



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

**No. 122, 2008**

**An Act to establish the Australian Organ and  
Tissue Donation and Transplantation Authority,  
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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and for other purposes**

*[Assented to 25 November 2008]*

**The Parliament of Australia enacts:**

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*Australian Organ and Tissue Donation and Transplantation Authority Act 2008*      *No. 122,*  
*2008*      *1*

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*.

### 2 Commencement

This Act commences on 1 January 2009.

### 3 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up the Australian Organ and Tissue Donation and Transplantation Authority.
- There is to be a Chief Executive Officer of the Authority.
- The Chief Executive Officer has functions relating to organ or tissue donation and transplantation matters.
- The Authority has the function of assisting the Chief Executive Officer.
- This Act also sets up the Australian Organ and Tissue Donation and Transplantation Advisory Council.
- The Advisory Council has the function of advising the Chief Executive Officer of the Authority about organ or tissue donation and transplantation matters.

### 4 Definitions

In this Act:

***Advisory Council*** means the Australian Organ and Tissue Donation and Transplantation Advisory Council.

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**Advisory Council member** means a member of the Advisory Council, and includes the Chair of the Advisory Council.

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

**CEO** means the Chief Executive Officer of the Authority.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**de facto partner** has the meaning given by the *Acts Interpretation Act 1901*.

**expert advisory committee** means a committee established under section 44.

**expert advisory committee member** means a member of an expert advisory committee, and includes the Chair of an expert advisory committee.

**improving** includes maintaining.

**organ** means an organ of a human body (within the ordinary meaning of that expression).

**organ or tissue donation and transplantation** means:

- (a) the removal of an organ and/or tissue from the body of an individual (whether living or dead) for the purpose of its transplantation to the body of a living individual (other than the individual from which it was removed); or
- (b) the transplantation to the body of a living individual of an organ and/or tissue removed from the body of another individual (whether living or dead);

or both.

**organ or tissue donation and transplantation matter** means a matter relating to organ or tissue donation and transplantation, and includes the following matters:

- (a) the provision of an organ or tissue donation and transplantation service;
- (b) the identification of potential organ or tissue donors;

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- (c) the obtaining of organs or tissue for transplantation;
- (d) waiting lists for potential organ or tissue recipients;
- (e) the allocation of organs or tissue for transplantation;
- (f) support services for organ or tissue donors and their partners and families;
- (g) the skills and knowledge of people involved in providing organ or tissue donation and transplantation services;
- (h) public knowledge about, and confidence in, organ or tissue donation and transplantation services.

***organ or tissue donation and transplantation service*** means:

- (a) a service relating to organ or tissue donation and transplantation; or
- (b) a service that is ancillary or incidental to a service covered by paragraph (a).

***partner*** of a person means:

- (a) the person's spouse; or
- (b) the person's de facto partner.

***tissue*** means:

- (a) a part of a human body (other than an organ); or
- (b) a part of an organ; or
- (c) a substance extracted from, or from a part of:
  - (i) an organ; or
  - (ii) any other part of a human body;

but does not include a substance or thing specified in the regulations.

***transplantation***, in relation to an organ or tissue, includes:

- (a) the transplantation of a part of the organ or tissue; and
- (b) the transplantation of a substance obtained from the organ or tissue.

***vacancy***, in relation to the office of an Advisory Council member, has a meaning affected by section 5.

## **5 Vacancy in the office of an Advisory Council member**

For the purposes of a reference in:

- (a) this Act to a vacancy in the office of an Advisory Council member; or
- (b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;

there are taken to be 15 offices of Advisory Council members in addition to the Chair of the Advisory Council.

## **6 Crown to be bound**

This Act binds the Crown in each of its capacities.

## **7 Extension to external Territories**

This Act extends to every external Territory other than Norfolk Island.

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## **Part 2—Australian Organ and Tissue Donation and Transplantation Authority**

### **8 Establishment of the Australian Organ and Tissue Donation and Transplantation Authority**

- (1) The Australian Organ and Tissue Donation and Transplantation Authority is established by this section.

Note: In this Act, **Authority** means the Australian Organ and Tissue Donation and Transplantation Authority—see section 4.

- (2) The Authority may also be known by a name specified in the regulations.

- (3) The Authority consists of:

- (a) the Chief Executive Officer of the Authority; and
- (b) the staff of the Authority.

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

### **9 Function of the Authority**

The function of the Authority is to assist the CEO in the performance of the CEO's functions.

## **Part 3—Chief Executive Officer of the Authority etc.**

### **Division 1—Office and functions of the CEO**

#### **10 CEO**

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

Note: In this Act, **CEO** means the Chief Executive Officer of the Authority—see section 4.

#### **11 Functions of the CEO**

- (1) The functions of the CEO are:
- (a) to formulate, in writing, policies and protocols relating to organ or tissue donation and transplantation matters; and
  - (b) to declare, in writing, standards and codes of practice relating to organ or tissue donation and transplantation matters; and
  - (c) to support and encourage the implementation of:
    - (i) policies and protocols formulated under paragraph (a); and
    - (ii) standards and codes of practice declared under paragraph (b); and
  - (d) to collect, analyse, interpret and disseminate information relating to organ or tissue donation and transplantation matters; and
  - (e) to support, encourage, conduct and evaluate training programs that are directed towards improving the skills and knowledge of people involved in organ or tissue donation and transplantation services; and
  - (f) to support, encourage, conduct and evaluate educational, promotional and community awareness programs that are relevant to organ or tissue donation and transplantation matters; and

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- (g) to make, on behalf of the Commonwealth, grants of financial assistance in relation to organ or tissue donation and transplantation matters; and
- (h) to support, encourage, conduct and evaluate research about organ or tissue donation and transplantation matters; and
- (i) to publish (whether on the Internet or otherwise) reports and papers relating to organ or tissue donation and transplantation matters; and
- (j) to advise the Minister about organ or tissue donation and transplantation matters; and
- (k) to consult and co-operate with other persons, organisations and governments on organ or tissue donation and transplantation matters; and
- (l) such other functions as are conferred on the CEO by this Act or any other law; and
- (m) such other functions (if any) as are specified in a written instrument given by the Minister to the CEO; and
- (n) to do anything incidental to or conducive to the performance of any of the above functions.

Note 1: See also section 57 (compliance with policies, protocols, standards and codes is voluntary).

Note 2: See also section 58 (protection of patient confidentiality).

Note 3: See also sections 54 to 56 (terms and conditions of grants).

Note 4: For variation and revocation of instruments made under paragraph (a), (b) or (m), see subsection 33(3) of the *Acts Interpretation Act 1901*.

### *Constitutional limits*

- (2) The CEO may perform the CEO's functions only:
    - (a) for purposes related to money appropriated for the purposes of the Commonwealth; or
    - (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
    - (c) for purposes related to the executive power of the Commonwealth; or
    - (d) for purposes related to the collection of statistics; or
    - (e) in, or for purposes related to, a Territory; or
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- (f) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) for purposes related to trade and commerce:
  - (i) between Australia and places outside Australia; or
  - (ii) among the States; or
  - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) by way of the provision of services to a constitutional corporation, where the services are directed towards improving the skills and knowledge of:
  - (i) employees of the corporation; or
  - (ii) other individuals associated with the corporation; who are involved in providing organ or tissue donation and transplantation services; or
- (i) by way of the promotion of organ or tissue donation and transplantation services provided by constitutional corporations; or
- (j) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (k) by way of the provision of a service to:
  - (i) the Commonwealth; or
  - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
- (l) for purposes related to the implied power of the Parliament to make laws with respect to nationhood; or
- (m) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

*Legislative instruments*

- (3) A policy or protocol formulated under paragraph (1)(a) is not a legislative instrument.
  - (4) A standard or code of practice declared under paragraph (1)(b) is not a legislative instrument.
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- (5) A declaration made under paragraph (1)(b) is not a legislative instrument.
- (6) An instrument made under paragraph (1)(m) is not a legislative instrument.

### **12 CEO must have regard to certain objectives etc.**

In performing the CEO's functions under this Act, the CEO must have regard to:

- (a) the following objectives:
    - (i) promoting a co-ordinated and consistent approach to organ or tissue donation and transplantation matters;
    - (ii) improving access to organ or tissue donation and transplantation services;
    - (iii) improving the identification of potential organ or tissue donors;
    - (iv) minimising waiting times for potential organ or tissue recipients;
    - (v) improving the management of waiting lists for potential organ or tissue recipients;
    - (vi) improving the management of the allocation of donated organs or tissue;
    - (vii) improving support services for organ or tissue donors and their partners and families;
    - (viii) improving the skills and knowledge of people involved in providing organ or tissue donation and transplantation services;
    - (ix) improving public knowledge about, and public confidence in, organ or tissue donation and transplantation services; and
  - (b) international best practice; and
  - (c) safety; and
  - (d) effectiveness; and
  - (e) privacy; and
  - (f) equity; and
  - (g) transparency; and
  - (h) such other matters (if any) as the CEO considers relevant.
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### **13 Policy principles**

- (1) The Minister may give written policy principles to the CEO about the performance of the CEO's functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Minister must cause a copy of the policy principles to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which they were given to the CEO.
- (3) The CEO must comply with the policy principles (if any) when performing the CEO's functions.
- (4) Policy principles are not legislative instruments.

## **Division 2—Appointment of the CEO**

### **14 Appointment of the CEO**

- (1) The CEO is to be appointed by the Minister by written instrument.
- (2) The CEO holds office on a full-time basis.

### **15 Period of appointment for the CEO**

The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

### **16 Acting appointments**

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

#### *Validation*

- (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.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

## **Division 3—Terms and conditions for the CEO**

### **17 Remuneration and allowances**

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

### **18 Leave of absence**

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

### **19 Resignation**

- (1) The CEO 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.

### **20 Outside employment**

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

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### **21 Disclosure of interests to the Minister**

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

### **22 Termination of appointment**

- (1) The Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the CEO if:
  - (a) the CEO:
    - (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 CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
  - (d) the CEO fails, without reasonable excuse, to comply with section 21.

### **23 Other terms and conditions**

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

## **Division 4—Delegation**

### **24 Delegation by the CEO**

- (1) The CEO may, by writing, delegate any or all of the CEO's functions and powers to a person who is a member of the staff of the Authority.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A delegate must comply with any written directions of the CEO.
- (3) Subsection (1) does not apply to a function conferred by paragraph 11(1)(a) or (b).

## **Division 5—Staff etc.**

### **25 Staff**

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

### **26 Consultants**

- (1) The CEO may engage persons having suitable qualifications and experience as consultants to the CEO.
- (2) The consultants are to be engaged on the terms and conditions that the CEO determines in writing.

### **27 Persons assisting the CEO**

The CEO may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to the CEO in connection with the performance of any of the CEO's functions.

## **Division 6—Reports and information**

### **28 Annual report**

- (1) The CEO must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the CEO, and the Authority, during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) For the purposes of subsection (1), the 6-month period beginning on 1 January 2009 is taken to be a financial year.

### **29 Minister may require the CEO to prepare reports or give information**

#### *Reports*

- (1) The Minister may, by written notice given to the CEO, require the CEO to:
  - (a) prepare a report about one or more specified matters relating to the performance of the CEO's functions; and
  - (b) give a copy of the report to the Minister within the period specified in the notice.

#### *Information*

- (2) The Minister may, by written notice given to the CEO, require the CEO to:
  - (a) prepare a document setting out specified information relating to the performance of the CEO's functions; and
  - (b) give a copy of the document to the Minister within the period specified in the notice.

#### *Compliance*

- (3) The CEO must comply with a requirement under subsection (1) or (2).

## **Division 7—Directions by Minister**

### **30 Minister may give directions to the CEO**

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

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Directions given by the Minister under subsection (1) must be of a general nature only.

- (3) The CEO must comply with a direction given by the Minister under subsection (1).

- (4) Subsection (3) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the Authority.

Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.

Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 54 of that Act.



## **Part 4—Australian Organ and Tissue Donation and Transplantation Advisory Council**

### **31 Establishment of the Australian Organ and Tissue Donation and Transplantation Advisory Council**

The Australian Organ and Tissue Donation and Transplantation Advisory Council is established.

Note: In this Act, *Advisory Council* means the Australian Organ and Tissue Donation and Transplantation Advisory Council—see section 4.

### **32 Function of the Advisory Council**

The Advisory Council has the function of advising the CEO about organ or tissue donation and transplantation matters.

### **33 Membership of the Advisory Council**

The Advisory Council consists of the following members:

- (a) a Chair;
- (b) at least 9, and not more than 15, other members.

### **34 Appointment of Advisory Council members etc.**

- (1) Each Advisory Council member is to be appointed by the Minister by written instrument.
- (2) Before appointing a person to the Advisory Council, the Minister must consult:
  - (a) the Minister of each State who is responsible, or principally responsible, for the administration of matters relating to health in the State; and
  - (b) the Minister of the Northern Territory who is responsible, or principally responsible, for the administration of matters relating to health in that Territory; and

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- (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; and
  - (d) such other persons (if any) as the Minister considers appropriate.
- (3) An Advisory Council member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.
- (4) An Advisory Council member holds office on a part-time basis.
- (5) The Minister may terminate the appointment of an Advisory Council member.
- (6) A person is not eligible for appointment to the Advisory Council unless the Minister is satisfied that the person has substantial experience or knowledge in at least one of the following fields:
  - (a) public administration;
  - (b) an organ or tissue donation and transplantation matter;
  - (c) business;
  - (d) management;
  - (e) finance;
  - (f) health consumer issues;
  - (g) any other appropriate field of expertise.

### **35 Procedures of the Advisory Council**

- (1) The Advisory Council is to hold:
  - (a) at least 4 meetings during:
    - (i) the financial year beginning on 1 July 2009; and
    - (ii) each later financial year; and
  - (b) at least 2 meetings during the 6-month period beginning on 1 January 2009; and
  - (c) such other meetings (if any) as are necessary for the performance of its function.

- (2) The Minister may give the Advisory Council written directions about:
- (a) the way in which the Advisory Council is to carry out its function; and
  - (b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A direction given under subsection (2) is not a legislative instrument.

### **36 Acting appointments—Chair**

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

- (2) A person is not eligible for appointment to act as the Chair of the Advisory Council unless the person is eligible for appointment as an Advisory Council member.

Note: See subsection 34(6).

#### *Validation*

- (3) 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.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

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### 37 Acting appointments—members other than the Chair

- (1) The Minister may appoint a person to act as an Advisory Council member other than the Chair.
- (2) A person is not eligible for appointment to act as an Advisory Council member unless the person is eligible for appointment as an Advisory Council member.

Note: See subsection 34(6).

#### *Validation*

- (3) 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.

Note: See section 33A of the *Acts Interpretation Act 1901*.

### 38 Remuneration and allowances

- (1) An Advisory Council 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 prescribed by the regulations.
- (2) However, an Advisory Council member is not entitled to be paid 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***) that:
    - (i) is established for a public purpose by a law of a State; and
    - (ii) is not 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 an Advisory Council member who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) An Advisory Council member is to be paid the allowances that are prescribed by the regulations.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

### **39 Leave of absence**

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

### **40 Resignation**

- (1) An Advisory Council 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.

### **41 Disclosure of interests to the Minister**

An Advisory Council member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

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### **42 Disclosure of interests to the Advisory Council**

- (1) An Advisory Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Council must disclose the nature of the interest to a meeting of the Advisory Council.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Advisory Council.
- (4) Unless the Advisory Council otherwise determines, the Advisory Council member:
  - (a) must not be present during any deliberation by the Advisory Council on the matter; and
  - (b) must not take part in any decision of the Advisory Council with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Advisory Council member:
  - (a) must not be present during any deliberation of the Advisory Council for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Advisory Council.
- (7) The Minister may terminate the appointment of an Advisory Council member if the member fails, without reasonable excuse, to comply with this section.
- (8) Subsection (7) does not limit subsection 34(5).

### **43 Other terms and conditions**

An Advisory Council 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.

## **Part 5—Expert advisory committees**

### **44 Establishment of expert advisory committees**

- (1) The CEO may, by writing, establish committees, to be known as expert advisory committees.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An instrument made under subsection (1) is not a legislative instrument.

### **45 Function of expert advisory committees**

An expert advisory committee has the function of advising the CEO about organ or tissue donation and transplantation matters referred to it by the CEO.

### **46 Appointment of expert advisory committee members etc.**

- (1) Each expert advisory committee member is to be appointed by the CEO by written instrument.
- (2) An expert advisory committee member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (3) An expert advisory committee member holds office on a part-time basis.
- (4) The CEO may terminate the appointment of an expert advisory committee member.

### **47 Procedures of expert advisory committees**

- (1) The CEO may give an expert advisory committee written directions about:
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- (a) the way in which the committee is to carry out its function;  
and
- (b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A direction given under subsection (1) is not a legislative instrument.

### 48 Remuneration and allowances

- (1) An expert advisory committee 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 prescribed by the regulations.
- (2) However, an expert advisory committee member is not entitled to be paid 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**) that:
    - (i) is established for a public purpose by a law of a State; and
    - (ii) is not 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 an expert advisory committee member who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) An expert advisory committee member is to be paid the allowances that are prescribed by the regulations.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.



**49 Leave of absence**

The CEO may grant leave of absence to an expert advisory committee member on the terms and conditions that the CEO determines.

**50 Resignation**

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

**51 Disclosure of interests to the CEO**

An expert advisory committee member must give written notice to the CEO of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

**52 Disclosure of interests to an expert advisory committee**

- (1) A person who:
  - (a) is an expert advisory committee member; and
  - (b) has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by an expert advisory committee of which the person is a member;must disclose the nature of the interest to a meeting of the committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the expert advisory committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the expert advisory committee.
- (4) Unless the expert advisory committee otherwise determines, the expert advisory committee member:

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- (a) must not be present during any deliberation by the expert advisory committee on the matter; and
  - (b) must not take part in any decision of the expert advisory committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the expert advisory committee member:
  - (a) must not be present during any deliberation of the expert advisory committee for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the expert advisory committee.
- (7) The CEO may terminate the appointment of an expert advisory committee member if the member fails, without reasonable excuse, to comply with this section.
- (8) Subsection (7) does not limit subsection 46(4).

### **53 Other terms and conditions**

An expert advisory committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the CEO.

## **Part 6—Grants**

### **54 Grant to a State**

#### *Scope*

- (1) This section applies to a grant of financial assistance to a State if:
  - (a) the grant is made by the CEO on behalf of the Commonwealth; and
  - (b) the grant relates to one or more organ or tissue donation and transplantation matters.

Note: See paragraph 11(1)(g) (grants of financial assistance).

#### *Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State.
- (3) An agreement under subsection (2) may be entered into by the CEO on behalf of the Commonwealth.
- (4) A term or condition set out in an agreement under subsection (2) may require compliance with:
  - (a) a policy or protocol formulated under paragraph 11(1)(a); or
  - (b) a standard or code of practice declared under paragraph 11(1)(b).

### **55 Grant to a Territory**

#### *Scope*

- (1) This section applies to a grant of financial assistance to a Territory if:
  - (a) the grant is made by the CEO on behalf of the Commonwealth; and

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- (b) the grant relates to one or more organ or tissue donation and transplantation matters.

Note: See paragraph 11(1)(g) (grants of financial assistance).

### *Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the Territory.
- (3) An agreement under subsection (2) may be entered into by the CEO on behalf of the Commonwealth.
- (4) A term or condition set out in an agreement under subsection (2) may require compliance with:
  - (a) a policy or protocol formulated under paragraph 11(1)(a); or
  - (b) a standard or code of practice declared under paragraph 11(1)(b).

## **56 Grant to a person other than a State or Territory**

### *Scope*

- (1) This section applies to a grant of financial assistance to a person other than a State or Territory if:
  - (a) the grant is made by the CEO on behalf of the Commonwealth; and
  - (b) the grant relates to one or more organ or tissue donation and transplantation matters.

Note: See paragraph 11(1)(g) (grants of financial assistance).

### *Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the CEO on behalf of the Commonwealth.

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- (4) A term or condition set out in an agreement under subsection (2) may require compliance with:
  - (a) a policy or protocol formulated under paragraph 11(1)(a); or
  - (b) a standard or code of practice declared under paragraph 11(1)(b).

## Part 7—Miscellaneous

### 57 Compliance with policies, protocols, standards and codes

- (1) Compliance with:
  - (a) a policy or protocol formulated under paragraph 11(1)(a); or
  - (b) a standard or code of practice declared under paragraph 11(1)(b);is voluntary.
- (2) Subsection (1) does not prevent compliance with:
  - (a) a policy or protocol formulated under paragraph 11(1)(a); or
  - (b) a standard or code of practice declared under paragraph 11(1)(b);from being a term or condition of:
  - (c) a grant of financial assistance; or
  - (d) a contract or other legally enforceable agreement.
- (3) Subsection (1) does not prevent:
  - (a) a policy or protocol formulated under paragraph 11(1)(a); or
  - (b) a standard or code of practice declared under paragraph 11(1)(b);from being applied or adopted by or under:
  - (c) a law of a State or Territory; or
  - (d) a law of the Commonwealth other than this Act.

### 58 Protection of patient confidentiality

- (1) In the performance of the CEO's functions, the CEO must not publish or disseminate information that is likely to enable the identification of a particular organ or tissue donor or recipient.
- (2) Subsection (1) does not apply if the publication or dissemination of the information takes place with the consent of:
  - (a) if the organ or tissue donor or recipient is aged at least 18 years—the organ or tissue donor or recipient; or

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- (b) if the organ or tissue donor or recipient has died but is survived by a person (the *surviving partner*) who was:
    - (i) his or her partner immediately before he or she died; and
    - (ii) living with him or her immediately before he or she died;the surviving partner; or
  - (c) in any other case—an individual who, under the regulations, is authorised to give consent to the publication or dissemination of the information.
- (3) For the purposes of paragraph (2)(b), a person is taken to have been living with his or her partner at a particular time if they were not living together at that time only because of:
- (a) a temporary absence from each other; or
  - (b) illness or infirmity of either or both of them.

**59 Concurrent operation of State and Territory laws etc.**

- (1) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (2) This Act does not affect the operation of:
- (a) a law of a State or Territory; or
  - (b) a rule of common law;
- to the extent that the law or rule requires the giving of consent to the removal of an organ or tissue from the body of an individual (whether living or dead).
- (3) Subsection (2) does not limit subsection (1).

**60 Regulations**

The Governor-General may make regulations prescribing matters:

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

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*[Minister's second reading speech made in—  
House of Representatives on 18 September 2008  
Senate on 13 November 2008]*

(174/08)

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34      *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*      No.  
122, 2008