

South Australia

**Children's Protection (Lawful Surrender of
Newborn Child) Amendment Bill 2011**

A BILL FOR

An Act to amend the *Children's Protection Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Children's Protection (Lawful Surrender of Newborn Child) Amendment Act 2011*.

5 2—Commencement

This Act will come into operation 3 months after the day on which it is assented to by the Governor.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Children's Protection Act 1993*

4—Insertion of Part 3A

After Part 3 insert:

Part 3A—Surrender of newborn child

15 9A—Interpretation

In this Part—

newborn child means a child not more than 60 days old;

prescribed person means a medical practitioner or a registered or enrolled nurse.

9B—Objects

The objects of this Part are—

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- (a) to encourage the lawful surrender, rather than the abandonment, of a newborn child; and
 - (b) to promote arrangements for the adoption or guardianship of a newborn child surrendered under this Part; and
 - 10 (c) to allow for circumstances in which a newborn child surrendered under this Part is to be returned or given to his or her mother or father.

9C—Lawful surrender of newborn child

(1) The mother of a newborn child who surrenders the child—

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- (a) into the physical custody of a prescribed person at a hospital or medical practice; or
 - (b) at a prescribed hospital in a place—
 - (i) specifically designed for the purpose; and
 - (ii) designated for the purpose by signs, in accordance with the regulations; or
 - 20 (c) to some other person or at some other place in accordance with the regulations,

will not be liable to prosecution for an offence arising only from that act.

(2) A mother surrendering a child under this section—

- 25
- (a) is not required to provide identifying information in relation to the child or herself (and a prescribed person, or some other person to whom a child is surrendered in accordance with the regulations, is not required to ask for such information or for information about the age of the child);
 - 30 but
 - (b) is to be encouraged—
 - (i) to provide information that may be of relevance to the current or future health of the child; and
 - (ii) to seek medical treatment or other support services for herself anonymously or otherwise.
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(3) If the birth of a child has not been registered under the *Births, Deaths and Marriages Registration Act 1996* or a corresponding law within the meaning of that Act prior to surrender under this section, the child is taken to be a foundling for the purposes of the *Births, Deaths and Marriages Registration Act 1996*.

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- (4) A child surrendered under this section is taken to be placed under the guardianship of the Minister, and the Minister is the lawful guardian of the child to the exclusion of the rights of any other person, until—
- (a) the child is returned or given to his or her mother or father under this Part; or
- (b) guardianship of the child is granted to another person under this or any other Act or law of the State or the Commonwealth; or
- (c) the child is adopted; or
- 10 (d) the child attains the age of 18 years,
- whichever first occurs.
- (5) A person to whom a child is surrendered under this section incurs no civil liability for an act or omission in good faith connected with the surrender of the child and the placing of the child under the guardianship of the Minister.
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9D—Adoption or guardianship

- (1) The Minister must, as soon as practicable after the surrender of a child under this Part, take action to enable the child to be adopted.
- 20 (2) Despite section 15 of the *Adoption Act 1988*, the Court under that Act may make an adoption order for a child surrendered under this Part without the consent of each person who is a parent or guardian of the child within the meaning of that Act.
- (3) An adoption or guardianship order in relation to a child surrendered under this Part must not be made unless—
- 25 (a) at least 6 weeks have elapsed since the date of surrender of the child; and
- (b) if an application has been made to the Minister under this Part by the mother or father of the child—until that application has been determined and the time for making an application for review has expired and no application for review has been made or, if an application for review has been made, that application has been finally determined.
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- (4) If it is practicable for a child surrendered under this Part to be adopted by, or placed under the guardianship of, a relative of the child, preference should be given to that outcome.
- 35 (5) If it becomes known to the Minister that a person is considering adopting, or becoming the guardian of the child, the person must be given notice in writing of the effect of this Part.

9E—Applications by mother or father

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- (1) The mother of a child surrendered under this Part may, while the child is under the guardianship of the Minister, apply to the Minister for the return of her child and, subject to this section, the child must be returned to his or her mother.
- (2) The father of a child surrendered under this Part may, while the child is under the guardianship of the Minister, apply to the Minister to assume responsibility for his child and, subject to this section, the child must be given to his or her father if—
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- (a) the father's application is made at least 6 weeks after the surrender of the child and no application has been made by the mother for the return of the child; or
- (b) the father's application is made before 6 weeks has elapsed but 6 weeks elapses without an application being made by the mother; or
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- (c) —
- (i) the mother has made an application for the return of the child at any time within the 6 weeks or after the 6 weeks but before the father; and
- 20
- (ii) the Minister has refused the application; and
- (iii) the time for making an application for review of the Minister's refusal has expired and no application for review has been made or, if an application for review has been made, that application has been finally determined.
- 25
- (3) If, within 6 weeks after the surrender of a child under this Part, the father of the child applies to the Minister to assume responsibility for the child, the father must be given notice in writing of the effect of this section.
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- (4) The Minister may require a person who claims to be the mother or father of a child surrendered under this Part to provide such information, or undergo such tests, as the Minister considers necessary to establish that the person is the mother or the father of the child.
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- (5) Before a child may be returned or given to his or her mother or father on an application under this section, the child must be placed in the care of his or her mother or father (as the case requires) under section 51 and that arrangement must remain in place for a continuous period of 3 months.
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- (6) The Minister may refuse an application under this section by the mother or father of a child if the Minister—
- (a) suspects on reasonable grounds that to place the child in the care of his or her mother or father under section 51 would place the child at risk; or

(b) forms, during the period that the child is in the care of his or her mother or father under section 51, a suspicion on reasonable grounds that to return or give the child to his or her mother or father would place the child at risk.

5 (7) If the Minister refuses an application under this section by the mother or father of a child, the Minister must give the mother or father a notice in writing setting out the reasons for that refusal and information about the right to apply for review of the refusal.

10 (8) The mother or father may, within 28 days after receiving the notice, apply to the Court for a review of the Minister's decision.

(9) On an application for review, the Court may—

(a) order the Minister to return or give the child to his or her mother or father; or

15 (b) confirm the Minister's decision and make a care and protection order as if the Minister had made an application for such an order in relation to the child.

9F—Information to be made available

The Minister must take reasonable steps—

20 (a) to make persons who provide services to pregnant women and others aware of this Part so as to encourage the lawful surrender, rather than abandonment, of a newborn child; and

25 (b) to ensure that information explaining the effect of this Part, and giving advice about care and services following the birth of a child, is readily available to a mother surrendering a child under this Part; and

(c) to ensure that any information provided by the mother that may be of relevance to the current or future health of the child is made available as necessary in the interests of the child.

9G—Inclusion of information in annual report

The annual report under the *Public Sector Act 2009* for the administrative unit of the Public Service that is responsible, under the Minister, for the administration of this Act must include—

35 (a) the number of children surrendered under this Part during the financial year to which the report relates; and

(b) in respect of each such child the circumstances in which each child has been surrendered; and

40 (c) if any child surrendered under this Part has ceased to be under the guardianship of the Minister during the financial year to which the report relates, the reason for the cessation; and

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- (d) the number of applications made to the Minister under section 9E during the financial year to which the report relates and the outcome, if known, of each such application; and
 - (e) the outcome of any application made to the Minister under section 9E in a previous year that is finally determined in the financial year to which the report relates.

9H—Social Development Committee to inquire into and report on operation of Part

10 The Social Development Committee of the Parliament must, within 3 years after the commencement of this Part, inquire into, consider and report on the operation of the Part.