

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).

