4 meetings of the Board each financial year.

**13R Presiding at meetings**

- (1) The Chair must preside at all meetings of the Board at which he or she is present.
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- (2) If the Chair is not present at a meeting of the Board:
  - (a) the Deputy Chair is to preside; or
  - (b) if the Deputy Chair is not present—the other Board members present must appoint one of themselves to preside.

### **13S Quorum**

- (1) At a meeting of the Board, a quorum is constituted by a majority of Board members.
- (2) However, if:
  - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
  - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

### **13T Voting at meetings**

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

### **13U Conduct of meetings**

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

### **13V Minutes**

The Board must keep minutes of its meetings.

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**13W Decisions without meetings**

- (1) The Board is taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
  - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
  - (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

**20 Division 2 of Part 3 (heading)**

Repeal the heading.

**21 Before section 14**

Insert:

**Part 4—Chief Executive Officer and staff etc.****Division 1—Chief Executive Officer****14A CEO**

There is to be a Chief Executive Officer of the Authority.

## **14B Functions of the CEO**

- (1) The CEO is responsible for the day-to-day administration of the Authority.

Note: The CEO is also a member of the Board (see section 13E).

- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with the objectives, strategies and policies determined by the Board under paragraph 13B(1)(b).
- (4) The Board may give written directions to the CEO about the performance of the CEO's duties.
- (5) The CEO must comply with a direction under subsection (4).
- (6) A direction under subsection (4) is not a legislative instrument.

## **22 After subsection 14(1)**

Insert:

- (1A) However, before the Minister appoints the CEO, the Minister must consult the Chair about the proposed appointment.

## **23 Section 15**

Omit "5 years", substitute "4 years".

## **24 Division 4 of Part 3**

Repeal the Division.

## **25 Section 26**

Repeal the section, substitute:

## **26 Consultants**

- (1) The Board may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to assist in the performance of the Authority's functions.

(2) The consultants are to be engaged on the terms and conditions that the Board determines in writing.

**26 Section 27 (heading)**

Repeal the heading, substitute:

**27 Persons assisting the Authority**

**27 Section 27**

Omit “CEO” (wherever occurring), substitute “Authority”.

**28 Section 27**

Omit “CEO’s”, substitute “Authority’s”.

**29 Division 7 of Part 3**

Repeal the Division.

**30 Part 4**

Repeal the Part.

**31 Sections 44 to 47 and 49 to 50**

Omit “CEO” (wherever occurring), substitute “Board”.

**32 Section 51 (heading)**

Repeal the heading, substitute:

**51 Disclosure of interests to the Board**

**33 Sections 51 and 53**

Omit “CEO” (wherever occurring), substitute “Board”.

**34 Part 5A**

Repeal the Part.

**35 Sections 54 to 56**

Omit “CEO” (wherever occurring), substitute “Board”.

## Schedule 2—Application etc. provisions

### 1 Definitions

In this Schedule:

*commencement day* means the day on which this item commences.

*OTA Act* means the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*.

### 2 Application—subsection 14(1A) of the OTA Act

Subsection 14(1A) of the OTA Act, as inserted by Schedule 1 to this Act, applies in relation to an appointment made on or after the commencement of this item.

### 3 Application—amendment made by item 23

The amendment made by item 23 of Schedule 1 to this Act applies in relation to an appointment made on or after the commencement of this item.

### 4 Continued engagement of consultants

- (1) This item applies to a person if:
  - (a) before the commencement day, the person was engaged by the CEO as a consultant under section 26 of the OTA Act; and
  - (b) the engagement was in effect immediately before that day.
- (2) The person is taken, on and after the commencement day, to be engaged by the Board as a consultant under section 26 of the OTA Act, as substituted by Schedule 1 to this Act, on the same terms and conditions that applied to the person's engagement immediately before that day.
- (3) This item does not prevent those terms and conditions being varied on or after the commencement day.

### 5 Continued existence of expert advisory committees

- (1) This item applies to an expert advisory committee if:
    - (a) the committee was established by the CEO under section 44 of the OTA Act before the commencement day; and
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- 
- (b) the committee was in existence immediately before that day.
- (2) The expert advisory committee is continued in existence (and may be dealt with), on and after the commencement day, as if it were an expert advisory committee established by the Board under section 44 of the OTA Act, as amended by Schedule 1 to this Act.

## **6 Continuation of appointment of expert advisory committee members**

- (1) This item applies to an appointment if:
- (a) the appointment was made by the CEO under section 46 of the OTA Act before the commencement day; and
  - (b) the appointment is in force immediately before that day.
- (2) The appointment continues in force (and may be dealt with), on and after the commencement day, as if it were an appointment made by the Board under section 46 of the OTA Act, as amended by Schedule 1 to this Act.

## **7 Duties of accountable authority**

For the purposes of sections 39, 42 and 46 of the *Public Governance, Performance and Accountability Act 2013*, the Board is the accountable authority of the Authority in relation to the reporting period (within the meaning of that Act) for the Authority that ends immediately before the commencement day.

## **8 Transitional rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) However, to avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;

**Schedule 2** Application etc. provisions

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- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
    - (e) directly amend the text of this Act.
  - (3) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).
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*[Minister's second reading speech made in—  
House of Representatives on 10 November 2016  
Senate on 23 November 2016]*

(170/16)

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20      *Australian Organ and Tissue Donation and Transplantation Authority*      *No. 83, 2016*  
*Amendment (New Governance Arrangements) Act 2016*