



PERINATAL REGISTRY ACT 1994

No. 31 of 1994

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PERINATAL REGISTRY ACT 1994

No. 31 of 1994

AN ACT to establish the Council of Obstetric and Paediatric Mortality and Morbidity and for related purposes

[Royal Assent 10 May 1994]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Perinatal Registry Act 1994*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

3—In this Act, unless the contrary intention appears—

“**born alive**” means the complete expulsion or extraction from its mother of a viable foetus in which, after that expulsion or extraction, the heart was beating;

“**Council**” means the Council of Obstetric and Paediatric Mortality and Morbidity established by section 4;

“**employee**” means a person whose services are made available to the Council under section 10 (a) or (b);

“**function**” includes duty;

“**maternal death**” means—

(a) the death of a woman caused by, or that may have been caused by, her pregnancy or in which her pregnancy was, or may have been, a contributing factor; or

(b) the death of a woman that occurs before the twenty-ninth day after the day on which the woman gave birth to a child; or

(c) the death of a woman caused by, or that may have been caused by, her giving birth to a child or in which her giving birth to a child was, or may have been, a contributing factor;

“**perinatal death**” means—

(a) the death of a viable foetus at any time up to the moment of its complete expulsion or extraction from its mother; and

(b) the death of a child born alive where the death occurs before the twenty-ninth day after the date of the birth;

“**register**” means the perinatal register or other register maintained by the Council under section 14;

“**regulations**” means regulations made and in force under section 20;

“**Secretary**” means Secretary of the Department;

“viable foetus” means a product of conception—

- (a) of at least 20 weeks’ gestation or such lesser number of weeks gestation as may be prescribed by the regulations; or
 - (b) of a weight of not less than 400 grammes or such lesser weight as may be prescribed by the regulations.
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PART 2

COUNCIL OF OBSTETRIC AND PAEDIATRIC MORTALITY AND MORBIDITY

The Council of Obstetric and Paediatric Mortality and Morbidity

4—The Council of Obstetric and Paediatric Mortality and Morbidity is established.

Membership of Council

5—(1) The Council consists of not less than 8 and not more than 10 members of whom—

- (a) two are to be persons nominated by the Vice-Chancellor of the University of Tasmania; and
- (b) one is to be a person who is—
 - (i) employed in the delivery of neonatal services at the Royal Hobart Hospital; and
 - (ii) nominated by the Secretary; and
- (c) one is to be a person who is—
 - (i) employed in the Department; and
 - (ii) nominated by the Secretary; and
- (d) one is to be a member of the Royal Australian College of Obstetricians and Gynaecologists nominated by the Tasmanian Branch of that College; and
- (e) one is to be a member of the Australian College of Paediatricians nominated by the Tasmanian Branch of that College; and

- (f) one is to be a member of the Royal Australian College of General Practitioners nominated by the Tasmanian Branch of that College; and
- (g) one is to be a registered nurse, within the meaning of the *Nursing Act 1987*, who—
 - (i) holds a practising certificate endorsed with the category of midwifery nursing issued under that Act; and
 - (ii) is nominated by the Tasmanian Branch of the Australian College of Midwives Incorporated.

(2) The members of the Council specified in subsection (1) (a) to (g) (inclusive) are appointed by the Minister.

(3) In addition to the members of the Council specified in subsection (1) (a) to (g) (inclusive), the Minister may appoint not more than 2 other members of the Council nominated by a majority of those members.

(4) The Minister may appoint a member as chairperson of the Council.

(5) The Minister may require a body or a person holding an office referred to in subsection (1) to nominate one or more persons within a specified period (being a period of not less than 2 months).

(6) If a body or person fails to comply with a requirement made under subsection (4), the Minister may appoint a person with the qualifications required by subsection (1) as a member of the Council.

(7) If a body or an office referred to in subsection (1) has a change of name, the Governor may, by order, amend that subsection by substituting the new name of the body or office.

(8) If a body or an office referred to in subsection (1) ceases to exist, the Governor may, on the recommendation of the Council, by order, amend that subsection by substituting an office or body which the Governor is satisfied—

- (a) is similar to the office that has ceased to exist; or
- (b) substantially represents the interests represented by the body that has ceased to exist.

(9) Schedule 1 has effect with respect to the membership of the Council.

(10) Schedule 2 has effect with respect to the meetings of the Council.

Functions of Council

6—The Council has the following functions:—

- (a) to investigate the circumstances surrounding, and the conditions that have or may have caused—
 - (i) maternal and perinatal deaths in Tasmania; and
 - (ii) deaths of children in Tasmania in the age group from 29 days to 14 years (inclusive); and
 - (iii) congenital abnormalities in children born in Tasmania; and
 - (iv) injuries, illness or defects suffered by pregnant women or viable foetuses in Tasmania at any time before or during childbirth;
- (b) to maintain a perinatal data collection for the purpose of—
 - (i) collecting, studying, researching and interpreting information relating to deaths referred to in paragraph (a); and
 - (ii) collecting, studying, researching and interpreting information relating to births in Tasmania; and
 - (iii) identifying and monitoring trends in respect of perinatal health (including congenital abnormalities); and
 - (iv) providing information to the Secretary on the requirements for, and the planning of, obstetric and neonatal care; and
 - (v) providing information to persons employed in health care and to researchers; and
 - (vi) maintaining a register of congenital abnormalities;
- (c) to provide information for the education and instruction in medical theory and practice in obstetrics and paediatrics for legally-qualified medical practitioners and nurses;

- (d) to investigate and report on any other matters relating to obstetric and paediatric mortality and morbidity referred to the Council by the Minister or the Secretary;
- (e) to perform any other function imposed by this Act or any other Act or the regulations.

Powers of Council

7—The Council has the following powers:—

- (a) to require any person to provide any information, or any document in that person's control, that is relevant to the performance by the Council of its functions;
- (b) to do all things necessary or convenient in connection with the performance of its functions and the exercise of its powers under this or any other Act.

Delegation

8—The Council may, in writing, delegate to a member of the Council or a committee established under section 9 any of its functions or powers other than this power of delegation.

Committees

9—(1) The Council may establish committees to assist it in performing its functions.

(2) A committee consists of—

- (a) such members of the Council as the Council determines; and
- (b) such other persons as the Council determines and are approved by the Minister.

(3) A committee—

- (a) must provide the Council with information and advice on any matter referred to it by the Council; and
- (b) must perform any functions delegated to it by the Council.

(4) A committee has the same powers as the Council.

(5) Meetings of a committee are to be held in accordance with any directions given by the Council.

(6) Schedule 1, other than clauses 1 and 7, applies in relation to members of a committee who are persons referred to in subsection (2) (b) as if—

- (a) a reference in that Schedule to a member were a reference to a member of the committee; and
- (b) a reference in that Schedule to the Council were a reference to the committee.

(7) Subject to this section, Schedule 2 applies in relation to the meetings of a committee as if—

- (a) a reference in that Schedule to a member were a reference to a member of the committee; and
- (b) a reference in that Schedule to the Council were a reference to the committee.

Staff

10—For the purposes of enabling the Council to perform its functions—

- (a) the Secretary must make available to the Council the services of such persons employed in the Department as are necessary; and
- (b) the Council, with the approval of the Secretary, may arrange with the Council of the University of Tasmania for the services of persons employed by the University to be made available to the Council.

Arrangements with other persons

11—With the approval of the Secretary, the Council may make arrangements and enter into contracts and joint ventures with other persons to facilitate the performance of its functions.

Annual report

12—(1) On or before 30 September in each year or such other date as may be determined by the Secretary, the Council must—

(a) prepare an annual report in respect of the preceding financial year or such other period as may have been prescribed under the *Tasmanian State Service Act 1984* in relation to the Secretary of the Department; and

(b) provide the Secretary with a copy of that report.

(2) The annual report is to relate to—

(a) the performance of the functions and the exercise of the powers of the Council, staff attached to the Council and any committee established under section 9; and

(b) such other matters the Secretary considers appropriate or necessary for Parliament to be properly informed as to the performance and progress of the Council during the period covered by the report.

(3) The annual report must not contain any information which enables the identification of any person in respect of whom information is kept in a register.

Protection of members of Council and staff

13—(1) A member of the Council or a committee does not incur any personal liability in respect of any act done, or omitted, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this or any other Act.

(2) An employee does not incur any personal liability in respect of any act done, or omitted, in the course of his or her employment undertaken for the purposes of this Act.

PART 3**REGISTERS****Registers**

14—The Council must maintain such perinatal and other registers as it considers appropriate.

Confidentiality and use of information

15—(1) A person must not disclose any information or publish any document acquired by him or her as a member of the Council, a member of a committee or an employee except where the information is disclosed or the document is published with the approval of the Council—

- (a) to a legally-qualified medical practitioner, or a nurse, concerned in—
 - (i) the care of the pregnant woman and her unborn child; or
 - (ii) the birth of the child; or
 - (iii) the care of the child under the age of 6 months; or
 - (iv) the care of the child born with a congenital abnormality, injury, illness or defect; or
- (b) to a person concerned in research.

Penalty: Fine not exceeding 10 penalty units.

(2) Any information disclosed or document published under subsection (1) (b) to a person concerned in research must not contain information which enables the identification of any person in respect of whom information is kept in a register except where the person or the person's parent or guardian has consented in writing to that identification.

(3) A document or information referred to in subsection (2) is not admissible in any proceedings before any court, tribunal, board, Agency (within the meaning of the *Tasmanian State Service Act 1984*) or person.

(4) The Council, a committee, a member of the Council or a committee or an employee may not be required to disclose the information or to produce the document before any court, tribunal, board, Agency (within the meaning of the *Tasmanian State Service Act 1984*) or person if—

- (a) the information or document was provided to the Council, a committee, a member of the Council or a committee or an employee under this Act; or
- (b) the document, not being a report referred to in section 12, was produced by the Council, a committee, a member of the Council or a committee or an employee for the purposes of the performance by the Council of its functions or of facilitating that performance.

(5) A person to whom information is disclosed or a document is published under subsection (1) (a) or (b) and any person or employee under the control of that person is subject in respect of that information or document to the same rights, privileges, obligations and liabilities under this section to which a member of the Council is subject.

(6) The *Freedom of Information Act 1991* does not apply in relation to—

- (a) any information or document that was provided to the Council, a committee, a member of the Council or a committee, an employee or a person under this Act; or
- (b) any document that was produced by the Council, a committee, a member of the Council or a committee, an employee or a person.

Duty of attendant at birth or death, &c., to provide prescribed information

16—(1) In this section—

“attendant” means—

- (a) if the birth or death occurs in a private medical establishment, the licensee of the establishment; or

- (b) if the birth or death occurs in a public hospital, the Regional Health Board which maintains and operates that hospital or, where that Board has delegated its functions as attendant under this section to another person, that other person; or
- (c) if the birth occurs elsewhere than in a private medical establishment or a public hospital—
 - (i) the midwife or person performing the duties of midwife in attendance on the mother at the time of the birth; or
 - (ii) where there is no midwife or person performing the duties of midwife in attendance on the mother at the time of the birth, the legally-qualified medical practitioner in attendance; or
 - (iii) where there is no midwife, person performing the duties of midwife or legally-qualified medical practitioner in attendance on the mother at the time of the birth—
 - (A) if the mother or child is admitted to a private medical establishment or a public hospital because of the birth, the person specified in paragraph (a) or (b); or
 - (B) in any other case, the legally-qualified medical practitioner who undertakes the care and treatment of the mother and child because of the birth; or
- (d) if the death occurs elsewhere than in a private medical establishment or a public hospital—
 - (i) where a legally-qualified medical practitioner was in attendance at the death or examined the body of the deceased, that medical practitioner; or
 - (ii) where a legally-qualified medical practitioner is required to give a certificate in respect of the death under section 34 of the *Registration of Births and Deaths Act 1895*, that medical practitioner; or

- (iii) where no legally-qualified medical practitioner is required to give the certificate referred to in subparagraph (ii), a person in attendance at the death; or
- (iv) in any other case, a person required to give information relating to the death to a registrar under the *Registration of Births and Deaths Act 1895*;

“**private medical establishment**” has the same meaning as in the *Hospitals Act 1918*;

“**Registrar-General**” has the same meaning as in the *Registration of Births and Deaths Act 1895*;

“**required information**” means the information required by the Council as specified in a form provided or approved by the Council.

(2) An attendant must provide the required information in relation to a birth, maternal death or perinatal death to the Council within 7 days after that birth or death.

Penalty: Fine not exceeding 10 penalty units.

(3) An attendant must not disclose or publish required information to any person except to the extent necessary for the performance of his, her or its functions as attendant and, as the case may be, as—

- (a) licensee of a private medical establishment; or
- (b) a Regional Health Board; or
- (c) a midwife or person performing the duties of midwife; or
- (d) a legally-qualified medical practitioner.

Penalty: Fine not exceeding 10 penalty units.

(4) The Registrar-General must provide the required information in relation to a maternal death or perinatal death to the Council within 30 days after a registrar of a district has received information of the death under section 23 of the *Registration of Births and Deaths Act 1895*.

Duty to provide information requested by Council

17—On receipt of the written request of the Council, a person must provide any information, or any document in that person's control, that the Council—

- (a) considers may be relevant to the performance of its functions; and
- (b) has specified in the request.

Penalty: Fine not exceeding 5 penalty units.

PART 4**MISCELLANEOUS****Presumptions**

18—In any proceedings, unless evidence is given to the contrary, proof is not required of—

- (a) the constitution of the Council or a committee; or
- (b) any resolution of the Council or a committee; or
- (c) the appointment of a member of the Council or a committee; or
- (d) the presence of a quorum at any meeting of the Council or a committee; or
- (e) the provision of the services of a person to the Council under section 10 (a) or (b).

Service of documents

19—A document may be served on the Council or a committee—

- (a) by leaving it at, or sending it by post to, the address of the Department; or
- (b) as specified in any form required to be provided under this Act; or
- (c) as otherwise approved by the Council in writing.

Regulations

20—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 0.5 penalty units for each day during which the offence continues.

(4) The regulations may authorize any matter to be from time to time determined, applied or regulated by the Council.

Consequential amendments

21—The *Registration of Births and Deaths Act 1895** is amended as follows:—

- (a) by omitting the definition of “perinatal death” from section 1A (1);
- (b) by repealing section 34A.

Administration of Act

22—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Community and Health Services; and
- (b) the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.

* 59 Vict., No. 9. For this Act, as reprinted up to and including 31 December 1959, see the Reprint of Statutes (1826-1959), Vol. 5, p. 297. Subsequently amended by No. 16 of 1963, No. 55 of 1965, No. 46 of 1966, No. 58 of 1968, No. 10 of 1973, No. 36 of 1974, No. 29 of 1984, No. 19 of 1985, No. 109 of 1987, No. 41 of 1988, No. 5 of 1990 and No. 43 of 1991 and by S.R. 1969, No. 214.

SCHEDULE 1
MEMBERS OF COUNCIL

Section 5 (9)

Interpretation

1—In this Schedule, “member” means member of the Council.

Term of office

2—A member holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment.

Holding other office

3—The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from—

- (a) holding that office and also the office of member; or
- (b) accepting any remuneration payable to a member.

Remuneration

4—A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister determines.

Conditions of appointment

5—A member holds office on such conditions relating to matters not provided for by this Act as are specified in the instrument of appointment.

***Tasmanian State Service Act 1984* inapplicable**

6—The *Tasmanian State Service Act 1984* does not apply in relation to a member.

Vacation of office

- 7—(1) A member vacates office if he or she—
- (a) dies; or
 - (b) resigns; or
 - (c) ceases to hold the qualification specified in section 5 (1) in respect of which he or she was appointed; or
 - (d) is removed from office under subclause (2).
- (2) The Minister may remove a member from office if—
- (a) the Minister is satisfied that the member is unable to perform adequately or competently the functions of office; or
 - (b) the member has been convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for 12 months or longer; or
 - (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his or her remuneration or estate for their benefit; or
 - (d) the member is absent from 3 consecutive meetings of the Council without the permission of the Council.

Filling of vacancy

8—If the office of a member becomes vacant, the Minister may appoint a person with the relevant qualifications specified in section 5 (1) to the vacant office for the remainder of that member's term of office.

SCHEDULE 2
MEETINGS OF COUNCIL

Section 5 (10)

Interpretation

1—In this Schedule—

“meeting” means meeting of the Council;

“member” means member of the Council.

Convening of meetings

2—(1) Subject to subclause (2), meetings are to be held at the times and places determined by the Council.

(2) A meeting may be convened by the chairperson or by any 3 other members.

Presiding at meetings

3—(1) The chairperson of the Council is to preside at all meetings at which he or she is present.

(2) If the chairperson of the Council is not present at a meeting, a member elected by the members present at the meeting must preside.

Quorum and voting at meetings

4—At a meeting—

(a) the quorum is half the total number of members of the Council; and

(b) a question is decided by a majority of the votes of the members present and voting; and

(c) the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Conduct of meetings

5—(1) Subject to this Act, the Council may regulate the calling of, and the conduct of business at, its meetings as it determines.

(2) Without limiting subclause (1), the Council may permit members to participate in a particular meeting or all meetings by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A member who participates in a meeting under permission granted under subclause (2) is taken to be present at the meeting.

(4) Without limiting subclause (1), the Council may allow a person to attend the meeting for the purpose of advising or informing it on any matter.

Resolution without meetings

6—(1) If at least half the total number of members of the Council sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting held on the day on which the last of those members signs the document.

(2) If a resolution is taken to have been passed under subclause (1), each member is to be, as soon as practicable—

- (a) advised of the matter; and
- (b) given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

Minutes

7—The Council is to keep minutes of its proceedings.

Validity of proceedings, &c.

8—(1) Any act or proceeding of the Council or of any person acting under any direction of the Council is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.

(2) All acts and proceedings of the Council or of any person acting under any direction of the Council are, notwithstanding the subsequent discovery of any defect in the appointment of any member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Council had been fully constituted.

*[Second reading presentation speech made in:—
House of Assembly on 20 April 1994
Legislative Council on 27 April 1994]*

