

## **MAJORITY POSITION**

### **Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005**

A majority of the Committee (Senators Humphries, Barnett and Polley) feels that the evidence presented to the Inquiry casts doubt over the efficacy and effect of the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005.

In particular, the majority feels the Inquiry raised serious questions about the constitutional validity of significant parts of the Bill, especially its attempt to regulate non-broadcast advertising by non-corporations which are not engaged in interstate or international trade or commerce. Majority Senators feel it is irresponsible to recommend that the Senate purport to pass into law a Bill which may fail, in whole or in part, to be valid. Those Senators suggest the Senate should make its own inquiries regarding the constitutionality of the Bill before proceeding to legislate.

A great deal of evidence was received regarding the terminology of the Bill, especially the terms 'non-directive' and 'referral'. The proponent of the Bill has accepted there are serious objections to those terms, and has intimated that amendments may be proposed to address these concerns. Majority Senators, however, see the concepts underpinning these terms as critical to the structure of the Bill. The terms 'non-directive' and 'referral', for example, are used to differentiate two types of pregnancy counselling services, which are then treated differently under the various provisions of the Bill. The scope of these terms will determine the impact of the Bill on counselling services, health service providers, advertisers and others in the community. Majority Senators cannot support the contention that these issues are secondary matters that can be 'sorted out' during the committee stage of the Bill's consideration.

There are a number of concerns expressed by witnesses about provisions in the Bill—for example, the magnitude of fines imposed on not-for-profit organisations for misrepresenting the nature of their services—which may be capable of amendment as the Bill progresses through the Parliament. Majority Senators, however, see the provisions in question as going to the heart, not the periphery, of the legislative scheme proposed, and as such believe the Bill in this form should not be supported at the Second Reading stage.

Clause 7 of the Bill prohibits pregnancy counselling services which do not 'refer' for abortions from advertising their services in the 24 Hour Health and Help section of telephone directories, even where an advertisement carries the notification required under clause 6. The majority rejects such a provision as discriminatory and notes that, while Senator Stott Despoja has indicated that the provision—like a number of others—may be amended, its presence in the Bill adds further to the uncertainty about the final direction of the legislation.

Overall the Bill seeks, in the majority's opinion, to hamper the efforts of those pregnancy counselling services which do not refer for abortion by imposing specific requirements for transparency without imposing equivalent provisions on other services, such as those linked to abortion providers.

It appears that the effect of the Bill would be to increase the likelihood of ready referral for abortion. This is contrary to good public policy which should reflect the widespread consensus, evident in the Parliament and elsewhere at the time the RU486 legislation was considered, that there are too many abortions in Australia.

Rather than hindering the work of those pregnancy counselling services which offer support to women facing a crisis pregnancy to choose an alternative to abortion we should be grateful for this community service, largely carried out by volunteers. The Commonwealth should be finding ways to foster and enhance this work, not undermine it.

### **Recommendation**

**That the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005 not be supported.**

Senator Gary Humphries  
Chairman  
LP, Australian Capital Territory

Senator Guy Barnett  
LP, Tasmania

Senator Helen Polley  
ALP, Tasmania

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