

REVISED SUBMISSION

TRANSPARENT ADVERTISING AND NOTIFICATION OF PREGNANCY COUNSELLING SERVICES BILL 2005

1. The Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005 is substantially flawed.

FAILS TO TAKE INTO ACCOUNT REALITY OF PREGNANCY COUNSELLING

2. One reason the Bill is flawed is that it does not take into account the reality of pregnancy counselling.
3. If one goes to the Yellow Pages, one finds a number of a number of organisations listed under the heading 'Pregnancy Counselling and Related Services'.
4. One also sees a substantial number of abortion providers listed under the heading 'Pregnancy Termination Services'.
5. Most of the organisations listed under the heading 'Pregnancy Counselling and Related Services' are charitable organisations which provide counselling and material assistance for pregnant women.
6. The counselling which is provided is substantially related to support for mothers in the course of pregnancy.

DECISION COUNSELLING

7. Only rarely is the counselling, 'decision counselling' as to whether or not to proceed with an abortion.
8. Most 'decision counselling' is provided by abortion providers on the day of the abortion.

WOMEN SHOULD RECEIVE COUNSELLING

9. Most Australians believe that women considering the question of abortion should receive counselling.

10. Although most Australians accept that abortion is an alternative which ought be available to women, there is considerable reserve in the community about the large number of abortions which take place in Australia, variously estimated at between 70,000 and 100,000 per annum.

ABORTIONS MAINLY PERFORMED ON PSYCHIATRIC GROUNDS

11. The great majority of abortions which take place are performed on the basis of supposed psychiatric grounds.
12. Yet very rarely are women referred by abortion providers to a psychiatrist, or even evaluated by a psychiatrist.
13. Moreover, the anecdotal evidence suggests that abortion providers in fact provide counselling simply as a prelude to abortion, without real discussion of the various alternatives.

LAWFULNESS OF ABORTION

14. At least in New South Wales, Victoria and Queensland, the test developed by the courts as to whether an abortion is lawful has been defined as follows:

Abortion is lawful provided:

there is an honest belief on reasonable grounds

- a. that the abortion is necessary
 - b. to preserve the woman from serious danger
 - c. to her life
 - d. or physical health
 - e. or mental health (taking into account economic, social and other matters)
 - f. such danger occurring at any time whether during pregnancy or at anytime thereafter
 - g. not being merely the normal dangers of pregnancy and childbirth
- the danger of operation is not out of proportion to the dangers to be averted.

15. In other States, there is a statutory test, not all that dissimilar.
16. The curial test, developed by Judge Levine in Wald's Case, Justice Menhennit in Davidson's Case, and Justice Kirby in CES v Superclinics, on the basis of the defence of necessity, is the most probable statement of the common law.
17. The difficulty with this formulation is that, as a matter of practice, abortion providers rarely address the issue as to whether the necessity for abortion is established in any particular case.
18. In fact, there is rarely any necessity for abortion.
19. The bleak choice, so beloved of polemicists between the life of the mother and that of the child, as a result of medical progress, is almost non-existent.

INFORMING WOMEN AS TO RISKS OF ABORTION

20. Anecdotal evidence suggests that abortion providers rarely inform women considering abortion as to the risks of undergoing an abortion (eg. breast cancer, placenta praevia, premature birth, depression).
21. There is substantial evidence that women who undergo abortions are exposed to various physical and emotional risks.

LACK OF SUPPORT

22. The reason why most women undergo an abortion is simply that there is a lack of support from the father of the child and/or from their family.

AMBIVALENCE ABOUT ABORTION AS SOLUTION

23. Hence, the ambivalence within the Australian community about abortion as a solution is well-founded.
24. The thrust of policy making in this area ought be in terms of providing pregnant women with sufficient support.
25. To a great extent, the role of the pregnancy counselling organisations is to provide just that – support.

26. Such organisations provide counselling and material assistance on a voluntary basis, the counsellors usually being trained volunteers.
27. The pregnancy counselling organisations are funded by donations.
28. Where a woman, following counselling, decides to terminate a pregnancy, that decision is respected by all pregnancy counselling organisations.
29. Pregnancy counselling is about respect for women, all women, no matter what their decision.

DECISION COUNSELLING DIRECTED TO FLOW-THROUGH

30. By contrast, the abortion providers who provide decision counselling on the day of the abortion are geared to ensuring a quick flow-through of women undergoing the abortion.

ABORTION REFERRALS

31. A second flaw in the Bill is its assumption that pregnancy counselling organisations ought refer women for abortion.
32. Abortion is a medical procedure, and is readily available following referral by general practitioners to appropriate specialists, or to clinics whose sole purpose is to conduct abortions.
33. Many women go directly to abortion clinics (conducted by medical practitioners) without first consulting a general practitioner.
34. It is entirely unsatisfactory to suggest that what is a medical procedure ought be the subject of referral by persons lacking medical training.
35. There is no evidence that significant numbers of Australian women fail to obtain an abortion because they do not know how to contact an abortion provider.

CASE FOR REGULATION

36. There is a real case to be made for regulation of decision counselling.
37. One, such decision counselling ought ensure that the decision counselling is provided by an organisation at arms length from the abortion provider.

38. Two, decision counselling ought not be provided on the day of the proposed abortion but, say, three or four days beforehand.
39. Three, decision counselling ought provide the pregnant woman with advice about options, which ought include both keeping the child and adoption.
40. Four, decision counselling ought provide appropriate information in subdued terms about the risks, both physical and emotional, of abortion.
41. Five, pregnant women should be provided with information as to sources of support in the course of pregnancy, and following birth of their baby.
42. Six, information provided in the course of decision counselling ought be, not merely oral, but also, in written form, so that the woman can consider it at length.

FREEDOM REQUIRES KNOWLEDGE

43. Genuine freedom requires knowledge.
44. Pregnant women should be provided with all the material facts.

"NON-DIRECTIVE" COUNSELLING

45. It is suggested that decision counselling be non-directive.
46. Certainly any decision counselling ought be sympathetic to the perspective of the woman undergoing such counselling.

COUNSELLING CANNOT BE VALUE FREE

47. However, it is quite unreal to assume that counselling can be value free.
48. For instance, any worthwhile counselling will respect the person being counselled as a person to be cherished for her own sake.
49. Counselling ought be truthful, and ought provide all relevant information.
50. The person who is being counselled ought be treated by the counsellor as the counsellor would wish to be treated if in such situation (the Golden Rule, otherwise expressed as Kant's principle of universalizability).

DIFFERENT PERSPECTIVES

51. Realistically, it ought be accepted that in a community such as Australia, where there is a widespread difference of views in relation to abortion, different organisations providing decision counselling will operate from somewhat different perspectives.
52. Undoubtedly, women who are undergoing counselling are, and should, be aware of the particular perspective, if any, of the organisation providing counselling.
53. "Counselling", currently available from abortion providers, is favourable to abortion as a "solution" – disregarding any other alternative.
54. The small number of local adoptions in Australia each year is eloquent as to the success of abortion providers in promoting abortion as 'the solution' to unexpected pregnancy.

INADEQUACIES OF BILL

55. Amongst the inadequacies of the proposed Bill is the heavy-handed fashion in which the Bill politicises what is a personal decision.
56. The legislation fails to take into account the perspective of the provider of counselling, which ought be attuned very much to that personal perspective.
57. For most women, abortion is a decision undertaken with reluctance – not a political issue.
58. Second, the Bill assumes that all counselling is decision counselling, when, in fact, most counselling provided by pregnancy help organisations is directed to providing emotional and/or material support.
59. Third, if the Bill is passed in its present form, its effect will be to reduce the emotional and material support available to pregnant women.
60. Fourth, the Bill fails to address the inadequacy of counselling by abortion providers, too often hurried, too often uninformative, too often an immediate prelude to a surgical abortion.
61. Fifth, insufficient consideration appears to have been given to whether the Bill, in all its provisions is within the power of the Commonwealth Parliament.
62. Almost certainly, at least some provisions may be subject to challenge if passed.

63. Sixth, as discussed, the Bill assumes that referrals for what is a medical procedure ought be provided by persons not medically trained.
64. A referenced copy of this submission will be available on request.

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