ACT Right to Life Association
Member of the Australian Federation of Right to Life Associations

SUBMISSION TO

Senate Community Affairs Legislation Committee

Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005

Kath Woolf
President

16 June 2006

PO Box 333 Civic Square ACT 2608
Telephone 02 6253 3100 Facsimile 02 6253 0362
Email: actrtla@actrtla.org.au Internet: www.actrtla.org.au ABN: 85 377 279 965

General Comments on the Bill

This Bill is a transparent attempt to severely disadvantage those pregnancy counselling services which assist women with real alternatives to abortion by way of material and emotional support where women are having problems with pregnancy.

The Bill's provisions serve:

- to defame and denigrate those pregnancy support services by labelling them with accusations of providing misinformation;
- to define in a most misleading manner the terms 'false provider', 'non-directive' and 'refer';
- to oblige pregnancy counselling services to direct women to abortion providers in contradiction of their ethical convictions;
- to punish by ludicrously large fines any pregnancy counselling service (or individual) which advertises honestly those services which they offer but declines to characterise those services by referring explicitly to their position on abortion;
- to proscribe the Commonwealth from funding the States to support any services which are not willing to assist the abortion industry by directing women to abortion providers;
- to restrict by severe pecuniary penalties all forms of the media from publishing material concerning these imputed counselling services unless they meet the dictates of those who favour the promotion of abortion, a form of strict censorship completely at odds with an open and free society.

The Association urges the Committee to recommend to the Parliament that it reject the Bill in its entirety.

Background to the attack on pro-life pregnancy counselling services

One of the linguistic 'king-hits' used by pro-abortion counselling services, abortion providers and pro-abortion lobby groups is to dub those pregnancy support services which do not 'refer' for abortion as 'false providers'. It is nothing short of a scandal that this insult is still alive, resurrected by the same type of persons who invented it over a decade ago**. It is critical to understand the birth of this calumny.**

The Bill takes its approach, especially in respect of the pejorative language used to defame pregnancy counselling services, from a Draft Report prepared in 1995 by a panel of women appointed by the National Health and Medical Research Council (NHMRC) to prepare a paper on abortion provision in Australia. It was titled *Services for the Termination of Pregnancy in Australia: A review. Draft consultation document 1995* (the Draft).

The Draft came down resoundingly in favour of policies and actions which would promote the acceptance of abortion as a "normal" medical procedure of no particular significance. To this end the Draft urged greater provision of abortion facilities, extension of counselling services for abortion, universal training in abortion techniques in medical and nursing schools, and the repeal of all abortion laws.

This was hardly surprising, as the Panel of 'experts' consisted of seven women all involved in advocacy of abortion on demand and/or in provision of abortion services.

Three of those women**,** Barbara Buttfield, Lyndall Ryan, and Margie Ripper had earlier that year launched a piece of pro-abortion propaganda called "We Women Decide" in which a handful of women volunteered to tell a panel of abortion activists about their abortion experiences and proclaimed that these women spoke for women generally in Australia. Abortionist Dr Peter Bayliss rubbished the report as *"Scientifically valueless" having merely canvassed "a relatively few obliging women, like those who speak to Oprah*".

The same three women were on the Management Committee of the Adelaide Pregnancy Advisory Centre, an abortion provider. A fourth member of the NHMRC Panel, A Watkins, was also involved in the management of the Centre. Another**,** Jo

Wainer, was the co-director of a Melbourne abortion clinic; together with Ryan and Ripper they addressed the 1993 *Abortion Rights Network* of Australia demanding that all abortion laws be repealed and that a "foetus must always be viewed as part of a woman's body" (contrary to all biological and physiological knowledge).

Another, Dr Weisberg, was Medical Director of the Family Planning Association of NSW. And to top it all, the Chair of this so-called independent, expert Panel was Judith Dwyer, a former CEO of the Family Planning Association of South Australia. Family Planning Associations champion abortion as a method of birth control and, in the Australian Capital Territory, has run an abortion clinic

The Panel's Draft report demonstrated:

- impatience with any moral or legal parameters regulating abortion counselling with recommendations that abortion be treated as a 'normal' procedure which should be compulsorily taught in medical and nursing schools;
- promotion of abortion services through every community organisation, including dissatisfaction that Aboriginal communities had a lower abortion rate than Australian overall rates; and, significantly,
- **an unprovoked attack on counselling services which did not refer for abortion**

The Panel was one of like-minded, pro-abortion women operating under the auspices of the NHMRC and thus were able to obtain the aegis of this government body for their partisan Draft. However the endorsement of the NHMRC was short-lived. The Draft was published for community discussion and attracted widespread community objection to its bias. Nevertheless, the Panel proceeded to publish its successor, *An Information Paper on Termination of Pregnancy in Australia (1997)* (the Paper), but without the endorsement of the NHMRC.

Indeed, at its 126th Session in 1998 the NHMRC noted that the Paper had been withdrawn from sale in early 1998 after the factual accuracy of the document was challenged. At its meeting on 30 August 2000, NHMRC looked at the possibility of reviving the project as "the Executive was not satisfied that the information paper addressed the terms of reference originally set nor that the paper presented a

dispassionate and national discourse on the subject. The information paper continues to contain some inaccuracies, for example in reporting state legislative provisions".

Language – labelling and deception

'False providers'

Language coined in this discredited Draft included the labelling of any pregnancy counselling which did not refer women to abortion providers as 'false providers". It is still common for pro-abortion advocates to reference this defamatory, unsubstantiated charge to the NHMRC. This is at best disingenuous considering the withdrawal of the NHMRC's endorsement.

Nonetheless, the thrust of the Draft and its Paper successor continues to be cited in the canon of readings of pro-abortion advocates eg the Association for the Legal Right to Abortion (ALRA) (WA) Inc. and in the main media, for example:

> *Back in 1995, the National Health and Medical Research Council coined the term "false provider" to describe services that publicly claim to provide all-options, non-sectarian counselling, yet refuse to discuss abortion as a choice or refer callers to abortion clinics.*
>
> **Adele Horin**, *Sydney Morning Herald*, February 25, 2006

As explained above, 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.

The inconsistency of approach in the Draft (and its successor Paper) is demonstrated by its uncritical praise for services like Children by Choice, a Queensland group which had facilitated nearly 10,000 abortions to that time. By contrast 'false providers' were charged with providing wrong information and even with the heinous activity of dissuading some women from using abortion services.

While the Draft stressed that "adequate information is essential for informed consent"**,** the Panel accepted as "best practice" hiding ultrasound images of the foetus from the mother:

> *ultrasound (to assess gestational length) should be conducted with the screen not visible to the patient, in a manner which is sensitive to the possible emotional power of the images produced* [at p 32 of the Draft]

Allowing the image to be visible to the patient when the gestational age of the foetus is being ascertained through ultrasound imaging is deemed *"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.

In pursuit of deliberately promoted ignorance, pro-abortion counselling services still continue to describe the fetus/unborn baby as "products of conception", "contents of the uterus", "blob of tissue". 'Information' according to many abortion advocates means essentially the provision of details of abortion procedures. Most extraordinarily, the Draft provides diagrams showed "relevant anatomical sites" for performing abortion on a pregnant uterus in which no baby is sketched – strange, a pregnant uterus with no baby! The nature of the child to be aborted is not deemed a consideration.

It is therefore ironic that pro-life support groups were, and continue to be, accused of using delaying tactics and defamed as "false providers of information" and "unprofessional".

The current Bill shows the same approach as that displayed in these discredited publications. Senator Stott-Despoja gives the impression that pro-abortion counselling services provide adequate information simply by informing their clients that their options include abortion, adoption or rearing the child. This is not sufficient to enable women to make a fully-informed decision. That obligation is breached by failure to inform women of:

- the risk of physical consequences of abortion,

- the adverse psychological sequelae which characterise post-abortion syndrome
- the developmental stage of the child whose fate is being decided.

The Senator' Bill is concerned merely with what is said or not said in the advertisement of pregnancy counselling services.

If a woman with problems related to her pregnancy should think that "pregnancy support' or 'pregnancy counselling' in the description/advertisement of a counselling service necessarily implies facilitation of abortion, then she is mistaken in that assumption and will soon find that this is not the case when she makes contact. The Bill's provisions reflect the mistaken assumption that the obligation to provide the woman with information stops with a few words in an advertisement. The substantial obligation to give women comprehensive information to assist her in her decision is not addressed in this Bill. If it were, abortion counselling services would be found most wanting.

It is instructive that the first regime designed to give women essential information and time to reflect on it was established by the ACT's *Health Regulation (Maternal Health Information) Act 1998.* That Act provided that a person should not perform an abortion unless a woman had been provided with information in accordance with s 8:

Section 8 - *Health Regulation (Maternal Health Information) Act 1998* (ACT)

What information must be provided

(1) Where it is proposed to perform an abortion a medical practitioner shall—

(a) properly, appropriately and adequately provide the woman with advice about—

(i) the medical risks of termination of pregnancy and of carrying a pregnancy to term; and
(ii) any particular medical risks specific to the woman concerned of termination of pregnancy and of carrying a pregnancy to term; and
(iii) any particular medical risks associated with the type of abortion procedure proposed to be used; and
(iv) the probable gestational age of the foetus at the time the abortion will be performed; and

(b) offer the woman the opportunity of referral to appropriate and adequate counselling—

(i) about her decision to terminate the pregnancy or to carry the pregnancy to term; and

(ii) after termination of pregnancy or during and after carrying the pregnancy to term; and

(c) provide the woman with any information approved under section 14 (2); and

(d) provide the woman with any information approved under section 14 (4); and

(e) provide the woman with any information approved under section 14 (5).

(2) No charge shall be made for the materials provided under subsection (1) (c), (1) (d) or (1) (e).

(3) Complying with this section does not in itself discharge any other contractual, statutory or other legal obligation of a medical practitioner or other person to provide information to a patient.

Section 14 - *Health Regulation (Maternal Health Information) Act 1998*

Approval of information pamphlets

(1) For this section, the Minister shall appoint an advisory panel with 7 members, consisting of—

(a) a specialist in obstetrics nominated by the ACT Health and Community Care Services Board; and

(b) a specialist in neonatal medicine nominated by the ACT Health and Community Care Services Board; and

(c) a specialist in obstetrics nominated by the Calvary Hospital Board of Management; and

(d) a specialist in neonatal medicine nominated by the Calvary Hospital Board of Management; and

(e) a specialist in psychiatry nominated by the Territory branch of the relevant specialist college or institution; and

(f) a registered nurse, currently specialising in women's health issues, nominated by the Calvary Hospital Board of Management; and

(g) a registered nurse, currently specialising in neonatal medicine, nominated by the ACT Health and Community Care Services Board.

(2) The advisory panel appointed under subsection (1) may, for section 8 (1) (c), approve materials containing information on the medical risks of termination of pregnancy and of carrying a pregnancy to term.

(3) An advisory panel appointed under subsection (1) shall comprise at least 3 women among its membership.

(4) The advisory panel appointed under subsection (1) may, for section 8 (1) (d), approve materials which present pictures or drawings and descriptions of the anatomical and physiological characteristics of a foetus at regular intervals.

(5) The Minister may, for section 8 (1) (e), approve materials containing information on—

(a) agencies operating in the ACT which provide assistance to women through pregnancy; and

(b) agencies operating in the ACT that make arrangements for the adoption of children; and

(c) agencies operating in the ACT that provide assistance with family planning.

The Act also required a 'cooling-off' period of three days between approach to an abortion provider and performance of the procedure, as decisions taken under pressure are notorious for being regretted later when the pressure is removed.

It should be noted that on the same day in August 2002 on which all provisions relating to the offence of abortion in the ACT were removed from the *Crimes Act 1901* (ACT), the *Health Regulation (Maternal Health Information) Act 1998* (ACT) also was repealed. Lobbying for its repeal were the pro-abortion groups in the ACT. It is hypocritical, therefore, of the pro-abortion lobby to overthrow mandatory provision of such independent, professional advice while professing concern that women seeking help from pregnancy counselling services might not be directed to the nearest abortion provider.

Opponents of provision to a woman of a legislatively mandated minimum of information and a mandatory cooling-off period for her to consider this input are indeed the 'false providers'. Section 8(a)(4) of the *Health Regulation (Maternal Health Information) Act 1998* (ACT) was apparently particularly threatening to pro-abortion advocacy and abortion counselling, that is, information about the baby's development, whether in words, diagram or ultrasound image.

The Association notes that the Commonwealth is presently exploring means to cut the abortion rate. Therefore, rather than supporting the restrictions on Commonwealth funding of pregnancy counselling services which the Bill seeks to impose, the Committee should recommend that funding be conditional on the provision of mandatory information such as was contained in the above repealed ACT enactment**.**

<u>'Non-directive' counselling and decision –making</u>

The Draft and the Paper present very peculiar versions of what constitutes counselling. This version of counselling insists that the woman's decision is to be supported in order to preserve her 'autonomy'. No opinion adverse to abortion is to be expressed in any way for fear of subverting or influencing the decision.

The Paper referred to above stated that "it is desirable to ensure that practice by health care providers is based on respect for the woman's autonomy to make decisions, and

is designed to support the woman's decision, rather than to influence or subvert her decision-making process"[at p 34]

If a woman were so sure of her decision to abort one must wonder why she would approach a counselling service at all. On this theory counselling exists only to affirm a decision already made by a client. This is a mistaken view of a person's 'autonomy'. In taking many important decisions affecting one's self, family and life situation, a person would normally seek information which would assist in making a decision, even requesting advice and insight into other ways of perceiving a problem and evaluating possible solutions. Only in relation to the very critical decision as to whether to abort a developing child is information represented by pro-abortion counsellors as merely a threat to the woman's 'autonomy'.

It is patronising to suggest that women cannot cope with information and advice and need some kind of "absolute autonomy not granted to other members of society" which takes no account of the rights of others (only 5% of women of women having an abortion said they had a medical reason). To discount the relevance of the substance and significance of a decision is unrealistic and does the woman no favour.

Naomi Wolf, noted feminist author and advocate of the "pro-choice" position on abortion, has taken issue with this very approach; she once said that she found the language of "choice" and "decision" limiting in promoting understanding of what is at stake:

> Pro-choice advocates tend to cast an abortion as 'an intensely personal decision'. To which we say, no: one's choice of carpet is an intensely personal decision. One's struggle with a life-and-death issue must be understood as a matter of personal conscience. There is a world of difference between the two, and it's the difference a moral frame makes. *(The Australian, 7-8 October 1995)*

It is this narrow and indefensible interpretation of the phrase 'non-directive' which the Bill wishes not only to promote but to afford discriminatory legal protection. Counselling which opens up options for the management of the pregnancy other than by abortion is surely an empowerment of the woman as it widens her range of choices. **Providing this information does not direct the woman to choose any particular option**. Pregnancy counselling services with objection to abortion are perfectly willing to provide information about abortion: the methods used;

documented studies of its physical and psychological sequelae and to make the offer of counselling for post-abortion syndrome.

‘Refer’

The financial penalties for those counselling services that ‘confess’ that they do not ‘refer for abortion’ reveals a radical misunderstanding of the word ‘refer’ in this context. Counselling services do not refer in any manner analogous to medical referral such as is usually needed for consultation with a medical specialist. The false implication to be drawn from the language of the Bill and accompanying rhetoric is that a lack of a ‘referral’ by a pregnancy counselling service somehow prevents the woman who is being counselled from accessing abortion services if she wishes to do that after being offered all alternative assistance. This is absurd. Abortion services are advertised in newspapers**,** telephone directories (hard copy and on-line). To impose an obligation under severe financial penalty on a service or individual to facilitate the access is morally repugnant.

One might ask why pregnancy support services are being targeted in this way when other services unashamedly proclaim their moral and ethical foundations. For example, no one would expect Lifeline to provide to a person, still insistent after counselling on proceeding with suicide, with the website address of Exit or one promoting Dr Nitschke’s solutions for self-help suicide. *Nor would one require Lifeline to include in their advertisements or in the inclusions in Help Pages a disclaimer to the effect that they do not refer to groups assisting with suicide*.

Abortion law in Australia

The Bill proposes severe penalties for failure to state the obvious; its provisions indicate that it was conceived not only in a moral vacuum but also with a total disregard for the law. The obligation implied in the Bill is that one should facilitate access to abortion, or state publicly that one does not intend to do so, as if that were a ‘right’ of everyone who might seek abortion. This presumption misrepresents the

legal position and rest on the misleading, frequent assertions by pro-abortion advocates and media supporters that abortion is unquestionably legal in Australia. This is not the case: for example the Crimes Act 1900 (NSW) provides:

> Section 83 – Administering drugs etc to woman with intent
>
> Whosoever, unlawfully administers to, or causes to be taken by, any woman, whether with child or not, any drug or noxious thing, or unlawfully used any instrument or other means, with intent in any such case to procure her miscarriage, shall be liable to imprisonment for ten years.

Virtually identical provisions are included in the criminal legislation of the other States and the Northern Territory: s 224, 225 and 226 (QLD); s 81 and 82 (SA); s 134 and 135 (TAS); ss 65 and 66 (VIC); ss 172 and 173 (NT). This is to say nothing of the Commonwealth's obligations as party to the United Nations *Convention on the Rights of the Child*, the Preamble to which declares that a child needs protection before, as well as after birth.

Given that pregnancy support sevices have been largely privately funded, the organisations have been connected with charities, including church charities. Their policy has been to provide professional counselling support to pregnant women, backed by the ability to offer services, whether financial, social or emotional, needed by women who may be pressured by a partner or family to terminate, or who may become mothers in difficult circumstances. The philosophy underlying these services is essentially pro-woman. These services also support women who have chosen to have an abortion and remain in need of support, especially those experiencing grief over the loss of the child. Why are they under attack by Senator Stott-Despoja?

Penalties

The penalties proposed in the Bill are ludicrous if they were not indicative of a threatening approach to the exercise of free association and of free expression by individuals and the media.

Senator Despoja's Bill seeks to subvert this network of service to the community for ideological and discriminatory reasons. Particularly vicious is the level of penalties to be imposed for not conforming to the dictatorial demands of a particular moral stance on the matter of abortion.

Clauses 5 and **6** of the Bill create offences which attract the following penalties:

> Penalty: For a **corporation** a maximum of **10,000 penalty units**.*
> For a **person** a maximum of **2,000 penalty units**.

> *The *Crimes Act 1914* defines "penalty unit" in s.4AA(1). The current value is $110. The maximum penalty for a corporation would therefore be $1,100,000. And the maximum penalty for a person would be $220,000.

Therefore the proposed penalty for a person who offends a provision of Stott-Despoja's Bill is equivalent to 10 times the available penalties for an individual's commission of an offence under Corporations Law [*see* **Schedule 3** of the *Corporations Act 2001 (Cth)* where the highest penalty is imprisonment for five years or 200 penalty units].

This penalty is also equivalent to the penalties for the very serious offences under the *Criminal Code Act 1995* (Cth), for example:

- aggravated cases of people smuggling (a penalty of 20 years imprisonment and/or a fine 2,000 penalty units;
- various drugs offences (eg selling drugs) have a penalty of 10 years imprisonment and/or 2,000 penalty units (see s. 302.4 of the *Criminal Code Act 1995)*.

Conclusion

The Bill should be rejected outright for its blatantly biased and discriminatory approach to the regulation of pregnancy counselling services. It attempts to control the manner in which support is offered to pregnant women by those services and individuals who do not favour abortion as a solution to problems women may experience with their pregnancy. Consequently it is an attempt to favour and promote those services which operate in a moral and legal vacuum. The proposed severe penalties for breaches of its provisions are nothing more than censorship of a deplorable kind which has no place in a free, democratic society.

Note: documents referred to in this submission are sourced from Papers relating to *Termination of Pregnancy Working Party*, National Health and Medical Research Council, obtained under the *Freedom of Information Act* on 9 March 2001.