



**Submission to the Community Affairs Legislation Committee Enquiry into the
Transparent Advertising and Notification of Pregnancy Counselling Bill 2005**

By

Reproductive Choice Australia

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Reproductive Choice Australia is a coalition of organisations and individuals who are interested in ensuring that women's reproductive rights are protected and enhanced in Australia.

Submission from:

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Dear Members of the Community Affairs Legislation Committee,

Reproductive Choice Australia (“RCA”) supports the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005 (the “Bill”). The Bill closes a loophole: it extends to women experiencing unplanned pregnancy the basic protections from fraud and deception already offered to most Australian consumers. Truth in advertising is essential to a liberal democracy, especially where, as here, federal funding is involved. This Bill requires truth in advertising, no more and no less.

Fake Counselling Organisations: The problem explained

Fake counselling organisations operate by assuming names which disguise their political agenda, refusing to disclose that they do not refer for abortion in their advertising and failing to inform callers that they will not discuss all options available to pregnant women objectively. Fake pregnancy counselling organisations explicitly target women who they describe as ‘abortion-minded’ and ‘abortion vulnerable’, with the aim of dissuading such women from choosing abortion. They design their advertising to disguise their ‘pro-life’ position, as research indicates that women who are considering abortion will avoid such organisations.¹ Therefore a woman contacting a fake pregnancy counselling organisation does not realize the type of organisation she is calling. People who answer phones at fake counselling organisations do not engage in “counselling” as the term is commonly understood- instead, these political volunteers with little or no formal qualifications use the phone call as a platform to further their *undisclosed* goal of discouraging the

¹ <http://www.care-net.org/publications/cot/ClientMarketingResearch.pdf>

uninformed and often vulnerable caller from choosing abortion. Australians experiencing unplanned pregnancy are not alone in their encounters with fraud and deception; similar problems exist in the United States and Canada.²

Attached to this submission is a .pdf of a recent advertising campaign by Pregnancy Counselling Australia (“PCA”). The letter accompanying the poster was sent, we understand, to every General Practitioner in Australia. The letter urges recipients to hang the poster in public spaces, specifically to be viewed by pregnant women. Nowhere in the poster does PCA make clear that they are an anti-choice organisation that does not refer for abortion. GPs themselves can not tell what sort of organisation PCA is, and therefore have no way of informing their patients. This is the goal of PCA. Why would PCA, or anti-choice services like it, object to the implementation of this Bill- legislation that will simply ensure they comply with longstanding and accepted standards of adequate disclosure? What do opponents of this Bill seek to hide, and why?

Pregnancy Counselling Australia is only one of the dozens of fake pregnancy counselling organisations operating in Australia. The ‘Pregnancy Counselling and Related Services’ section in the Yellow Pages directories is generally dominated by adverts from fake pregnancy counselling agencies. As with Pregnancy Counselling Australia, their advertising does not disclose their anti-abortion position. Some advertise that they will provide ‘Abortion Information’. However, when a woman calls the organisation or visits

² For a full report on the status of fake pregnancy counselling organisations in the United States (referred to in the United States as “Crisis Pregnancy Centers”) *see* http://www.prochoice.org/pubs_research/publications/downloads/public_policy/cpc_report.pdf. Litigation is one strategy used to combat fraud and deception in the United States, where a number of successful cases have been brought against Crisis Pregnancy Centers for their deceptive tactics.

their website, they are provided with misleading and sometimes false information about abortion.³

Women who call fake counselling organisations often suffer emotional injury from these telephone interactions. RCA has heard from a number of all-options service providers that unwitting callers are told by fake counsellors, for example: that abortion increases the risk of breast cancer, cervical cancer and mental illness; that abortion will prevent the caller from becoming pregnant in future, that women who choose abortion are “murderers” or “child abusers.” Women have anecdotally reported that they are made to feel guilty or negatively judged for considering abortion. In addition, the distress and confusion caused to women by these interactions can lead to women delaying their decision around an unplanned and unwanted pregnancy. This may mean that women eventually seek pregnancy termination services at a later gestation, which has implications for increased risks and cost, as well as limited access to services.

Australians’ Right to Truth in Advertising

At the heart of the Bill is a concept familiar to Australians: the right to truth in advertising. Indeed, it would likely surprise many Australians to learn that the protections provided to them by the Australian Competition and Consumer Commission (ACCC) from misleading or deceptive advertising do not cover all service providers, but only those who charge a fee for their service.

³ For an example of deceptive advertising, see Brisbane Yellow pages 2006 p 2202 for an advert by ‘Pregnancy Problem Centre’. The Pregnancy Problem Centre’s website, as advertised, provides misleading and false information

As the national agency responsible for administration of the Trade Practices Act 1974, the ACCC ensures compliance with truth in advertising requirements. As stated on the ACCC website:

Businesses need to be particularly careful about what they say and do when they are advertising, because of the wide audience that their promotional messages may reach. The laws that prohibit misleading advertising apply to businesses advertising through all kinds of media, including television, radio, the internet, telemarketing, door-to-door selling, billboards, brochures, pamphlets and fliers.

Companies engaged in advertising goods or services must be careful not to send a message that creates, or could create, a wrong picture in the minds of those who receive the message. Failing to disclose important information in advertising may also sometimes be misleading.

Some examples of advertising which may be misleading include:

a transport company giving the impression that it takes freight by air, when it actually sends it by road

a seller of mobile phones offering free weekend calls, but not stressing sufficiently that calls to other mobiles are excluded

a car manufacturer using a radiator grille and badge that are deceptively similar to those of Rolls Royce⁴

It is implausible that the ACCC should be concerned with mobile phone calling schemes to the exclusion of misleading advertising regarding health service provision at critical moments in the lives of Australian women. Importantly, the Bill removes the only impediment to application of consumer protection in the case of fake pregnancy counselling centres: under the Bill, the payment of monies for services rendered is- and should be- made irrelevant to the requirement of truthful advertising. RCA sees no reason why the absence of a commercial exchange between service provider and user constitutes legitimate grounds to undermine the service-users' rights to accurate and honest disclosures on which her informed consent to utilize such services rests. We fail to

⁴ <http://www.accc.gov.au/content/index.phtml/itemId/11843/fromItemId/3871>

understand, in other words, why the protections granted to fee-paying service users by the ACCC have not been extended to service users who are not requested to pay fees.

Anti-choice political activists have, for too long, enjoyed the “free services” loophole exempting them from truthful advertising laws. There is no reason organisations that target Australian citizens at vulnerable times in their lives with the intent to deceive and coerce them should be “above the law.” RCA welcomes the Bill as rectifying this shortcoming in federal consumer protection laws for potential users of pregnancy services. Because this Bill aims to remedy an unfortunate situation of unequal protection of law, there is no reason it should not pass.

The Importance of Autonomy in Medical Decision-making

Behind the idea of transparency in advertising is a conception of consumers as individuals whose autonomy deserves respect. The Greek root of the word autonomy means “self-rule”. In medicine, self-rule relates to the capacity of an adult to make decisions regarding their life and health without being subject to undue influence or coercion. Truthful and accurate information is a key tool for enabling people to exercise self-rule, both in medical decision-making and in all aspects of life. The government is uniquely positioned to facilitate, through this Bill, that Australians experiencing unplanned pregnancy are able to make autonomous decisions.

Whether we are speaking about the role of the government, in the recent words of Health Minister Tony Abbott, to regulate to enable consumers to “make better and more

informed choices about what they do with their lives"⁵, or the rights of patients to disclosures necessary for them to make informed medical decisions, what is clearly acknowledged is the responsibility of product and service providers to disclose information essential to decision-making. To make informed decisions, Australians must have a substantial understanding of the issues involved and the options available. Without it, decisions cannot be said to be informed, or consequently autonomous.

Depriving Australians of informed consent is one way of stripping them of control of decisions that shape their lives: a control to which all citizens of liberal democracies are entitled regardless of their gender, ethnicity or religion. Autonomous persons will necessarily differ in their decisions: in this instance, some Australians will choose to continue unplanned pregnancies, and others will choose to terminate. However, as the Health Minister Tony Abbott recently noted, citizens in liberal democracies “need to be allowed to make mistakes”. “Sometimes,” the Minister asserted, “we have a right to be wrong.”⁶ The criticisms others might offer of one’s decision must not have any bearing on the right of Australians to truth in advertising. The right to truth in advertising stands independent of any political party. This is because – as the Health Minister so clearly stated – Australia is a country that believes in the right of individuals to make their own judgments about what is in their best interests, even if others believe they are mistaken.

⁵ Address to the Queensland Obesity Summit Speech by the Minister for Health and Ageing, Tony Abbott, to the Queensland Obesity Summit, Parliament House, Brisbane, 3 May 2006.
www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2006-ta-abbsp030506.htm?OpenDocument&yr=2006&mth=5

⁶ Idem.

Recommendation

For all of the reasons described herein, Reproductive Choice Australia supports the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005, and commends it to become law.

**MAGDA SCHALER-HAYNES
ON BEHALF OF THE ORGANISING COMMITTEE
REPRODUCTIVE CHOICE AUSTRALIA**

Attachment

Attached to this submission is a .pdf of a recent advertising campaign by Pregnancy Counselling Australia (“PCA”).