

Submission to the Community Affairs Legislation Committee of the Australian Senate

Inquiry into Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005

June 2006

The Australian Consumers Association

The Australian Consumers' Association (ACA) publisher of CHOICE Online web site, CHOICE magazines and books, is a not-for-profit organisation that's been researching and campaigning on behalf of consumers since its foundation in 1959. With more than 200,000 subscribers to our information products, we're the largest consumer organisation in Australia. Our aim is to tackle the issues that really matter to consumers, arming them with the information to make confident choices and purchases, and lobbying for change when consumers are getting a raw deal.

The ACA is completely independent: we don't receive ongoing funding from any commercial, government or other organisation. We earn the money to buy all the products we test and support our campaigns through the sale of our own products and services, such as CHOICE Online, magazines and books. To find out more about ACA, see choice.com.au.

Role of ACA in relation to provision of services

It is not the role of the Australian Consumers Association to express a view as to whether abortion should be legal or illegal, and if legal the circumstances in which an abortion should be permitted. Abortion is a contentious issue on which Australian consumers hold a diverse range of differing views, sometimes very passionately held.

It is however the role of the Australian Consumers Association to comment on the quality of the provision of health services including the provision of counselling services.

Current situation

It has been drawn to our attention that a number of pregnancy counselling services may be providing misleading information about the services that they offer. We are not currently in a position to come to a final view as to whether any particular statement by any particular service is or is not misleading or deceptive. Nevertheless, it is clearly possible that any service provider (for profit or non-profit) may deliberately or inadvertently make a claim which actually misleads a consumer. Further, there does appear to be significant anecdotal evidence that one or more currently operating pregnancy counselling services promote their services in a manner which is at least non-transparent and probably misleading.

We note that the reason for the referral of the Bill to the Committee is:

to examine the adequacy of the legislation in improving regulation of pregnancy counselling, and ensure the counselling provided by Government-funded pregnancy counselling services is objective, non-directive, and includes information on all three pregnancy options.

We are advised that other means of preventing misleading conduct by pregnancy counselling services, such as taking action under Part V of the Trade Practices Act, are not available as they fall outside the scope of the Act.

Unplanned pregnancies and the need for advice

A large proportion of unplanned pregnancies cause great distress to the women involved. It is in everyone's interest to reduce the number of unplanned pregnancies. ACA welcomes all initiatives by Parliament and government to reduce the number of unplanned pregnancies.

When distressed, consumers are much less able to understand and interpret information as than they normally are. Further some proportion of women with unplanned pregnancies are young; evidence suggests that young people are much less skilled at interpreting information about goods and services than older more experienced people. Moreover another proportion of unplanned pregnancies are the victims of sexual assault, many of whom will be extremely distressed and also have less than normal ability to understand and interpret the information available to them.

For these reasons it is clear that the information provided to women about pregnancy counselling services needs to be not only not misleading but also as accurate, complete and easy to understand as possible.

Policy objective

Our concern is not so much with the particular services provided by pregnancy counselling services. Rather we believe that those services – like all services offered to consumers - should be marketed and provided in ways that are neither misleading nor unfair. It is a basic principle of consumer protection that the consumer should know exactly what service they are being provided with. This is true whether the service is provided by a commercial organization, a government organization or a not for profit organization.

In short we believe that services provided to individual consumers including but not limited to pregnancy counselling services should be subject to broadly equivalent prohibitions on misleading, deceptive or unconscionable conduct as those set out in Part V of the Trade Practices Act generally and section 52 and 51AB particularly. This should apply regardless of whether or not the service provider operates for profit or not for profit. As you will be aware section 52 of the Act prohibits misleading and deceptive conduct and section 51AB prohibits unconscionable conduct.

In addition, as argued in the previous section, a requirement to provide positive information about the services that are or are not provided is also justified.

The Bill

The Bill is intended, among other things, to prevent misleading conduct in the provision of pregnancy counselling services. ACA supports this policy intention.

ACA supports the objects of the Bill (Clause 4).

ACA supports Clause 5 of the Bill which seeks to prohibit misleading and deceptive conduct in relation to the advertising of pregnancy counselling services as they implement the policy objective. While there are perhaps other ways to achieve this objective, given the likelihood of current misleading activity taking place the Bill is an appropriate way to quickly respond to those market problems.

The Committee may wish to consider whether it would additionally be appropriate to prohibit deliberately grossly negligent misleading advice provided to consumers in the course of providing pregnancy related counselling.

ACA supports Clause 6 of the Bill. Due to the distress arising from unplanned pregnancy and the relative youth of some affected women, a requirement to provide clear positive information about the service is justified.

We note that Clause 5 of the Bill if enacted would apply equally to ‘non-directive pregnancy counselling services’. The Committee may wish to consider (in the interests of ensuring consumers know exactly what services are on offer) whether non-directive pregnancy counselling services might be required to provide consumers with the information that they *do* provide referrals for terminations. This would be useful information for many women, including those who do not want, or may even find offensive, information about terminations.

ACA supports Clause 8 of the Bill. Government funding should not be provided to a service that engages in misleading conduct.

ACA has no view about clauses 7, 9 and 10.

Further desirable measures

ACA believes that it would be more effective in achieving its aims if the Bill additionally was to:

- prohibit pregnancy counselling services from engaging in unfair or unconscionable conduct,
- provide a remedy at law to consumers who suffer loss (including non-economic loss) as the result of misleading, deceptive, unfair or unconscionable conduct, and

- subject pregnancy counselling services some form of independent complaints handling and dispute resolution scheme to facilitate consumers seeking remedies for breaches of the prohibitions referred to above.

Thank you for considering the matters raised above.

ENDS