

Legislative Council

Wednesday, 9th February 2011

CHILDREN'S PROTECTION (LAWFUL SURRENDER OF NEWBORN CHILD) AMENDMENT BILL

The Hon. A. BRESSINGTON (19:59): Obtained leave and introduced a bill for an act to amend the Children's Protection Act 1993. Read a first time.

The Hon. A. BRESSINGTON (19:59): I move:

That this bill be now read a second time.

The Children's Protection (Lawful Surrender of Newborn Child) Amendment Bill 2011 seeks to establish in South Australia a means by which women and young girls can safely, anonymously and legally relinquish their newborn babies, also known as a baby safe haven scheme. While this would be an Australian first, many countries, including Germany, Switzerland, Japan, Portugal and every state in America, have some form of baby safe haven legislation in place, although the models differ significantly. Most allow women to anonymously relinquish their newborn babies in hospitals or to emergency services personnel, receive medical attention and walk away, knowing that the baby will be well looked after.

It is my understanding that the first baby safe haven was established in the American state of Texas in 1998, following a spate of 13 babies being abandoned. By 2003, 41 additional states had introduced a baby safe haven law and, as I said, all American states, regardless of whether they are nominally Democrat or Republic, have followed suit. In that time, well over 1,000 babies have been safely surrendered in the United States.

The key to understanding the bill that I propose today is its objects or, more specifically, how it gives effect to its objects, which are neatly expressed in proposed section 9B, the first of which is to encourage the lawful surrender, rather than the abandonment, of a newborn baby, defined to mean a baby less than 60 days old. As is detailed in section 9C, the bill enables this through three means.

Firstly, a woman will be able to surrender the baby into the physical custody of a medical practitioner or nurse in either a clinic or hospital. It is important to note that such prescribed persons are covered for any civil liability for their actions in good faith when receiving a surrendered child and then placing the child under the guardianship of the minister. It will require informing those prescribed persons of their responsibilities under this bill, and that would, obviously, be a government responsibility.

Secondly, hospitals selected by the minister and prescribed in regulation will be required to install specifically designed baby hatches in which a mother, without entering the hospital, can place her child, knowing that when she closes the hatch an alarm will sound alerting medical staff. Such hatches are in use internationally. It is rather unfortunate that another term for that is a 'baby chute', which conjures up the idea of a laundry chute, or something. It is basically a door in the wall with a humicrib behind that. The door is opened, the baby is put in and 10 seconds after the door is closed an alarm goes off to alert medical staff that there is a baby in the crib.

Thirdly, the bill enables the minister to prescribe in the regulations such other places or persons deemed appropriate. While I have not specifically nominated this as an option in the

bill, but rather left it to the minister to consider, this provision is intended to allow the minister to cover ambulance paramedics, who could travel to the mother and collect the child whilst ensuring that both mother and child receive the medical attention they may require. Several American states have this as part of their baby safe haven scheme.

Babies surrendered under the bill are automatically placed under the guardianship of the minister and registered under the Births, Deaths and Marriages Registration Act 1996, if not already done. Additionally, where appropriate, the woman is to be encouraged to provide information that may be of relevance to the current or future health of the child and to seek medical treatment or other support services for herself, anonymously or otherwise.

In all cases, the woman is able to surrender her unharmed baby safely, anonymously and lawfully, knowing that it will be well looked after. They will have committed no crime and no attempt will be made to contact them. While it is one of the more controversial elements of the bill, my research shows that anonymity is paramount to the use and hence success of baby safe haven schemes.

Unfortunately the research base on child abandonment in general is small, with many questions yet to be asked, let alone answered. Even less is known about the women who discard their newborns. The reality is that in most cases, particularly where the child has died, women rarely come forward and hence are never found.

The mainly anecdotal evidence that does exist unsurprisingly shows that these women are often young, disconnected from stable support systems such as family, in denial of their pregnancy or unwilling to seek out support services or simply do not know that they are pregnant. It is suggested that the combination of denial and isolation results in the women not seeking prenatal care or making plans for the birth or care of the baby.

Through the little research available, it is possible to come to understand how women who use this service internationally are feeling. It is evident that they are desperate and afraid; they do not want people to know about their baby, or they do not know about the baby themselves and they are in shock; they just want someone to take it, keep it safe and make sure it gets a good home. However, at present, such women here in South Australia have nowhere to turn. This absence of options results in babies being abandoned, usually by young women and, if not found in time, tragically, they die.

While I will not dwell on the tragic details, as examples, members may recall the well-publicised 2008 case of the baby that died due to exposure to the elements after being left in a suburban driveway, or the 2007 case of the full-term baby boy left in the bathroom of an Adelaide TAFE who also died. Thankfully, not all end in tragedy, as the 2003 South Australian case of baby Joshua demonstrates. After he was left on a random doorstep and the mother not coming forward, *The Advertiser* reported a year later that baby Joshua had been adopted into a loving family home.

It is impossible to know accurately how many babies each year are abandoned here in South Australia or nationally. Data collection is limited, as I have said, with no department routinely reporting on child abandonment. Some proponents of baby safe havens estimate, on media reports, that between New South Wales, Victoria and South Australia 12 babies are abandoned each year, with many tragically dying. However, it is likely to be significantly higher than this, as this figure relies upon those cases in which the child is, firstly, found following abandonment and, secondly, the case then being covered by the media.

We also know from the Australian Institute of Health and Welfare that a significant number of marginalised women each year (it was about 40 in South Australia in 2009) do not access any prenatal service and hence their pregnancies go unreported. This of course raises the

possibility that many more babies are born and abandoned without authorities ever knowing. Additionally, this figure ignores children who die through infanticide.

That said, the number of babies abandoned is, thankfully, few in number. However, as I will argue, just because babies are not abandoned here on a daily basis does not mean that we should not be addressing this most serious social problem, for each baby lost in the absence of a baby safe haven scheme is a life that could have been saved.

The second object of the bill is to facilitate and prompt adoption of surrendered newborns. As baby Joshua's case demonstrates, this is the best option for a child anonymously surrendered and where the parents make no attempt to reclaim their parental rights. However, as has been raised in this place on numerous occasions, particularly by the Hon. Dennis Hood, adoption in South Australia of South Australian children is currently nearly non-existent, except for the few examples of step-parents adopting their stepchildren.

The explanations for this are varied, but it is not an exaggeration to say that Families SA is not all that supportive of what might be called traditional adoption. I have no doubt that, in the absence of a baby safe haven law, if baby Joshua had not been abandoned anonymously, and even if the mother or father or extended family had no desire to reclaim him, that child would have been placed under the guardianship of the minister until the age of 18 and had to endure all of the drama that goes with that particular circumstance.

As members will see in clause 9D(1), as soon as the minister takes guardianship of the newborn baby, steps must be taken to enable that child to be adopted. Preference is also given in this section to adoption by the child's extended family if they are known to the minister and it is safe to do so. This is in accordance with my policy position of retaining the child with the family whenever and wherever possible.

However, for a period of six weeks or greater, this second objective is overridden by the third and final objective of the bill, which of course is to return a surrendered baby to either its mother or father where in the infant's best interest. Recognising that some children under similar international schemes have later been reclaimed by their mother, or indeed father, the bill will provide a window in which the biological parents may come forward and no other enduring guardianship or adoption may then take place.

This is particularly important, as the mother may have been affected by depression, anxiety or panic at the time of the birth. In fact, a number of short-term issues may have been present at the time, especially for those young mothers or couples who are still in their teens.

While both are given a right to reclaim, the bill requires the mother and/or father to make an application, in accordance with proposed section 9E. This section provides for paternity testing, if deemed necessary, and gives the minister full powers under the Child Protection Act 1993 to ascertain the baby's safety, if returned. Additionally, if it is determined that a child may be reclaimed by either parent, a period of supervision for three months, in accordance with section 51 of the act, is mandated before the parent can resume full guardianship. Of course, if it is reasonably suspected by the minister that it is not safe for a child to be returned to either parent, the minister may refuse the parent's application. The applying parent is then able to have this determination reviewed in the Youth Court.

While no Australian state or territory has introduced legislation similar to what I propose today, I am by no means the only voice calling for the establishment of baby safe havens. Indeed, many community organisations and church groups, both here in South Australia and interstate, have given baby safe havens their support. Others offer their support more reluctantly, an example being the President of Reproductive Choice Australia and ethicist, Dr

Leslie Cannold, who was quoted in *The Independent Weekly* last year as saying, 'The idea is too little too late, but better than nothing for women in a desperate situation.'

A very vocal proponent of baby safe havens can be found in the Labor Party, in Senator Helen Polley, who has for years advocated the necessity of providing desperate women with an alternative to abandoning their babies. Senator Polley has spoken passionately on numerous occasions in the Senate and has organised petitions to the Tasmanian House of Assembly and the Senate, and instigated a Facebook cause entitled 'Support "Safe Havens" for abandoned babies' which, as of this morning, had 5,364 members.

The New South Wales Liberal Party, which looks as though it may soon form government, has also given its support to the establishment of baby safe havens should it win the next election. Following the tragic case in which a newborn girl was discovered deceased after being abandoned by her mother in a shoebox in Sydney, the shadow minister for community services and women, the Hon. Pru Goward, said:

I've never in my lifetime known children being abandoned or murdered in such great numbers as we have at the moment.

She committed the Liberal Party to supporting baby safe havens. Other members of the New South Wales legislature have also thrown their support behind baby safe havens.

As recently as December last year, the Victorian government, following the conviction of former water polo champion Keli Lane for the murder of two-day-old Tegan Lane, also expressed support for the concept of baby safe havens, with the community services minister, Mary Wooldridge, expressing her intent to raise their establishment at this month's meeting of the Coalition of Australian Governments. The current President of the Australian Medical Association, Dr Andrew Pesce, has also thrown his support behind baby safe havens. He said:

It's obviously very important that we as a community do everything we can to assist mothers and obviously their babies, who are in such a degree of distress that they're thinking of abandoning their baby...and to help some desperate women out of desperate situations for the benefit of them and their babies.

I contacted the office of the South Australian President of the Australian Medical Association, Dr Andrew Lavender, who reaffirmed Dr Pesce's statements.

Last year, I sent copies of the draft bill to those who I thought might be interested. I found this process most beneficial, and I would like to thank all those who sent through their feedback—perhaps that is a practice the Labor Party might like to adopt. While some simply expressed their support, others have clearly closely examined the bill and identified minor drafting errors as well as more significant issues. Again, I thank those who participated. One positive suggestion was that there be a review after three years to ascertain the implementation and effectiveness of the bill. This was obviously taken on board, and section 9H of the bill now requires the Social Development Committee to inquire into the bill's operation.

As part of my consultation on the draft bill, I also provided a copy to the Law Society of South Australia, requesting that its feedback be provided in confidence until the bill was introduced. I am now more than happy to provide this feedback to members upon request.

Overall, their feedback was supportive, particularly of the bill's intent to address and hopefully prevent the types of tragic cases referred to earlier. However, the Law Society did express concern that the anonymous surrender of a baby under the bill would, in effect, deny that baby the right to know information about his or her biological parents. The Law Society

rightly contrasted this with the Adoption Act 1998 under which this right to information is recognised.

In responding to the Law Society I acknowledged its concern but stated that I saw no way of addressing it without compromising the ability of women to access the service anonymously, something I fear would act as a deterrent to the use of this service. This is supported by my research which, as I stated earlier, suggests anonymity, particularly as the time of surrender of the newborn is crucial to the success of the baby safe havens. However, its feedback did lead to the insertion of section 9F(c) which requires the minister to take reasonable steps to ensure that any information provided by the surrendering mother that is relevant to the health of the child is made available to that child if it is in their best interests.

This is to be read in conjunction with section 9C(2)(b)(i) which encourages women accessing the service to provide information that may be of relevance to the health of the child, which I would argue includes details of both mother and father but not necessarily.

Additionally, the minister, under this section, could produce a pamphlet and questionnaire similar to that used in the American state of Illinois as part of their baby safe haven law which is provided to the mother when surrendering and can be completed then or later and sent in anonymously. While this does not fully address the Law Society's concerns, it is the best compromise that parliamentary counsel and I could conjure between the need to retain the mother's anonymity and the child's right to know their biological parents.

While highly unlikely, another consequence of allowing anonymity when surrendering a child is the possibility that a person not related to a baby, like a babysitter or an extended family member may, for whatever reason, abandon a child under their care by leaving it at the baby safe haven. Again, while this is highly unlikely, I have faith that the police investigating the abduction or missing person report would make contact with either SA Health or the Minister for Families and Communities office to ascertain whether that child has been surrendered. There is also nothing to prevent the guidelines associated with the bill requiring the South Australian police being notified of a surrendered child.

One obvious criticism of baby safe haven laws is that by allowing a woman to act independently of the father in surrendering their baby, the father's rights are essentially ignored. I have expressed in this place on numerous occasions my support of father's rights, and my position has not changed. Like the child's right to know their biological identity, however, I see no way of achieving the intent of the bill, specifically the reduction and, hopefully, prevention of baby abandonment leading to that child's death and preventing a woman acting independently of the father.

I have, however, sought to ensure that the bill will, while retaining its key elements, recognise the father's rights, particularly the right to reclaim the child if he so wishes. Both mother and father are given priority in their right to reclaim the child, provided it is safe to do so. This, of course, will not be applicable in situations where the father is not made aware of the surrender or even the pregnancy. This is, indeed, regrettable but I see no way of addressing this while achieving the bill's intent. I am, of course, more than open to suggestions from other members in this place.

In introducing the bill today I do not suggest that if it were to pass that not a single child would be abandoned in the street or a public toilet, as has occurred in the past. There will still be those who, despite the existence of baby safe havens, will not, for whatever reason, see it as an option. Additionally, it is clear from my research that awareness in the general population of the existence of such schemes does lead to an increase in their use, and hence a

decrease in the number of children being abandoned. This is the experience, particularly in some US states.

Unless the minister here heavily promotes the existence of this law it will no doubt take several years to establish itself in the public psyche. This has, unfortunately, been the inexperience in some states in America where initial uptake has been slow, resulting in the effectiveness of these schemes coming under question. To try and encourage awareness, the bill requires prescribed hospitals to adequately sign hatches that they have installed and requires the minister take steps to make pregnancy service providers aware of baby safe haven law.

I also do not suggest that baby safe havens have been beyond criticism. There are those, particularly in the United States, who flatly oppose baby safe havens on the ground that it encourages the abdication of parental responsibility. At an emotional level I can understand this argument. I cannot imagine ever being so desperate as to consider abandoning one of my children, nor would I want to encourage it; however, clearly some women, without encouragement, do become so desperate.

When you consider the alternative of babies dying of exposure in a driveway or dumpster, then I am satisfied that, rather than encouraging irresponsible behaviour, this bill instead encourages parents to take the responsible action of relinquishing their baby to people who can provide proper medical and other care for the infant, instead of unsafely abandoning the baby.

Ultimately, the drawbacks, compromises and mixed results do not detract from the necessity of establishing these schemes when we have babies being abandoned in the street. In answer to the rhetorical question asked by the former chief executive of the United States-based non-government organisation, the National Council for Adoption, 'Just how many babies do these laws have to rescue from death in a dumpster in order be worthwhile?' my answer of course is: only one.

In closing, I would like to quote Tory Shepherd in her unusually supportive opinion piece on baby safe havens of 30 November last year:

At first it sounds crazy. But do a bit of research, think it through, and before too long it sounds...not so crazy.

Ms Shepherd then goes on to conclude that baby safe havens seem like 'a reasonable option of last resort', adding that 'the logic that hospitals should offer an anonymous haven for unwanted babies seems sound'.

It is my hope that members in this place, like Tory Shepherd—who, as members would be aware, has been no friend of mine in the past—will do a little research, think it through, and conclude that baby safe havens are indeed a logical solution to what is a tragic and entirely preventable problem. Baby safe havens are by no means a solution to the complex causes of babies being abandoned, but they are a necessity for when they are. I commend to bill to the house.

Debate adjourned on motion of Hon. R.P. Wortley.