

Submission on the

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

to the

**Senate Community Affairs Legislation Committee**

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## **Does the Commonwealth Parliament have power to pass this Bill?**

What is the head of power? Section 51 of the Constitution is silent on the provision and advertising of abortion counselling.

Section 52(xx), the corporations power? Few abortion support and counselling agencies, if any, are corporations.

Section 51(v), covering electronic advertising? Little advertising of these agencies is by electronic media.

Section 51(xxxviii), matters referred to the Commonwealth by one or more States, as hinted in Section 3 of the present Bill? We are not aware that any relevant matters have been referred, or of any proposals to do so.

*In the absence of any clear Commonwealth power under the Constitution, it would be irregular for the Senate to proceed with this Bill.*

## **‘Misleading advertising’ under the Trade Practices Act 1974?**

Promoters of the present Bill complain that some pregnancy support counsellors do not advertise the fact that they don’t refer women to abortionists, and that this constitutes ‘misleading advertising’, which would be illegal under the *Trade Practices Act 1974* if they were engaged in trade or commerce.

Does the *Trade Practices Act 1974* require business firms to advertise that there are some goods or services which they do not provide? Of course not. McDonalds are not required by law to tell prospective customers that their menu does not extend to cognac or caviar, sushi or sheep’s eyes.

*To allege ‘misleading advertising’ in promoting this Bill is itself misleading.*

## **‘Non-directive counselling’: is it always desirable?**

Certainly not. The Samaritans, and other groups offering counsel to people who are suicidal, make no attempt to be ‘objective’, ‘non-directive’, when the options are life or death. If they did, we would not value their work as we do, and we would not give them any money, either our own or the taxpayers’.

Suicide counsellors know from experience that the period during which a person is suicidal is often very brief, that the decision is often balanced precariously, and that if they can help him or her through the crisis, the danger may not recur. Their role as counsellors is to help people to avoid making a decision which is inevitably a destructive decision, and to which there are always alternatives.

The experience of some pregnancy counsellors leads them to see their role similarly: as helping women who, like suicidal people, are often in an emotionally fragile, ambivalent, or desperate state of mind, to avoid making a decision which is inevitably a destructive decision, and to which there are always alternatives.

They also see their role as including offers of practical material help to women who need

accommodation, contact with other women, baby equipment, money, or whatever, to complete their pregnancy.

*These are the pregnancy support counsellors that the promoters of the present Bill are seeking to exclude from equal access to advertising in the phone book, and to public funding.*

### **‘Non-directive counselling’: is it even possible?**

‘Non-directive counselling’ was promoted by Carl Rogers and others in the US three-quarters of a century ago, and enjoyed a certain vogue over subsequent decades. More recently it has come under increasing question in the professional literature whether counsellors can ever be genuinely non-directive in practice. Counsellors, like everyone else, have their own opinions and preferences, which they cannot help conveying to their clients in the counselling situation, by tone of voice, gesture, facial expression, and other non-verbal means, however hard they try to avoid making explicit verbal recommendations.

*In a matter of life and death, such as suicide or abortion, it is even more obvious that non-directive counselling is not possible.*

### **How does the present Bill define ‘non-directive counselling’?**

Section 3 of the Bill defines a non-directive counselling service as one which

‘offers counselling, information services, referrals and support on all three pregnancy options.’

The defining ‘option’ is the last-mentioned, abortion: ‘non-directive’ agencies are agencies which refer for abortion – presumably those run by the Family Planning Associations are examples of what the promoters of this Bill have in mind.

*In this Bill, ‘non-directive’ does not mean ‘non-directive’. It simply means ‘referring for abortion’.*

### **Is Family Planning ‘non-directive’ between ‘all three pregnancy options’?**

This is unlikely. For instance, the annual reports of Family Planning WA, until they stopped providing this information, recorded year after year that around 75% of the women they counselled were referred for abortion.

*What does this suggest about the direction of their counselling?*

The Family Planning associations have a long-standing commitment to presenting abortion as a safe procedure, and to dismissing or minimising any negative sequelae of abortion.

*Is it conceivable that this commitment would not be reflected in any ‘information services’ that they provide when counselling pregnant women?*

The Family Planning associations have no large bodies of members and supporters.

*Accordingly, they are simply not set up to support women in completing their pregnancies by offering them whatever practical, material, person-to-person, and where necessary long-term support they need.*

Providing such support has always been part of the role of the 'pro-life' pregnancy counselling agencies. They are the only agencies able to provide it.

### **Would it be helpful to women to erect a barrier between two groups of agencies?**

No. If the present Bill were to pass, women would in effect be forced to classify themselves as 'pro-choice' or 'pro-life' before they approached a counselling agency. But in practice things are not so simple. Many women are in an ambivalent state of mind – that is why they seek counselling. Women who would call themselves pro-life in general may find themselves under pressure to terminate their own pregnancy. Women who would call themselves pro-choice in general may not feel quite the same when it is their own pregnancy that is in question. Good counselling will help women to work through these ambivalences.

*To require a woman to classify herself into one of two boxes before she can seek counselling would be contrary to good counselling practice.*

### **Conclusion**

The present Bill may not be within the powers of the Commonwealth.

It relies on a reading of the *Trade Practices Act 1974* which is simply mistaken.

It requires the Senate to accept that a large group of dedicated pregnancy support counsellors are engaged in deceiving the public, a charge which is unsustainable, unsustained, and offensive.

It seeks to shut down every pregnancy counselling agency which does not refer women to abortionists, by denying them listing in the Help section of the phone book, and by excluding them from public funding, so that women will not even know that these agencies exist.

It seeks to restrict pregnant women to counselling agencies which are set up to refer for abortion, but are committed to dismissing or minimising possible adverse sequelae of abortion, and have no means of providing a woman with practical material support that she may need if she is to complete her pregnancy.

It would do nothing to reduce the current abortion rate which most Australians, 'pro-choice' as well as 'pro-life', believe is too high.

It is a mean-spirited, sour, socially divisive Bill. The Senate should give no further time to it.