



**Australian Organ and Tissue Donation
and Transplantation Authority
Amendment (Governance and Other
Measures) Act 2021**

No. 89, 2021

***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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Australian Organ and Tissue Donation and Transplantation Authority Amendment (Governance and Other Measures) Act 2021

No. 89, 2021

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

[Assented to 2 September 2021]

The Parliament of Australia enacts:

No. 89, 2021 Australian Organ and Tissue Donation and Transplantation Authority 1
Amendment (Governance and Other Measures) Act 2021

1 Short title

This Act is the *Australian Organ and Tissue Donation and Transplantation Authority Amendment (Governance and Other Measures) Act 2021*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 September 2021
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 November 2021 (F2021N00272)

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Amendment (Governance and Other Measures) Act 2021

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 Authority consists of the Chief Executive Officer and the staff of the Authority. The functions of the CEO include:

- (a) determining objectives, strategies and policies to be followed by the Authority in the performance of its functions; and
- (b) ensuring the proper, efficient and effective performance of the Authority's functions; and
- (c) managing the administration of the Authority.

The Australian Organ and Tissue Donation and Transplantation Advisory Board is also established by this Act. The Advisory Board's main function is advising the CEO about a number of matters including organ or tissue donation and transplantation matters.

The Act also provides for the CEO to establish expert advisory committees and for the Authority to make grants relating to organ or tissue donation and transplantation matters.

2 Section 4

Insert:

Advisory Board member means a member of the Advisory Board
(and includes the Chair and Deputy Chair).

3 Section 4 (definition of *appointed member*)

Repeal the definition.

4 Section 4 (definition of *Board*)

After “Transplantation”, insert “Advisory”.

5 Section 4 (definition of *Board member*)

Repeal the definition.

6 Section 4 (definition of *Chair*)

After “Chair of the”, insert “Advisory”.

7 Section 4 (definition of *COAG Health Council*)

Repeal the definition.

8 Section 4 (definition of *Deputy Chair*)

After “Chair of the”, insert “Advisory”.

9 Section 4 (paragraphs (a) and (b) of the definition of *organ or tissue donation and transplantation*)

Omit “dead”, substitute “deceased”.

10 Paragraph 8(3)(a)

Repeal the paragraph.

11 Paragraph 8(4)(a)

Repeal the paragraph, substitute:

(a) the following combination of bodies is a listed entity:

- (i) the Authority;
- (ii) the Advisory Board; and

- (aa) the listed entity is to be known as the Australian Organ and Tissue Donation and Transplantation Authority; and

12 Paragraph 8(4)(b)

Omit “Board”, substitute “CEO”.

13 Subparagraphs 8(4)(c)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) the CEO;
- (ii) the Advisory Board members;

14 Subparagraphs 8(4)(d)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) the functions of the CEO referred to in section 14B; and
- (iii) the functions of the Advisory Board referred to in section 29; and

15 Subsection 11(2)

Repeal the subsection, substitute:

Constitutional limits

- (2) The Authority may perform its functions only:
 - (a) with respect to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
 - (b) with respect to the executive power of the Commonwealth; or
 - (c) with respect to statistics; or
 - (d) with respect to, or in, a Territory; or
 - (e) with respect to, or in, a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
 - (f) with respect 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

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- (g) with respect to the granting of financial assistance to a constitutional corporation for the purposes of carrying out the corporation's activities; or
 - (h) with respect to the provision of medical services; or
 - (i) with respect to a postal, telegraphic, telephonic or other like service; or
 - (j) with respect to the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
 - (k) with respect to the implied power of the Parliament to make laws with respect to nationhood; or
 - (l) with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

(2A) A term used in subsection (2) and the Constitution has the same meaning in that subsection as it has in the Constitution.

16 Part 2A

Repeal the Part.

17 Part 4 (heading)

Omit "4", substitute "3".

18 Section 14B

Repeal the section, substitute:

14B Functions of the CEO

- (1) The functions of the CEO are:
 - (a) to determine objectives, strategies and policies to be followed by the Authority in the performance of its functions; and
 - (b) to ensure the proper, efficient and effective performance of the Authority's functions; and
 - (c) to manage the administration of the Authority; and
 - (d) such other functions as are conferred on the CEO by this Act or any other law; and

(e) to do anything incidental or conducive to the performance of any of the above functions.

(2) The CEO has power to do all things necessary or convenient to be done for, or in connection with, the performance of the CEO's functions.

19 Subsection 14(1A)

Repeal the subsection.

20 Section 15

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

21 Subsection 22(1)

Repeal the subsection, substitute:

- (1) The Minister may terminate the appointment of the CEO:
- (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity.

22 Paragraph 22(2)(c)

Omit "employment", substitute "work".

23 Subsections 26(1) and (2)

Omit "Board", substitute "CEO".

24 Before Part 5

Insert:

Part 4—Australian Organ and Tissue Donation and Transplantation Advisory Board

Division 1—Establishment and functions of the Advisory Board

28 Establishment of the Advisory Board

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

29 Functions of the Advisory Board

- (1) The functions of the Advisory Board are:
- (a) to advise the CEO, either on its own initiative or at the request of the CEO, about the following matters:
 - (i) the objectives, strategies and policies to be followed by the Authority in the performance of its functions;
 - (ii) the performance of the Authority's functions;
 - (iii) organ or tissue donation and transplantation matters;and
 - (b) to provide strategic advice to the Minister about the performance of the Authority's functions if requested to do so by the Minister; and
 - (c) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The Advisory Board has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Division 2—Members of the Advisory Board

30 Membership

The Advisory Board consists of:

- (a) the Chair; and
- (b) the Deputy Chair; and

(c) at least 3, but not more than 5, other members.

31 Appointment of Advisory Board members

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

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

Eligibility for appointment

- (2) A person is not eligible for appointment as an Advisory Board member unless the Minister is satisfied that the person has experience in, or knowledge of, at least one of the following fields:
- (a) public or health leadership or administration;
 - (b) clinical expertise in organ or tissue donation and transplantation;
 - (c) business management;
 - (d) community leadership and engagement in relation to organ or tissue donation and transplantation matters;
 - (e) promotion of organ or tissue donation and transplantation matters;
 - (f) health consumer advocacy;
 - (g) any other field that the Minister considers appropriate.

Mix of Advisory Board members

- (3) In appointing the Advisory Board members, the Minister must ensure, to the extent practicable, that those Advisory Board members are an appropriate mix of persons meeting the requirements of subsection (2).

Consultation

- (4) Before the Minister appoints a person as an Advisory Board member (other than the Chair), 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

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- (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
 - (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.

32 Term of appointment

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

33 Acting appointment

Acting as the Chair

- (1) The Minister may, by written instrument, appoint an Advisory 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 Advisory Board member (other than the Chair):
 - (a) during a vacancy in the office of an Advisory 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 Advisory 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 31(2).

34 Remuneration

- (1) An Advisory 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 Advisory Board member is to be paid the remuneration that is prescribed by the regulations.
- (2) An Advisory 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*.

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

36 Other terms and conditions

An Advisory 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.

37 Resignation

- (1) An Advisory Board member may resign the member's 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.

38 Termination of appointment

- (1) The Minister may terminate the appointment of an Advisory Board member:
 - (a) for misbehaviour; or
 - (b) if the Advisory Board member is unable to perform the duties of that member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of an Advisory Board member if:
 - (a) the Advisory 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 that member's creditors; or
 - (iv) makes an assignment of that member's remuneration for the benefit of that member's creditors; or
 - (b) the Advisory Board member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Board; or
 - (c) the Advisory 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 Advisory Board

39 Convening meetings

- (1) The Advisory 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 Advisory Board each financial year.

40 Presiding at meetings

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

41 Conduct of meetings

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

42 Minutes

The Advisory Board must keep minutes of its meetings.

25 Subsection 44(1)

Omit “Board”, substitute “CEO”.

26 Section 45

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

27 Subsections 46(1) and (4) and 47(1)

Omit “Board”, substitute “CEO”.

28 Section 49

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

29 Subsections 50(1) and (2)

Omit “Board”, substitute “CEO”.

30 Section 51 (heading)

Omit “Board”, substitute “CEO”.

31 Subsections 51(1) and (4)

Omit “Board”, substitute “CEO”.

32 Section 53

Omit “Board”, substitute “CEO”.

33 Paragraph 54(1)(a)

Omit “Board”, substitute “Authority”.

34 Subsection 54(3)

Omit “Board”, substitute “Authority”.

35 Paragraph 55(1)(a)

Omit “Board”, substitute “Authority”.

36 Subsection 55(3)

Omit “Board”, substitute “Authority”.

37 Paragraph 56(1)(a)

Omit “Board”, substitute “Authority”.

38 After subsection 56(2)

Insert:

(2A) If the grant of financial assistance is made to a constitutional corporation, the corporation must comply with the terms and conditions.

39 Subsection 56(3)

Omit “Board”, substitute “Authority”.

40 Before subsection 58(1)

Insert:

(1A) In the performance of the Authority's functions, the Authority must not publish or disseminate information that is likely to enable the identification of a particular organ or tissue donor or recipient.

41 Subsection 58(2)

Omit "Subsection (1) does not", substitute "Subsections (1A) and (1) do not".

42 Subsection 59(2)

Omit "dead", substitute "deceased".

Schedule 2—Application, transitional and saving provisions

1 Definitions

In this Schedule:

commencement time means the commencement of this Schedule.

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

reporting period has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

2 Functions of the CEO

Section 14B of the OTA Act, as amended by Schedule 1 to this Act, applies in relation to the CEO whether appointed before or after the commencement time.

3 Board members

- (1) This item applies to a person who, immediately before the commencement time, was an appointed member within the meaning of the OTA Act, as in force immediately before that time.
- (2) The person is taken, after the commencement time, to have been appointed under section 31 of the OTA Act, as amended by Schedule 1 to this Act, as an Advisory Board member:
 - (a) for the balance of the person's term of appointment that remained immediately before that time; and
 - (b) on the same terms and conditions as applied to the person immediately before that time.
- (3) This item does not prevent those terms and conditions being varied after the commencement time.

4 Consultants

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

5 Expert advisory committee

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

6 Expert advisory committee members

- (1) This item applies to a person if:
 - (a) the person was appointed by the Board as an expert advisory committee member under section 46 of the OTA Act before the commencement time; and
 - (b) the appointment was in effect immediately before that time.
- (2) The person is taken, after the commencement time, to have been appointed by the CEO under section 46 of the OTA Act, as amended by Schedule 1 to this Act, as an expert advisory committee member:
 - (a) for the balance of the person's term of appointment that remained immediately before that time; and
 - (b) on the same terms and conditions as applied to the person immediately before that time.

- (3) This item does not prevent those terms and conditions being varied after the commencement time.

7 Agreements regarding grants of financial assistance

- (1) This item applies if:
- (a) a grant of financial assistance of a kind referred to in subsection 54(1), 55(1) or 56(1) of the OTA Act was made by the Board to a person before the commencement time; and
 - (b) immediately before that time, an agreement setting out the terms and conditions on which the financial assistance was granted has not been entered into between the Commonwealth and the person.
- (2) The Authority may, after the commencement time, enter into such an agreement on behalf of the Commonwealth.

8 Compliance with terms and conditions of grants of financial assistance

Subsection 56(2A) of the OTA Act, as inserted by Schedule 1 to this Act, applies in relation to the terms and conditions set out in an agreement that is entered into after the commencement time.

9 Protection of patient confidentiality

Section 58 of the OTA Act, as amended by Schedule 1 to this Act, applies in relation to information that was obtained before or after the commencement time.

10 Annual report etc.

For the purposes of sections 39, 42 and 46 of the *Public Governance, Performance and Accountability Act 2013*, and rules made for the purposes of those sections, the CEO is the accountable authority in relation to the following reporting periods for the Authority:

- (a) the reporting period commencing on 1 July 2021;
- (b) each later reporting period.

11 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or
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application provisions) relating to the amendments or repeals made by this Act.

- (2) 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;
 - (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 Schedule (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 16 June 2021
Senate on 12 August 2021]*

(72/21)
