CORONERS ACT, 2003

SOUTH  *AUSTRALIA*

RULING OF CORONER

An Inquiry taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 12th days of February 2015 and the 2nd day of March 2015, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, concerning Mellanie Joanne Paltridge.

1.1. This ruling concerns an issue as to whether the Chief Executive Officer of SA Health (the Chief Executive) is obliged to comply with the terms of a summons issued to that person by this Court to produce documentation described in the summons. Objection has been taken to the production of any documentation so described on the basis that the documentation, and presumably any information that is contained within it, is covered by the restrictions contained within Part 7 of the Health Care Act 2008 (the Act).

1.2. This is an Inquest into the death of Mellanie Joanne Paltridge who died at the Women's and Children's Hospital (the hospital) on 15 April 2012. She was 25 years of age. Ms Paltridge had been taken to the hospital on 14 April 2012 by ambulance having experienced an unconscious collapse and severe abdominal pain when shopping in a supermarket. She was 23 weeks pregnant at the time of her presentation. Evidence has been given in the Inquest that the cause of Ms Paltridge's death is a ruptured splenic artery aneurysm.

1.3. Although this diagnosis was suspected at a time when Ms Paltridge was very much in extremis on the morning of her death, no definitive diagnosis had been made at any time during her presentation despite the fact that she had been seen and examined by a number of medical practitioners of varying levels of experience, although not by a

consultant. When Ms Paltridge collapsed, Ms Paltridge underwent emergency surgery in an effort to identify and correct Ms Paltridge's pathology, but even then the rupture of the splenic artery was not identified. Ms Paltridge died during surgery. The rupture of that artery and the identification of it as the cause of Ms Paltridge's death were only definitively identified during a post mortem examination.

1.4. In this Inquest evidence has been admitted concerning the death of a pregnant woman by the name of Monique Hooper. Ms Hooper's death had also occurred following a presentation at the hospital. Her death had occurred on 11 August 2009. The cause of her death had also been the consequences of a ruptured splenic artery aneurysm. Ms Hooper had presented at the hospital several hours before her collapse and death. The evidence is that the ruptured splenic artery aneurysm, like that of Ms Paltridge, had also remained undiagnosed until Ms Hooper fatally collapsed on hospital premises.

1.5. Evidence has been led that the rupture of a splenic artery aneurysm is a rare pathological event and one that is difficult to diagnose. In my opinion the hospital's experience of the earlier death of Ms Hooper was relevant to the issues in this Inquest for a number of reasons, not the least of which is that it is relevant for this Court to enquire whether any diagnostic lessons had been learned from that experience such that a higher level of knowledge about the condition and about its methodology of diagnosis may have led to an earlier diagnosis of Ms Paltridge and have prevented her death. The Court is particularly keen to identify what, if any, and what level of, inquiry had been made within the hospital or within SA Health as to the circumstances of Ms Hooper's death and what remedial measures had been adopted to reduce the risk of the likelihood of such an event being repeated. To this end the Court has deemed it necessary to examine any recommendations that may have resulted from any such inquiry. Furthermore, any recommendations that may have been made after the death of Ms Hooper may well find themselves evaluated by and repeated by this Court. The documentation sought by way of summons to the Chief Executive, if any, would be relevant to the above issues. Naturally, the Court acknowledges that it may not receive into evidence any material that is covered by any legal constraint that may be placed upon the production of that material.

1.6. Tendered in evidence[1] is the '**Twenty-fourth Report of the Maternal, Perinatal and Infant Mortality Committee on maternal, perinatal and post-neonatal deaths in 2009 including the South Australian Protocol for Investigation of Stillbirths**'. I shall refer to the committee described in the title of that document as the Committee. The Report states that copyright in the document resides in 'SA Health'. The Government of South Australia logo, with a reference to SA Health, is displayed on the frontispiece of the Report. The Introduction to the Report on page 13 states that the Committee is an authorised quality improvement body established under Part 7 of the Act. The Committee's stated terms of reference are to advise the Chief Executive on three defined matters as follows:

1. The pattern and causation of maternal, perinatal and infant deaths in the state;
2. The avoidability of any factors associated with such deaths and any measures which could be taken to assist with the prevention of such deaths, including improvements in health services in the state;
3. Education and training for members of the medical, midwifery and nursing professions and for the community generally in order to assist in the reduction of maternal, perinatal and infant morbidity and mortality in the state.

1.7. There is a sub-committee of the Committee known as the Maternal Subcommittee (the Subcommittee). The terms of reference of the Subcommittee, as set out in Appendix 1 to the Report, are as follows:

1. To review the causes of death associated with pregnancy and childbirth; to determine whether these may have been preventable, and to establish what were the avoidable factors, if any, presented in the case history;
2. To report to the Maternal, Perinatal and Infant Mortality Committee;
3. To undertake review, educational and advisory roles as appropriate from time to time, by initiation or by invitation.

1.8. At page 17 of the Report under the heading, '**2. Causes of Maternal Deaths 2009**', reference is made to a maternal death that was attributed to irreversible shock due to severe coagulopathy following haemorrhage from a ruptured splenic artery aneurysm complicating late pregnancy. The information that then follows contains reference to the woman's presentation and surgery. The Report does not identify the woman in question and does not identify the hospital at which the described events occurred. It is assumed that the reference in the Report to this death is as a result of the

[1] Exhibit C25

Subcommittee's activities in respect of that death. The document is silent as to whether any recommendations were made consequent upon any Subcommittee investigation into this death.

1.9. Ms Doecke of counsel represents both the Women's and Children's Health Network and, since the service on the Chief Executive of a summons to produce documents, the Chief Executive. Ms Doecke has objected to the production of the Report in evidence, or to at least that part of it that deals with the de-identified maternal death that I have already referred to. Her objection is based on the provisions of Part 7 of the Act 2008, and in particular section 66(3) of the Act. She argues that the Report, coupled with the Court's knowledge of the circumstances of the death of Ms Hooper, might lead to the implicit identification of Ms Hooper as the deceased woman referred to in the Report and that this would contravene section 66 of the Act. For similar reasons Ms Doecke contends that she is not lawfully able to inform the Court whether Ms Hooper's case is the subject of the Report. I will deal with the effect of section 66 at another point of this ruling, but I state here that I have overruled the objection to the admissibility of the Report. The reasons for that will become apparent in due course. I would here simply add two things; firstly, the Report is freely available on the internet and is in the public domain. No person had to be compelled to produce the Report to the Court or to answer questions either about its provenance or its contents. Secondly, if the reference to the maternal death in the Report was a reference to a person other than Ms Hooper, Ms Doecke would be perfectly at liberty to inform the Court of that matter without breaching any real or perceived confidentiality in respect of any person's identity.

1.10. During the course of the Inquest Ms Doecke accepted service on behalf of the Chief Executive of a summons directed to the Chief Executive to produce '*any documentation received by, created by or otherwise in possession of the Maternal, Perinatal and Infant Mortality Committee, relating to the death of Monique Ann Hooper. This is including, but not limited to, any report of said Committee relating to the death of Monique Ann Hooper and any such document or report in relation to the maternal death described in the twenty fourth report of the said Committee on page 17*'. It will be observed that the summons would relate to documentation concerning Ms Hooper and to that concerning the de-identified woman on page 17 of the Report in the event that the de-identified woman was not Ms Hooper.

1.11. Objection has been taken on behalf of the Chief Executive to the production of any material of either description including any report or other document that might set out any recommendations that may have been made pursuant to any inquiry conducted by the Subcommittee or Committee in respect of the death of Ms Hooper or the death of the unidentified person described in the Twenty-fourth Report of the Committee. Ms Doecke on behalf of the Chief Executive has indicated to the Court that her client would not be prepared to produce any record of any such recommendations even if the same were to be regarded by the Court as produced in full satisfaction of the summons.

1.12. The objection to the production of any material described in the summons is taken on the basis of the provisions contained within Part 7 of the Act, and in particular section 66 of the Act. I note that the objection is not taken pursuant to Part 8 of the Act which deals with root cause analyses in respect of specific adverse incidents.

1.13. Ms Doecke has indicated to the Court that based upon the prohibitions or restrictions in Part 7 of the Act her client is not prepared to allow me privately to view any material that might fall within the description set out within the summons to enable the Court to assess whether the material is relevant to the issues under consideration in this Inquest, the weight that might be accorded to material that is relevant and whether the material falls within any prohibition contained within Part 7 of the Act, in particular section 66. Ms Doecke went so far as to say that the unwillingness to allow this Court to view privately any material for the purposes I have described would extend to any desire on the part of a higher court, reviewing any decision this Court might make, to view the material for the same purpose. I observe that all this naturally would mean that the sole and final arbiter as to whether, as a matter of law or fact, any prohibition or restriction on the production of information or documentation to a court exists, would be an unidentified entity outside of and immune from the curial process and an entity that may have custody and control of the information or documentation sought by the Court.

1.14. The Act came into operation on 1 July 2008. The Act effectively replaced the South Australian Health Commission Act 1976. Parts 7 and 8 of the Act appear to have been designed to enable and facilitate the activities that were contemplated within section 64D of the repealed South Australian Health Commission Act 1976. However, whereas section 64D of the South Australian Health Commission Act 1976

did not make reference to a specific purpose of facilitating an investigation into a known adverse health care incident (although it would have enabled such an investigation as part of the activities contemplated in that provision), Part 8 of the new Act is specifically designed to enable an investigation into such an adverse health care incident.

1.15. It is accepted in this matter that no investigation pursuant to Part 8 of the Act was conducted in relation to the death of Monique Hooper. Nor is it suggested that any such investigation was conducted into the maternal death which is described within the Twenty-fourth Report of the Committee, should that death be a different death and not that of Ms Hooper. Therefore, this ruling is only concerned with whether or not the provisions of Part 7 of the Act apply to the production of the material sought within the summons to the Chief Executive.

1.16. The stated purpose of Part 7 of the Act is contained within section 63(2) which I set out.

> (2) The purpose of this Part is to allow the authorisation of activities associated with undertaking or making assessments, evaluations or recommendations with respect to the practices, procedures, systems, structures or processes of a health service—
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> (a) where the purpose of any such activity is wholly or predominantly to improve the quality and safety of health services; and
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> (b) where the public disclosure of, or public access to, information is restricted in order to achieve the best possible outcomes associated with the improvement of health services.[2]

1.17. It is to be noted that the purpose of Part 7 is said to be advanced by or be associated with a restriction of public disclosure of, or public access to, information. To my mind section 63(2)(b) of itself would be incapable of creating a total prohibition of public disclosure of, or public access to, the information that is contemplated within that provision. There is no reference to the circumstances in which public disclosure of, or public access to, information should be curtailed or prohibited and it does not identify those persons or other entities who might be restricted from disclosing such information or be prohibited from such disclosure. The manner in which such public disclosure of, or public access to, information is to be restricted needs to be found elsewhere in Part 7.

1.18. The only provision in Part 7 which deals with the disclosure of, or the restriction of the disclosure or production of, information is in section 66 of the Act. It is this provision that is contended by the Chief Executive to apply in this case.

1.19. The second reading speech of the Minister for Health contained the following passage that was intended to address the functions of Parts 7 and 8 of the Health Care Bill as the Act then was.

> 'The quality improvement or research activities are protected in the same way as that currently provided for under section 64D of the South Australian Health Commission Act 1976. However the provisions in this Bill have taken into account recent Crown Law advice and court judgements to ensure persons or groups of persons conducting research into the causes of mortality or morbidity, or involved in the assessment and improvement of the quality of specified health services, are properly protected from being legally required to make certain information public.
>
> The provisions in the Bill support clinicians, managers and others to communicate openly and honestly in assessing the processes and outcomes of the provision of health services where there has been a significant adverse event and to make recommendations for system improvements. This is most likely to happen where those involved are secure in the knowledge that what they divulge cannot be made public or used in any proceedings. The Bill, in promoting full and frank discussion in a 'protected' environment for the purposes of facilitating quality improvement in health services, maintains the right to have access to or disclose information in the public interest. This is consistent with what is the current intent of section 64D of the South Australian Health Commission Act 1976. To further support participation in an analysis of an adverse event undertaking under part 8 of the Bill, a provision is drafted enabling a person who believes they have been victimised as a result of this participation to take action that can be dealt with as a tort or under the Equal Opportunity Act 1984.
>
> The Bill provides for a specific investigative procedure, a Root Cause Analysis, to be undertaken where there has been an adverse incident. Root Cause Analysis is a specific type of quality improvement activity which uses an investigative method to determine the underlying contributing factors leading to an adverse event. The purpose is to identify the system issues that result in adverse events occurring again. RCA has a systems focus. It does not review individual responsibility nor does it investigate the performance, intentionally unsafe acts, criminal acts or acts relating to clinician impairment. These are left to the appropriate bodies such as registration boards or courts.'

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[2] Part 7, Section 63(2) of the Health Care Act 2008

1.20. The first of these paragraphs addresses the purpose and function of Part 7 of what would become the Health Care Act 2008. It will be seen from the Minister's remarks that one of the purposes of Part 7 is to ensure that persons or groups of persons conducting research into the causes of mortality or morbidity, or who were involved in the assessment and improvement of the quality of specified health services, are properly protected from being legally required to make certain information public. However, this statement leaves open the possibility that there may be other persons or entities who legitimately have knowledge of information or have access to documentary material that has been gathered in the course of an inquiry, such as that conducted by the Subcommittee, and who will not require the same protection. To my mind while it is to be accepted that section 66 of the Act identifies the type of information the dissemination of which should be restricted as well as the circumstances in which the dissemination of information should be restricted, the provision has more to do with identifying the class or classes of person who may be restricted in disseminating information and with identifying those persons or class of persons who cannot be required to produce documents or disclose information to a Court or other agency.

1.21. I turn now specifically to the provisions contained within section 66 of the Act which is said to be the provision which defeats the Court's summons to the Chief Executive. For these purposes it can be accepted that the Subcommittee and its activities in respect of the death of Ms Hooper, if there were any, or those activities in connection with the woman described in the Committee's Report, are covered by section 66.

66 Protection of information

(1) This section applies to -

(a) a person who is, or has been, an authorised person; or

(b) a person -

(i) who provides, or has provided, technical, administrative or secretarial assistance to an authorised person or in connection with an authorised activity; or

(ii) who receives or gathers information on behalf of an authorised person in connection with an authorised activity.

(2) A person to whom this section applies must not—

(a) make a record of information gained as a result of, or in connection with, an authorised activity; or

(b) make use of or disclose information gained as a result of, or in connection with, an authorised activity,

except—

(c) to the extent necessary for the proper performance of the authorised activity; or

(d) in pursuance of any reporting requirements of a prescribed kind to a governing body of an entity; or

(e) as part of making a disclosure to another authorised person; or

(f) to the extent allowed by the regulations. Maximum penalty: $60 000.

(3) Without limiting subsection (2), a person to whom this section applies cannot be required—

(a) to produce to a court, agency or other body any document that has been brought into existence for the purposes of an authorised activity; or

(b) to disclose to a court, agency or other body any information that has become known for the purposes of an authorised activity.

(4) Subsections (2) and (3) do not apply to any information or document that does not identify, either expressly or by implication, a particular person or particular persons.

(5) This section does not prohibit a disclosure of information if the person, or each of the persons, who would be directly or indirectly identified by the disclosure consents to that disclosure of the information.

1.22. A number of matters are apparent from this provision. Firstly, the provision as a whole only applies to a person who is either an '*authorised person*' or a person of a certain description with a defined connection to an '*authorised activity*' as contemplated within the provision. The provision does not purport to apply to all persons. If anything, the provision expressly eschews an application to all persons. As well, the provision itself makes a distinction between those persons to whom the section applies on the one hand, and on the other '*a governing body*' which is an entity to which a person to whom the section applies may have a duty to report[3]. Section 66 clearly contemplates that persons other than persons to whom the section applies, such as the Chief Executive whom the Committee has a duty to advise in accordance with its terms of reference, will come into possession of information gathered in connection with the authorised activities, as well as reports, recommendations and other material either documentary or otherwise. Section 66 does not apply to those persons. This is to be contrasted with section 73 of the Act, as

[3] Section 66(2)(d) of the Health Care Act 2008

contained within Part 8 relating to investigation of adverse incidents, which specifically identifies a person who receives a report prepared under section 72(3) of the Act as a person to whom the disclosure restrictions and court immunities apply[4].

1.23. I am mindful of the fact that section 63(2)(b) of the Act refers to the restriction of the public disclosure of, or public access to information generally and bares no reference to the class or classes of person to whom the restriction of disclosure might apply. However, if it was the legislature's intention to place a blanket prohibition or restriction upon the disclosure of information on all persons, or the legislature intended that all persons should be relieved of the requirement to produce documentation to a court or disclose information to a court, it could easily have said so by refraining from enacting section 66(1) and deleting the words '*to whom this section applies*' in section 66(2) and 66(3).

1.24. Ms Doecke argued that if the section 66(3) immunities could be circumvented by simply directing the court's requirement in respect of the disclosure of information or in respect of the production of documents, to a person who was not a person to whom the section applies, that this would render the protections afforded by that provision as nugatory. I reject that contention. In my opinion there is nothing inconsistent with the purposes of Part 7 or with the Health Care Act 2008 generally to require persons other than those described in section 66 of the Act to produce to a court a document or to disclose to a court information to which Part 7 relates. To my mind the purpose of section 66 is, as the Minister stated in the second reading speech, to ensure that persons or groups of persons conducting research into the causes of mortality or morbidity, or who were involved in the assessment and improvement of the quality of specified health services, are properly protected from being legally required to make certain information public. Those protections are not in any way diminished by requiring the Chief Executive to produce the documentation that has been required by way of the summons. To my mind there is no legitimate basis to depart from the plain words in section 66 of the Act that in my view clearly restrict its operation to a limited number of persons.

1.25. The second matter worthy of observation in relation to the operation of section 66 is that the section 66(3) court immunities in respect of the disclosure of information and the production of documentation to a court can be overcome in one of two

[4] Section 73(1)(c) of the Health Care Act 2008

circumstances, namely either if the information or document does not identify expressly or by implication a particular person or particular persons[5], or in the case of disclosure of information if the person, or each of the persons, who would be directly or indirectly identified by the disclosure consents to the disclosure of the information[6]. I observe here that the latter exception involving consent does not specifically relate to the situation where a document is sought to be produced to a court and where the document identifies expressly or by implication a person. It is not apparent why the legislature chose to make that distinction. I return to this aspect of the matter.

1.26. Counsel for the Chief Executive has informed the Court that the Chief Executive is not an '*authorised person*' as stated in section 66(1)(a) of the Act. This in my view is not surprising because it is unlikely that the Chief Executive of SA Health, having regard to his duties and responsibilities as described within the Act, would fall within the definition of *'authorised person'* as contained within section 63 of the Act and as further clarified within section 64(1)(b) of the Act. Ms Doecke faintly argued that the Chief Executive might fall within section 66(1)(b)(ii) as a person who receives or gathers information on behalf of an authorised person in connection with an authorised activity and for that reason could be characterised as a person to whom section 66 applies. I would reject that contention. Firstly, there is no evidence that the Chief Executive performs such a function. Secondly, it is evident that this provision was added for the avoidance of doubt having regard to the issue raised in **Southern Adelaide Health Service Inc v C & Ors; Case Stated on acquittal (No 1 of 2006)** [2007] SASC 181 as to whether or not in terms of the repealed section 64D of the South Australian Health Commission Act 1976 a person who conducted interviews was a person providing technical, administrative or secretarial assistance. It is even less intrinsically likely that the Chief Executive performs a function of that description. I find that the Chief Executive is not a person to whom section 66 of the Act applies.

1.27. When section 66 of the Health Care Act 2008 is examined as a whole, it is clear that all of its prohibitions as far as the disclosure of information either generally or to a court are concerned, are exclusively placed upon persons to whom the section is said to apply and to those persons only. The prohibitions do not in my view apply to the Chief Executive.

[5] Section 66(4) of the Health Care Act 2008

1.28. Thus the requirement to produce documents as contained within the summons in this instance, addressed as it is to the Chief Executive of SA Health, is not a requirement placed upon a person to whom the section applies. Rather, the requirement contained within the summons is directed to a person to whom section 66 does not apply, that is to say the Chief Executive of SA Health. Thus, the prohibitions in section 66(3) in respect of requiring production or disclosure to a court of material contemplated in Part 7 of the Act do not apply to the existing requirement placed by the summons upon the Chief Executive to produce documentation. The section 66(3) prohibitions are thus not enlivened in this case.

1.29. For much the same reasons the production to the Court of the Twenty-fourth Report of the Committee does not offend section 66 of the Act notwithstanding that an inference is available that the woman referred to at page 17 of the report is Ms Hooper. In this regard I would observe here that any person who was close to Ms Hooper could, upon reading that part of the Report, come to a conclusion that the woman referred to was probably Ms Hooper. There could be no sensible suggestion that the Report would offend section 66 by reason of its implicit identification of Ms Hooper in the eyes of people who knew her and knew of the circumstances of her death.

1.30. Counsel for the Chief Executive, Ms Doecke, when informing the Court that the Chief Executive was not an '*authorised person*', told the Court that in fact the Chief Executive was only in possession of information that was in any event publicly available within the Twenty-fourth Report of the Committee at page 17. I took it from that intimation that the Chief Executive was not in possession of documentation of the kind described in the summons, nor was in a position to be able to produce it and therefore comply with the summons.

1.31. I have already referred to the fact that according to the Twenty-fourth Report of the Committee, the Subcommittee's terms of reference include an obligation to report to the Committee in respect of its activities. In turn, the Committee's terms of reference are to advise the Chief Executive of certain matters. The matters identified in the terms of reference of both the Committee and the Subcommittee would fall within the compass of Part 7 of the Act. A duty on the part of the Committee to report to the Chief Executive, based upon a report to it from the Subcommittee in respect of any

[6] Section 66(5) of the Health Care Act 2008

particular matter would be in keeping with the Chief Executive's duties and responsibilities as set out in the Act. It is not necessary to set out here the duties and responsibilities of both the Chief Executive and the Minister, but it is clear that both the Chief Executive and the Minister have responsibility for the administration of the Health Care Act 2008 and that the Chief Executive has a duty to assist the Minister in the carrying out of the latter's responsibilities. One only has to examine the list of duties and responsibilities in respect of both officers to come to the conclusion that any suggestion that the Chief Executive would not be in a position to produce the material sought in the summons is untenable. To my mind the summons is well aimed. Even if it was not, one would have thought that there would be an entity within SA Health, a model litigant, who would be in a position to produce the required documentation and who was not a person to whom section 66 of the Act applies.

1.32. The final matter concerns the question of the identification or possible identification either by express reference or by implication to a person or persons in the documentation sought. Not having seen any of the documentation, it is difficult for the Court to determine whether or not persons are identified within the documentation sought, either expressly or by implication. It would seem to the Court to be unlikely, although not impossible, for any recommendations within a document described in the summons to make express reference to a person or persons. It is to be acknowledged that if such a document was produced to the Court there might be a concomitant implicit revelation that the recommendations arose pursuant to an investigation into the death of Ms Hooper. However, I am not persuaded that a set of recommendations would either expressly or by implication identify persons who had been involved in her clinical management or any person who had provided information to or had otherwise assisted in the authorised activity underlying the recommendations. It will be observed that section 66 does not prohibit disclosure of information if the person or each of the persons who would be directly or indirectly identified by the disclosure consents to that disclosure of the information. To my mind, the implication of this exception is that the reference within the provision to the identification of persons is confined to the identification of persons who are capable of providing or withholding the consent contemplated in section 66(5). However, as earlier observed, the exception appears to be confined to the prohibition of disclosure of information as distinct from the production of documentary material. To my mind, there could be

nothing objectionable in the Court receiving into evidence, orally, evidence of recommendations that had been made in respect of the Hooper matter notwithstanding that this evidence would identify Ms Hooper's death as the matter that gave rise to the recommendations.

1.33. The ruling of the Court is that the Chief Executive is required to comply with the summons and to produce the documentary material described therein.

In witness whereof the said Coroner has hereunto set and subscribed his hand and Seal the 2nd day of March, 2015.

Deputy State Coroner