

SECOND READING SPEECH

Perinatal Registry Amendment Bill 2010

Mr Speaker

The purpose of this Bill is to amend the *Perinatal Registry Act 1994* to reflect the outcome of a review of the Act undertaken by the Council of Obstetric and Paediatric Morbidity and Mortality and the Commissioner for Children.

The *Perinatal Registry Act* establishes the Council of Obstetric and Paediatric Mortality and Morbidity. The functions of the Council include investigating the circumstances surrounding:

- the deaths of children from new born up to 17 years
- still born children and
- the deaths of pregnant women and the deaths of women up to 12 months after they gave birth or ceased to be pregnant, where there may be an obstetric cause.

The Council maintains a collection of perinatal data that it uses to provide obstetric and paediatric information to medical practitioners, nurses and midwives and others for the purposes of education and planning.

It also investigates and reports on matters relating to obstetric and paediatric mortality and morbidity referred to it by the Minister for Health or the Secretary of the Department of Health and Human Services.

The Council membership comprises:

- two persons nominated by the Vice-Chancellor of the University of Tasmania
- a person employed in the delivery of neonatal services at Royal Hobart Hospital
- a member of the Royal Australian College of Obstetricians and Gynaecologists nominated by the Tasmanian Branch of that College

- a member of the Australian College of Paediatricians nominated by the Tasmanian Branch of that College
- a member of the Royal Australian College of General Practitioners nominated by the Tasmanian Branch of that College
- a midwife who is nominated by the Tasmanian Branch of the Australian College of Midwives
- the Commissioner for Children
- an employee of the Department of Health and Human Services and
- a community representative.

The Chairperson is Dr Peter Dargaville, Director of the Neonatal Intensive Care Unit at the Royal Hobart Hospital.

The Act contains very strict confidentiality provisions such that the Council and its members are precluded from providing identifying information to persons other than the treating medical practitioner or a nurse involved in the care of a subject woman or child.

Council information is not admissible in any court proceedings, it cannot be accessed under the *Right to Information Act 2009* and members cannot be required to disclose information to a court, tribunal or other body, including a State Service agency.

In fact, the provisions are so strict that it is arguable whether the Council is able to carry out its functions and provide information to the Minister or Secretary when asked. This appears to be a drafting ambiguity and the Bill remedies this concern and makes it clear that the Council may use or disclose information to the extent necessary for the performance of the Council's functions or in the performance of the Council's powers.

I note that when the Act was first introduced into parliament in 1994, the then Minister for Community and Health Services said:

The purpose of this bill is to establish a statutory council with the task of collecting and collating information on, and investigating the circumstances surrounding, the problems relating to the development and birth of children, the pregnancy of, and giving birth, of women and the health problems and deaths of young children.

Tasmania was the first State to have a comprehensive obstetric and perinatal database which was established by Professor Joe Correy at the university medical school in 1973. The collection of data is unique in Australia because of its comprehensive scope and thoroughness. The promulgation of information gained by all hospitals, obstetricians, gynaecologists and paediatricians has contributed significantly to improvements in the management and treatment of mothers and children over the years.

While there is no doubt that the collection of information is beneficial for the management and treatment of mothers and children by the health profession, it is also important to note that other persons have a role in protecting the health and welfare of children in particular, and there is a need for the role and functions of the Council to evolve.

In 2009, as part of a coronial inquiry into the death of a child, Coroner Chandler formally requested a copy of a Child Death Review carried out by a committee of the Council. The request was refused as section 15 of the Act precluded the release. An examination of the relevant provisions of the Act showed that the Council and its committees had no authority to release information to the coroner or even to child protection services within the Department of Health and Human Services.

The Coroner called for urgent amendment of the *Perinatal Registry Act* to enable relevant information and opinion to be provided to the Coroner.

Specifically he said:

It is, in my opinion, most regrettable that a coroner, having a statutory obligation to investigate the cause of a person's death and to make recommendations upon ways similar deaths may be avoided is denied access to material which is directly relevant to those matters. This is particularly concerning when the death involves an infant who is dependent for its safety upon the quality of care provided by its guardians, including the State.

These matters lead me to recommend that, as a matter of urgency the Act be amended so that a coroner may be provided with any information or documents held by the Council or a committee of Council which touches upon, or is relevant to, the death of a child who is the subject of a coronial investigation. It is pertinent to note that s15(1), in its present form, already permits Council to release such material to a doctor or nurse in certain specified circumstances and to persons connected with research.

Following the publication of the coroner's report, the Commissioner for Children prepared an Options Paper which was considered by the Council earlier this year. As part of the process, the Council also met with the Chief Magistrate and coroners to discuss the issues.

The Council agreed that the benefits of being able to share information with the coroner and other relevant parties, including the Minister and Secretary, outweighed any detriment that might occur by lessening the confidentiality provisions of the Act. The Council also identified a number of other matters that needed amending.

I will now summarise the various amendments.

The new section 6A will enable the Council, of its own motion or at the request of the coroner, to give information relevant to a coronial inquiry into the death of a child or a maternal or late maternal death to the coroner.

The Act already defines 'maternal' and 'late maternal' death to mean the death of a woman who was pregnant or within 12 months after a pregnancy where the death was related to the pregnancy or had an obstetric cause.

Section 6A(2) also makes it clear that the coroner may use the information in order to carry out the coroner's functions and it may be admitted into evidence if required. Of course, the initial decision as to whether to give information or not, and what information to give, remains with the Council.

The functions of the Council in section 6 are expanded to enable the Council to investigate and report to the Secretary or Minister (or any other relevant Minister) on any matter relating to obstetric and paediatric mortality and morbidity of its own motion without first requiring a reference from the Secretary or Minister.

Another new function is to enable the Council to communicate information regarding the death or morbidity of a particular child or woman to the Secretary, a relevant Minister or a prescribed person. As the responsibility for children is spread across a number of ministerial portfolios, it is important that the Council is able to report not only to the Minister for Health, but also to the Minister for Children and the Minister for Human Services.

However, if confidential information is released by the Council to a coroner, the Secretary, a Minister or a prescribed person, the new section 15A gives the Council the power to place restrictions upon the subsequent use of any information or reports released by it. .

Section 15 of the Act has been repealed and replaced. Much of the new section 15 is just a re-arrangement of the current section to improve its drafting style. The section maintains the protections and restrictions on the use of Council information mentioned earlier. It continues to allow information to be released to health practitioners involved in the care of a woman or child, and allows de-identified information to be given to researchers.

However, two new subsections (8) and (9) are included at the request of Council members. As part of the work of Council and its committees, members may receive information that would lead to them forming the belief or suspicion that a child is at risk of neglect or abuse, or that an offence has been committed in relation to a child or woman. Despite being 'mandatory reporters' under the *Children, Young Persons and Their Families Act 1997*, the health practitioner members are currently unable to pass that information on to either child protection or Tasmania Police.

The amendments will allow the health practitioner members to carry out their obligations under the *Children, Young Persons and Their Families Act* and also gives the Council the discretion to report information about possible serious offences to the Commissioner of Police. The public interest in protecting the safety and welfare of vulnerable children in particular outweighs any detriment that may occur by the release of otherwise confidential information.

Members will also note that the title of the Act is amended to better reflect the purpose of the Act and the functions of the Council.

In conclusion, the amendments have the support of Council members, the Chief Magistrate and coroners, and Tasmania Police. The amendments clarify and enhance the powers of the Council and have potential to benefit the health and wellbeing of Tasmanians.

I commend the Bill to the House.