

The Senate

Community Affairs
Legislation Committee

Transparent Advertising and Notification of
Pregnancy Counselling Services Bill 2005

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Senator Kerry Nettle	AG, New South Wales
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TRANSPARENT ADVERTISING AND NOTIFICATION OF PREGNANCY COUNSELLING SERVICES BILL 2005

THE INQUIRY

1.1 The Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005 was introduced into the Senate as a Private Senator's Bill on 23 June 2005 by Senator Natasha Stott Despoja. On 11 May 2006, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 4 of 2006), referred the Bill to the Community Affairs Legislation Committee for inquiry and report by 17 August 2006.

1.2 The Committee received 94 submissions, additional material from witnesses at hearings and in response to questions on notice and 5901 emailed pieces of correspondence supporting the Bill, a total of over 6000 public contributions to the inquiry. These are listed at Appendix 1. A petition signed by 13 271 citizens supporting the Bill was tabled in the Senate on 22 June 2006. The Committee considered the Bill at public hearings on 22 June (Canberra) and 18, 19 and 20 July 2006 (Melbourne, Sydney, Adelaide, respectively). Details of the public hearings are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca

THE BILL

1.3 The purpose of this Bill is to introduce an Act prohibiting misleading or deceptive advertising or notification of pregnancy counselling services.

1.4 The objects of the Bill are to:

- prohibit misleading and deceptive notification and advertising of pregnancy counselling services, regardless of whether the service is provided free-of-charge or for a fee;
- promote transparency by mandating that pregnancy counselling services which do not refer for terminations of pregnancy must provide a statement to this effect in any advertising material;
- legislate that telephone carriage service providers may only list non-directive pregnancy counselling services on 24 hour health and help call pages;
- suspend payment of Commonwealth financial assistance to service providers that are found to be non-compliant with the provisions of this Act until the matter is rectified; and
- introduce annual reporting by the Minister for Health and Ageing on the nature of Commonwealth financial assistance to pregnancy counselling services and disclosure of the policy objectives of the service provider being a condition of payment.

BACKGROUND

1.5 Women seeking information about their pregnancy and the options for managing an unplanned pregnancy may access relevant information by calling one of a number of telephone counselling services, or by attending a medical practice, family planning or professional counselling organisation. Pregnancy counselling services seek to support, and provide advice and information, to a woman and her family when faced with an unplanned pregnancy. This may involve discussion on the options available to the woman which are generally considered to be: parenting (continuing the pregnancy and raising the child within the birth family); adoption (the legal act of permanently placing the child with a person or persons other than the natural birth parents); or abortion (medical termination of the pregnancy).

1.6 Pregnancy counselling services generally discuss aspects about each of the three options. However, the extent to which each option is presented as a legitimate course of action and to which information is discussed in an unbiased, non-judgemental way can vary significantly from service provider to service provider. It was argued that the particular ideological or religious beliefs of an organisation, or vested interests such as financial interests, can result in a situation where a woman is not fully informed or misled about all of her options when faced with an unplanned pregnancy.

1.7 This could include advertising for pregnancy counselling that omits important information on the type of counselling that can be expected. For example, some witnesses argued that pregnancy counselling services which are philosophically opposed to abortion will not provide clients with information on how to access termination services under any circumstances and may not reveal this stance in their advertising material:

They design their advertising to disguise their ‘pro-life’ position, as research indicates that women who are considering abortion will avoid such organisations. Therefore a woman contacting a fake pregnancy counselling organisation does not realise the type of organisation she is calling.¹

1.8 Alternatively, other witnesses argued that pregnancy counselling services with links to termination clinics, and which may have a financial interest in clients seeking terminations, may not reveal this interest in their advertising material:

An abortion provider has a vested financial interest in a woman proceeding with a termination, even if that abortion provider is a registered charity or non profit organisation. The Yellow Pages lists abortion providers among the Pregnancy Counselling & Related Services in Sydney (as well as other locations)...²

1 *Submission 81*, p.3 (Reproductive Choice Australia).

2 *Submission 43*, p.2 (Women's Forum Australia).

1.9 A service that provides counselling or information without charge is not deemed to be engaged in a commercial transaction or an act of trade and so is exempt from operating within the confines of the *Trade Practices Act 1974*. Section 52 of this Act states:

A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

1.10 Consequently there is no legislative basis for ensuring that free-of-charge pregnancy counselling providers both do not engage in advertising that may be perceived as deceptive or misleading or that they provide key information which may be sought by potential clients.

1.11 The omission of key information can result in Australian women not being fully informed on all the options for dealing with an unplanned pregnancy and not feeling fully supported and empowered to arrive at an independent decision which is in the best interests of herself and her family. The limited timeframe available to make a decision about whether or not to continue with an unplanned pregnancy increases the importance of access to complete, accurate and unbiased information. If the woman seeks to continue her pregnancy then she requires timely access to antenatal care and other support services. If she decides to terminate the pregnancy then an abortion at the earliest stage of gestation, especially in the first trimester, is preferable to a later term abortion. The Australian Medical Association commented that it is unlikely that the Bill will reduce the overall number of terminations, citing that once a woman has decided on a particular course of action there is limited scope for changing this decision.³ However pregnancy counselling services disclosing their particular ideologies upfront to potential clients may lead to a reduction in the number of later term abortions:

If people feel certain they know what kind of counselling is going to be available to them, that it is not going to try and pressure them in any direction and they feel very secure, they might go to it when they are only eight, nine or 10 weeks pregnant. If they are very frightened and they look in that book and they think, 'Oh, my goodness, this is going to be somebody who's going to chew my ear off and not tell me I can have an abortion or whatever,' they might not do it until they are 20 weeks and someone has noticed they are pregnant.⁴

1.12 In her second reading speech, Senator Natasha Stott Despoja explained the concerns she had received from members of the public over the lack of transparent advertising in pregnancy counselling services. Senator Stott Despoja cited the example of an organisation that 'gave the impression it was an impartial or non-directive pregnancy counselling service, yet in fact it is run by a pro-life organisation,

3 *Committee Hansard* 22.6.06, p.36 (Dr Mukesh Haikerwal, Australian Medical Association).

4 *Committee Hansard* 22.6.06, p.36 (Dr Margaret Chirgwin, Australian Medical Association).

and does not refer for terminations'.⁵ The Committee received many case studies from people who felt they had been misled by some pregnancy counselling services.⁶ The Royal Women's Hospital commented:

Women have said that they have felt misled, manipulated and unsupported in their contact with some pregnancy counselling services and would not have contacted them had they known of their philosophical position.⁷

1.13 The Bessie Smyth Foundation described the significant distress experienced by some women after contacting pregnancy counselling services which do not disclose their pro-life stance in advertising material:

...many women feel angry that the anti-abortion agencies try to tell them what they should do and that they refuse to provide referral information for termination of pregnancy. Many women have also been made to feel petrified about having a termination because of the misinformation they were told by the anti-abortion agency about risks and complications of the operation. In some cases this leads to women changing their mind and resolving to continue the pregnancy but then doing a reality check a month or so later and realising that now is not really the time for them to enter parenthood. Then they phone us and realise that they are now in the second trimester, so the termination is being had at a later stage of pregnancy than they'd prefer but it will also cost them more. These women are very angry with the anti-abortion agency that they first phoned.⁸

1.14 Senator Stott Despoja explained that the Bill seeks to make pregnancy counselling service providers who are exempt from operating within the legal parameters of the Trade Practices Act because they do not charge for their services, subject to the same principles as entities engaged in trade or commerce.⁹ The Bill includes provisions for imposing significant penalties on pregnancy counselling service providers considered to be engaged in misleading or deceptive conduct. In addition, where the organisation is in receipt of funding from the Federal Government payment would be provisional on compliance with the Bill.

1.15 On 8 February 2006 the Senate Community Affairs Legislation Committee tabled its report on the *Therapeutic Goods Amendment (Repeal of Ministerial*

5 Senator Natasha Stott Despoja, Second Reading Speech, *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005*, 23 June 2005.

6 See for example, *Submission 2*, pp 4–8 (Dr Susie Allanson); *Committee Hansard* 20.7.06 p.35 (Ms Brigid Coombe, Pregnancy Advisory Service); *Submission 82*, Additional Information dated 10.8.06 pp 1–2 (Get Up); *Submission 11*, p.5 (National Foundation for Australian Women); *Submission 48*, pp.3–4 (National Union of Students); *Submission 74*, p.2 (Coalition for Women's Right to Choose).

7 *Submission 57*, p.4 (The Royal Women's Hospital Melbourne).

8 *Submission 82*, Additional Information dated 4.8.06, p.15 (The Bessie Smyth Foundation).

9 Senator Natasha Stott Despoja, Second Reading Speech, *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005*, 23 June 2005.

responsibility for approval of RU486) Bill 2005. In its findings the Committee report acknowledged the high number of terminations performed in Australia and recommended strategies for reducing this incidence including 'independent professional counselling for women considering a termination of pregnancy, counselling post termination and counselling for relinquishing mothers as required' and 'greater social support for women who choose to continue with their pregnancy'.¹⁰

Recent Federal Government initiatives

1.16 On 2 March 2006 the Federal Government announced that a new Medicare Benefits Scheme (MBS) payment would be introduced for 'pregnancy support counselling by general practitioners and other health professionals' and that the Federal Government would fund a National Pregnancy Support Telephone Helpline to provide 'professional non-directive advice on a 24-hour basis, 7 days a week'.¹¹ These measures are anticipated to cost \$51.1 million over four years, consisting of around \$35.6 million for the MBS payment and \$15.5 million for the helpline.¹²

1.17 In announcing the new Pregnancy Support Helpline, the Prime Minister said:

It will provide advice on a full range of services and organisations available to support pregnant women. It will be for women seeking assistance to decide whether particular organisation, what particular organisation or service they wish to get further advice from. In other words, people go to this organisation, the organisation incidentally will be chosen after advice from a group of qualified professionals so it will be a completely transparent choice process. People will go to the helpline, they will get some counselling, if they want to be referred to an organisation they will be provided with, or directed to a list of organisations and there will be enough information available in relation to those organisations to give an indication of the broad philosophy under which those organisations operate. And to be very specific if somebody is seeking advice direct to a group or organisation and that person is of absolutely no religious beliefs and wishes to none-the-less obtain counselling from an organisation, well there will be sufficient information available for them to find an organisation that is consonant with their own beliefs and they will feel happy about it. Equally if somebody has no objection to an organisation with a religious affiliation or in fact wants an organisation with a religious affiliation there will be enough information available so that they can choose such an organisation. In other words, the referral process will not be cooked in favour of a particular attitude. But I would expect that amongst the organisations that

10 Senate Community Affairs Legislation Committee, *Inquiry into the Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) Bill 2005*, February 2006, p.46.

11 The Hon. John Howard and the Hon. Tony Abbott, Minister for Health and Ageing, *Media Release ABB024/06*, 'Pregnancy support counselling', 2 March 2006.

12 The Hon. Tony Abbott, *Media Release ABB062/06*, 'Promoting health throughout life', 9 May 2006.

do tender for the helpline and in fact organisations that will be available to provide services, will include organisations and should include organisations that have some religious affiliation and there should be no objection, providing the process is completely even-handed and transparent for that to be the case.¹³

1.18 Counselling accessible under the new MBS item commences on 1 November 2006 and will be available upon referral from a General Practitioner. Individuals providing counselling services that are linked to abortion clinics will not be eligible for the payment nor will it be available to people who are simultaneously consulting with somebody about a termination. The telephone counselling helpline is expected to commence operation in late 2006. After one full year in operation the service will be subject to an evaluation. The Department of Health and Ageing (DoHA) described the service to be delivered as:

Information will be provided on all available options and on the services available to support pregnant women. Sufficient information will be provided to identify the broad philosophy within which any organisation or service provider operates.¹⁴

1.19 On 3 July 2006 the Minister for Health and Ageing announced the appointment of a National Pregnancy Counselling Expert Advisory Committee to provide 'independent technical advice' to DoHA on the establishment of the helpline and the development of the new MBS item.¹⁵

ISSUES

1.20 The Committee received a range of submissions and evidence which both supported the Bill either in its entirety or subject to amendment, or opposed the Bill. 5 901 emails with comments in support of the Bill were also received by the Committee. While many people supported the intent of the Bill, that is, to increase transparency in advertising, there was, however, extensive debate about how this outcome may be best achieved. This report examines the following major issues: constitutionality of the Bill; advertising of pregnancy counselling services; advertising in telephone directories; contentious terminology; whether the Bill is balanced; presenting the options for dealing with an unplanned pregnancy; funding to pregnancy counselling services; qualifications and professional standards of counsellors and counselling services; and, issues confronting women in rural, regional and remote communities.

13 Transcript of Joint Press Conference by the Prime Minister the Hon. John Howard and the Hon. Tony Abbott, Minister for Health and Ageing, Parliament House, Canberra, 2 March 2006.

14 Department of Health and Ageing, Pregnancy Support Measures – Questions and Answers, at: <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-mediarel-yr2006-ta-abb024qa.htm> accessed on 15 June 2006.

15 The Hon. Tony Abbott, MP, Minister for Health and Ageing, *Media Release ABB101/06*, 'Appointment of National Pregnancy Counselling Expert Advisory Committee', 3 July 2006.

Constitutionality

1.21 There was debate over whether certain aspects of the Bill go beyond the Commonwealth's constitutional power. As is usual with questions of legal and constitutional interpretation, a range of views were expressed. Some witnesses expressed doubt that the Commonwealth had the legislative power to control advertising and, as many pregnancy counselling services are not corporations, the Bill 'cannot rely on the corporations' power (section 51 (xx))'.¹⁶ The Festival of Light Australia argued that:

...there does not seem to be any head of power to enable it to legislate directly either concerning pregnancy counselling services or advertising. We note that there is an anticipation of the possibility of the states referring the matter to the Commonwealth, but we are aware that there is no such request currently.¹⁷

1.22 Mr Charles Francis discussed whether the Commonwealth would have power under section 51(v) of the Constitution to enact section 7 of the Bill. After noting that section 51(v) of the Constitution gives the Commonwealth power to legislate with respect to 'postal, telegraphic, telephone and other like services', Mr Francis commented that:

Ultimately what powers are contained in Section 51(v) is a matter to be interpreted by the High Court. However, it would seem that the purpose of this power was to enable the Commonwealth to administer such bodies as Telstra or Australia Post. Any attempt by the Commonwealth, however, to regulate such advertising by those using these services so that the advertising accords with a particular philosophy would seem to be an unwarranted attempt to extend the power far beyond what was intended by the Constitution and as such invalid.¹⁸

1.23 It was suggested that the Bill is an attempt to impose censorship on media advertising and publishing material, which is 'at odds with an open and free society'.¹⁹ The Festival of Light Australia stated that censorship is a State matter and 'the control of the telephone directory arguably is a type of censorship'. Moreover, 'we are concerned, in fact that a ramification of the bill would be to enable our nation to go further down the path of mad political correctness'.²⁰

1.24 The Senate Clerk Assistant (Procedure), Mr Cleaver Elliott, the procedural adviser and drafter of the Bill, provided advice stating:

16 *Submission 12*, p.3 and Additional Information dated 2.8.06 (Festival of Light Australia). Also *Submission 62*, p.6 (NSW Right to Life Association).

17 *Committee Hansard* 20.7.06, p.2 (Festival of Light Australia).

18 *Submission 23*, Additional Information dated 9.8.06, p.1 (Mr Charles Francis).

19 *Submission 56*, p.2 (ACT Right to Life Association).

20 *Committee Hansard* 20.7.06, p.2 (Festival of Light Australia).

The first issue that was raised was whether the Commonwealth's power over advertising is constitutional or not. The short answer is yes. The statute books already have the Tobacco Advertising Prohibition Act 1992 which has operated constitutionally since 1992 and the Disability Discrimination Act 1992 – the Act which I used as a precedent for the definition – which has also operated constitutionally for 14 years, however the exact nature and context of the advertising must remain within the trade practices power...

I stand by the bill's drafting and I do not see anything in the evidence presented so far that would change my mind. Robust political debate and evidence has been given which may cause the text of the bill to be adjusted. This is routine legislative procedure...

When I embarked on this project...the Parliamentary Library wisely cautioned that there were constitutional issues for such a bill... [The Library advice] concluded that a separate bill would be constitutionally sound. I developed the bill in full knowledge of this.²¹

1.25 Advice to the Committee from the Parliamentary Library noted that there are limitations to the Commonwealth's constitutional power and that 'reliance on the constitutional 'trade and commerce' power (s. 51(i)) to support the Bill, does not seem viable'. The advice continued to suggest that:

The Commonwealth probably can, however, validly prohibit misleading advertising by non-commercial entities by reference to:

- The mode of advertising under section 51(v) of the Constitution – i.e. advertising by post, internet, radio and television, telephone (including telephone books), regardless of whether such advertising is in trade or commerce.
- The Territories power under section 122 of the Constitution. The Commonwealth has plenary power to legislate with respect to the Territories so that it could enact a provision banning all misleading advertising in the Territories.

If the Bill were to restrict its operation to instances expressly attached to one or more of those powers, it is likely that it would be within the power of the Commonwealth.²²

1.26 The Library also addressed the scenario where the legislation could be 'read down':

Assuming the Commonwealth does not have the constitutional power to legislate with respect to all the situations currently expressed as giving rise to an offence in clauses 5 and 6 of the Bill, the question arises whether these clauses, as presently drafted, are invalid, or are capable of being 'read down' under section 15A of the Acts Interpretation Act 1901 so that they

21 *Additional information dated 10.8.06* (Mr Cleaver Elliott).

22 Parliamentary Library, Client Memorandum, dated 16 August 2006, p.2.

can validly operate in situations where the Commonwealth does have the constitutional power to legislate (eg in the situation that the advertising is transmitted by post, internet, radio and television or, telephone thus attracting section 51(v) of the Constitution).

The caselaw on section 15A of the Acts Interpretation Act 1901 is complex and each case turns on both the particular drafting and practical operation of the legislation in question.²³

1.27 The Committee acknowledges that while arguments of constitutional power often arise in respect of legislation before Parliament, it is ultimately the High Court that makes a determination on the validity of such arguments.

Advertising of pregnancy counselling services

1.28 Fundamental to the Bill is examining how pregnancy counselling providers currently advertise the nature of their services and whether there is a need for legal provisions to ensure that advertising material contains only honest and transparent representations to the public. The sub-sections below discuss matters such as the Trade Practices Act, the concept of achieving transparency in the advertising of pregnancy counselling services, as well as current advertising practices.

The Trade Practices Act

1.29 As noted earlier, section 52 of the *Trade Practices Act 1974* provides that trade and commercial entities must not engage in misleading and deceptive conduct. In addition, section 55A, relating to the provision of services, states that:

A corporation shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

1.30 Pregnancy counselling services offering advice free of charge fall outside the Trade Practices Act and cannot be prosecuted for providing misleading or deceptive information. Senator Stott Despoja argued that the absence of a legislative basis for regulating the marketing and advertisement of pregnancy counselling services has resulted in the public being misled about the nature of some providers:

Currently, a number of Government-funded pregnancy counselling services do not provide information about, or referrals for abortion, despite often claiming to provide information on all pregnancy options.²⁴

1.31 Many witnesses supported this argument. For example, Reproductive Choice Australia stated that 'the pregnancy counselling situation exists in a loophole of regulation and is unjustly outside the rubric of the Trade Practices Act solely for the

23 Parliamentary Library, Client Memorandum, dated 16 August 2006, p.3.

24 Senator Natasha Stott Despoja, *Media Release*, 'Pregnancy counselling must be transparent', 12 December 2005.

reason that no funds are changing hands'.²⁵ Sexual Health and Family Planning Australia noted that all counselling services should be subject to the same level of accountability:

...at the moment, if you run a business and sell a service you are subject to the trade practice laws with regard to misleading advertising. However, if you offer a free service, you are not. I think it very responsible in this issue that is so sensitive that the people who offer services – and I include both sides of the coin, if you will – would be subject to the same sort of accountability.²⁶

1.32 However, an opponent of the Bill commented that the Commonwealth has no power to legislate over the operation of pregnancy counselling services because they are provided free-of-charge:

The Commonwealth has power in relation to trade practices, but counselling services are not within the ambit of trade practices. They are a free service and as such they do not fall within the ambit of the Commonwealth's powers.²⁷

1.33 The Festival of Light Australia argued that if the intention of the Bill is to subject pregnancy counselling services to the same legal provisions as outlined in the Trade Practices Act then it is unreasonable to legislate that pregnancy counselling services must advertise what they do not supply, noting that 'David Jones might advertise blouses and shoes and it does not have to say in that advertisement, "We do not sell bread."²⁸ The organisation also argued that it is unreasonable to have the penalties imposed under the Bill consistent with those imposed under the Trade Practices Act as pregnancy counselling services are operated by small, not-for-profit organisations and cannot afford such large penalties.²⁹

Transparency in advertising

1.34 The inquiry examined the concept of achieving 'transparency' in the advertisement of pregnancy counselling services; that is, clear, honest and upfront advertising so that the public can make informed decisions about the type of pregnancy counselling service they wish to contact. The notion of achieving transparency in advertising was generally supported by witnesses.

1.35 The argument was made that it is in the public interest that providers of pregnancy counselling services are transparent in their advertising, and organisations with a particular personal belief should disclose this position rather than purport to be

25 *Committee Hansard* 18.7.06, p.31 (Reproductive Choice Australia).

26 *Committee Hansard* 19.7.06, p.29 (Sexual Health and Family Planning Australia).

27 *Committee Hansard* 18.7.06 p.2 (Mr Charles Francis).

28 *Committee Hansard* 20.7.06, p.16 (Mrs Roslyn Phillips, Festival of Light Australia).

29 *Committee Hansard* 20.7.06 p.15 (Mr David d'Lima, Festival of Light Australia).

neutral.³⁰ Reproductive Choice Australia commented that 'all Australians, whether or not they pay a fee for a service and regardless of their sex, religion or pregnancy status, have a right to truth in advertising'.³¹ This would:

...ensure pregnant women have the same rights as other Australian citizens: the right to full and honest information about the nature of the pregnancy counselling services available to them.³²

1.36 The National Foundation for Australian Women commented that it would be 'improper' for services not to clarify their position and drew a parallel with relationship counselling:

If one wishes to take the analogy which we have made with marriage guidance counselling services...one knows perfectly well, if you choose to go to a service perhaps run by our distinguished colleagues from Catholic welfare services, that they will come to you with a specific philosophical approach, and they are open and proper about it. There is no problem with that; it is clear. That is our point: the problem is not people having different philosophical positions; the problem lies in them not being clear and up-front about their philosophical positions.³³

1.37 A number of submissions acknowledged the limited resources available to some women and that they may not have access to 'endless phone calls and lots of resources' which highlights the importance of transparent advertising:

If a 15-year-old Sudanese refugee who has just arrived from a refugee camp, pregnant after a sexual assault, and who has half an hour during her school lunch break to make a call on a borrowed mobile phone goes there for her support and does not get the service she wants, she does not have a lot of options. Some women do not have many options; they do not have access to options and information.³⁴

1.38 Pregnancy Help Australia, a pregnancy counselling service that does not refer for terminations, stated that the organisation was 'supportive of the requirement of truth and transparency in advertising in relation to all counselling services including pregnancy counselling'.³⁵ Dr Nicholas Tonti-Filippini, while supporting the need for penalties for false advertising, commented that he did not think that the Bill was comprehensive in its approach:

30 *Submission 7*, p.1 (Ms Shakina Burdo). See also *Submission 84*, Additional Information dated 9.8.06 p.16 (The Bessie Smyth Foundation).

31 *Committee Hansard* 18.7.06, p.19 (Reproductive Choice Australia).

32 *Committee Hansard* 18.7.06, p.21 (Reproductive Choice Australia).

33 *Committee Hansard* 22.6.06, p.16 (National Foundation for Australian Women).

34 *Committee Hansard* 18.7.06 p.51 (Ms Annarella Hardiman, Royal Women's Hospital Melbourne).

35 *Committee Hansard* 22.6.06, p.20 (Pregnancy Help Australia).

I agree that there should be penalties for false advertising. It is unfortunate if there is an area, because it escapes the Trade Practices Act, where people are providing services and advertising in a way that is misleading. But I am not sure that this bill addresses that. I think that the bill addresses one aspect – referral for the termination of pregnancy. I do not think that that is an appropriate measure of what counsellors do.³⁶

1.39 Catholic Social Services Australia also voiced concern that while it supported the aim of transparency in advertising, the Bill does not achieve this objective:

The bill singles out particular pregnancy counselling services—namely, those that do not provide referral to termination providers—and places onerous requirements on them to advertise in a particular way under threat of criminal penalties. The bill defines pregnancy counselling so broadly as to catch in its net a vast array of service providers, medical practitioners, educators and others. It further defines advertising so broadly as to capture every conceivable form of publication or notice, whether made to the public or not.³⁷

1.40 Dr David van Gend suggested that it is inappropriate and unnecessary to force pregnancy counselling organisations to state their stance on abortion in advertising material:

If you have a slogan under your phone number which says, ‘We do not refer for abortion,’ why is that there? It sounds a little obsessive or monomaniac. Why is there this particular focus on, ‘We won’t refer for abortion’? It is as though they are walking around wearing a placard saying, ‘We won’t refer for abortion.’ That is not their business.³⁸

1.41 It was also put to the Committee that:

When a woman goes to independent counselling services, she is usually properly informed of most of the many risks and dangers of abortions. It should then be readily apparent to her why the service does not recommend the possibility of referral for abortion.³⁹

1.42 Pregnancy Help Australia commented that there is a wide range of pregnancy counselling services in the community which cater to the differing needs of women with unplanned pregnancies, and therefore:

Women who have found our phone number are generally well able to find a phone number for a termination service. I do not know that women are

36 *Committee Hansard* 18.7.06, p.14 (Dr Nicholas Tonti-Filippini).

37 *Committee Hansard* 22.6.06, p.21 (Catholic Social Services Australia).

38 *Committee Hansard* 19.7.06, p.49 (Dr David van Gend).

39 *Submission 23*, p.1 (Mr Charles Francis).

struggling, if they have called our service, to say, 'Where can I look for one?' I do not think that that comes up.⁴⁰

1.43 It was argued in evidence that the onus should be on the providers of terminations to ensure that they employ effective advertising strategies so women can readily identify and locate this type of service:

If they are having difficulty in accessing abortion services this is because those services have failed to advertise themselves adequately. It is not the responsibility of [pro-life counselling services] to make good that deficiency.⁴¹

Advertising practices

1.44 The advertising practices of pregnancy counselling service providers were debated extensively in evidence. A number of submissions referred to a 1995 National Health and Medical Research Council (NHMRC) draft consultation document which used the term 'false providers' to describe services that state they provide independent non-sectarian and all options advice and information for unplanned pregnancy, yet 'refuse to discuss abortion as a reproductive health choice or refer to appropriate organisations'.⁴² It was argued that such organisations are motivated by the desire to ensure the woman continues with any current or future pregnancies and does not seek a termination.⁴³ Witnesses claimed that these organisations put the health and welfare of the embryo or foetus above that of the woman through employing tactics designed to mislead or misinform about the effects of abortion such as infertility, breast cancer and mental illness.⁴⁴ It was suggested that the continued operation of 'false providers' is an attack on the women of Australia who have fought to secure their individual right to make choices about reproduction.⁴⁵

1.45 A number of submissions supporting the Bill cited an example of deceptive and misleading advertising as the distribution of posters to medical practices across Australia which advertised 'free, confidential, compassionate' 24-hour counselling to pregnant women.⁴⁶ The covering letter requested that the posters to be displayed in the 'waiting room and/or consulting suites', yet neither the letter nor the poster indicated that the policy of the counselling service is to not provide information on accessing

40 *Committee Hansard* 22.6.06, p.41 (Mrs Deborah Garratt, Pregnancy Help Australia).

41 *Submission 89*, p.3 (Birthline).

42 *Options Counselling for Unplanned Pregnancy Support and Advice*, accessed on 14 June 2006 at: <http://www.reproductivechoiceaustralia.org.au/Articles/False-Providers-paper.pdf>

43 *Submission 2*, p.3 (Dr Susie Allanson).

44 *Submission 2*, p.3 (Dr Susie Allanson).

45 *Submission 47*, p.3 (University of Melbourne Student Union).

46 See for example, *Submission 81*, p.4 (Reproductive Choice Australia); *Submission 85*, p.4 (Children By Choice).

terminations.⁴⁷ Dr Susie Allanson, a clinical psychologist, commented on the affect of such action:

Medical practitioners have unwittingly advertised a false provider by displaying the false provider's poster or literature to patients, only to hurriedly remove it when feedback of that 'service' suggests their patients have been upset or annoyed by their contact with it. Schools have also been targeted in a similarly ambiguous and mischievous manner.⁴⁸

1.46 The argument that services which do not provide information on accessing terminations are 'false providers' was strongly denied. The ACT Right to Life Association argued that the NHMRC draft document was partisan and that it had been withdrawn from sale in 1998 'after the factual accuracy of the document was challenged'.⁴⁹ The Association stated that:

...the NHMRC did not coin the term 'false provider' and pro-abortion advocates, writers and legislators should inform themselves of, and confess the falsity of such statements. It certainly should not form the underlying assumption of Senator Stott Despoja's Bill that there is some demonstrated fault with pregnancy counselling services.⁵⁰

1.47 ACT Right to Life Association further argued that the NHMRC draft document advocated the use of deceptive practices in termination clinics, such as that it should be accepted as 'best practice' during an ultrasound to determine the gestational age prior to a termination to hide images of the foetus from the mother because it is 'unsympathetic or punitive'.

In other words, the sight of her unborn child, surely a critical piece of information the woman needs to make an informed decision about the baby's fate, is to be suppressed. This equates to deception.⁵¹

1.48 The Association also argued that 'in pursuit of deliberately promoted ignorance', the document promotes misleading terminology to 'describe the fetus/unborn baby as "products of conception", "contents of the uterus", [or] "blob of tissue"'.⁵²

47 *Submission 81*, pp.11–12 (Reproductive Choice Australia).

48 *Submission 2*, p.3 (Dr Susie Allanson).

49 *Submission 56*, p.4. A copy of the NHMRC draft document was provided in Additional Information dated 24.7.06 (ACT Right to Life Association).

50 *Submission 56*, p.5 (ACT Right to Life Association).

51 *Submission 56*, p.6 (ACT Right to Life Association).

52 *Submission 56*, p.6 (ACT Right to Life Association).

Listings in 24 Hour Health and Help section of telephone directories

1.49 Telephone directories such as the Yellow Pages and White Pages⁵³ list a range of pregnancy-related services under different subject listings including:

- Pregnancy Counselling and Related Services;
- Pregnancy Support Services; and
- Pregnancy Termination Services.

1.50 There was much discussion about the services listed in the 24 Hour Health and Help section of telephone directories across Australia. Sensis informed the Committee that any organisation can include a listing in this section of the directories, provided the service meets the criteria of being:

- in the public interest;
- attended to 24 hours a day, 365 days of the year; and
- accurate advertising of the nature of the service provided.

1.51 Sensis advised that it deals with over 600 000 businesses and organisations and relies on the warranties made by these entities that any proposed advertising material is an accurate and fair representation of the services or products they are advertising, placing the onus on the advertiser to ensure conformance with relevant State, Territory or Federal legislation.⁵⁴ In addition, as part of the advertising contract's terms and conditions all organisations sign up to ensure that they adhere to the Yellow Pages Advertising Rules.⁵⁵ Where matters are raised by regulating bodies, Sensis liaises with the customer to seek resolution and amend future listings in their directories.

1.52 In response to concerns received in 2003 about the advertisement of Pregnancy Counselling Australia's listing in the 24 Hour Services and Community Help section of the White Pages, the listing for this organisation was amended to include the phrase 'pregnancy termination alternatives and post termination counselling'. Sensis also now includes a statement in the 'Health and Support Services' section of the 24 hour services pages recommending that consumers 'understand the type of service each organisation offers' before contacting them. The Committee was informed that Pregnancy Counselling Australia have further amended their listing in the 2007 Yellow Pages (Melbourne) telephone directory to include the statement 'alternatives to abortion' to clarify the nature of their service.

53 White Pages directories and Yellow Pages directories are brands of Sensis, the advertising subsidiary of Telstra.

54 *Committee Hansard* 18.7.06 p.34 (Mr Tom Hurst, Sensis Pty Ltd).

55 *Committee Hansard* 18.7.06 p.36 (Mr Tom Hurst, Sensis). A copy of the Advertising Rules was provided by Sensis as Additional Information to *Submission 34*.

1.53 However it was argued that a statement such as 'alternatives to abortion' may not be readily interpreted as a service which does not provide information on accessing termination services. This may be particularly so for women who are very young, disadvantaged or have limited education and are deeply distressed over their situation:

The words 'abortion alternatives' provides no indication to those who aren't 'in the know' that they will be calling an agency which is anti-abortion in its approach and nor do those words 'abortion alternatives' tell those who are not 'in the know' that the agency will not countenance (as is expressed in its own constitution) 'providing information, advice or referral about abortion or abortifacients'.⁵⁶

1.54 The need for transparency of advertising in the 24 Hour Health and Help section of telephone directories was highlighted in evidence. It was argued that this section is commonly referred to when women first discover they are pregnant and it should only list services that provide non-judgemental and unbiased counselling. A submitter described the difficult situation she faced when contacting a pregnancy counselling service that did not provide non-judgemental counselling:

I was made to feel even more confused when confronted by counsellors who had their own moral and ethical stance on my pregnancy. They also gave unfounded and false information about the risks of abortion. It was when I finally rang a service whose counsellors offered non-judgemental and sound advice and on all choices, including abortion, that I felt I had the knowledge and power to make an informed decision.⁵⁷

1.55 It was argued that the personal, moral or ideological beliefs held by a counsellor or counselling services should be respected, regardless of whether they do or do not support one or all options for unplanned pregnancies; however, if this belief restricts the range of services a client can expect to receive then they should be transparent about this with prospective clients and in advertising material.⁵⁸ The Women's Services Network of South Australia commented:

...women should have factual information and that this should be very transparent in terms of someone explaining their background or their reasoning behind not giving full information, or giving what we believe is misleading information to women.⁵⁹

1.56 It was discussed that the cost of advertising in telephone directories is very high and this may be a barrier to advertising in certain forms of telephone directories.⁶⁰ There is also a very limited number of pregnancy counselling services

56 *Submission 84*, p.6 (The Bessie Smyth Foundation).

57 *Submission 20*, p.1 (Ms Robyn Preston).

58 *Submission 36*, p.2 (Sexual Health and Family Planning Australia).

59 *Committee Hansard* 20.7.06 p.24 (Ms Ann-Marie Hayes, Women's Services Network of SA).

60 *Committee Hansard* 19.7.06 pp.75–76 (Ms Margaret Kirkby, The Bessie Smyth Foundation).

currently in operation which would meet the criterion of being available 24 hours, every day of the year.

1.57 Clearer labelling in advertising material may reduce some of the confusion attached to contacting particular counselling service providers. For example, evidence debated the use of terms such as 'pregnancy counselling' to describe what may be better described as 'pregnancy support counselling' where the intention of the service is to assist a woman to continue with a pregnancy. Equally, the type of counselling provided by termination clinics may be better referred to as 'pre-termination counselling' to clarify the specific type of counselling a woman can expect to receive.

1.58 The Bill would prohibit any pregnancy counselling service which did not refer for abortion from being listed in the 24 Hour Health and Help section of a telephone directory. Some commented that this reflects a bias in favour of abortion that is not consistent with good public policy:

The Bill assumes that it is good public policy to favour only those pregnancy counselling services which 'provide referrals to termination of pregnancy services where requested'. Abortion is very readily available in Australia today. Abortion providers are listed under 'Pregnancy/Termination Services' in the Yellow Pages. 'The estimated number of induced abortions in Australia in 2003 was 84 218.' Most Australians (87%) want the number of abortions reduced. A majority of Australia's (54%) believe abortion involves the taking of a human life. It would be unconscionable to require those who believe that abortion involves the taking of a human life to refer a pregnant woman to an abortion provider. There is no justification in public policy to favour those pregnancy counselling services which facilitate abortion. On the contrary, a public policy which reflected the beliefs of the majority of Australians about abortion would favour those pregnancy counselling services which declined to refer for abortion but offered support, including material help, for women with a crisis pregnancy to continue the pregnancy.⁶¹

Contentious Terminology

1.59 Some of the definitions and terminology used in the Bill were regarded as quite contentious and attracted considerable debate in evidence.

Non-directive counselling

1.60 The definition of 'non-directive', proposed in the Bill, received particular attention. Specific concerns were raised in relation to why the Bill seeks to provide a definition of non-directive which is specific to the provision of pregnancy counselling services, as well as the appropriateness of including the term 'referral' in this definition.

61 *Submission 12*, p.3 (The Festival of Light Australia).

1.61 Clause 3 of the Bill defines 'non-directive pregnancy counselling service' as:

non-directive pregnancy counselling service means a service that offers counselling, information services, referrals and support on all three pregnancy options being;

- (a) raising the child; or
- (b) adoption; or
- (c) termination of pregnancy

and will provide referrals to termination of pregnancy services where requested.

1.62 Senator Stott Despoja explained the definition of non-directive proposed in the Bill as follows:

This is about preventing people from suggesting or giving the impression that they provide all-options counselling, or my definition of non-directive counselling. People are only penalised if they are responsible for presenting their services in a misleading or deceptive way. This is not going to affect the operation of pregnancy counselling services in Australia, regardless of their perspective or the services they provide.⁶²

In the context of the definition section of the bill, I have tried to aim for as much specificity as possible in the reference to providing referrals to termination of pregnancy services where requested. That is part of my definition of 'non-directive'.⁶³

1.63 The term 'non-directive' is used by a number of pregnancy counselling services to describe their services, including the Australian Federation of Pregnancy Support Services (trading as Pregnancy Help Australia) which is a peak body for 29 pregnancy support organisations across Australia⁶⁴ and the Caroline Chisholm Society.⁶⁵ Pregnancy Help Australia described their service's interpretation of non-directive counselling as:

...non-directive counselling is about working with the client, where they are at that point and with the information that they are seeking at that point, rather than leading them down any particular path. It really does not have a lot to do with specific information-giving or specific referrals at any point in time. Once a counselling call moves into information giving, we may be a little less non-directive. It does not mean we become directive, but it is a different process. We use more cognitive kinds of skills. But, in terms of being non-directive, the most important thing is that we stay with the

62 *Committee Hansard* 18.7.06 p.12 (Senator Natasha Stott Despoja).

63 *Committee Hansard* 22.6.06 p.35 (Senator Natasha Stott Despoja).

64 *Our Service Charter*, accessed on 13 July 2006 at:
<http://www.pregnancysupport.com.au/?pageid=P:H:491541>

65 *Committee Hansard* 18.7.06 p.4 (Ms Mary D'Elia, Caroline Chisholm Society).

woman and/or the man and their issue rather than what we think their issues might be or should be.⁶⁶

1.64 Many witnesses described non-directive as an approach to counselling which includes preserving the autonomy of the client through being empathic, non-judgemental and respectful of the client, exploring the choices available to them and encouraging the individual to arrive at a decision independently.⁶⁷ In contrast, directive counselling implies the use of techniques such as coercion, persuasion, influencing, directing and controlling so that the client is inclined to make decisions consistent with the views of the counsellor. At the Senate Budget Estimates hearing on 1 June 2006 the Department of Health and Ageing described counselling as:

...really about the process of supporting decision making and ensuring that the counsellor assists the client to explore their feelings in relation to the issue.⁶⁸

1.65 Dr Mukesh Haikerwal, President of the Australian Medical Association, broadly described non-directional counselling as:

From our point of view, non-directional is that you are basically told what choices are available and given information about the variety of choices.⁶⁹

1.66 Specifically, it was argued that:

Non-directional would mean...that once a patient indicates that her preference seems to be for a particular course or approach to solve a problem, you should be able to support her in that decision.⁷⁰

1.67 A number of witnesses argued that the definition of non-directive as stated in the Bill narrows the commonly accepted understanding of non-directive counselling from describing a particular modality or process of counselling to one which is specific to the field of pregnancy counselling. Mr Charles Francis stated:

This Bill seems to me to proceed on the entirely erroneous principle that the option of referring a woman for an abortion should be an integral part of pregnancy counselling. The term 'pregnancy counselling' does not, by definition, include the option of referring for abortion.⁷¹

66 *Committee Hansard* 22.6.06 pp.44–45 (Mrs Deborah Garratt, Pregnancy Help Australia).

67 See for example, *Submission* 25, p.3 (Catholic Archdiocese of Adelaide); *Submission* 68, p.2 (Catholic Women's League Australia); *Submission* 73, p.1 (Catholic Archdiocese of Sydney); *Submission* 63, p. 2 (Caroline Chisholm Society); *Submission* 62, p.5 (NSW Right to Life Association).

68 *Committee Hansard* 1.6.06, p.69 (Ms Carolyn Smith, Department of Health and Ageing).

69 *Committee Hansard* 22.6.06 p.33 (Dr Mukesh Haikerwal, Australian Medical Association).

70 *Committee Hansard* 22.6.06 p.33 (Dr Andrew Pesce, Australian Medical Association).

71 *Committee Hansard* 18.7.06, p.2 (Mr Charles Francis).

1.68 Evidence stated that the Bill's definition of non-directive implies that if an entity does not provide information on all three options (parenting, adoption and termination) it is somehow delivering directive counselling.⁷² Furthermore, the definition restricts whether a particular counselling service is eligible to advertise in the 24 Hour Health and Help section of telephone directories.⁷³ The Caroline Chisholm Society commented:

By stating that I am not a non-directive service under your definition then in fact what I am stating is that I am directive, and my social workers would walk out on that basis, and rightly so, because they would be misrepresented by the organisation if I were to sign a form that effectively said they were directive counsellors.⁷⁴

1.69 Ms Brigid Coombe, Director of the Pregnancy Advisory Centre, provided the Committee with her understanding of the term non-directive by stating that:

The definition given in the bill of 'non-directive counselling' does not, in my view, describe a counselling methodology but rather a service approach. Moreover, it is an appropriate approach as it responds to the variation in women's needs when contacting such a service. Women often require information about all of the options that they may be considering and expect that they get this from a service which advertises to provide help for them in their crisis. Accurate information is at times a crucial part of women's informed and responsible decision-making process. It is women's needs that should be central to appropriate service provision.⁷⁵

1.70 Dr Nicholas Tonti-Fillipini argued that the definition of non-directive proposed in the Bill is one-directional:

Surely, if they are non-directive and if they are going to be required to refer for anything, they should be required to refer for the range of possible services, including abortion. I do not think that it is proper that they do refer, but what I am saying is that, if you are going to require them to refer, why only for abortion? Why not require them to refer, if the woman wants it, to pregnancy support services?⁷⁶

1.71 It was argued that organisations such as Family Planning Australia are not non-directive in their approach to counselling women on all three options:

72 See for example, *Submission 46*, p.2 (Pregnancy Help Australia); *Submission 77*, p.6 (Catholic Social Services Australia).

73 *Submission 15*, p.3 (Ms Emma West).

74 *Committee Hansard* 18.7.06 p.13 (Ms Mary D'Elia, Caroline Chisholm Society).

75 *Committee Hansard* 20.7.06 p.35 (Ms Brigid Coombe, Pregnancy Advisory Centre).

76 *Committee Hansard* 18.7.06 p.8 (Dr Nicholas Tonti-Fillipini).

According to their own statistics, about 75 per cent of the women they 'counsel' are referred for abortion. What does this suggest about them being 'non-directive'?⁷⁷

1.72 The Caroline Chisholm Society stated that they did not agree with the definition of non-directive proposed in the Bill, arguing that it detracts from what is really important in pregnancy counselling:

I am concerned that this definition of non-directive counselling with a referral for termination or no referral for termination required as a statement perhaps takes us away from really concentrating on good professional practice in this area and thinking about accreditation in the field so that when people see an advertisement they see the words 'pregnancy counselling' and perhaps a little logo that says that the service is accredited.⁷⁸

1.73 The Society concluded:

What I think we are talking about in terms of counselling is decision-making counselling, which should be non-directive. But the best way to guarantee that, in my view, is to go down the path of professional service delivery and accreditation—those sorts of things.⁷⁹

1.74 The Honourable Carolyn Pickles, from the Children, Youth and Women's Health Service in South Australia argued that non-directive counselling is an important aspect of pregnancy counselling:

Pregnancy counselling services should be non-directive. The experience reported by some women to our staff at Women's Health Statewide indicates that they have been provided with factually incorrect information, such as exaggerated risks of harm such as breast cancer... Women who are distressed may not, may choose not, to discuss their decision with family or friends, and rely on impartial counselling services to assist them.⁸⁰

1.75 The concept of achieving truly non-directive counselling was also argued to be a myth because every counsellor has personal preferences and biases influencing their thoughts and beliefs and it is difficult to suppress one's personal views.⁸¹ Non-directive counselling is especially difficult to achieve when discussing topics which prompt polarised views, such as abortion.⁸² It was questioned why it is necessary to restrict the use of the term non-directive in advertising material because 'there is no

77 *Submission 65*, p.3 (Pregnancy Problem House).

78 *Committee Hansard* 18.7.06 p.7 (Ms Mary D'Elia, Caroline Chisholm Society).

79 *Committee Hansard* 18.7.06 p.9 (Ms Jacinta Collins, Caroline Chisholm Society).

80 *Committee Hansard* 20.7.06 p.33 (The Hon. Carolyn Pickles, Children, Youth and Women's Health Service).

81 *Submission 19*, p.2 (Dr Johanna Lynch).

82 *Submission 16*, p.4 (The Coalition for the Defence of Human Life).

evidence that significant numbers of Australian women fail to obtain an abortion because they do not know how to contact an abortion provider'.⁸³

'Referrals' to termination service providers

1.76 Many submissions questioned the term 'referral' in the definition of non-directive. It was argued that to conduct a referral is to direct a patient to a medical practitioner for the purposes of accessing a specialty health care service and referrals should only be made by trained and qualified medical practitioners.⁸⁴ Dr Nicholas Tonti-Filippini commented:

I support the idea of truth in advertising but I do not think it is appropriate to force pregnancy counselling into a medical model by requiring it to refer for abortion. It is not normally the practice in counselling to issue referrals. Referral for specialist medical procedures is done by medical practitioners.⁸⁵

1.77 The Caroline Chisholm Society described their organisation's response to the proposed definition of non-directive which includes the legislated requirement to 'provide referrals to termination services' if a counselling service wishes to use this term in advertising material:

We are not a medical service and as such do not provide referrals for termination of pregnancy as that is not our role. We offer a space for women to explore what they would like to do, to think about the impact that these options may have in their lives and to explore the perceived barriers in moving forward with one option over another.⁸⁶

1.78 Other witnesses disputed this argument, stating that pregnancy counsellors already provide information related to other medical matters such as continuation of the pregnancy. Counsellors may provide a referral or refer a woman to a range of community-based support services to assist her with the pregnancy, or may provide referrals to adoption services if she does not wish to parent her child. Dr Leslie Cannold from Reproductive Choice Australia explained that:

...if one goes on and continues a pregnancy to keep the child or to adopt out, that is also a medical procedure. One has to have contact with a GP, have ultrasounds, get prenatal care and then give birth. It seems to me to be quite specious to suggest that one is a medical procedure and therefore

83 *Submission 62*, p.4 (NSW Right to Life Association).

84 See for example, *Submission 77* p.6 (Catholic Social Services Australia); *Submission 46* p.2 (Pregnancy Help Australia); *Submission 51* pp.2–3 (World Federation of Doctors Who Respect Human Life – Queensland Branch).

85 *Committee Hansard* 18.7.06 p.3 (Dr Nicholas Tonti-Filippini).

86 *Committee Hansard* 18.7.06 p.4 (Ms Mary D'Elia, Caroline Chisholm Society).

cannot be referred to when the other two are being referred to and also could be easily seen to constitute medical procedures.⁸⁷

1.79 The Australian Medical Association rebutted claims that 'referral' is only a medical term:

Senator FIELDING—Isn't 'referral' a medical term which is inappropriate for counselling services and which is not necessary because abortion clinics do not require referrals?

Dr Haikerwal—'Referral' can be very much a narrow descriptor of what one medical practitioner will do to another, but, in more general terms, people can refer you to where you would purchase something because you got a good deal or whatever else. So I would see 'referral' in this context as being a much more general term.⁸⁸

1.80 Some witnesses expressed frustration over the interpretation of the term 'referral' by many opponents of the Bill as meaning a 'medical referral'. Dr Andrew Pesce commented:

I guess I am a bit frustrated that a lot of energy may be spent on this. It would be better to call it 'assisting the woman in obtaining the relevant service that she requires'. If you do not want to call it a 'referral', then call it 'assisting'. If you do not want to assist someone then you should probably say that. We could get stuck on the concept of 'referral', which has a specific meaning in the [Medicare Benefits Scheme] structure and with doctors, but the term is used all the time.⁸⁹

1.81 Dr Leslie Cannold stated:

What interests me about that word 'referral'—and, as I said, I see this as part of the quibbling around the words used in the bill—is the idea that 'referral' is such a problematic word because it is a medical word and, in any case, many of these services do not refer at all.⁹⁰

1.82 It was argued that facilitating access to a variety of referral information sources and community services is an integral component in holistic support:

On the to-ing and fro-ing that has occurred over the word 'refer', we would reject the view that referral to an abortion provider is solely the prerogative of a doctor. If you place meeting the needs of women at the centre of your service delivery, you have to have referral information about a wide range of services—and not just where to get an abortion or where to get support to continue a pregnancy or about adoption.⁹¹

87 *Committee Hansard* 18.7.06 p.31 (Dr Leslie Cannold, Reproductive Choice Australia).

88 *Committee Hansard* 22.6.06 p.34 (Dr Mukesh Haikerwal, Australian Medical Association).

89 *Committee Hansard* 22.6.06 p.35 (Dr Andrew Pesce, Australian Medical Association).

90 *Committee Hansard* 18.7.06 p.28 (Dr Leslie Cannold, Reproductive Choice Australia).

91 *Committee Hansard* 19.7.06 p.66 (Ms Margaret Kirkby, The Bessie Smyth Foundation).

1.83 To access a termination in all Australian jurisdictions except the Australian Capital Territory, it is necessary to obtain a referral from at least one medical practitioner which states that continuing with the pregnancy poses an unnecessary risk to the physical or psychological health of the woman. It varies across the jurisdictions as to whether this assessment must be made by a medical practitioner independent of a clinic providing terminations. In states where the opinion of one medical practitioner is sufficient to substantiate having a termination and that this assessment may be made by a practitioner working within a termination clinic, women can in fact 'self-refer' for a termination:

I would like to just pick up on the words 'refer' and 'referral'. You do not actually need a referral to go to a doctor, or a family planning clinic, or to access abortion.⁹²

1.84 It was suggested that the problems which had been raised about using the term 'referral' to describe the process of providing advice on accessing a termination may be overcome by using alternative language:

I think a better term is 'access to information and education'. Centres should be providing information, education and communication about services. You do not actually need to be a referral service, in the strictest terms of that word.⁹³

Examining the scope of the Bill

1.85 There was much discussion about whether the Bill is balanced in its approach to regulating the advertising of pregnancy counselling services. Some opponents of the Bill argued that the Bill lacks balance and is an ideological attack on organisations which do not support abortion.⁹⁴ It was argued that whilst the focus of the Bill is transparent advertising of pregnancy counselling services that do not refer for abortions, the Bill does not acknowledge that clinics providing terminations also may not be providing clear and complete information on the advantages of continuing with the pregnancy. The Festival of Light Australia commented:

So the Bill is specifically penalising pregnancy counselling services which do not provide referrals for abortions if they do not state that in their advertisements, whereas it makes no mention of counselling agencies which do refer for abortions but do not provide ongoing support for women who choose to keep their babies. It does not require them to put that in the ad, so it is a very much biased Bill.⁹⁵

92 *Committee Hansard* 22.6.06 p.16 (Ms Christina Richards, Australian Reproductive Health Alliance).

93 *Committee Hansard* 22.6.06 p.16 (Ms Christina Richards).

94 *Submission 12*, p.3 (Festival of Light Australia).

95 *Committee Hansard* 20.7.06 p.8 (Mrs Roslyn Phillips, Festival of Light Australia).

1.86 However, the claim that the Bill is targeting only one type of pregnancy counselling service was refuted by Senator Stott Despoja, who stated that the Bill will apply to any service that engages in misleading or deceptive advertising:

...this bill specifically deals with misleading and deceptive advertising, as you know. It is not intended and the effect of the bill is not to favour a particular organisation over another, however, it does apply penalties to any organisation that is deceptive or misleading in its advertising.⁹⁶

1.87 It was also claimed in evidence that the Bill may result in pregnancy counselling services committing an illegal act if they had to provide referral information for accessing termination services.⁹⁷ This was vehemently rejected by Senator Stott Despoja, who stated:

It is a very strong statement to suggest that a piece of legislation is entreating people to act illegally. I understand you have strong views, but I ask you to consider that statement, particularly in that it is not furthering or changing the law in a way that changes the current role, responsibility or position of counsellors. It does not loosen or change the law in any way. In fact, there is nothing to suggest that counsellors who are operating now would operate any differently as a consequence of this legislation— that is suggesting that counsellors are acting illegally now.⁹⁸

1.88 It was argued that restricting the 24 Hour Health and Help section of telephone directories and Federal Government funding to 'non-directive' services only, as defined in the Bill, would unfairly discriminate against pro-life counselling services.⁹⁹

1.89 Pregnancy Help Australia, a counselling organisation that does not provide information on accessing termination services, defended the type of service they provide:

The fact that we do not offer a particular referral for a medical service does not mean that what our counsellors provide to callers is any less or that we give less to women.¹⁰⁰

1.90 The Caroline Chisholm Society noted:

It is a false position of this Bill to imply that only pro-life counsellors bring a value to their counselling. Pro-abortion counsellors equally bring strong personal values into the counselling environment. Often that potential bias is compounded by their employment status, as they are employed by

96 *Committee Hansard* 20.7.06 p.9 (Senator Natasha Stott Despoja).

97 See for example, *Committee Hansard* 20.7.06 p.7 (Mrs Roslyn Phillips, Festival of Light Australia); *Submission 46*, p.2 (Pregnancy Help Australia).

98 *Committee Hansard* 22.6.06 p.47 (Senator Natasha Stott Despoja).

99 *Submission 12*, p.2 (Festival of Light Australia).

100 *Committee Hansard* 22.6.06, p.46 (Mrs Deborah Garratt, Pregnancy Help Australia).

businesses which provide terminations and so have a vested financial interest in the outcome of the counselling session.¹⁰¹

1.91 Witnesses commented that pregnancy support agencies provide a range of important services to assist women with continuing their pregnancies such as practical and material assistance, referrals to wider support networks including welfare organisations, legal, educational and other support services, and informing women of their rights and entitlements. It was stated that the same level of support is not available through providers of termination services.¹⁰² Right to Life Australia strongly defended the activities of pro-life pregnancy counselling services, commenting on the 'enormous contribution to the welfare of Australian women and their babies' that has been derived from counselling services which do not refer for terminations.¹⁰³

1.92 The Catholic Women's League described the valuable community service they provide to women who choose to continue their pregnancies:

The Catholic Women's League in particular, as you would imagine, are very supportive of women who wish to continue their pregnancies under whatever circumstances. A lot of our effort and work goes into the more positive aspects of this. We support the person. I think the sorts of things that can happen have already been mentioned. God bless us: we have a number of older ladies who do the practical things such as knitting booties and whatever.¹⁰⁴

1.93 The argument was presented that, because some pregnancy counselling services do not refer for terminations, they have an important role in assisting women who are experiencing grief after a termination.¹⁰⁵ The Pregnancy Support Group in Albury Wodonga commented:

Women who have had an abortion and regret it, often express an aversion to the abortionist, his staff, and those who facilitated the abortion. If we referred for an abortion, even implying that it was acceptable under some circumstances, we would lose our credibility with these women. They would then be abandoned by a society, which regards abortion as a right, not as a loss or a traumatic event. They would have no where else to turn to for assistance.¹⁰⁶

1.94 Pregnancy counselling providers opposed to facilitating access to termination services discussed some of the challenges their organisations would face if the Bill

101 *Submission 63*, p.4 (Caroline Chisholm Society).

102 *Submission 3*, p.9 (Ms Melinda Tankard Reist).

103 *Submission 18*, p.1 (Right to Life Australia).

104 *Committee Hansard 19.7.06*, p.46 (Mrs Margo Nancarrow, Catholic Women's League Australia).

105 *Submission 78*, p.3 (Open Doors Counselling and Educational Services).

106 *Submission 35*, p.3 (Pregnancy Support Group, Albury Wodonga Inc.).

were passed. An organisation speculated that they would potentially have a reduction in clients if they advertised that they do not provide information on accessing termination services:

I think that, if we are required to say that we offer pregnancy counselling but do not offer referrals for terminations, we are asking women to decide before they even pick up the telephone whether that is something they would want to have. We are putting in front of women a piece of paper and they have to decide, "Maybe I do want a referral for a termination service so I won't ring that service."¹⁰⁷

1.95 However, it was emphasised that the Bill is about ensuring that Australian women can access truthful and non-directive information when they contact pregnancy counselling services, and not about penalising or disrupting the work of pregnancy counselling services that do not provide referrals for terminations:

I wonder whether [services that do not refer for termination] may end up getting more calls. In fact, once they know that they do not offer abortion services, those women who want to explore their options of keeping a child will actually notice that.¹⁰⁸

Presenting the options for unplanned pregnancy to women

1.96 Women contacting a pregnancy counselling organisation are seeking access to a range of information regardless of whether she may be of the mind to continue with, or terminate, her pregnancy. In the context of pregnancy counselling, information may be provided on matters relating to:

- health risks associated with having a termination;
- health risks she may need to consider if she chooses to continue with the pregnancy;
- adoption processes, rights and responsibilities in the Australian context;
- the type and range of community and financial support services available to assist with parenting; and
- specialist service providers that can be accessed for further information or referrals.

1.97 There was considerable discussion on abortion during the hearings although this matter was not the focus of the Bill. Strong views were presented in relation to the health risks of abortion, advocating claims to different studies. The Committee was not asked to formulate a judgement but has briefly outlined the range of views presented in evidence. The accuracy and completeness of information provided to women about all three options, and whether some options are presented in a more

107 *Committee Hansard* 22.6.06, p.46 (Mrs Deborah Garratt, Pregnancy Help Australia).

108 *Committee Hansard* 19.7.06 p.40 (Dr Sally Cockburn, Sexual Health and Family Planning Australia).

favourable light by certain types of pregnancy counselling services, are discussed below.

Concerns about information provided by pregnancy counselling services that are philosophically opposed to terminations

1.98 Supporters of the Bill argued that the lack of transparency in advertising of pregnancy counselling services results in a situation where the decision to terminate the pregnancy is not presented as a legitimate option. Reproductive Choice Australia argued that this approach could be perceived as manipulation:

But pushing a patient to do one thing rather than another is not 'counselling', it's manipulation, especially when that patient is trusting you to act professionally.¹⁰⁹

1.99 The Committee received evidence from individuals and organisations stating the potential harm this approach to counselling can inflict on a woman who finds herself in the difficult and emotionally vulnerable position of dealing with an unplanned pregnancy.

1.100 It was argued that where a counselling service purports to provide 'non-directive counselling services' yet does not provide information or referrals for terminations, or seeks to impose guilt on the woman for her decision to terminate, this can increase the woman's angst and suffering and may lead to:

- significant distress to both the woman and to the people supporting her;
- a delay in seeking further advice or support which can result in the woman presenting for a termination at a later stage of gestation when terminating may be more dangerous or not possible due to the advanced stage of pregnancy; or
- continuation of an unwanted pregnancy due to incorrect information and fear, which can have significant consequences on both the woman and the child or children she bears.¹¹⁰

1.101 The impact of motive-driven information when faced with the emotionally distressing situation of an unplanned pregnancy was described by the National Union of Students:

Women who contact pregnancy counselling services tend to more often than not to be at a point of utter despair and vulnerability. There have been numerous reports that some pregnancy counselling service providers consciously pray on women's fragile emotional state to exert their own

109 Reproductive Choice Australia, *Media Release*, 'Women need legitimate counselling, not state-sponsored manipulation', 27 February 2006.

110 *Submission 38*, p.3 (Pregnancy Advisory Centre, Central Northern Adelaide Health Service). See also publication cited in this submission: Dagg, P. 1990. "The Psychological Sequelae of Therapeutic Abortion – denied and completed", *American Journal of Psychiatry*, Vol 148. pp 578–585.

personal opinions and actively work to convince women not to abort their unintended pregnancies. Some women who have used these services are continually made to feel guilty and called names such as “baby killers”.¹¹¹

1.102 Dr Carol Deller described the methods used by some counsellors to dissuade women from terminating their pregnancies:

Pregnant women, agonising over whether to have their baby or whether to undergo an abortion were called “Murderers”, were shown photos of well developed fetuses torn apart, and then told that was what would happen if they had an abortion, even though they were at a very early stage of foetal growth.¹¹²

1.103 The Public Health Association of Australia strongly criticised Pregnancy Counselling Australia's website as misleading women on the risks associated with terminations:

In the physical effects of abortion section it states that the immediate risk of complication of abortion is one in 100. There are no references, there are no studies cited and, most importantly, there is no distinction between the different methods of termination, such as surgical, medical, curettage or RU486. It is grossly misleading, disproportionate and out by a factor of 10. The website states: Most studies conducted so far show a significant link between abortion and breast cancer...This statement is factually wrong. It overlooks the WHO 2000 scientific statement saying that there is no link between breast cancer and abortion and the study published in the Lancet, which is a top scientific journal, in 2004 which analysed 53 studies around the world of over 83,000 women and concluded that there is no link between abortion and breast cancer. I am an epidemiologist and I would say there is no link between abortion and breast cancer.¹¹³

1.104 The Association further commented:

There are many more examples on this website of exaggerated, unreliable, unreferenced and misleading comments about incomplete abortion, allergic reaction to drugs, tearing of the cervix and perforation of the uterus. Regarding death, it does not compare the risk of continuing to term with the risk of termination, and I will happily table the Public Health Perspectives with the reference in it about carrying to term having a higher risk than terminating. There are many more examples, and most are exaggerated and unreferenced, and I put it to you that they illustrate the reason for this bill.¹¹⁴

111 *Submission 48*, pp 3–4 (National Union of Students).

112 *Submission 14*, p.1 (Dr Carol Deller).

113 *Committee Hansard* 18.7.06 p.42 (Dr Angela Taft, Public Health Association of Australia).

114 *Committee Hansard* 18.7.06 p.42 (Dr Angela Taft, Public Health Association of Australia).

1.105 It was claimed that the negative affects of abortion are often misrepresented by counselling services that do not provide information on accessing termination services.¹¹⁵ This includes the suggestion the terminations result in an increased risk of breast and uterine cancer, infertility or difficulties in maintaining future pregnancies. It may also trigger the onset of mental illness including a condition described as 'post abortion syndrome'.¹¹⁶ Witnesses argued that the effects of inaccurate information, or information which presents a skewed interpretation of the risks associated with terminating a pregnancy, can cause unnecessary emotional distress to the woman as well as potentially instilling in her a sense of mistrust towards service providers and this may lead to a reluctance to access essential services in the future including services providing important sexual and reproductive health information.¹¹⁷

1.106 However, other witnesses argued that the counselling provided by these services was not manipulative or misinformed.¹¹⁸ Pregnancy Counselling Australia stated that its duty of care was first to do no harm and that it was 'dedicated to helping the caller achieve an outcome free from psychological and physical harm for any of those implicated'.¹¹⁹ Pregnancy Counselling Australia described the services they provide:

For our callers seeking counselling, we aim to engage the caller in a warm and friendly manner and endeavour to keep the lines of communication open. We validate her feelings and invite her to discuss her worries and concerns surrounding the pregnancy. We listen for the things that may need to be further explored. We talk about the effects of pregnancy and the baby's development. We recommend appropriate support services where necessary...We do not make judgements, give advice or provide solutions. We hope that the caller has enough information to make an informed decision.¹²⁰

1.107 When given examples of instances where counsellors had purportedly responded in a highly emotive way, Pregnancy Help Australia responded that:

If they are an accurate representation of a counselling call...From my perspective it would be a serious situation if the counsellor had made comments like that. I would be speaking to the counsellor directly and ascertaining whether this was a training issue or an issue of this person not

115 *Committee Hansard* 22.7.06, p.15 (Mrs Marie Coleman, National Foundation for Australian Women).

116 See for example, *Submission 5*, p.1 (Endeavour Forum); *Submission 37*, p.2 (Helpers of God's Precious Infants); *Submission 40*, pp.1–3 (Salt Shakers).

117 *Committee Hansard* 18.7.06 p.51 (Ms Annarella Hardiman, Royal Women's Hospital, Melbourne).

118 *Committee Hansard* 19.7.06, p.42 (Dr David van Gend, World Federation of Doctors Who Respect Human Life, Queensland Branch).

119 *Committee Hansard* 18.7.06, p.58 (Pregnancy Counselling Australia).

120 *Committee Hansard* 18.7.06, p.60 (Pregnancy Counselling Australia).

being able to work within the bounds of our philosophy, and we would take steps accordingly. We would not condone counsellors who manipulated or coerced or in any way made women feel uncomfortable.¹²¹

1.108 Dr Susie Allanson argued that it is difficult to develop an understanding of the extent and nature of the impact on women who may have been affected by inaccurate or biased information on pregnancy termination as avenues for complaint are unlikely to be pursued because of the sensitivities attached to having an unplanned pregnancy and society's response, which may affect the woman and her family at a time when she may want to 'move on' once the pregnancy is resolved.¹²²

1.109 It was suggested that for services receiving funding from the Federal Government, there should be a heightened requirement to ensure that information presented is accurate and a true reflection of contemporary knowledge. The World Federation of Doctors Who Respect Human Life (Queensland Branch) recommended that the problem of counselling bias 'in either direction' could be overcome by the Department of Health and Ageing developing a booklet of authoritative, impartial information which should be required for use by all organisations in receipt of Federal Government funding.¹²³

Concerns about pregnancy counselling services that are linked to termination clinics

1.110 Pregnancy Counselling Australia and other witnesses argued that providers of termination services do not provide sufficient information associated with terminations, in particular the long term health risks associated with terminations, the often long-term emotional consequences of grief, regret, guilt and anger which can impact on a woman's personality, relationships and behaviours.¹²⁴ In addition, they said that women are not being fully informed about the links between induced terminations and long-term health conditions such as breast cancer and the risk of subsequent premature births.¹²⁵ Witnesses also pointed to many instances where women had approached services for post-abortion counselling as a result of the problems caused by termination services.¹²⁶

1.111 A pregnancy counselling service described the information they provide to anyone contemplating a termination to ensure they are sufficiently informed:

121 *Committee Hansard* 22.6.06, p.50 (Pregnancy Help Australia).

122 *Submission 2*, p.4 (Dr Susie Allanson).

123 *Submission 51*, p.6 (World Federation of Doctors Who Respect Human Life, Queensland Branch).

124 *Committee Hansard* 18.7.06, p.60 (Pregnancy Counselling Australia); see also *Committee Hansard* 19.7.06, p.44 (Women's Forum Australia); 22.6.06, p.47 (Pregnancy Help Australia).

125 *Committee Hansard* 18.7.06, p.8 (Endeavour Foundation).

126 *Committee Hansard* 20.7.06, p.10 (Festival of Light Australia).

The information we give out includes diagrams of the development of the baby in the womb, the negative effects of abortion and the type of person who is most likely to suffer from Post Abortion Syndrome. This is exactly the type of information that any woman undergoing an abortion would be required to see in order to give her informed consent.¹²⁷

1.112 The Pregnancy Support Group in Albury Wodonga stated that:

We welcome transparency. We are up front with our description in the phone book and to our callers. We have nothing to hide. Many of our callers are seeking counselling for post abortion trauma. They are upset at the counselling they received at the abortion clinic, prior to the abortion. They tell us they felt pressured into having an abortion, or making a quick decision, or that they were lied to, especially with regard to the size and development of the foetus they aborted.¹²⁸

1.113 It was argued that some termination providers skew the information they provide because their business interests place them in a position where they are more inclined to emphasise the benefits of termination as an option. This may lead them to 'play down' the risks associated with abortion.¹²⁹ Women's Forum Australia maintained that:

Transparency and full choice in advertising and notification of pregnancy services should require counselling services to disclose whether they have a financial interest in a woman's decision to terminate...Women's Forum Australia believes that women facing a pregnancy in difficult circumstances are entitled to expect non-judgmental, independent, unbiased and professional counselling by providers with no vested interest, particularly of a financial nature, in the woman's decision.¹³⁰

1.114 Right to Life Australia believed that the business interests of termination clinics affected their ability to meet the complete needs of clients:

The main aim of these clinics is to sell an abortion. Women telephoning for an appointment are instructed to bring sufficient money, Medicare card, to come fasting and to bring an appropriate change of clothing. So called counselling is scant.¹³¹

1.115 When asked if there is a conflict of interest for organisations which provide referrals for, or offer terminations, as well as performing pregnancy counselling, Dr Leslie Cannold, from Reproductive Choice Australia stated:

127 *Submission 37*, p.2 (Helper's of God's Precious Infants).

128 *Submission 35*, p.2 (Pregnancy Support Group, Albury Wodonga)

129 *Submission 3*, p.2 (Ms Melinda Tankard Reist).

130 *Committee Hansard* 19.7.06, p.43 (Women's Forum Australia).

131 *Submission 18*, p.2 (Right to Life Australia Inc).

Susie Allanson is responsible for counselling women who are feeling conflicted about their decision. She does not get any extra money or any extra anything if she assists a woman to come to a decision that results in her deciding that she wants to go through with the termination or if it results in the decision that she wants to adopt or have a child. She does not get paid any differently; there is no financial incentive.¹³²

1.116 It was claimed that organisations specialising in the provision of terminations may also present abortion in such a way as to make it seem the most logical or sensible option for the woman rather than providing clear, non-directive advice and information on other alternatives such as parenting or adoption.¹³³ Mr James Poland commented that the perceived neutrality of termination service providers, simply because they refer for terminations, is flawed:

It is easy for a "pro-termination" counselling service to appear "non-directive" just by being prepared to refer to all three options, whereas it is heavily biased towards counselling to termination.¹³⁴

1.117 It was suggested that women with 'deeper issues...such as 'relationship and financial pressures, domestic violence, unsupportive employers, their mixed feelings towards being pregnant' may not have these matters examined fully by counsellors in termination clinics.¹³⁵ This can result in a situation where termination is viewed as the most appropriate course of action even if it is not ultimately what the woman wants.

1.118 Witnesses argued that providers of terminations are sometimes 'complicit in facilitating the coercion' as abortion is viewed to be a 'very handy and socially acceptable solution' to an unplanned pregnancy.¹³⁶ The Queensland Right to Life Association explained that pro-life groups are not any more or less directive in their approach to counselling than organisations that hold a pro-choice philosophy:

Anecdotal reports from women also indicate that many, especially teenage mothers were told they were too young to be mothers, couldn't be expected to cope with a child, would miss out on school or careers etc. This also does not fit into the nature of non-directive counselling.¹³⁷

1.119 Reference was made to the pressure a woman may be subjected to by her partner, family or friends to coerce her into obtaining a termination, possibly against her will.¹³⁸ Dr Johanna Lynch discussed the impact:

132 *Committee Hansard* 18.7.06 p.26 (Dr Leslie Cannold).

133 *Submission 71*, p.1 (Mr Peter Phillips).

134 *Submission 8*, p.1 (Mr James Poland).

135 *Submission 3*, p.2 (Ms Melinda Tankard Reist).

136 *Submission 3*, pp.8–9 (Ms Melinda Tankard Reist).

137 *Submission 24*, p.2 (Queensland Right to Life Association).

138 See for example, *Submission 13*, p.1 (Ms Anita Toner); *Submission 5a*, p.5 (Endeavour Forum).

Women in that position feel isolated and alone and fearful, longing for someone to agree with her that her gut feeling is worth following and that she is resilient and able to care for this baby, against 'his' wishes if necessary.¹³⁹

1.120 Women's Forum Australia also highlighted concerns with services which provided same-day counselling and same-day abortion provision. They argued that those services did not allow the space women need and that women 'often cannot get out of coercive situations'. Women's Forum Australia went on to note that, in some States, no referral is required for an abortion 'so a woman who is vulnerable, in crisis and has a journey around her of lots of pressures is put directly into the hands of somebody who will benefit financially from her decision to abort'. For any other surgical procedure, the process of referral is 'gated' at the General Practitioner.¹⁴⁰

1.121 It was commented that by not providing ongoing support, providers of termination services were the ones misleading Australian women. The Festival of Light Australia stated that:

I believe it is misleading for a pregnancy advisory centre by its very name, to say, 'Offers advice on pregnancy' when it does not offer ongoing support for women who need help to continue their pregnancy. So just the name, I believe, is misleading. But your Bill would not touch them.¹⁴¹

1.122 However, the Pregnancy Advisory Centre in South Australia which provides counselling and operates a termination clinic, refuted the suggestion that clinics providing terminations do not deliver information and support to women for continuing their pregnancies:

If they want information about continuing the pregnancy and what supports they may need in their particular circumstances to do that, we will absolutely give them that. We not only give them that information but do that stuff around referral that I was talking about. We facilitate links. We do not give all the information ourselves but we know where the expertise is and pass women on to where the expertise is.¹⁴²

1.123 The Bessie Smyth Foundation, a dedicated pregnancy counselling service, explained why it is in fact against the interests of termination clinics to present termination of the pregnancy as the most appropriate option if this is not what the woman ultimately wants:

All abortion providers realise that, if they perform an abortion on a woman who, at the end of the day, really did not want that procedure, they are

139 *Submission 19*, p.1 (Dr Johanna Lynch).

140 *Committee Hansard* 19.7.06, p.45 (Women's Forum Australia).

141 *Committee Hansard* 20.7.06, p.15 (Festival of Light Australia).

142 *Committee Hansard* 20.7.06 p.36 (Ms Brigid Coombe, Pregnancy Advisory Centre, Central Northern Adelaide Health Service).

looking at the possibility of a medical negligence action. No abortion provider wants a woman to have an abortion that she did not want to have. So I dispute that assertion.¹⁴³

1.124 Ms Cait Calcutt, Coordinator of Children By Choice, commented on the type of pregnancy counselling their organisation provides to women which includes discussing information about all three options:

We offer counselling, information and referral around all three options of an unplanned pregnancy. The aim of our service is to facilitate a woman to make the decision that she believes is best for her. But, if she comes to us and she has decided that she wants a termination of pregnancy and she is seeking information in relation to termination of pregnancy, we are happy to provide her with that, and the same goes if she has decided upon adoption or continuing with the pregnancy and parenting the child.¹⁴⁴

1.125 Ms Calcutt also advised that Children By Choice does not have a financial interest in women obtaining terminations:

The counselling provided by Children by Choice aims to facilitate women's decision making around an unplanned pregnancy, not to impose the counsellor's values on the woman. We have no financial interest in referring women to any abortion service provider, nor do we have any financial interest in any abortion clinic. We regard our service as professional and non-directive.¹⁴⁵

Examining the evidence on risks associated with pregnancy termination

1.126 The Committee was presented with a range of evidence discussing the health risks of pregnancy termination including whether abortion can result in an increased risk of breast cancer, infertility or mental health problems. The Committee notes that internationally this is a highly contentious issue.

1.127 Some witnesses claiming a link between induced abortion and breast cancer pointed to a study published in the Journal of American Physicians and Surgeons by Dr Joel Brind.¹⁴⁶ Dr Brind reviewed scientific studies invalidating the link between breast cancer and abortion and concluded that the methodologies that had been used to form the conclusion that there is no link between breast cancer and induced abortion

143 *Committee Hansard* 20.7.06 p.68 (Ms Margaret Kirkby, The Bessie Smyth Foundation).

144 *Committee Hansard* 19.7.06 p.33 (Ms Cait Calcutt, Children By Choice).

145 *Committee Hansard* 19.7.06 p.26 (Ms Cait Calcutt, Children By Choice).

146 See *Submission 5*, Additional Information dated 18.7.06, (Endeavour Forum); *Submission 12*, Additional Information dated 20.7.06 (Festival of Light Australia).

were flawed or had serious weaknesses. He stated that the link between breast cancer and induced termination, as previously reported, should remain valid.¹⁴⁷

1.128 Other studies referred to include:

- a study by Rooney and Calhoun who concluded that women with prior induced abortion are reported to have a statistically significant increase in premature births or deliver babies with a low birth rate;¹⁴⁸
- a study published in the *Journal of Child Psychology and Psychiatry* that discussed the 'mental health problems, including depression anxiety, substance abuse and suicidal thoughts' that results from terminations, concluding that women who had terminations have an increased risk of developing mental health problems;¹⁴⁹ and
- studies undertaken at the Elliott Institute in the United States, commenting on the detrimental effects of abortion including a link between 'abortion and depression, substance abuse and suicide'.¹⁵⁰

1.129 It was also argued that providers of termination services have a duty to inform woman about other risks such as 'post abortion syndrome':

...the abortion providers do not acknowledge the post-abortion syndrome, which pregnancy support services deal with because we help women even after they have had the abortion and try to resolve their feelings of unresolved grief.¹⁵¹

1.130 The Committee was also presented with evidence refuting claims of a link between abortion and health issues such as infertility, breast and uterine cancer and mental illness. Reference was made to a publication by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists 'Termination of pregnancy: a resource for health professionals'.¹⁵² The publication stated that induced abortion is not associated with an increase in risk of breast cancer, as concluded in a study published in the *Lancet* in 2004 which analysed data from more than 50 studies on

147 Brind, J. 'Induced abortion as an independent risk factor for breast cancer: A critical review of recent studies based on prospective data', *Journal of American Physicians and Surgeons*, Winter 2005, Vol. 10 (4), pp.105–110.

148 Rooney, B. & B.C. Calhoun, 'Induced abortion and risk of later premature births', *Journal of American Physicians and Surgeons*, Summer 2003, Vol. 8 (2), pp.46–49. See *Submission 5*, Additional Information dated 18.7.06 (Endeavour Forum); *Submission 12*, Additional Information 20.7.06 (Festival of Light Australia).

149 *Submission 5*, p.1 (Endeavour Forum).

150 *Committee Hansard* 18.7.06 p.60 (Mrs Helen Dennis, Pregnancy Counselling Australia).

151 *Committee Hansard* 18.7.06 p.1 (Mrs Babette Francis, Endeavour Forum).

152 See *Committee Hansard* 18.7.06 p.11 (Senator Judith Adams); *Committee Hansard* 18.7.06 p.42 (Dr Angela Taft, Public Health Association of Australia Inc.); *Committee Hansard* 20.7.06 p.39 (Dr Rima Staugas).

83 000 women with breast cancer.¹⁵³ Witnesses also pointed to a fact sheet issued by the World Health Organisation in 2000 titled 'Induced abortion does not increase breast cancer risk'. The fact sheet refutes the claim that induced abortion increases the risk of breast cancer.¹⁵⁴ The Australian Medical Association also advised the Committee that 'current research does not support a definitive link between breast cancer and abortion'.¹⁵⁵

1.131 The existence of a medical condition known as 'post abortion syndrome' was also questioned in evidence to the Committee.¹⁵⁶ It was commented that such a condition is not acknowledged in the authoritative reference manual on mental illness, the Diagnostic and Statistical Manual of Mental Disorders (4th Edition), whilst 'several US studies have attempted to find support for its existence and instead found evidence to the contrary'.¹⁵⁷ It was argued that professional counselling provides women with the skills and knowledge to arrive at a decision autonomously, and this minimises any potential damage to her mental health, regardless of whether she chooses to continue with, or terminate, her pregnancy:

If she is made to feel guilty, ashamed and disrespected for her decision and if she is made confused and scared about it by poor information that is going to increase the risk to her mental health. So the role of any service should be to assist her with positive supports for her situation and positive, comprehensive information.¹⁵⁸

1.132 The Australian Reproductive Health Alliance provided the Committee with a report which suggested that most women feel relief rather than regret after an abortion. The report stated:

The majority of women who choose to have legal abortions do not experience regret or long-term negative emotional effects from their decision to undergo the procedure, according to a study published in the June issue of the journal *Social Science & Medicine*, [NewsRx.com/Mental Health Weekly Digest](http://NewsRx.com/MentalHealthWeeklyDigest)...The women who said they experienced no post-abortion distress had indicated prior to the procedure that they opted not to

153 Beral, V., D. Bull, R. Doll, R. Peto, G. Reeves, 'Breast cancer and abortion: collaborative reanalysis of data from 53 epidemiological studies, including 83000 women with breast cancer from 16 countries', *Lancet*, 2004, 363, pp.1007-16.

154 World Health Organisation, 'Induced abortion does not increase breast cancer risk', Fact Sheet No. 240, June 2000. See *Submission 36*, Additional Information dated 19.7.06 (Sexual Health and Family Planning Australia).

155 *Submission 6*, Additional Information dated 3.8.06, p.1 (Australian Medical Association).

156 See for example, *Submission 1*, Additional Information (d), p.3 (Australian Reproductive Health Alliance); *Submission 38*, Attachment 1, p.14 (Pregnancy Advisory Centre).

157 *Submission 82*, p.3 (Get Up).

158 *Committee Hansard* 18.7.06 p.49 (Ms Annarella Hardiman, Royal Women's Hospital Melbourne). See also studies supporting this argument, quoted in *Submission 84*, Additional Information dated 9.8.06, p.11 (The Bessie Smyth Foundation) and *Submission 1*, Additional Information dated 26.6.06 p.1 (Australian Reproductive Health Alliance).

give birth because they "prioritized work, studies, and/or existing children," according to the study. According to the researchers, "almost all" of the women said the abortion was a "relief or a form of taking responsibility," and more than half of the women said they experienced positive emotional experiences after the abortion such as "mental growth and maturity of the abortion process".¹⁵⁹

1.133 What is clear from this inquiry is that women need access to a diversity of reliable information sources, as well as support networks and other community resources. Complete, factual and unbiased information provides significant assistance to women confronted with the decision to either parent, adopt or terminate the pregnancy. Women should feel empowered to arrive at a decision independently and free of any coercion or influence, regardless of the ideological beliefs or interests of the pregnancy counselling services she consults with for information. The National Foundation for Australian Women commented on the benefit of developing 'clinical protocols on abortion and related topics', perhaps under the authority of an organisation such as the National Health and Medical Research Council.¹⁶⁰

Federal funding to pregnancy counselling services

1.134 It was noted earlier in the report that the Federal Government will be providing \$51.1 million to increase the accessibility of pregnancy counselling by General Practitioners and healthcare professionals, and to establish the new national telephone helpline. The Australian Federation of Pregnancy Support Services who deliver pregnancy counselling services under the trading name Pregnancy Help Australia informed the Committee that they receive \$300 000 funding from the Federal Government for this year, which is an increase from the previous year.¹⁶¹

1.135 Concern was expressed at the small amount of funding directed to pregnancy counselling services, or services providing support to women that chose to continue with their pregnancies.¹⁶² The ACT Right to Life Association argued that funding directed to services offering pregnancy support is insufficient:

Although there are many groups providing practical support for women who wish to continue their pregnancy, the Federal Government provides only \$250 000 per year for these services. Yet \$13 million per year goes to family planning organisations which refer women to abortion clinics and

159 *Submission 1*, Additional Information dated 26.6.06, p.1 (Australian Reproductive Health Alliance).

160 *Committee Hansard* 22.6.06 p.15 (Mrs Marie Coleman, National Foundation for Australian Women).

161 *Committee Hansard* 22.6.06 p.49 (Mrs Anne Foster, Pregnancy Help Australia).

162 See for example, *Submission 3*, p.5 (Ms Melinda Tankard Reist); *Submission 18*, p.4 (Right to Life Australia).

don't provide practical support for women confronted with difficulties in pregnancy.¹⁶³

1.136 Family planning associations across the country provide a range of support services on reproductive matters. Evidence commented that organisations such as Family Planning Australia receive Federal Government funding and provide a type of pregnancy counselling, even if this is not their sole service output.¹⁶⁴ An opponent of the Bill highlighted that the ideological viewpoint of an organisation should not influence whether they do or do not receive government funding:

The fact that crisis pregnancy centres are ideologically opposed to abortion should be irrelevant to their funding. They do not claim to provide the option of abortion, just as Children by Choice and Family Planning do not claim to provide ongoing support if women [choose] to continue with a pregnancy.¹⁶⁵

1.137 It was argued that all pregnancy counselling services in receipt of Federal Government funding should be bound to comply with a code of ethics, accountable to health professionals, peers and professional associations and information provided must be evidence-based and supported by research.¹⁶⁶

1.138 There are currently no federally funded 24 hour pregnancy counselling services in Australia that provide information on all three options.

Regulating the activities of counsellors and counselling service providers

1.139 Currently the activities of counsellors or counselling service providers are not governed by legislation and are not bound to operate within parameters set down by professional organisations or associations (such as the Psychotherapy and Counselling Federation of Australia) unless the organisation opts to become a member. Whilst there are mandatory qualifications that must be obtained to label oneself a psychologist in Australia an equivalent does not apply to counsellors. In effect any person may purport to be a counsellor, regardless of whether they have attained any training or professional experience in counselling.

1.140 Evidence highlighted the significant value of professional standards and guidelines, informed by codes of ethics supported by health professionals, peers and professionals associations, to ensure the delivery of high quality, impartial counselling services.¹⁶⁷ Professional competence and adequate skilling of service providers, as

163 Woolfe, K., 'Pro-Choice and no-choice', *On line Opinion*, 20 July 2005, p.1.

164 *Submission 24*, p.2 (Queensland Right to Life).

165 *Submission 31*, p.1 (Mr Jim Dowling and Ms Anne Rampa).

166 *Submission 49*, p.2 (Public Health Association of Australia Inc).

167 See for example, *Submission 57*, p.6 (Royal Women's Hospital Melbourne); *Submission 63*, p.4 (Caroline Chisholm Society); *Submission 2*, p.12 (Dr Susie Allanson); *Submission 84*, p.6 (The Bessie Smyth Foundation).

well as providing formal avenues for complaints, are important means of delivering confidence to consumers in the delivery of healthcare services.¹⁶⁸ It was argued that an individual describing themselves as a counsellor should have a 'recognised accredited professional qualification'.¹⁶⁹ Dr Susie Allanson discussed the importance of professional counsellors who are appropriately trained to quickly establish rapport with clients so the client is more inclined to discuss what is going on in their lives, are non-judgemental in their approach and who are trained to identify factors unduly influencing the client towards a particular option.¹⁷⁰

1.141 A number of organisations outlined the types of training programs they use to assure the quality of counselling services. Catholic Social Services Australia described the industry-recognised quality frameworks they use to train members which 'amongst other things, make explicit the values that underpin services, they articulate processes for the supervision of professional counsellors, and they articulate processes to deal with ethical challenges'.¹⁷¹ Pregnancy Help Australia stated that whilst their counsellors are not required to have professional qualifications, counsellors must undergo face-to-face training which may be supplemented with participation in distance education, a three-month probationary period with increased supervision and a telephone skills assessment.¹⁷²

1.142 The Caroline Chisholm Society commented on the methods their organisation uses to assure the longer term quality of their counselling services:

All staff adhere to the Australian Association of Social Workers (AASW) Code of Ethics. The Society provides regular supervision of all staff to ensure good practice and is interested in women being supported with honest, clear information about pregnancy options, ensuring that women are given the opportunity to explore all options without pressure and time to think through consequences.¹⁷³

1.143 It was argued that counsellors should be bound to provide professional and ethical counselling and evidence-based information to ensure that the woman and her family are best supported when faced with an unplanned pregnancy.¹⁷⁴ This is particularly important where a woman presents for counselling who may have an intellectual disability, mental illness, psychosocial deprivation or have experienced trauma, violence or have a history of drug abuse, counselling may be complex and

168 *Submission 1*, p.1 (Australian Reproductive Health Alliance).

169 *Committee Hansard* 22.6.06, p.18 (Ms Christina Richards, Australian Reproductive Health Alliance).

170 *Committee Hansard* 18.7.06 p.45 (Dr Susie Allanson).

171 *Submission 77*, p.7 (Catholic Social Services Australia).

172 *Committee Hansard* 22.6.06 pp.41–42 (Mrs Debbie Garrett, Pregnancy Help Australia).

173 *Submission 63*, p.1 (Caroline Chisholm Society).

174 *Submission 2*, p.12 (Dr Susie Allanson).

require access to a wider network of healthcare providers and appropriate referrals.¹⁷⁵ Witnesses stated that a woman with an unplanned pregnancy has a right to be accurately informed about her options and she should not be made 'to feel guilty or negatively judged for considering an abortion'.¹⁷⁶

1.144 Professional guidelines and accreditation of counsellors and counselling services would partially facilitate the provision of complete, accurate and comprehensive information by pregnancy counsellors and contribute towards improved healthcare in Australia. Rather than focussing on disclosure of the particular values or beliefs held by the counselling service, Dr Nicholas Tonti-Filippini described the significant value that could be derived through professional standards and guidelines for counselling, consistent with the approach taken in other areas of healthcare:

When you go to a doctor, unless you know the doctor very well, you usually do not know what the doctor's private views are in relation to whatever it is you might be seeking. It does not intrude in the conversation. What you expect when you go to a doctor is professional advice that gives you the options and gives you accurate medical information about what is available to you and what the effects of that would be. That is what I would like to see happen in pregnancy counselling—accurate, full, comprehensive material information, as is required by every other profession in that respect.¹⁷⁷

1.145 The Royal Women's Hospital commented that adherence to codes of ethics should be fundamental in the provision of counselling:

Whether you refer to the AMA code of ethics or the social work profession code of ethics or the psychology or psychiatry codes of ethics, they all refer to a set of principles about being impartial. And if you cannot be impartial then you need to say that you are not able to provide a certain service or that you have a conflict of interest, and provide something else that will resolve things for that person. That should be up front.... The ethics should underpin all of the work that is offered to women.¹⁷⁸

1.146 Sexual Health and Family Planning Australia stated that:

...all health information counselling and advice services should be required to provide properly qualified, skilled and accountable personnel who are free to deliver information and/or counselling that is responsive to clients needs.¹⁷⁹

175 *Submission 2*, p.10 (Dr Susie Allanson).

176 *Submission 81*, p.5 (Reproductive Choice Australia).

177 *Committee Hansard* 18.7.06, p.6 (Dr Nicholas Tonti-Filippini).

178 *Committee Hansard* 19.7.06, p.49 (Ms Annarella Hardiman, Royal Women's Hospital Melbourne).

179 *Submission 36*, p.3 (Sexual Health and Family Planning Australia).

1.147 The Committee notes that many individuals and organisations expressed their willingness to collaborate with the Federal Government to develop counselling standards and guidelines, and best practice models for pregnancy counselling services. It was argued that such standards and guidelines are not a substitute for transparency in advertising and notification of pregnancy counselling services. Dr Cannold noted:

So I think accreditation is a wonderful thing. There has been a lot of valid concern about the quality of the training of some of the people who are on the other end of the phones, but it does not take the place of the need for the bill to ensure that there is transparent advertising.¹⁸⁰

Issues facing women in rural, regional and remote areas of Australia

1.148 There are particular challenges faced by women residing outside urban centres when confronted with an unplanned pregnancy. The Australian Reproductive Health Alliance noted the 'lack of services [which] generally exacerbates reproductive health issues/decisions for women in rural areas e.g., when a doctor or pharmacist withholds information or options'.¹⁸¹

1.149 Senator Judith Adams described some of the difficulties faced by women residing away from urban centres when seeking information about family planning:

I am from a rural area and I have had a number of rural women talk about no GP or a GP who does not prescribe the pill and in other areas the pharmacist does not dispense the pill and any sort of discussion about termination just is not on. A lot of rural areas now have no access to GPs or very small access.¹⁸²

1.150 It was commented that women living in rural, regional or remote areas of Australia encounter considered obstacles in accessing reproductive healthcare:

Also, services tend very much to be located in capital cities, which is an enormous disadvantage to rural and regional women who live a long way from these services. Apart from being deeply insulting, and many women feel that it is, it is also extremely inconvenient and very expensive to have to come somewhere and wait for two or three days to have a procedure.¹⁸³

1.151 The difficulty in obtaining confidentiality in small communities was also discussed:

180 *Committee Hansard* 18.7.06, p.25 (Dr Leslie Cannold, Reproductive Choice Australia).

181 *Submission 1*, p.2 (AHRA).

182 *Committee Hansard* 20.7.06 p.14 (Senator Judith Adams).

183 *Committee Hansard* 19.7.06 p.29 (Dr Gwendolyn Gray, Sexual Health and Family Planning Australia).

...approaching or being approached by a service which deals only/mainly with pregnancy issues may result in a high risk of invading privacy; counselling through mainstream healthcare providers may be preferable.¹⁸⁴

1.152 As a result, women in rural, regional and remote areas often rely upon telephone services for advice and information about pregnancy terminations because they allow for anonymity and confidentiality which is important for women that:

...do not want to necessarily let anyone know in their own town or area that they are in that situation.¹⁸⁵

CONCLUSION

1.153 The Committee acknowledges the valuable contribution made by pregnancy counselling services and individuals who are providing emotional and material support to women and families in Australia. A number of submissions were received from individuals working with pregnancy counselling providers who cited the positive impact their service is having on people in need. The Committee commends their efforts.

1.154 It was clear from evidence that the community is in favour of transparent advertising, however, how this is best achieved remains the challenge for policy makers and politicians. Much discussion focussed on definitions and terminology used in the Bill.

1.155 The Committee acknowledges that transparency in advertising is important. Most importantly, women and their families should be provided with accurate, honest and complete information by counsellors and pregnancy counselling services about their options. This point was articulated in much evidence to the inquiry, regardless of whether the individual or organisation supported or opposed the Bill.

1.156 The difficulties faced by women when contemplating the options available for dealing with an unplanned pregnancy were emphasised during the inquiry. The provision of considered and accurate information facilitates Australian women to make informed decisions by disclosing information that is pertinent to their arriving at an autonomous decision that is in the best interests of the individual. This will directly contribute to improved health outcomes for Australian women.

1.157 The Committee acknowledges that more needs to be done to support women when faced with an unexpected pregnancy. For Australian women termination of a pregnancy remains a legal option under certain circumstances. Putting aside whether she ultimately decides to continue with, or terminate the pregnancy, she has a right to be provided with accurate, complete and factual information about each of the

184 *Submission 1*, p.2 (ARHA).

185 *Committee Hansard* 20.7.06 p.24 (Ms Ann-Marie Hayes, Women's Services Network of SA).

options—parenting, adoption or termination—and to not be unduly influenced or coerced into 'choosing' a course of action by an external party.

1.158 The inquiry into removing the responsibility for approving the abortifacient RU486 from the Minister for Health and Ageing and to the Therapeutic Goods Administration highlighted that Australians think there are too many abortions performed in Australia, but this may be symptomatic of either ineffective or inappropriately targeted community programs on sex education and preventive measures. This inquiry again highlights the importance of better education and wider availability of information on contraception and fertility control to assist in reducing the number of unplanned, and potentially unwanted, pregnancies in Australia.¹⁸⁶

Senator Gary Humphries
Chairman
August 2006

186 *Committee Hansard* 22.6.06, p.37 (Dr Andrew Pesce, Australian Medical Association).

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

Minority Report

Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005

**Senator Stott Despoja
Senator Moore
Senator Nettle
Senator Webber
Senator Allison
Senator C Brown**

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1. Background:

The aim of *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* (to be referred to as ‘the bill’ from here on after) is to regulate pregnancy counselling services to prevent misleading or deceptive advertising or notification of pregnancy counselling services.

On the recommendation of the Selection of Bills Committee, the bill was referred to the Community Affairs Legislation Committee for further examination into the adequacy of the legislation in improving the regulation of pregnancy counselling services. The Committee was also required to determine whether counselling provided by Government funded pregnancy counselling services is objective, non-directive and includes information on all three pregnancy counselling options.

This bill does not discriminate against any particular pregnancy counselling service, whether anti-choice or pro-choice.

It is designed to implement the necessary regulatory measures to prevent the misleading and deceptive advertising of pregnancy counselling services. It will not force services that have a philosophical opposition to abortion to refer women to termination clinics, but as the legislation clearly sets out, it requires these services to advertise if they do not provide that particular service, so women can be fully informed.

However, Dr Sally Cockburn argued in her opening statement to the Committee that the focus should be on the rights of Australian women to receive non-directive impartial and evidence-based information on all three pregnancy options. Dr Cockburn argued that:

Much of the focus has been on the rights of service providers. SH&FPA, however, believes that focus should be on the rights of Australian women and their support persons.¹

2. Summary:

This Minority report analyses some of the key debates to come out of the Committee inquiry into the bill.

The Committee process was an essential step in bringing a full and ongoing debate about the issue of transparency in advertising of pregnancy counselling services to the Federal Parliament.

Unlike organisations which charge for the services they provide, and are thus subject to the Trade Practices Act, non-fee charging pregnancy counselling organisations are

¹ *Committee Hansard* 19.7.06 p.24 (Dr Sally Cockburn, SH&FPA)

not regulated in any way to prevent them from engaging in deceptive behaviour, or misleading advertising.

2.1 The key conclusions:

This bill was introduced into the Senate “to prohibit misleading and deceptive advertising and notification of pregnancy counselling services; promote transparency and full choice in the notification and advertising of pregnancy counselling services; improve public health; and minimise the difficulties associated with obtaining advice to deal with unplanned pregnancy.”²

Considering most pregnancy counselling services are not subject to the Trade Practices Act because they usually do not charge for the information or services they provide, this bill “essentially makes pregnancy counselling services subject to the same laws regarding misleading advertising as organisations which are engaged in trade or commerce.”³

Evidence presented during the committee process further highlighted the need for a piece of legislation of this kind to protect Australian women from accessing false and misleading pregnancy counselling services. This is detailed in section 3 of the report.

The introduction of this bill is essential in protecting the rights of women, and preventing pregnancy counselling services that do not provide balanced information about, offer, or refer for all three options, from advertising in ways that suggest otherwise. This Bill, in effect, will hold pregnancy counselling services accountable for the advertising and information that they provide, creating a safety mechanism protecting the fundamental right for women to have access to non-directive counselling on all three pregnancy options: keeping the baby, adoption, or abortion, if they choose.

The bill is the best way so far to prevent pregnancy counselling services from advertising services for which they do not provide, and which will ensure they become accountable for the information and services that they do provide.

This bill should be seen as the vital first step in the legislative and policy debate about pregnancy counselling services in Australia, and the related issues and concerns to arise from the committee hearings.

2.2 The key findings:

- The public hearings highlighted the misinterpretation of the bill, with anti-choice organisations and individuals arguing that this piece of legislation:
 - forces pregnancy counsellors to participate in an illegal act

² Senator Natasha Stott Despoja Second Reading Speech *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* Senate Hansard 23/06/05 p4

³ *Ibid*

-
- forces pregnancy counselling services to provide referrals for an abortion
 - affects the amount of women calling/visiting these counselling services, by ‘forcing’ them to outline what they do/do not refer/advise on
 - will shut down or decrease funding to certain services
 - fails to regulate ‘pro-choice’ counselling services due to the biased nature of the bill
- Highlighted the need to incorporate a definition of the term ‘refer’ in the bill
 - Misunderstanding of the term ‘refer’
 - Whether or not it is only a medical term
 - Highlighted the need to adequately address the definition of non-directive counselling
 - Inadequacy of the Department of Health and Ageing definition compared to the definition provided in the bill
 - Relevant suggestions to address this issue
 - Highlighted the concerns over the 24-hour pregnancy counselling listing in the *White Pages*
 - Raised other concerns outside the content of the bill
 - Misinformation about abortion risks e.g. alleged link between breast cancer and abortion
 - What medical information pregnancy counselling service providers should base their research on (i.e. W.H.O or N.H.M.R.C)
 - Counselling standards
 - The report concludes that this piece of legislation is essential in protecting women from misleading advertising, and highlights that further debate and discussion about other related pregnancy counselling concerns is required in the Federal Parliament;

We welcome and appreciate the participation and contribution of medical practitioners, pregnancy counselling services, and individuals all of whom provided the committee with essential evidence in the debate about this bill and other related issues.

3. Need for the Bill

Senator Stott Despoja introduced this Private Member's Bill on June 23, 2005, in response to a number of concerns "about the way one pregnancy counselling service, Pregnancy Counselling Australia, was listed in the White Pages." These concerns are outlined in Senator Stott Despoja's second reading speech introducing the bill, where she stated that:

"my increasing awareness of a number of other pregnancy counselling services which like Pregnancy Counselling Australia, do not refer for terminations yet do not mention this in their advertising and notification material, has encouraged me to continue to push for greater transparency in this area, to ensure women are able to make informed choices about who they contact for information when they are deciding whether they can continue with a pregnancy, are seeking support in continuing their pregnancy, or have decided to have an abortion."⁴

The urgency of this issue was highlighted in March 2006 when the Federal Government announced it would allocate \$51 million over the next four years to establish a National Pregnancy Support Telephone Helpline, and introduce a Medicare rebate for pregnancy counselling. Service providers with any connection to abortion clinics are precluded from accessing the Medicare rebate for their patients, while those groups with religious or philosophical objections to abortion will be eligible.

In response to Questions on Notice, The Department of Health and Aging confirmed that GPs associated with termination clinics would be excluded from the accessing the item stating

- The service is non-directive
- Practitioners and allied health professionals claiming the item are not associated with clinics that provide termination services
- Practitioners cannot also provide termination services for the periods that they are claiming the counselling item.⁵

Anecdotal evidence presented during the inquiry highlighted the need for the regulation of pregnancy counselling services. A document tabled by the Pregnancy Advisory Centre in Adelaide, highlighted the misleading and deceptive information women have been receiving.

One woman reported being told that if she terminated her pregnancy it was;

Killing the baby...Also said that the Government would give them money – a 'few thousand.'⁶

⁴ Senator Natasha Stott Despoja, Second Reading Speech, *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005*, 23 June 2005

⁵ Department of Health and Aging 'Questions and Answers' 3.03.06

⁶ Case studies tabled by Pregnancy Advisory Centre at the Adelaide Committee Hearing 20.7.06

Another woman reported

They told me I was at increased risk of breast cancer later in life and that I was also at risk of being more infertile. They kept saying 'but there is help through the Government financially, there are childcare benefits, we will give you a cot and baby clothes...' they were really pushing and pressuring me to having a child, I felt bullied.⁷

Dr Susie Allanson, a clinical psychologist for the Fertility Control Clinic provided the Committee with a number of case studies from women who had come to the FCC following a traumatic counselling experience. One woman reported;

My boyfriend and I went to a pregnancy counselling service in [a country town]. They showed us a film that was really frightening showing the baby trying to get away from the instruments the doctor was using. Then they told us how bad it was to have an abortion and I would never be able to have any children. They said my boyfriend would leave me if I had an abortion. I said my parents would kill me and kick me out if they found out I was pregnant. They said they would give me baby clothes and somewhere to stay till I had the baby. I said I wanted to finish school and I had to get an abortion. I did not want to live with strangers or adopt the baby out. I was so furious and scared after seeing them.⁸

The bill seeks to ensure that pregnancy counselling organisations that do not refer for terminations declare this, so women seeking advice on whether to continue a pregnancy know what sort of organisation they are contacting.

Ms Cait Calcutt from Children by Choice reinforced this point, arguing that the intent of the bill "is not about outlawing different types of services but about recognising the different types of pregnancy counselling services in Australia. This bill is about ensuring that we represent ourselves accurately to women who may be seeking our services."⁹

The need for greater transparency in pregnancy counselling services was further reinforced by Dr Haikerwal. The AMA highlighted the fact that coercion towards a particular reproductive choice is simply unacceptable;

Whilst advocating for a reduction in Australia's abortion rate through acceptable interventions, the AMA feels that all women must be able to access non-directional pregnancy counselling services at any time. We support the principles behind the bill-namely, that advertising and notification for pregnancy counselling services must not be misleading or deceptive."¹⁰

⁷ *Ibid*

⁸ *Submission No.2 p.7 (Case studies – Dr Susie Allanson)*

⁹ *Committee Hansard 19.7.06 p.39 (Cait Calcutt, Children By Choice)*

¹⁰ *Committee Hansard 22.6.06 p.31 (Dr Mukesh Haikerwal, President of the Australian Medical Association)*

4. Terminology

Although witnesses generally supported the need for transparent advertising, there was debate about some of the terminology used in the bill including:

While there is a clear need for the implementation of legislation to regulate pregnancy counselling services in Australia, a theme to arise from the public hearings, highlighted how sections of the bill have been misinterpreted by anti-choice services.

4.1 Non-directive

As mentioned in the Chair's report, the term "non-directive" received particular attention throughout the Committee process.

Section 3 of the bill defines "non-directive" pregnancy counselling services as:

A service that offers counselling, information services, referrals and support on all three pregnancy options being:

- (a) raising the child; or
- (b) adoption; or
- (c) termination of pregnancy

and will provide referrals to termination of pregnancy services where requested.¹¹

Brigid Coombe, Director of the Pregnancy Advisory Centre, provided the Committee with her understanding of the term non-directive. She stated during her opening address that:

The definition given in the bill of 'non-directive counselling' does not, in my view, describe a counselling methodology but rather a service approach. Moreover, it is an appropriate approach as it responds to the variation in women's needs when contacting such a service. Women often require information about all of the options that they may be considering and expect that they get this from a service which advertises to provide help for them in their crisis. Accurate information is at times a crucial part of women's informed and responsible decision-making process. It is women's needs that should be central to appropriate service provision.¹²

Dr Pesce, from the AMA stated during the hearing in Canberra, that:

non-directional would mean...that once a patient indicates that her preference seems to be for a particular course or approach to solve a problem, you should be able to support her in that decision...I think that, if you want to provide a proper

¹¹ *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* Senator Stott Despoja

¹² *Committee Hansard 20.7.06 p.35* (Brigid Coombe, Pregnancy Advisory Centre)

service, you are obliged to follow the path that the patient chooses for herself as you advise her on all her options.¹³

Dr Susie Allanson, from the Fertility Control Clinic in Melbourne argued that the term "non-directive", as defined in Senator Stott Despoja's bill, has been confused due to the Department of Health and Ageing's understanding of the definition.

...it appears that the Federal Department of Health and Aging believes that AFPSS is providing "non-directional" pregnancy counselling. The Department's view raises the difficult issue of language and how anti-choice organizations may commandeer pro-choice language to hide their actual practice and philosophy. Because of the problem in discriminating between false providers versus pro-choice pregnancy counselling, pro-choice services have tried to more clearly articulate the concerns and differences between anti-choice and ethical counselling by emphasising certain language such as "non-directional", "woman-centred", "options", and "pro-choice". Unfortunately, anti-choice rhetoric can subsequently claim this language as its own and the confusion for the public continues.¹⁴

In her opening statement to the Committee, The Honourable Carolyn Pickles, from the Children, Youth and Women's Health Service in South Australia argued that non-directive counselling is an important aspect of pregnancy counselling.

Pregnancy counselling services should be non-directive. The experience reported by some women to our staff at Women's Health Statewide indicates that they have been provided with factually incorrect information, such as exaggerated risks of harm such as breast cancer... Women who are distressed may not, may choose not, to discuss their decision with family or friends, and rely on impartial counselling services to assist them.¹⁵

This statement further indicates the general understanding of the term "non-directive" in relation to the bill.

When questioned by one Senator as to whether Children by Choice offer advice on all three options, Coordinator, Cait Calcutt, stated:

We offer counselling, information and referral around all three options of an unplanned pregnancy. The aim of our service is to facilitate a woman to make the decision that she believes is best for her. But, if she comes to us and she has decided that she wants a termination of pregnancy and she is seeking information in relation to termination of pregnancy, we are happy to provide her with that, and the same goes if she has decided upon adoption or continuing with the pregnancy and parenting the child.¹⁶

Non-directive counselling, under the definition of the bill, requires counsellors to provide information on all three pregnancy options, and refer where necessary. The

¹³ *Committee Hansard* 22.6.06 p33 (Dr Andrew Pesce, The Australian Medical Association)

¹⁴ *Submission No.2* p11-12 (Dr Susie Allanson)

¹⁵ *Committee Hansard* 20.7.06 p.33 (The Hon. Carolyn Pickles, Board of Directors, Children Youth and Women's Health Service)

¹⁶ *Committee Hansard* 19.7.06 p.33 (Cait Calcutt, Children by Choice)

meaning of refer in this context has resulted in much debate from those who oppose the bill.

4.2 Refer

We acknowledge that a specific definition of the term ‘referral’ is needed in Part 1 section 3 of the bill, the term ‘refer’ is commonly used as a general term in the daily fixtures of life. However, the term refer is defined as **as “To direct for information or for anything required”**¹⁷

Opponents of the bill claim that pregnancy counselling services do not have the authority to ‘refer’, as this is a medical term, and only Medical Practitioners can provide referrals. This claim, however, was refuted by the Australian Medical Association, with Dr Pesce arguing that:

You can refer to *Hansard*, and there is a more general meaning of the word...I am a bit frustrated that a lot of energy may be spent on this. It would be better to call it ‘assisting the woman in obtaining the relevant service that she requires.’ If you do not want to call it a ‘referral’, then call it ‘assisting’. If you don’t want to assist someone then you should probably say that. We could get stuck on the concept of ‘referral’, which has a specific meaning in the MBS structure and with Doctors, but the term is used all the time. If I were trying to do my job properly and a patient came to me and asked me for something that I could not provide then it would be my obligation to assist her in obtaining that somewhere else, whether that includes a medical referral or a referral to her spiritual counsellor.¹⁸

The frustration with the medicalisation of such a term was evident during the public hearings, with Dr Leslie Cannold from Reproductive Choice Australia stating:

I feel that all this quibbling about the word ‘referral’ is a way of ducking the main issue. Do we support transparency or do we not? If we do, maybe we can find another word. Andrew Pesce in the Canberra hearings used ‘assist women to’, if we are going to have such a hard time with the word ‘referral’. This is not really a major obstacle to having this bill go into law.¹⁹

Ms Margaret Kirkby, from the Bessie Smyth Foundation reinforced this frustration in her opening statement to the Committee in Sydney, stating:

We would reject the view that referral to an abortion provider is solely the prerogative of a doctor. If you place meeting the needs of women at the centre of your service delivery, you have to have referral information about a wide range of services – and not just where to get an abortion or where to get support to continue a pregnancy or about adoption...We are very conscious about wasting women’s time if you do not give them decent referral information.²⁰

¹⁷ *Macquarie Australia’s National Dictionary Revised 3rd Edition* (Macquarie Library Pty Ltd: Macquarie University, 2001) p1589

¹⁸ *Committee Hansard* 22.6.06 p.35 (Dr. Andrew Pesce Australian Medical Association)

¹⁹ *Committee Hansard* 18.7.06 p.31 (Dr Leslie Cannold, Reproductive Choice Australia)

²⁰ *Committee Hansard* 19.7.06 p.66 (Margaret Kirkby, The Bessie Smyth Foundation)

A large proportion of the debate at the final public hearing in Adelaide focussed on defining contentious terminology within the bill. Senator Moore reiterated the frustration about the time spent on this debate, and asked both the Coalition for Women's Right to Choose, and the Women's Services Network of SA to outline their understanding of the term referral.

Senator Moore: So from your perspective, working with women's services, what connotation does the verb 'to refer' conjure up for you in the draft legislation, when it says 'non-directional?'

Dr Ripper: My experience would be that in everyday speech people use the word 'refer' to mean 'passing on to', in a very general and generic way; in the way that the AMA clarified. Inside a medical consultation it may well have a different meaning but that is not what we are speaking about...

Ms Hayes: From the Women's Services Network perspective, it would be in common parlance that we would use the word 'refer' to provide a woman with information about a service and refer her to that service and it is not in a strict way.²¹

Ms Coombe, argued in her opening statement that referral in the context of the bill is not limited to the

Definition of referral by a doctor to a medical specialist...Referral also encompasses the provision of information about what services are available to meet a person's specific need and may include facilitating links to assist that person to get to that service.

I would argue that the need to say a service cannot provide a woman with a referral, as in information about where to go to access the service – because only a doctor can do that – is in fact a rationalisation for services which are placing their needs above that of the client – that is, the service is solving their conflict of interest by creating an obstacle for women to navigate.²²

5. Misinterpretation of Bill

5.1 Background:

Anti-choice organisations and individuals argued incorrectly that the bill "intends to put out of business any pregnancy counselling service which will not refer for abortion...such an attempt to suppress community groups who do not share the permissive views on abortion held by the framers of this bill is surely a misuse of parliamentary power..."²³.

This bill does not disadvantage so-called 'pro-life' pregnancy counselling services as suggested, by opponents of the bill, but rather it is designed to prevent the misleading and deceptive advertising of these services. This is a gross misinterpretation of the bill.

²¹ *Committee Hansard* 20.7.06 p.27 (Senator Moore, Dr Ripper and Ms Hayes)

²² *Committee Hansard* 20.7.06 p.35 (Brigid Coombe, Pregnancy Advisory Centre)

²³ *Committee Hansard* 19.7.06 p.42 (Dr van Gend – World Federation of Doctor's who Respect Human Life)

The bill ensures that pregnancy counselling organisations which do not refer for terminations declare this, so women seeking advice on whether to continue a pregnancy whether the organisation provides information and referrals on all three pregnancy options.

Point 1.139 of the Chair's report highlights the concerns raised by Festival of Light regarding the penalties imposed, arguing that:

Because corporations are often profit-making organisations, whereas the small organisations we describe are not corporations, but the same penalty would apply to them though they are not corporations.²⁴

In response to this argument by Mr d'Lima, his colleague Ms Phillips, stated:

It would bankrupt them because Birthline has an annual budget of \$55,000. If they were to be fined \$200, 000-

Senator Stott Despoja: I am sure that Birthline are not going to engage in misleading and deceptive practices.²⁵

The penalty units have been incorporated to enforce and promote the importance of non-directive and truthful advertising and mirror those contained in the Trade Practice Act. It is not designed to 'hamper' any particular counselling service, and indeed is only payable if an organisation is providing misleading and deceptive advertising. Rather it is intended to promote transparency transparent advertising and notification of pregnancy counselling services. Only organisations that breach the rules will be penalised.

5.2 The Bill forces pregnancy counselling services to refer for abortion:

A common misconception that arised in the public hearings and the submissions, by opponents of the bill was that this bill, if successful, would “force” all pregnancy counselling services, regardless of their pro/anti choice stance, to provide referrals for termination.

Dr Nicholas Tonti-Filipini highlighted this misconception arguing that:

I do not think it is appropriate to force pregnancy counselling services into a medical model by requiring it to refer for abortion.²⁶

- Section 6(1) of the *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* states

Any person that advertises or notifies a pregnancy counselling service that does not provide referrals for terminations of pregnancy must include in the advertising or

²⁴ *Committee Hansard* 20.7.06 p.15 (Mr d'Lima -Festival of Light)

²⁵ *Committee Hansard* 20.7.06 p.15 (Ms Phillips –Festival of Light)

²⁶ *Committee Hansard* 18.7.06 p.3 (Dr Nicholas Tonti-Filipini)

notification material a statement that “This service does not provide referrals for terminations of pregnancy” or a like statement.

In reference to Section 6(1) of the bill, Ms Roselyn Phillips, of The Festival of Light stated:

“The bill is specifically penalising pregnancy counselling services which do not provide referrals for abortions if they do not state that in their advertisements, whereas it makes no mention of counselling agencies which do refer for abortions but do not provide ongoing support for women who choose to keep their babies. It does not require them to put that in the ad, so it is a very much biased bill.”²⁷

This is a clear example of how the bill has been misinterpreted.

The legislation simply does not ‘force’ pregnancy counselling services to refer for abortion. It does require services to be upfront about whether or not they offer or advise on all three options to women seeking advice.

Debate over whether or not the bill would make pregnancy counselling services *refer* for terminations, was a common theme of attack from anti-choice advocates.

In his submission to the Committee, Mr Charles Francis claimed the bill “proceeds on the entirely erroneous principle that the alternative possibility of referring a woman for an abortion should be an integral part of all pregnancy counselling.”²⁸

5.3 Bill forces counsellors to participate in an "illegal act":

Considering this bill seeks to enshrine in law transparency in advertising, the claim made by opponents of the bill that this piece of legislation would force them to participate in an "illegal" act is an extraordinary example of misinterpretation. Pregnancy Help Australia claim in their submission to the Committee that “abortion remains illegal in most states in Australia. Therefore, in these situations, the Bill requires the counsellor to be complicit in an illegal act.”²⁹

Upon questioning, Senator Stott Despoja asked if Pregnancy Help Australia, would consider their statement arguing that:

It does not loosen or change the law in any way. In fact, there is nothing to suggest that counsellors who are operating now would operate any differently as a consequence of this legislation – that is suggesting that counsellors are acting illegally now...I recognise that you might have different views on some issues but I urge you to reconsider that statement.³⁰

²⁷ Phillips, Roselyn – Festival Of Light *Community Affairs Legislation Committee* Proof Committee Senate Hansard, Thursday 20th July p8

²⁸ Francis, Charles QC Submission to the *Community Affairs Legislation Committee*

²⁹ *Submission 46*, p.1 (Pregnancy Help Australia)

³⁰ *Committee Hansard 22.6.06* p47 (Senator Stott Despoja)

The misinterpretation of this bill is one of many examples that stem from an anti-choice philosophy rather than being grounded in the actual legal and medical realities and facts.

5.4 Bill "favours" Pro-choice pregnancy counselling services:

The argument that the bill favours pro-choice counselling services was raised spuriously by anti-choice services through the Committee process. Considering the bill is designed only to promote transparency in advertising, this argument is again an example of how this piece of legislation has been wittingly misinterpreted.

President of the ACT Right To Life Association, Ms Kath Woolf outlined in her opening statement to the Committee that this:

bill is a transparent attempt, we believe, to severely disadvantage those pregnancy counselling services which assist women with real alternatives to abortion... The bill's provisions serve, first, to entrench inappropriately in legislation a theory of counselling that is based on misunderstanding of both the theory and practice of counselling.³¹

During the Committee hearing in Sydney, Senator Moore highlighted that the intent of the bill is "to ensure that any woman in the community or her family, when seeking information about what is available to her if she is pregnant, will have an open choice when looking at any of the advertising material." This statement reinforces the simple fact that the bill requires only, that pregnancy counselling services are upfront and clear about what services they do and do not provide. It does not force all pregnancy counselling services to refer for abortion, as argued by anti-choice individuals and services.

Those opposed to the bill argued that the legislation was both biased and unfair on services that do not provide referrals. Festival of Light claimed in their submission that:

The Bill assumes that it is good public policy to favour only those pregnancy counselling services which "provide referrals to termination of pregnancy services where requested."³²

If so - called "pro-life" pregnancy counselling services are proud of their stance, then advertising that they do not refer for terminations should not be an issue.

This bill is not a debate about the legality of abortion it is about providing women with upfront information about the services that they are contacting for pregnancy counselling.

When questioned on how the bill would 'favour' only pro-choice pregnancy counselling services, Festival of Light claimed:

³¹ Woolf, Kath ACT Right to Life Association *Community Affairs Legislation Committee Proof Committee Senate Hansard*, Wednesday 19th July p2

³² *Submission No.12*, p.3 (Festival Of Light)

Because it would provide penalties only for those pregnancy counselling organisations which do not directly refer for abortion and no penalties for agencies like the Pregnancy Advisory Centre in Woodville which does not provide ongoing support for women who want to continue their pregnancy.³³

In response to this accusation, Senator Stott Despoja stated:

If they advertised as a non-directive counselling service and they failed to provide those three options, you bet I'd be happy and they would be guilty under this legislation! It applies across the board.³⁴

While there have been suggestions that some pregnancy counselling services may be covered by the *Trade Practices Act* because they charge for their services, Graeme Samuel Chairman of the ACCC argued:

The fact that the advertising was paid for does not change the character of the conduct to bring it within the "trade and commerce" pre-condition. (An example was a case where Canberra Airport paid for newspaper advertising in relation to a zoning decision - this was held not to be conduct in trade or commerce.)³⁵

Upon questioning Right to Life Australia Inc., Senator Moore asked the President, Ms Margaret Tighe:

Can you tell us where in the draft legislation your services are being threatened?

Mrs Tighe: That is a good question Senator. I believe they are not, actually, because of the response from the ACCC...

Senator Stott Despoja: But there is nothing in the bill designed to target or close down the organisation.

Mrs Tighe:...I believe it is important that we stand up against this type of legislation, which, really, is only aimed, I believe, at closing all avenues for those women who are ambivalent about whether or not they have an abortion...

Senator Moore: But where in the legislation is your work being threatened?

Mrs Wells: In the legislation, I cannot see anything in particular...³⁶

This Hansard passage is evidence of the misinterpretation and misunderstanding of the bill. Right to Life Australia and Pregnancy Counselling Australia admit that no where in this proposed piece of legislation does it infer that pro-life pregnancy counselling services will be threatened.

Considering this was an argument put forward during the Committee process, it is important to note that not only does this bill only require pregnancy counselling services to be upfront about the services they provide, but anti-choice services admit that this legislation does not threaten the existence of their organisations.

³³ *Committee Hansard* 20.7.06 p.8 (Mrs Phillips, Festival of Light)

³⁴ *Committee Hansard* 20.7.06 p.11 (Senator Stott Despoja)

³⁵ This was an email sent to Senator Stott Despoja on 15.8.06

³⁶ *Committee Hansard* 18.7.06 p.60 (Senator Moore, Mrs Tighe, Senator Stott Despoja and Mrs Wells)

6. Constitutionality of bill

6.1 Constitutional basis for the bill

The Chair's report raises the issue of the constitutional validity of the bill.

Despite this issue being raised by opponents of the bill, obviously it is not the role of nor is it appropriate for a Senate Committee to determine constitutional validity of a bill. This is a matter for the High Court.

Nonetheless, we acknowledge the important and various interpretations of constitutional powers but believe there are strong grounds in which to proceed with such a bill.

One of the reasons the bill was drafted as a stand-alone piece of legislation was in an attempt to by pass some of the evident constitutional matters that arise.

The drafting of the bill proceeded on the basis that:

"The statute books already have the Tobacco Advertising Prohibition Act 1992 which has operated constitutionally since 1992 and the Disability Discrimination Act 1992 – the Act which I used as a precedent – which has also operated constitutionally for 14 years, however the exact nature and context of the advertising must remain within the trade practices power"

We still believe that there are several heads of power that would support the bill. The most likely section 51(v) – broadcasting power, which can be used to regulate advertising by radio, newspaper, internet, TV, telephone etc. This should support a law which seeks to regulate the manner in which services are advertised such as clauses 5 and 6 of the Bill.

Senator Webber requested additional information from Mr Cleaver Elliot, Clerk Assistant (Procedure) regarding constitutional issues, Mr Elliott stated:

As I have mentioned before there is only one test on constitutionality – it is the one which the Federal Government is undergoing at the moment with its WorkChoices legislation before the High Court of Australia. It is a most common argument put to the Senate, the House and in our community that one should not proceed because something is not constitutional (any Hansard word search will get you scores of hits) yet government's still proceed in the face of such risk and criticism in their endeavour to implement new public policy.

I stand by the bill's drafting and I do not see anything in the evidence presented so far that would change my mind. Robust political debate and evidence has been given which may cause the text of the bill to be adjusted. This is routine legislative procedure. While some passing cursory policy comment has been given in relation to the constitutionality of the bill, I have seen no authoritative legal opinion with supporting authority which has questioned the constitutionality of the bill.³⁷

³⁷ Cleaver Elliot's email to Senator Webber 14.8.06

In response to a query from Senator Barnett, regarding constitutionality, Mr Elliot responded:

It is important that you be advised that a Senate committee has no jurisdiction to determine the constitutionality or otherwise of a bill.

If for example a committee in considering a bill were to determine as a threshold issue that a bill is unconstitutional and that is a reason for the committee to not further consider it, that action by the committee would itself be unconstitutional – (although not justiciable because it could not be brought before the court).

Mr Elliot also stated:

It would appear that some confusion has developed here to lead the committee away from its responsibilities and in to areas where it has neither responsibility nor jurisdiction.

A committee which purported to exercise authority in accordance with an area of the Constitution from which it is excluded, and did not exercise authority in an area of the Constitution where it has exclusive authority, would be derelict in its duty.³⁸

6.2 Role for the States

Mr Charles Frances in his submission argued that:

It seems to me that the requirements of the Bill in so far as it seeks to deal with those who provide counselling services free is probably beyond the constitutional powers of the Commonwealth and is a matter for the States only.³⁹

Mr Francis' view that this is a matter for the States is one that is definitely worth pursuing.

The intent of this legislation should also be adopted on a State-by-State basis. This is an avenue that the supporters of this bill will pursue.

At a minimum, this would provide a useful back up to any federal legislation.

7. 24 hour pregnancy help pages:

Concerns that this section needs to be less restrictive could be accommodated by allowing both non-directive pregnancy counselling services, as per the definition in the bill, and those which do not refer for terminations to advertise in the 24-hour listings in the White Pages.

Currently, no Government funded pro-choice dedicated pregnancy counselling services, which means that pro-choice service is able to provide national 24 hour pregnancy counselling helpline. Thus, there is no service that is able to meet Sensis' eligibility criteria for listing in the 24-hour listing of the White Pages.

³⁸ Cleaver Elliot's email to Senator Barnett 14.8.06

³⁹ Submission No. 23 p.2 (Charles Francis)

Ms Kate Mannix, reinforced the problem of the current 24-hour listings in the *White Pages* stating:

Only non-directive services (within the definition described in the Bill) should be legally allowed to advertise under 24 hour emergency services. It is insulting and degrading to mislead a person in a state of extreme distress into believing they will receive counselling which is impartial. It is sinful (I use this word deliberately) to use taxpayers' funds to insult and degrade such a person.⁴⁰

The Federal Government should to address this by allocating a similar amount of funding a pro-choice dedicated pregnancy counselling services, **to that provided to the 'pro-life' Australian Federation of Pregnancy Support Services.**

Ms Brigid Coombe provided an example of the problem associated with the current 24hour pages in the white pages, stating:

I would also like to give you an example of how easy it is for women to misinterpret information describing services on the 24-hour pages. I spoke with a woman at the centre last week who had rung Pregnancy Counselling Australia. As you will note the White Pages, there it states, 'Alternatives to abortion and post-abortion counselling.' I asked her why she had rung them given that their entry states, 'Alternatives to abortion'. She said she saw the word 'abortion' and in her anxious state thought, 'That's what I want', and rang them. She was given inaccurate and alarming information and took a route via a hospital gynaecologist to be reassured by accurate information and then information about our service and found us. That example is reason for consideration about it is that will accurately describe to women what sort of service they are going to get.

Senator Stott Despoja raised these concerns with Ms Coombe, asking:

If people disclose that, as per the requirements of the bill for other advertising, in that 24-hour section: provided that it is disclosed, would that be sufficient, or would you want an added proviso, which is that there was a service listed in the 24-hour section of the *White Pages* that actually provided referrals for terminations as well?

Ms Coombe: Yes, of course I think it would be great improvement on services if there were also a service that was available for women that provided comprehensive services...I have given examples. We read 'alternatives to abortion'. We understand that we would not ring that service. Other women do not read it that way. Their levels of literacy and their sophistication about this whole issue may not be what ours are.⁴¹

It is concerning that, women who call 12456 and ask to be connected to a pregnancy counselling service, are offered anti-choice services initially. Questioning Sensis about the 24-hour listing the the *White Pages*, Senator Webber informed the Committee:

Just for the information of both the people from Sensis and the committee, I took you up on your suggestion and spoke to a very helpful woman when I rang 12456

⁴⁰ *Submission No.32 p.2* (Kate Mannix)

⁴¹ *Committee Hansard 20.7.06 p.37* (Brigid Coombe, Pregnancy Advisory Centre)

and asked to be connected to a pregnancy counselling service in Melbourne. I was offered Pregnancy Counselling Australia as my first option and Pregnancy Support Service as my second option and then asked whether instead I wanted a more geographically specific referral – so it is 'p' for pregnancy⁴².

This example alone is representative of the need to balance the 24-hour listing in the *White Pages*.

8. Other concerns to arise from the hearings that are not directly related to the bill

8.1 Alleged Breast Cancer abortion link:

During the Inquiry into the bill, there was much debate over pregnancy counselling in general.

A disturbing theme was the alleged 'link' between breast cancer and abortion. This particular issue is one that some anti-choice pregnancy counselling services discuss and advertise as a risk associated with terminating pregnancy.

A common question to arise during the hearings was the basis on which anti-choice organisations base their research. The World Health Organization (W.H.O), the National Health and Medical Research Centre (N.H.M.R.C) or the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) all support this. Reputable medical organisations refute any link between breast cancer and abortion, and indeed attest to elective early abortion being a very safe procedure.

One study on which "pro-life" services and individuals relied was a study conducted by Professor Joel Brind, Professor of Human Biology and Endocrinology at Broun College of the City University of New York. A submission was received by Professor Brind following the conclusion of the Committee hearings.

Professor Brind claimed in his submission that the issue sheet circulated by the WHO refuting the link between abortion and breast cancer is an example of scientific misconduct. He argues that the WHO:

Follows a summary description of the illicit manipulations of data that resulted in false results of no connection between abortion and breast cancer.⁴³

Anti-choice counselling services have relied primarily on one piece of evidence supporting the link between abortion and breast cancer yet, have failed to acknowledge the studies conducted by the WHO at an international level, and NHMRC, RANZCOG, and in the Breast Cancer Council of Australia. These organisations state that the available evidence suggests there to be no conclusive link between abortion and breast cancer.

⁴² *Committee Hansard* 18.7.06 p.40 (Senator Ruth Webber)

⁴³ *Submission No.91* (Professor Joel Brind, USA) p.1

In November 2005, RANZCOG published *Termination of pregnancy: A resource for health professionals*. In the section on long-term risks associated with abortion RANZCOG concluded that:

The evidence does not support an association between termination of pregnancy and infertility, ectopic pregnancy or breast cancer...A comprehensive analysis of data from 53 studies including 83,000 women with breast cancer concluded that 'pregnancies that end as a spontaneous or induced abortion do not increase a women's risk of developing breast cancer and that studies of breast cancer with retrospective recording of induced abortion yielded misleading results.'⁴⁴

RANZCOG states:

In recent years there has been epidemiological debate about a possible association between induced abortion and breast cancer. A number of studies have looked at the influence of induced or spontaneous abortion on breast cancer risk; however the quality of the studies varies, and results have been inconsistent.⁴⁵

Dr Norman Ford, director of the Caroline Chisholm Centre for Health Ethics, himself may 'morally disprove abortion', but is opposed to using fear rather than evidence when advising women of the possible side effects of an induced abortion. Dr Ford argues in an article published in the *Chisholm Health Ethics Bulletin* 2003 that there is an:

ethical imperative to provide accurate information on the increased risk of breast cancer ... More flawless research should provide the answers. Women have a right to know the truth, and fears that induced abortion may not appear safe should not be allowed to obscure the facts.⁴⁶

The so-called abortion/breast cancer link, a common point raised by anti-choice groups and refuted by pro-choice groups during the Committee hearings, is representative of the debate around the importance of pregnancy counselling services drawing on reliable sources of evidence-based information and reinforces the need for greater debate on the regulation of such services.

In response to an article written by Senator Stott Despoja in *The Herald Sun*, Mr Francis argued:

It has taken the World Health Organisation decades to warn that the contraceptive pill is a Class I carcinogen, in the same category as tobacco and asbestos, and no doubt it may take decades for WHO, wedded to the ideology of population control, to acknowledge the link between abortion and breast cancer. However, women need the truth NOW, and especially on facts about which there is no scientific dispute: that the younger a woman is when she has her first full-term pregnancy, the lower her risk of breast cancer. Conversely, women who have no children or only have children after age 30 are at increased risk. One wonders why

⁴⁴ 'Termination of pregnancy: A guide for health professionals' *Royal Australian and New Zealand College of Obstetricians and Gynaecologists* November 2005

<http://www.ranzcog.edu.au/womenshealth/pdfs/Termination-of-pregnancy.pdf>

⁴⁵ *Ibid*

⁴⁶ Ford, Dr Norman 'Abortion and the Risk of Breast Cancer' *Chisholm Health Ethics Bulletin* Winter 2003 p.11

our Cancer Councils have not used the high-profile case of a celebrity who had breast cancer, to advise women to give priority to having babies over career, especially when breast cancer is the major killer of pre-menopausal women, and the third major cause of death in post-menopausal women.⁴⁷

This quote highlights the importance of regulating pregnancy counselling services. While we acknowledge that there are risks associated with all surgical procedures, the alleged abortion breast - cancer link has been refuted by all reputable medical associations, and should therefore not be considered as a genuine risk.

Senator Judith Adams pursued this alleged link between abortion and breast cancer throughout the inquiry, specifically inquiring as to what research this claim was based on.

Senator Adams: There is a World Health Organisation document – their fact sheet 2040; this was June 2000:

Induced abortion does not increase breast cancer risk.

So that is their assessment.

Mrs Phillips: Yes, and that is based largely on the Melby study which they thought was reliable but in fact was fact.

Senator Adams: They have got 10 studies here. Anyway, thanks –

Mr d'Lima: There are certainly many studies on both sides. But it may well be the case that we are at the stage where smoking was perhaps in the fifties or sixties and it may turn out to be the case that there are grave risks linked to abortion that are yet to be more thoroughly identified.⁴⁸

The alleged "risks" associated with termination, were pursued by Senator Kerry Nettle during the Melbourne Public Hearing, whereby the Senator stated:

I just wanted to alert Mrs Francis to the US National Cancer Institute which in 2003 concluded that abortion and miscarriages do not increase a woman's subsequent risk of developing breast cancer....

Mrs Francis: ...Many of the heads of the National Cancer Institute in the United States are also connected with the abortion industry...The abortion industry is so powerful and has so many people on the payroll of the National Cancer Institute that they are trying to bury the abortion-breast cancer link as much as they can.⁴⁹

This statement is representative of the additional concerns to arise from the Committee Inquiry. While the medical risks associated with abortion are not directly related to transparency in advertising, the need for the implementation of effective pregnancy counselling regulation is more important now, than ever before, in addition to transparent advertising legislation such as that contained in the bill.

⁴⁷ Francis, Charles 'Grave Risks in having an abortion' *Herald Sun* 24.7.06

⁴⁸ *Committee Hansard* 20.7.06 (Senator Adams questions)

⁴⁹ *Committee Hansard* 18.7.06 p.18 (Senator Nettle, Mrs Francis)

8.2 International examples of the regulation of pregnancy counselling services

The Committee has requested information on whether there are any international examples of regulation on which we could model this piece of legislation.

While nothing to the extent of this bill has been enforced at a national level, there are some interesting international examples to be studied.

Affirmative legislation has been introduced into the United States at both the federal and state level. In 2006, Congresswoman Carolyn Maloney (D-NY);

...introduced a bill intended to curb deceptive advertising of CPCs, entitled the “Stop Deceptive Advertising in Women’s Services” Act. The bill authorizes the Federal Trade Commission to regulate the advertising practices of CPCs so they cannot be confused with legitimate abortion providers or providers of abortion referrals.⁵⁰

The bill was referred to the Committee on Energy and Commerce on April 19 2006 for further examination.

Although steps have been taken to regulate the advertising of pregnancy counselling services in the USA, Christina Richards, from the Australian Reproductive Health Alliance outlined during the Committee hearing in Canberra that:

In ensuring that transparency, professional expertise and capacity to properly advise or refer remain at the centre of considerations in transparent advertising and notification of pregnancy counselling services in Australia, my hope is that the committee is able to avoid the volatility of the US experience around this issue, where specific facilities have been set up to look like medical clinics but are actually centres that give false information to those seeking an abortion.⁵¹

The AMA, while not supporting any particular international model for regulating pregnancy counselling services, argued that:

pregnancy counselling services be guided by the following principles, they must be:

- Professional;
- Objective and non-directive;
- Supportive to women (not coercive or judgemental);
- Committed to protecting privacy and confidentiality; and

Transparent (particularly in advertising) and accountable in conducting their services, so as to ensure that the best interests of women seeking such services.⁵²

8.3 Implementation of pregnancy counselling standards

The question of enforcing pregnancy counselling standards was a issue of concern that was raised throughout the Committee process. Through the evidence presented to the Committee, it became evident that a form of counselling standards required, in addition to transparent advertising to ensure that women who contact pregnancy

⁵⁰ ‘Crisis Pregnancy Centres: An Affront to Choice’ *National Abortion Federation USA* 2006 p.17

⁵¹ *Committee Hansard* 22.6.06 p.14 (Christina Richards, Australian Reproductive Health Alliance)

⁵² *Additional Information* 3.08.06 (Australian Medical Association)

counselling services, regardless of the pro/anti choice stance, receive non-directive and truthful information.

This point was highlighted by Ms Cait Calcutt, from Children by Choice:

All our counsellors and employed staff are required to have four-year degrees in psychology or social work or a related discipline, such as behavioural science. They are also required to have counselling experience, and they undertake training with Children by Choice in pregnancy counselling.⁵³

Following on this point, Senator Stott Despoja asked:

Surely there is a strong argument there for professional counselling?

Dr Grey: Senator, I think your point about accreditation is very important. In every area it is a question of getting standards, and I think that is where the Abortion Providers Federation of Australasia did a lot of very good work in developing some protocols...So moving in the direction of having some publicly debated and acknowledged levels of accreditation and accreditation procedures would be very good.⁵⁴

The issue of implementing pregnancy counselling standards was reinforced during the public hearing in Melbourne:

Senator Allison: You would endorse a system whereby that accreditation or professionalism was expressed as part of advertising?

Dr Tonti-Filipini: I would very much like to see that. I have done some work in another area which is related, and that is infertility counselling. The same problem was occurring there. If you look at the National Health and Research Council guidelines on reproductive technology, you will see that they specify that somebody has to be appropriately qualified in a counselling discipline.

While Dr Tonti-Filipini, opposes the proposed legislation, his support for the implementation of counselling standards, is representative of the problems associated with counsellors that fail to provide non-directive and objective advice.

In response to the question of whether or not specific counselling standards should be enforced, the Australian Medical Association argued that:

Professionally trained counsellors are most likely to have the high-level of skills and knowledge required to conduct pregnancy counselling services. Certainly, the government is accountable to the Australian public to ensure that pregnancy counselling services are staffed by appropriately trained professionals.⁵⁵

Dr Cannold argued that such standards and guidelines would not substitute for transparent in advertising and notification of pregnancy counselling services, stating:

⁵³ *Committee Hansard* 19.7.06 p.36 (Cait Calcutt, Children by Choice)

⁵⁴ *Committee Hansard* 19.7.06 p.37 (Dr Grey, SH&FPA)

⁵⁵ *Additional Information* 3.8.06 (Australian Medical Association)

There has been a lot of valid concern about the quality of the training of some of the people who are on the other end of the phones, but it does not take the place of the need for the bill to ensure that there is transparent advertising.⁵⁶

9. Sensis concerns

The purpose of clause 6 of the bill is to specify the requirements for pregnancy counselling organisations which may otherwise promote their services in a manner which is misleading or deceptive – not the organisations which advertise these services.

However, if an organisation that advertises a service in a manner which is misleading and that organisation is involved in trade and commerce, it is already subject to a range of provisions under Parts V, VC and VI of the *Trade Practices Act 1974*. That Act already provides substantial penalties for a breach of these provisions.

It is the intention of clause 6 of the bill to clarify, so as to remove any possibility of misleading or deceptive advertising in this area, the specific requirements for the advertising of, or notification of, pregnancy counselling services. The clause does provide both defences and for a penalty. This specific situation is not covered by the *Trade Practices Act 1974*, hence the need for the separate provisions provided by this bill.

10. Recommendation

We recommend that the bill pass the Senate.

Senator Natasha Stott Despoja
AD, South Australia

Senator Claire Moore
ALP, Queensland

Senator Kerry Nettle
AG, New South Wales

Senator Ruth Webber
ALP, Western Australia

Senator Lyn Allison
AD, Victoria

Senator Carol Brown
ALP, Tasmania

⁵⁶ *Committee Hansard* 18.7.07 p.25 (Dr Cannold, Reproductive Choice Australia)

Additional Comments

Senator Judith Adams

Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005

1.1 The major objectives of this Bill are to prohibit misleading and deceptive notification and advertising of pregnancy counselling services and to promote transparency in any advertising material. Pregnancy counselling services provide information and advice to women, especially when faced with an unplanned pregnancy, on the options available to them, generally considered to be parenting, adoption or termination. I agree with the principles underpinning this Bill and the necessity for pregnancy counselling services to be open and transparent about the extent of all-options counselling that they provide.

1.2 My agreement with these principles forms the basis of my strong support for the Government's intentions in relation to the introduction of the National Pregnancy Services Telephone Hotline which will provide professional, non-directive advice. It will be a requirement for the Helpline operator to provide a non-directive counselling service to assist a person to make a decision. The advice provided by the Helpline will cover the full range of options available of raising a child, adoption and termination.

1.3 Throughout the inquiry, the Committee was overwhelmed by the evidence presented to it either supporting or refuting a link between pregnancy termination and some alleged health risks. I was particularly concerned by some of the inaccurate and wildly exaggerated claims presented to the Committee, such as that termination leads to an increased risk of breast cancer, that it leads to the development of mental health problems, or that it causes infertility. There is no credible, scientific evidence to support these claims.

1.4 I understand that the National Breast Cancer Centre will be publishing a report refuting claims of a link between pregnancy termination and an increased risk of breast cancer. I commend the work of this, and other distinguished research bodies which are working to further our knowledge and understanding on such healthcare matters, both domestically and internationally.

1.5 Australian women have a right to be provided with accurate, complete and scientifically proven information, regardless of whether the pregnancy counselling service they approach for assistance does or does not provide information on accessing termination services. Only information that is substantiated by credible scientific studies, and has been reported by reputable healthcare organisations, should be used by pregnancy counselling services when discussing the options for dealing with an unplanned pregnancy. Each option - whether it be continuing with the pregnancy and choosing to either parent or adopt out, or choosing to terminate the pregnancy - brings with it associated medical risks to the woman depending on her

particular situation. Only by providing the woman with a thorough understanding of the issues related to each option, can she feel empowered to make an autonomous and informed decision about her pregnancy.

1.6 The Committee heard evidence discussing the additional challenges faced by women living in rural, regional and remote communities who experience an unplanned pregnancy. These women are not afforded the same luxury as are their counterparts in city centres of being able to 'shop' around for advice and support from a range of service providers. For women living in small, outback communities, if their local doctor is opposed to pregnancy termination and will not provide information about accessing a termination or other family planning advice, there are often very limited opportunities for accessing alternative advice. The situation is further complicated because it can be particularly difficult to obtain confidentiality in small towns. This is why unbiased, non-directive and independent pregnancy counselling and support available through telephone helplines is so important to these women.

1.7 Telephone helplines do not remove many of the other obstacles faced by women residing in rural, regional and remote areas in obtaining healthcare appropriate to their needs; for example, there remains the problem of only a sparsity of service providers outside of urban centres providing healthcare including those that perform terminations, or that provide direct contact or assistance to women who choose to continue with their pregnancies. However, at least these women can feel that they have access to information and support to help them with their pregnancies and the decision to either continue with, or terminate the pregnancy.

1.8 During the inquiry a number of organisations stressed the importance of supporting a woman during pregnancy to deliver a child into the world. I believe very strongly that services providing such support have a continuing responsibility to ensure that this mother and child are fully supported after birth and given every opportunity to get established into the life of parenthood and not being immediately abandoned without recourse to advice, support or assistance.

1.9 This inquiry generated considerable evidence from a range of groups and individuals which expressed a diversity of opinions. They discussed a number of fundamental issues that are raised by the provisions of this Bill. I consider that it is imperative for the Senate to proceed with debate on this Bill and the important issues that it has raised.

1.10 Having considered the evidence presented during the inquiry and being in strong support of the principles contained within the Bill, **I recommend that the Bill be passed.**

Senator Judith Adams
Liberal Party, Western Australia

Family First

Additional Comments

Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005

The *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* would have numerous effects, the most serious of which are:

- Obliging pregnancy counselling agencies that have a conscientious objection to referring for abortions to print a statement in all their advertising or publications similar to suggested words in the Bill, which are "this service does not provide referrals for termination of pregnancy". Failure to do this could result in a fine of more than \$1 million.
- Ensuring that pregnancy counselling agencies that do not refer for abortions are not allowed to be listed in the "24 hour health and help call pages" of the telephone directory, regardless of whether they print the required statement in advertising and publications.

The Bill is flawed because it links counselling with referrals for abortion.

It is also flawed because it adopts an ideological position by limiting its concern solely to whether or not agencies refer for abortion. The Bill dictates that agencies must refer for abortion if asked after counselling, or be labelled as biased.

FAMILY FIRST is proudly pro-woman which is why FAMILY FIRST believes the Bill should have focussed on ensuring we have the best possible pregnancy counselling services for Australian women. We should have the highest possible standards of counselling and look at ways to improve existing counselling services.

Catholic Social Services Australia summarised some of the broad problems of the Bill:

The bill singles out particular pregnancy counselling services—namely, those that do not provide referral to termination providers—and places onerous requirements on them to advertise in a particular way under threat of criminal penalties. The bill defines pregnancy counselling so broadly as to catch in its net a vast array of service providers, medical practitioners, educators and others. It further defines advertising so broadly as to capture every conceivable form of publication or notice, whether made to the public or not.¹

1 Mr Frank Quinlan, Catholic Social Services Australia, Committee Hansard 22 June 2006, page 21.

What is non-directive counselling?

It is clear that the term “non-directive counselling” means different things to different people.

The Bill defines non-directive counselling as “a service that offers counselling, information services, referrals and support on all three pregnancy options being (a) raising the child; or (b) adoption; or (c) termination of pregnancy: and will provide referrals to termination of pregnancy services where requested.”

The Department of Health and Ageing has a different understanding of what non-directive counselling means:

Counselling is really about the process of supporting decision making and ensuring that the counsellor assists the client to explore their feelings in relation to the issue. The issue of what happens once the client has made the decision and whether there is ongoing referral is a different issue from whether nondirective counselling is being provided.²

Other evidence highlighted that pregnancy counselling should not be viewed as solely a medical service:

Pregnancy counselling services should not be seen as exclusively medical services. There is a need for women to be able to explore non-medical options. There is also a need for women who may want to continue a pregnancy to have access to support services. To medicalise pregnancy counselling would suggest that medical interventions are the only services available.³

Pregnancy Counselling Australia argued that:

It is not our role as a counselling service to refer women to an abortion facility. We are a non-medical organisation and we do not have the authority to issue a referral for a medical procedure.⁴

As Open Doors Counselling pointed out, an abortion referral can influence a client's decision and is not compatible with non-directive counselling:

... an abortion referral from a counsellor can be perceived by the client as the counsellor's assessment of her suitability for abortion. This is out of place in non-directive, client-centred counselling, and can cause premature foreclosure of the client's own decision-making process.⁵

2 Ms Carolyn Smith, Department of Health and Ageing, Senate Community Affairs Committee Estimates Hansard, 1 June 2006, page 69.

3 Dr Nicholas Tonti-Filippini, submission 10

4 Pregnancy Counselling Australia, submission 29, page 3.

5 Open Doors Counselling and Educational Services Inc, submission 78, page 2.

Decision-making counselling and pre-termination counselling

It emerged that the counselling commonly offered can be broken up into two broad groups: decision-making counselling and pre-termination counselling. This leads to the problem of women not having the opportunity to properly consider what decision is right for them:

We also hear of women talking about that experience at the clinic as being more about pre-termination counselling. I think this is really important. For example, it says, ‘This is what the procedure will look like; this is what to expect,’ and those types of things. There is perhaps not as much time spent on whether or not this decision is right for them. I have heard women say that, because they have come to a clinic that provides termination, there is some kind of assumption that that is the decision that they need to take. We see that there are a range of concerns. We very much want to see counselling as being independent of providers who may have an interest in the service of termination.⁶

Ms Jacinta Collins from the Caroline Chisholm Society pointed out that:

... when you look at what [organisations such as Reproductive Choice Australia] characterise as appropriate options counselling—when you get through stage 1 and stage 2 of what they regard as the process—you see that stage 3 deals solely with pre-termination issues and does not deal with other issues women might have, such as ambivalence about a termination, and what support might be appropriate in those circumstances.⁷

One abortion clinic worker admitted that not all women attending an abortion clinic received decision-making counselling.⁸

Full information offered by agencies that do not refer for abortion

There was some confusion over the sort of counselling offered by agencies that do not refer for abortion.

Senators Adams and Nettle claimed that Pregnancy Help Australia is "not allowed to give any information regarding a termination".⁹

Others giving evidence appeared to have a similar misunderstanding. They seemed to confuse providing information with providing a referral:

... I think a lot of young people would assume, that they would get help support and explore all options ... I think that is the entire problem that this bill is trying to overcome ... I assume that young women would be quite

6 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 9.

7 Ms Jacinta Collins, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 5.

8 Dr Allanson, Fertility Control Clinic, Committee Hansard, 18 July 2006, page 47.

9 Committee Hansard, 19 July 2006, page 10.

concerned to realise later on that they were not provided with all the options that were available to them.¹⁰

FAMILY FIRST believes it is important to stress that pregnancy support agencies that declare a conscientious objection to providing a referral for abortion do provide information to women on all the options including abortion. All they do not provide is a referral.

Mrs Garratt from Pregnancy Help Australia said "all our counsellors are trained to say, 'We cannot provide you with a referral for termination services. We can, however, talk to you about your options and give you information about abortion procedures, etcetera, if that is what you want to do.'¹¹

Ms D'Elia from the Caroline Chisholm Society stated:

We do not refer for the termination of a pregnancy. We are not medical practitioners. That is the role of a medical practitioner. But we are happy to talk about all the options that are available for a woman to explore. We do explore all three options that are available. If someone was to ask for a referral for termination we would say that it is really important for them to seek further counselling and support from their GP or local hospital. We do not provide a direct referral to a termination clinic; we believe that it is important for there to be the intervention of a medical practitioner in that process.¹²

Referring for abortion

The Bill wrongly assumes that pregnancy counselling that does not include a possible abortion referral is no good. As one submission put it, the Bill:

... is based on a biased and unfounded assumption that the only legitimate pregnancy counselling services are those which refer for abortion.¹³

The emphasis on referral is against the advice of the Department of Health and Ageing, which said in relation to pregnancy counselling services it funds:

We are not expecting them to provide specific referrals to specific termination services. We think it would be very difficult for any telephone counselling service to do that, and that is not required.¹⁴

FAMILY FIRST believes it is in fact inappropriate for pregnancy counsellors to assume a medical role and refer for abortion:

10 Ms Sarah Wickham, National Union of Students, Committee Hansard, 18 July 2006, page 32.

11 Mrs Deborah Garratt, Pregnancy Help Australia, Committee Hansard, 22 June 2006, page 41.

12 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 13.

13 Festival of Light Australia, submission 12.

14 Ms Murnane, Department of Health and Ageing, Committee Hansard, 22 June 2006, page 2.

A referral for a termination of pregnancy, a referral for a surgical procedure, is a medical referral and should be treated that way ... You cannot expect counselling services to provide medical referrals.¹⁵

While the Australian Medical Association (AMA) gave evidence that “you need a referral from a medical practitioner to access a clinic specifically set up to perform abortions”¹⁶, the Committee later heard that the AMA was wrong:

When the AMA appeared before you, they said that they understood that you did require a doctor’s referral for abortion. In reality, often a doctor within a clinic can conduct that referral, but that is certainly not what seems to be implied from the evidence that came from the AMA or their understanding of the situation. If you look at the submission of the Bessie Smyth Foundation, they say that it is not the case that a medical referral is required for a termination. I think there is still much in that area that needs to be addressed in terms of what is good practice before we go down the path of saying, ‘We’re going to use these sorts of phrases to prescribe how people delivering services can advertise.’ That is probably the main problem I see with this particular approach.¹⁷

Even supporters of the Bill acknowledged that clients can self-refer for abortion:

You do not actually need a referral to go to a doctor or a family planning clinic or to access abortion. You can self-refer.¹⁸

It was also pointed out that abortion clinics are prominently advertised and easy to access.

The false implication to be drawn from the language of the Bill and accompanying rhetoric is that a lack of a ‘referral’ by a pregnancy counselling service somehow prevents the woman who is being counselled from accessing abortion services if she wishes to do that after being offered all alternative assistance. This is absurd. Abortion services are advertised in newspapers, telephone directories ...¹⁹

FAMILY FIRST strongly believes that abortion referrals are not an integral part of pregnancy counselling. They can even frustrate a counsellor's ability to help women make a fully informed and considered decision.

15 Dr Nicholas Tonti-Filippini, Committee Hansard, 18 July 2006, page 14-15.

16 Dr Haikerwal, Australian Medical Association, Committee Hansard, 22 June 2006, page 34.

17 Ms Jacinta Collins, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 7.

18 Ms Richards, Australian Reproductive Health Alliance, Committee Hansard, 22 June 2006, page 16.

19 ACT Right to Life Association, submission 56, page 11.

Are pregnancy counselling agencies misleading women?

The Bill contains allegations of impropriety against pregnancy counselling agencies that do not refer for abortion.²⁰ But the allegations are made by agencies which are abortion clinics or refer to abortion clinics.²¹

One of the main sources of allegations was Dr Susie Allanson who works for Melbourne abortion provider The Fertility Control Clinic.²²

Many of the allegations in Dr Allanson's submission were reproduced by GetUp – another organisation lobbying for the Bill – on its internet site. In an interesting comment on the issue of transparency, GetUp did not reveal to its readers that the source of the allegations was an abortion clinic – which is surely a relevant issue.²³

Despite concealing the truth from its readers, there were some telling comments on the GetUp blog. One of the comments on the blog was from a woman who decided to test the claims GetUp made about Pregnancy Counselling Australia:

Wednesday, June 07, 2006

I rang the line today with a plausible story, just to see what they would say and to make up my own mind, and felt that the advice was reasonable so on this occasion I cannot support this campaign. Perhaps subsequent advice might have been inappropriate but my half hour conversation with a counsellor was balanced and fair.

Posted by **Deb Lloyd** at 4:46:31 PM

Pregnancy Counselling Australia pointed out “our advertisement in the 24-hour section of the White Pages reads ‘Alternatives to abortion & post-abortion counselling.’ This clearly states that we are concerned about supporting pregnant women and those negatively affected by the abortion decision. Sensis has agreed that our advertisement does comply with their requirements. Our web site, www.pregnancycounselling.com.au also states that we do not refer for abortion. Our Duty of Care does not allow us to refer for any service that can cause harm.”²⁴

Further, Pregnancy Counselling Australia stated:

With every caller, where possible, a counsellor is trained to give our .Duty of Care Statement.

- We are not a medical centre.

20 Eg. Senator Stott Despoja, Senate Hansard, 23 June 2005, page 4 and Natasha Stott Despoja, Telling the truth on pregnancy, *Herald Sun*, 18 July 2006, page 18.

21 For example, submissions 2, 38, 57, 85.

22 Dr Susie Allanson, The Fertility Control Clinic, submission 2.

23 See GetUp Blog <http://www.getup.org.au/blog.asp> accessed 7 July 2006.

24 Pregnancy Counselling Australia, submission 29, page 2.

- We are not a legal service.
- We do not recommend any procedure that may cause physical or psychological harm so we do not refer for abortion.²⁵

Other agencies are also open about their position. Mrs Garratt from Pregnancy Help Australia said:

all our counsellors are trained to say, 'We cannot provide you with a referral for termination services. We can, however, talk to you about your options and give you information about abortion procedures, et cetera, if that is what you want to do.'²⁶

Pregnancy counselling agencies that do not refer for abortion are quite clear about their position. The Bill appears to be more about discouraging women from contacting these agencies simply because they do not do abortion referrals.

Why is the bill so one-directional?

The Bill is consumed by the issue of abortion referrals. But abortion is only one possible outcome from pregnancy counselling.

Dr Nicholas Tonti-Filippini challenged the bias in the Bill:

Surely, if they are non-directive and if they are going to be required to refer for anything, they should be required to refer for the range of possible services, including abortion. I do not think that it is proper that they do refer, but what I am saying is that, if you are going to require them to refer, why only for abortion? Why not require them to refer, if the woman wants it, to pregnancy support services?²⁷

Ms Tankard Reist pointed out that:

The Bill's underlying assumption is that pregnancy support agencies which are not directly connected to the abortion industry require scrutiny – but that abortion providers who provide counselling and organisations that routinely refer to them do not need to be transparent about their positions and activities in the same way.²⁸

The Caroline Chisholm Society gave evidence that rather than a one directional policy towards abortion, many women are unaware of the range of supports available to help them have their babies:

Very often we hear women that are very distressed perhaps months or years afterwards who will say, 'I was not given the right information. I was not

25 Pregnancy Counselling Australia, submission 29, page 3.

26 Mrs Deborah Garratt, Pregnancy Help Australia, Committee Hansard, 22 June 2006, page 41.

27 Dr Nicholas Tonti-Filippini, Committee Hansard, 18 July 2006, page 8.

28 Ms Melinda Tankard Reist, submission 3, page 1.

given a range of supports. I did not know that there was support for me to study and have my baby. I did not know that I could continue in my career.' Those women in our community are very distressed about not being given supports and options to continue their pregnancy.²⁹

... the initial reaction from many women and their partner or friends is: 'You must terminate this pregnancy because this, this and this are a problem.' One of the concerns for me is that if we move down a path which states there is no referral or there is referral then we are not looking at whether or not there is good counselling practice in those different places; we are simply saying, 'This is a service that may or may not be provided.' There are many women, and I meet them all the time, who will not have the opportunity, if this is where we move with this legislation, of exploring all of the options that are open to them and thinking about what that might mean for them.³⁰

FAMILY FIRST believes all women should have the opportunity to find out about all their options when faced with a difficult pregnancy. The emphasis should not be on whether counselling organisations refer for abortion, but on ensuring the highest standards of counselling.

What would be the effect of publishing a statement on non-referral in all advertising?

In order to avoid a fine, those counselling organisations that do not refer for abortion would have to publish a statement on all their advertisements and publications making their position clear.

This would discourage women from contacting them.

A number of organisations highlighted the problems of printing such a statement.

The Caroline Chisholm Society argued that:

We would be very clear that we are not directive within our counselling and yet having to state that openly works in the reverse, if you like. By stating that I am not a non-directive service under your definition then in fact what I am stating is that I am directive, and my social workers would walk out on that basis, and rightly so, because they would be misrepresented by the organisation if I were to sign a form that effectively said they were directive counsellors.³¹

Women's Forum Australia argued that it was not fair to force counselling agencies to publish such a statement as:

29 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 10-11.

30 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 6.

31 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 13.

... the phrase 'does not refer for abortion' is a politically polarised phrase—we all know that. For that to be insisted to be in advertising is politicising what I see as a medical or community service to women in crisis pregnancy. I actually think it increases the misleading nature of advertising rather than decreases it.³²

Dr David van Gend agreed transparency was important and necessary, but said the required declaration would make organisations appear harsh and unapproachable:

We are all happy with the idea of openness and honesty—there is no problem with that—but we do not want ways of being transparent which in fact put off people who otherwise would have talked to the counsellor and benefited from the counsellor. We do not want them to miss out on the benefit that this organisation, for instance, has given for 30 years because they have been put off by an appearance of harshness which does not exist or by an appearance of monomania about whether or not we refer which does not exist. Do you see my point? It is purely out of concern that women get the good things of the service without being put off by a slightly artificial and unfair focus on the statement 'We do not refer for abortion'.³³

Problems in pregnancy counselling

FAMILY FIRST believes the Bill is fundamentally flawed because it does not focus on the quality of pregnancy counselling services. That should be our focus. That should be our number one priority.

Even supporters of the Bill admitted it would not improve the quality of counselling:

I do not think it is the intention of this bill to try to seek the provision of quality services. As I understand it, the intent of the bill is around advertising and making advertising clear.³⁴

Everyone agreed the standard of pregnancy counselling in Australia could be improved.

A supporter of the Bill stated "... I think there are good quality termination services that do offer some counselling and I think there are some absolutely shabby ones that we could all be deeply mortified about ..."³⁵

Others stated their broad concern about the quality of pregnancy counselling:

... anecdotally I have come across problems across the spectrum also in terms of service delivery in this area. My concern is that the approach in

32 Dr Johanna Lynch, Women's Forum Australia, Committee Hansard, 19 July 2006, page 47.

33 Dr David van Gend, Committee Hansard, 19 July 2006, page 51.

34 Dr Taft, Public Health Association of Australia, Committee Hansard, 18 July 2006, page 51.

35 Ms Marie Coleman, National Foundation for Australian Women, Committee Hansard, 22 June 2006, page 19.

this bill does not cover the breadth of those problems. Even some of the submissions that have been supporting the bill imply that they would like to see better professional development and accreditation, and that path taken to try and improve the professionalism of service delivery in this area. That is, indeed, to be commended.³⁶

... we could also cite many examples of poor practice or misinformation at the other extreme. We do not believe that simply insisting that there be a statement around referral for abortion or non-referral for abortion is going to achieve good practice in this area.³⁷

A number of concerns were highlighted, including the need to separate counselling and the abortion clinic³⁸, and that many women have counselling and an abortion on the same day.

FAMILY FIRST was alarmed by evidence that women attending some agencies had same day abortion referrals. Another concern is that many women were not offered decision-making counselling but only the more limited pre-termination counselling:

‘Pregnancy counselling’ as a broad term should also refer to advocacy and referral. Not everyone wants counselling. Many women will use the resources, knowledge, skills and supports that they already have in their lives to make a decision. When they go to a counsellor, it is more about going to a service to assist them in working through the decision and taking action. So, within the counselling strategies that are used, nondirective is one, but so is information provision.³⁹

Dr Allanson conceded that the Fertility Control Clinic provides same day abortions for about half their clients⁴⁰. The Royal Women's Hospital said that although "around 75 to 80 per cent of women can [proceed immediately to an abortion], after they have indicated they are clear in the decision and they do not require further in-depth counselling ...", the only reason they do not have a same day abortion was "purely through the demand on the service ...".⁴¹

The great majority of women attending a Melbourne abortion clinic had an abortion "... because 90 per cent of them have no doubts about their decision then it is at least 90 per cent [of clients who walk in the door and decide to have an abortion]. Out of that other 10 per cent, it might be five out of 10 who would end up having a termination."⁴²

36 Ms Jacinta Collins, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 4.

37 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 4.

38 Dr Johanna Lynch, Women's Forum Australia, Committee Hansard, 19 July 2006, page 52.

39 Ms Hardiman, Royal Women's Hospital, Committee Hansard, 18 July 2006, page 49.

40 Dr Allanson, Fertility Control Clinic, Committee Hansard, 18 July 2006, page 54.

41 Ms Hardiman, Royal Women's Hospital, Committee Hansard, 18 July 2006, page 55.

42 Dr Allanson, Fertility Control Clinic, Committee Hansard, 18 July 2006, page 46.

At the same time Dr Allanson conceded that "I have heard of some women who have talked about a previous abortion where they have felt that they were rushed, where they have felt that they did not get the opportunity for any real counselling."⁴³

FAMILY FIRST was alarmed at evidence that some "providers actually impose a financial *disincentive* to continue the pregnancy. The Pre-term Foundation as well as Australian Birth Control Services charge a counselling fee of \$50 only in the event that the woman chooses *not* to proceed with the termination."⁴⁴

FAMILY FIRST believes this is shocking in the extreme – that women are financially penalised for deciding to have their babies.

Ms Mary D'Elia from the Caroline Chisholm Society pointed out that:

... there are often examples where women talk about having their counselling on the same day that they have a termination. We would argue very strongly that some time between counselling and the procedure, to consider what some of the different options might be, is quite important. Women talk about attending clinics with their partner and feeling that they are quite pressured to continue because they have not had any opportunity for space or time from that time in the counselling room.⁴⁵

Rushed or limited counselling means some women later regret their decision. Ms D'Elia noted that when she has public speaking engagements about the services offered by the Caroline Chisholm Society:

... women come up to me and they say, 'I wish I had known about your service when I was pregnant. I wish I had known that there were supports out there to continue my pregnancy.' I think that is a really sad position for us to be in as a community—that so many women make that statement days, weeks and years after having terminated their pregnancy or perhaps having moved forward with their pregnancy but struggled with it."⁴⁶

To improve counselling - without targeting particular groups for ideological reasons – some witnesses suggested improving accreditation and standards across the sector.

Dr Tonti-Filippini suggested:

That is what I would like to see happen in pregnancy counselling—accurate, full, comprehensive material information, as is required by every other profession in that respect. To me that resolves the problem that is attempted to be addressed by this bill. I think the policy would be better addressing professional standards and accreditation to ensure that

43 Dr Allanson, Fertility Control Clinic, Committee Hansard, 18 July 2006, page 47.

44 Women's Forum Australia, submission 43.

45 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 9.

46 Ms Mary D'Elia, Caroline Chisholm Society, Committee Hansard, 18 July 2006, page 6-7.

pregnancy counselling meets the requirements that are there for every other profession.⁴⁷

Proper standards and accreditation would ensure that women do not feel rushed to make a decision, that counselling services are separate to abortion clinics and that women are aware of practical alternatives to abortion.

Banning pregnancy counselling agencies from the 24 hour health and help call pages

Even supporters of the Bill, such as the Australian Reproductive Health Alliance, said it was unfair that organisations that do not refer for abortion, but which complied with the legislation, would still be banned from listing in particular parts of the White Pages.⁴⁸

Government funding for pregnancy counselling

Some witnesses and Senators claimed the Federal Government provided more funding to Pregnancy Help Australia than to organisations that refer for abortion.

The Australian Reproductive Health Alliance claimed "the only government service funded solely for pregnancy counselling and advice does not currently provide the full range of information about all options."⁴⁹

The Department of Health and Ageing made it clear that Pregnancy Help Australia "... is certainly not the only organisation the Australian government funds [for pregnancy counselling]. The Australian government also funds Family Planning Australia ... and its state and territory subsidiaries through the public health outcome funding agreements to a substantially larger degree overall than this program [for funding Pregnancy Help Australia]."⁵⁰

Conclusion

FAMILY FIRST believes the *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* is an ideological attack on the tremendous work of pregnancy support agencies that do not refer for abortions.

That is outrageous.

47 Dr Nicholas Tonti-Filippini, Committee Hansard, 18 July 2006, page 6.

48 Ms Richards, Australian Reproductive Health Alliance, Committee Hansard, 22 June 2006, page 18.

49 Ms Richards, Australian Reproductive Health Alliance, Committee Hansard, 22 June 2006, page 13.

50 Mr Andrew Stuart, Department of Health and Ageing, Senate Community Affairs Committee Estimates Hansard, 1 June 2006, page 71.

FAMILY FIRST is proudly pro-woman which is why FAMILY FIRST believes the Bill should have focussed on ensuring we have the best possible pregnancy counselling services for Australian women. We should have the highest possible standards of counselling and look at ways to improve existing counselling services.

FAMILY FIRST was horrified to learn that some agencies actually impose a financial penalty on women who decided to have their babies.

Sadly, the Bill does nothing to address the quality of pregnancy counselling.

Nor does the Bill address the poor standard of counselling in agencies that do refer for abortion. And the Bill fails to ensure that abortion referral agencies provide help to women who decide not to have an abortion.

The Bill merely dictates that agencies must refer for abortion if asked after counselling, or be labelled as biased.

FAMILY FIRST strongly believes this Bill should not receive support.

Senator Steve Fielding
Leader of the Family First Party
Family First Senator for Victoria

APPENDIX 1

Submissions received by the Committee

- 1 Australian Reproductive Health Alliance (ACT)
Supplementary information
 - 'Crisis Pregnancy Centres: An Affront to Choice', National Abortion Federation, 2006 provided at hearing 22.6.06
 - Additional information provided following hearing 22.6.06, received 26.6.06 and 27.6.06 (health articles and studies references)
- 2 Allanson, Dr Susie (VIC)
Supplementary information
 - Fertility Control Clinic information relating to a termination provided at hearing 18.6.06
- 3 Tankard Reist, Ms Melinda (ACT)
- 4 Healey, Mr Colin
- 5 Endeavour Forum Inc
Supplementary information
 - Additional information provided following hearing 18.7.06, received 24.7.06, 31.7.06, 11.8.06, 15.8.06 (health articles)
 - Breast Cancer Risks, Prevention booklet, CD and articles on health risks with abortion provided at hearing 18.6.06
- 6 Australian Medical Association (AMA) (ACT)
Supplementary information
 - Opening Statement provided at hearing 22.6.06
 - Response to questions provided after hearing 22.6.06, received 3.8.06
- 7 Burdo, Ms Shakina
- 8 Poland, Mr James (TAS)
- 9 Rose, Mr Conan (NSW)
- 10 Tonti-Filippini, Dr Nicholas (VIC)
- 11 National Foundation for Australian Women (NFAW) (ACT)
Supplementary information
 - Web info on pregnancy support and abortion counselling options provided at hearing 22.6.06
- 12 Festival of Light Australia (SA)
Supplementary information
 - Additional information provided following hearing 20.7.06, received 24.7.06 (studies references), 26.7.06 (What Australians really think about abortion), 2.8.06 (response to questions from hearing) and 4.8.06 (The abortion-breast link:serious flaws in the Melbye study)
 - Today Tonight transcript and CD 11.7.06 and articles on health risks with abortion provided at hearing 20.7.06

- 13 Toner, Ms Anita (VIC)
- 14 Deller, Dr Carol (WA)
- 15 West, Ms Emma (WA)
- 16 Coalition for the Defence of Human Life (WA)
- 17 O'Connor, Ms Mary (VIC)
- 18 Right to Life Australia Inc (VIC)
- 19 Lynch, Dr Johanna (QLD)
- 20 Preston, Ms Robyn (QLD)
- 21 Usher, Ms Maryse (VIC)
- 22 Mackenzie, Ms Janet (VIC)
- 23 Francis, Mr Charles (VIC)
- Supplementary information*
- Article 'Settlement on breast cancer may haunt abortion industry', Catholic Register, January 2002 provided at hearing 18.6.06
 - Additional information provided following hearing 18.7.06, received 8.8.06 (response to questions from hearing)
- 24 Queensland Right to Life (QLD)
- 25 Catholic Archdiocese of Adelaide, Office of Family and Life (SA)
- 26 Pregnancy Counselling Australia (VIC)
- Supplementary information*
- Response to questions provided after hearing 18.7.06, received 1.8.06
 - Additional information provided following hearing 18.7.06, received 4.8.06
 - New Yellow Pages advertisement provided at hearing 18.6.06
- 27 Christian Democratic Party WA (WA)
- 28 Grant, Mr Richard (VIC)
- 29 Lindorff, Ms Katie (VIC)
- 30 Monash Student Association (VIC)
- 31 Dowling, Mr Jim and Rampa, Ms Anne (QLD)
- 32 Mannix, Ms Kate (NSW)
- Supplementary information*
- Additional information provided following hearing 19.07.06, received 7.8.06
- 33 Origins NSW (NSW)
- 34 Sensis Pty Ltd (VIC)
- Supplementary information*
- Yellow Pages Advertising Rules, 2006 provided at hearing 18.6.06
 - Response to questions from hearing 18.7.06, received 10.8.06
- 35 Pregnancy Support Group, Albury Wodonga Inc (VIC)

-
- 36 Sexual Health & Family Planning Australia (NSW)
Supplementary information
- 'Induced abortion does not increase breast cancer risk', WHO Factsheet No.240, June 2000 provided at hearing 19.7.06
- 37 Helpers of God's Precious Infants ()
- 38 Pregnancy Advisory Centre
Central Northern Adelaide Health Service (SA)
Supplementary information
- Paper listing comments/experience of pregnancy counselling services provided at hearing 20.7.06
 - Response to questions provided after hearing 20.7.06, received 9.8.06
- 39 Association for the Legal Right to Abortion (WA) Inc (ALRA) (WA)
- 40 Salt Shakers, Christian Ethics Action Group (VIC)
- 41 Women's Health Queensland Wide Inc (QLD)
- 42 Glen, Ms Helen (QLD)
- 43 Women's Forum Australia (NSW)
Supplementary information
- Women and Abortion: An evidence based review, Selena Ewing, 2005 provided at hearing 19.7.06
- 44 Name withheld
- 45 Dower, Dr Jo (QLD)
- 46 Pregnancy Help Australia (Australian Federation of Pregnancy Support Services Inc) (ACT)
Supplementary information
- Additional information provided following hearing 22.6.06, received 19.7.06 and 31.7.06 (responses to questions provided at and after hearing)
- 47 University of Melbourne Student Union (VIC)
- 48 National Union of Students (VIC)
- 49 Public Health Association of Australia Inc (ACT)
Supplementary information
- Abortion in Australia: Public Health Perspectives, 3rd edition 2005, PHAA provided at hearing 18.6.06
- 50 Young parents Program (QLD)
- 51 World Federation of Doctors who Respect Human Life – Queensland Branch (QLD)
Supplementary information
- Pregnancy counselling brochures provided at hearing 19.7.06
 - Additional information provided following hearing 19.7.06, received 25.7.06
- 52 Logan Women's Health and Wellbeing Centre Inc (QLD)
- 53 Ransom, Ms Elizabeth (VIC)

54 National Union of Students – Victoria Branch (VIC)

55 La Trobe Women's Office (VIC)

56 ACT Right to Life Association (ACT)

Supplementary information

- Additional information received following hearing 19.7.06, received 24.7.06 (1995 NHMRC consultation draft and submissions)

57 The Royal Women's Hospital Melbourne (VIC)

58 Do Not Be Quiet (VIC)

59 Newcastle University Student Association (NSW)

60 Joseph, Ms Rita ()

61 Wainer, Dr Jo (VIC)

62 Bioethics Committee, NSW Right to Life Association (NSW)

63 Caroline Chishom Society (VIC)

64 Smith, Ms Christine

65 Pregnancy Problem House (WA)

66 Edwards, Ms Zoe and Hadgraft, Ms Nyssa (VIC)

67 Hammet, M A (VIC)

68 Catholic Women's League Australia Inc (NSW)

69 Preston, Mrs Liz (QLD)

70 Labor Students (QLD)

71 Phillips, Mr Peter (VIC)

72 Women's Services Network of SA (SA)

73 Catholic Archdiocese of Sydney, Life Office (NSW)

74 Coalition for Women's Right to Choose SA (SA)

Supplementary information

- False and misleading health information provided by federally funded pregnancy resource centres, US HoR committee paper, July 2006 provided at hearing 20.7.06
- Response to questions following hearing, 20.8.06 dated 10.8.06

75 Children, Youth and Women's Health Service (SA)

Supplementary information

- 'Gardai probe clinic's videos on abortion', The Sunday Times, 16.7.06 provided at hearing 20.7.06
- Response to questions provided after hearing 20.7.06, received 4.8.06

76 Australian Consumers Association (NSW)

77 Catholic Social Services Australia (ACT)

Supplementary information

- Code of Ethics, February 2006 provided at hearing 22.6.06
- Response to questions provided after hearing 22.6.06, received 3.8.06

78 Open Doors Counselling and Educational Services Inc (VIC)

79 Knobel, Ms C Maree (VIC)

-
- 80 Charles, Mr Owen (VIC)
- 81 Reproductive Choice Australia (VIC)
Supplementary information
- Additional information received following hearing 18.7.06, received 20.7.06 (list of member services)
 - 'Survey results: US pregnancy care centres', Family Research Council, 14.7.06 and 2005 Care Net Client Marketing Research, Liz Entsminger provided at hearing 18.6.06
- 82 GetUp.org.au (NSW)
Supplementary information
- Response to questions following hearing 18.7.06, received 10.8.06
- 83 Catholic Health Australia (ACT)
- 84 Bessie Smyth Foundation (NSW)
Supplementary information
- Response to questions provided after hearing 19.7.06, received 9.8.06
- 85 Children by Choice (QLD)
- 86 YWCA Australia (VIC)
- 87 Name withheld
- 88 Glasgow, Mr Ken (NT)
- 89 Birthline Pregnancy Support Inc (SA)
- 90 Gartlan, Mrs Pat (TAS)
- 91 Brind, Professor Joel (USA)
- 92 Vanrenen, Dr B S (VIC)
- 93 den-Bakker, Mrs Denise
- 94 Clark, Mr Jonathan (USA)

Additional information

Elliott, Mr Cleaver, Senate Clerk Assistant (Procedure) – Advices dated 10 and 14 August 2006

Parliamentary Library - Client Memorandum dated 16 August 2006.

Senator Guy Barnett

- 'One mum's nightmare won't go away', Canberra Times, dated 14.11.04 (provided at hearing 19.7.06)

Senator Natasha Stott Despoja:

- Code of Ethics 1999, Australian Association of Social Workers
- Code of Ethical Standards for Catholic Health and Aged Care Services in Australia 2001, Catholic Health Australia,
- Correspondence with Sensis re listings in White Pages, dated 18 and 27 August 2004 (provided at hearing 18.7.06)
- Drafting advice, received 9 August 2006

APPENDIX 2

Public Hearing

Thursday, 22 June 2006

Parliament House, Canberra

Committee Members in attendance

Senator Humphries (Chair)

Senator Moore

Senator Adams

Senator Carol Brown

Senator Fielding

Senator Nettle

Senator Polley

Senator Stott Despoja

Senator Webber

Witnesses

Department of Health and Ageing

Ms Mary Murnane, Deputy Secretary

Mr Richard Eccles, FAS Primary Care Division

Ms Wynne Hannon, General Counsel

Mr Andrew Stuart, FAS Population Health Division

Ms Carolyn Smith, Asst Sec Targeted Prevention Programs Branch

Australian Reproductive Health Alliance

Ms Christina Richards, Chief Executive Officer

National Foundation for Australian Women

Ms Marie Coleman, Convenor, NFAW Social Policy Committee

Catholic Social Services Australia

Mr Frank Quinlan, Executive Director

Mrs Margaret Roots, Director, Family Services and Network Support

Australian Medical Association

Dr Mukesh Haikerwal, President

Dr Andrew Pesce, Federal Councillor

Dr Margaret Chirgwin, Director, Public Health and Ethics

Pregnancy Help Australia (Australian Federation of Pregnancy Support Services Inc)

Ms Anne Foster, Executive Officer

Ms Debbie Garrett, Director Counselling Services

Tuesday, 18 July 2006

St James Court Conference Centre, West Melbourne

Committee Members in attendance

Senator Humphries (Chair)

Senator Moore

Senator Adams

Senator Allison

Senator Barnett

Senator Nettle

Senator Polley

Senator Stott Despoja

Senator Webber

Witnesses

Endeavour Forum

Mrs Babette Francis

Mr Charles Francis QC

Dr Nicholas Tonti-Filippini, consultant ethicist

Ms Marcia Riordan, Respect Life Office, Catholic Archdiocese of Melbourne

Caroline Chisholm Society

Ms Mary D'Elia, Chief Executive Officer

Ms Jacinta Collins, Board Member

Reproductive Choice Australia

Dr Leslie Cannold

Ms Magda Schaler-Haynes

National Union of Students

Ms Sarah Wickham, National Women's Officer

Do Not Be Quiet

Dr Aron Igai, Contributor

Sensis Pty Ltd

Mr Tom Hurst, Senior Policy Manager

Mr Marcus Crachi, Lawyer

Mr Stephen Ronchi, Manager External Affairs

The Royal Women's Hospital, Melbourne

Professor Jeremy Oats, Medical Director, Maternity and Women's Services

Ms Annarella Hardiman, Manager Pregnancy Advisory Service

Dr Susie Allanson, clinical psychologist, Fertility Control Clinic

Public Health Association of Australia Inc

Dr Angela Taft

Right to Life Australia

Mrs Margaret Tighe, President

Pregnancy Counselling Australia

Ms Helen Dennis, Secretary

Ms Sheila Wells, Coordinator

Wednesday, 19 July 2006

Parliament House, Sydney

Committee Members in attendance

Senator Humphries (Chair)

Senator Moore

Senator Adams

Senator Barnett

Senator Nettle

Senator Polley

Senator Stott Despoja

Senator Webber

Witnesses

NSW Right to Life Association, Bioethics Committee

Mr Michael McAuley, Chairman, Council of Bioethics Committee

Dr Simon McCaffery, President

ACT Right to Life Association

Ms Kath Woolf, President

Catholic Archdiocese of Sydney, Life Office

Dr Brigid Vout, Executive Officer, Life Office

Catholic Women's League Australia Inc

Ms Margo Nancarrow, National Bioethics Working Party Convenor

Sexual Health and Family Planning Australia

Dr Sally Cockburn, Board Member

Dr Gwendolyn Gray, Board Member

Children by Choice

Ms Cait Calcutt, Coordinator

World Federation of Doctors Who Respect Human Life, Queensland Branch

Dr David van Gend, Secretary

Women's Forum Australia

Dr Johanna Lynch, Board Member

Ms Melinda Tankard Reist**GetUp.org.au**

Ms Lilian McCombs, Political Campaigner

Mr Nick Moraitis, Online Director

Ms Kate Mannix**Bessie Smyth Foundation**

Ms Margaret Kirkby, Coordinator

Thursday, 20 July 2006

Parliament House, Adelaide

Committee Members in attendance

Senator Humphries (Chair)

Senator Moore

Senator Nettle

Senator Stott Despoja

Senator Webber

Witnesses**Festival of Light Australia**

Mr David d'Lima, National Field Officer

Mrs Roslyn Phillips, National Research Officer

The Catholic Archdiocese of Adelaide, Office of Family and Life

Mr Paul Russell, Senior Officer

Coalition for Women's Right to Choose

Ms Marilyn Rolls, Committee Member

Dr Margie Ripper

Women's Services Network of SA

Ms Ann-Marie Hayes, Co Chair

Children, Youth and Women's Health Service, Government of South Australia

Hon Carolyn Pickles, Chair, Board of Directors

Ms Rima Staugas, General Manager Health Services

Pregnancy Advisory Centre, Central Northern Adelaide Health Service

Ms Brigid Coombe, Director