

# **Conscience votes in the federal parliament since 1996**

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## Introduction

In August 2002 we published a Parliamentary Library paper on conscience votes in federal, state and some overseas parliaments.<sup>1</sup> Conscience votes, like instances of crossing the floor, are difficult to find in Hansard, particularly before 1981 when we are forced to rely on hardcopy. In compiling the list of conscience votes we relied on references in *House of Representatives Practice*. We intend to publish an updated version of our paper when the 41<sup>st</sup> parliament ends. Since 2002 we have found some additional procedural conscience votes and have revised some votes included in the original list in *House of Representatives Practice*.

In this paper we consider aspects of conscience votes in the period since 1996. We do not attempt to draw conclusions but rather to track patterns in these votes that have occurred under the Howard government. The aspects considered include voting patterns of party leaders and the party vote, the vote of women, the media and conscience votes and dilemmas facing MPs in these votes.

## Definitions

In our original paper we used the term ‘free vote’ to describe ‘the rare vote in parliament, in which members are not obliged by the parties to follow a party line, but vote according to their own moral, political, religious or social beliefs’.<sup>2</sup>

The term ‘conscience vote’ is most commonly used in Australia to describe votes on moral and social issues such as abortion, euthanasia and capital punishment – the life and death issues. In Australia the term may also include issues on which the parties do not always have a formal policy such as parliamentary procedure and parliamentary privilege. The term ‘free vote’ is more commonly used in other Westminster parliaments.

In Australian state and federal parliaments the decision to allow a conscience vote is a political one and is not a subject on which the Speaker can be asked to rule. The conscience vote can apply to one party, more than one party or all parties represented in the parliament.

## Reasons for calling for a conscience vote

The reasons for calling for a conscience vote are varied and may include:

- to accommodate a member’s personal philosophy or beliefs,
- to prevent members crossing the floor,

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1. Deirdre McKeown and Rob Lundie, ‘Free votes in Australian and some overseas parliaments’, *Current Issues Brief*, No. 1 2002–03, Parliamentary Library.

2. *The Penguin Macquarie Dictionary of Australian Politics*, Penguin Books, 1988, p. 100

- to embarrass or destabilise the other side,
- to gain publicity or support for a particular stance on an issue,
- to force an issue, or
- to defuse tensions within a party and perhaps avoid an embarrassing split within the party.

David McGee, Clerk of the New Zealand House of Representatives, has described conscience issues as ‘fractious, stimulating, moving and confusing by turns. They remain a necessary safety valve to handle those issues which cannot appropriately be treated as party matters.’<sup>3</sup>

## Which issues have a conscience vote?

Conscience votes have been allowed on:

- ‘life and death’ issues, such as abortion, euthanasia and capital punishment,
- social or moral issues, such as family law, homosexuality, drug reform, war crimes and gambling,
- human reproductive and scientific research issues, such as in vitro fertilisation, stem cell research and therapeutic cloning, and
- parliamentary procedure and privilege issues and standing orders.

Conscience votes are not usually allowed on economic issues or issues that have a significant impact on the budget although ‘until 1936 tariff proposals were free votes in both Houses in the Australian Parliament’.<sup>4</sup>

Free votes are generally not allowed when a party has a definite policy on an issue. For example, although capital punishment is an issue that usually attracts a free vote, the ALP does not allow its members such a vote because the party has already adopted an anti death – penalty policy.

## The Howard government and conscience votes

Since 1996 five bills have attracted a conscience vote. A shorthand term for each bill, which will be used in this paper, appears in brackets:

- Euthanasia Laws Bill 1996 [Euthanasia Bill],

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3. David McGee, *Parliamentary Practice in New Zealand*, GP Publications, second edition, 1994, p. 74.

4. J.R. Odgers, *Australian Senate Practice*, sixth edition, 1991, p. 420.

Research Involving Embryos and Prohibition of Human Cloning Bill 2002 which was split into:

- Prohibition of Human Cloning Bill 2002 [Cloning Bill],
- Research Involving Embryos Bill 2002 [Stem Cell Bill],
- Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 [RU486 Bill], and
- Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 [Therapeutic Cloning Bill]

Four of these bills illustrate the complex issues raised by biotechnology and medical science. Despite the fact that the Therapeutic Goods Amendment Bill was concerned only with administrative issues involving the approval of the abortion drug RU486, it is generally acknowledged that the issue developed into a ‘hotly contested moral and religious debate about abortion’.<sup>5</sup>

The fifth bill, on euthanasia, could be classified as a more traditional ‘life and death’ issue and one that would expect to attract a conscience vote. This Bill also had the complication that the federal government was proposing to override Northern Territory legislation.

In the 21<sup>st</sup> century medical science and ethics have become the predominant issues for decision by conscience votes. John Warhurst has called them ‘socio-moral issues’.<sup>6</sup>

Two of the five conscience vote bills – the Stem Cell Bill and the Therapeutic Cloning Bill – have required, as part of a cooperative legislative approach, that the states enact mirror legislation. This was done for 2002 Stem Cell Bill with members of state parliaments also being allowed a conscience vote. At the time of writing legislation mirroring the 2006 therapeutic cloning legislation has been passed by the Victorian and New South Wales parliaments and is being debated in the Queensland and Western Australian parliaments. Members of these state parliaments have, again, been allowed a conscience vote. The 2002 legislation appears to be the first time that conscience votes have determined the outcome of a cooperative legislative scheme.

In our original list of conscience votes we included the Constitution Alteration (Establishment of Republic) Bill 1999. Government members and senators were granted a conscience vote in this debate. The reason for this decision was outlined by the Prime Minister:

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5. Leslie Cannold, ‘A moral smokescreen’, *Sydney Morning Herald*, 26 November 2005.
  6. John Warhurst, ‘Reformist women MPs take lead in ethics debates’, *Canberra Times*, 5 October 2006.

I want to make it clear that it is clearly government policy to have this referendum and therefore this measure has the support of the government. But, because of the provisions in the referendum legislation, if there is to be a formal no case circulated there must obviously be managed opposition to the bill. That is the reason why some of my colleagues, with my full support and authority, are going to vote against this measure, so they can be the authors of the no case.<sup>7</sup>

We have decided not to include this bill on our list of conscience votes as it is an example of an artificial conscience vote and could even be interpreted as an instance of approved crossing the floor.

## Who introduced the legislation

Table 1 shows that two of the five bills were government bills, two were introduced by government backbenchers (one senator and one member) and one was sponsored by four female senators across party lines. Cross party sponsorship of private senators' bills is not common. Senator Fiona Nash said in her 2<sup>nd</sup> reading speech on the RU486 Bill:

I am advised that this is the first time in the history of this place that four members of different parties have co-sponsored a private senators' bill.<sup>8</sup>

It is also the first time that a bill with cross-party sponsors has been granted a free vote. In December 2006 four female Senators again came together as cross-party sponsors of a private senators' bill – the Pregnancy Counselling (Truth in Advertising) Bill 2006. A number of female senators noted the cross-party cooperation and expressed the hope that the cross-party work between women in the Senate continued.<sup>9</sup> This bill did not attract a conscience vote and, at the time of writing, is still being debated.

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7. John Howard, House of Representatives, *Debates*, Constitution Alteration (Establishment of Republic) Bill 1999, 9 August 1999, p. 8173.
  8. Senator Fiona Nash, Senate, *Debates*, Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005, 8 February 2006, p. 88.
  9. For example, Senator Ruth Webber, Senate, *Debates*, Pregnancy Counselling (Truth in Advertising) Bill 2006, 14 June 2007, p. 159.

**Table 1: Introduction of legislation**

Bill	Chamber/Introduced by
Euthanasia Laws Bill 1996	House of Representatives, Kevin Andrews MP (Lib, Vic)
Prohibition of Human Cloning Bill 2002	House of Representatives, Government bill, (original bill introduced by Prime Minister John Howard)
Research Involving Embryos Bill 2002	House of Representatives, Government bill, (original bill introduced by Prime Minister John Howard)
Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005	Senate, Bill co-sponsored by Senator Fiona Nash (Nationals, NSW), Senator Claire Moore (ALP, Qld ), Senator Judith Troeth (Lib, Vic) and Senator Lyn Allison (Aust Democrats, Vic)
Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006	Senate, Senator Kay Patterson (Lib, Vic)

### **Vote of the Prime Minister and Leader of the Opposition in conscience votes in the House of Representatives since 1996**

When members are allowed a conscience vote it is not uncommon for the leaders to declare their positions before the debate.<sup>10</sup> John Warhurst has suggested that in this case a conscience vote is never straightforward 'because backbenchers are still faced with the prospect of disagreeing with their leaders. It is much easier to conform'.<sup>11</sup> In this situation it is possible that a de facto 'party view' could emerge for members to 're-coalesce around'.

This view is reflected by research on conscience votes in the New Zealand, British and Canadian parliaments. The findings confirm that members generally tend to act in accordance with caucus decisions and that, often in these votes, the primacy of the party is not diminished.<sup>12</sup>

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10. See, for example, Editorial, *Herald Sun*, 9 November 2006 and Alison Rehn and Malcolm Farr, 'Howard backs RU486 veto', *Daily Telegraph*, 9 February 2006.

11. John Warhurst, 'There is no such thing as a free vote', *The Canberra Times*, 12 April 2002.

12. See David McGee, *Parliamentary Practice in New Zealand*, GP Publications, second edition, 1994, p. 73, Anthony Mughan and Roger M. Scully, 'Accounting for change in free vote outcomes in the House of Commons', *British Journal of Political Science*, vol 27 issue 4, October 1997, p. 640 and L. Marvin Overby, Raymond Tatalovich and Donley T. Studlar, 'Party and free votes in Canada', *Party Politics*, Vol 4., no. 3 1998, p.381.

Table 2 shows the votes of the Prime Minister and the Leader of the Opposition in the House of Representatives since 1996.

**Table 2: Voting pattern of party leaders in the House of Representatives**

Bill	2 <sup>nd</sup> reading		3 <sup>rd</sup> reading		Result
	Ayes	Noes	Ayes	Noes	
Euthanasia Laws Bill 1996	Howard Beazley		Howard Beazley		Bill passed
Research Involving Embryos and Prohibition of Human Cloning Bill 2002	Procedural motion to split the bill Howard Aye    Crean No				Motion passed
Prohibition of Human Cloning Bill 2002	No division		No division		Bill passed
Research Involving Embryos Bill 2002	Howard Crean		Howard did not vote Crean		Bill passed
Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005	Beazley	Howard	No division		Bill passed
Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006		Howard Rudd	No division		Bill passed

All bills passed the House of Representatives and the Senate. A list of these bills and the dates they were debated in both chambers is at Appendix 2.

In the House of Representatives in two bills there was no division at the third reading stage and in one bill there were no divisions. The Prime Minister voted against two bills and the current opposition leader, Kevin Rudd, has voted against one bill. The Prime Minister did not vote in one division at the third reading stage. Kim Beazley and Simon Crean each voted for one bill as opposition leader. Crean voted against the motion to split the Research Involving Embryos and Prohibition of Human Cloning Bill 2002.

Table 3 shows the voting pattern of party leaders and the percentage of the final ALP and Liberal Party vote on each bill in the Senate and the House of Representatives.

**Table 3: Voting pattern of party leaders and the party vote**

Bill	Leader and vote	Party	House of Representatives vote	Senate vote
Euthanasia Laws Bill 1996	Howard - yes	LP	83% yes 17% no	75% yes 25% no
	Beazley - yes	ALP	51% yes 49% no	33% yes 67% no
Research Involving Embryos Bill 2002	Howard - yes	LP	69% yes 31% no	59% yes 41% no
	Crean - yes	ALP	90% yes 10% no	71% yes 29% no
Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005	Howard - no	LP	51% yes 49% no	47% yes 53% no
	Beazley - yes	ALP	92% yes 8% no	81% yes 19% no
Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006	Howard - no	LP	54% yes 46% no	67% yes 33% no
	Rudd - no	ALP	73% yes 27% no	68% yes 32% no

In the most recent conscience vote, on therapeutic cloning, the parties did not support the vote of either leader.

In the RU486 debate the Liberal Party was split: the House of Representatives did not support the Prime Minister while the Senate did support him. The ALP supported the Leader of the Opposition.

Both parties supported their leaders in the stem cell debate.

In the euthanasia debate the Liberal Party supported the Prime Minister. ALP members of the House of Representatives supported the Leader of the Opposition while ALP senators did not.

Since 1996 there have probably been too few conscience votes to establish a trend but it appears that, apart from the most recent vote, members of parliament have voted with their leaders. The vote in the RU486 debate showed the Liberal Party divided, with the House of Representatives voting against the Prime Minister and the Senate supporting him.

### Backbench pressure

In the lead up to conscience votes on RU486 and Therapeutic Cloning Bills the Prime Minister responded to backbench pressure and allowed a conscience vote on bills that overturned existing legislation.

In late 2005, two Liberal members were reported as asking the Prime Minister to allow a conscience vote on legislation removing the right of the Minister for Health to approve the abortion drug RU486:

Liberal MPs Sharman Stone and Mal Washer have asked Mr Howard to ignore a decision by Health minister Tony Abbott to extend an effective ban on the controversial drug [RU486] and let coalition members have their own say.<sup>13</sup>

It was also reported that Sharman Stone, a parliamentary secretary at the time, would consider crossing the floor to gain 'greater access to the drug'.<sup>14</sup>

In response to pressure on the therapeutic cloning issue in 2006 the Prime Minister initially ruled out any changes to the current laws saying:

The clear view of cabinet is the status quo and my sense in the party is there could be a majority in that direction as well. ...

My sense is this is a difficult issue, but there's a clear cabinet view.<sup>15</sup>

Just over one week later he was forced to move to:

... head off a fresh backbench revolt by allowing a conscience vote that could overturn a cabinet ban on therapeutic cloning.<sup>16</sup>

The Prime Minister did not support either bill but both were passed by the Senate and the House of Representatives. The backbench has been determined to push for change on these

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13. Annabel Stafford, 'Abortion pill splits coalition', *Australian Financial Review*, 17 November 2005.

14. *ibid.*

15. Clara Pirani, 'Conscience vote on stem cells rejected', *Australian*, 7 August 2006.

16. Matthew Franklin and Samantha Maiden, 'PM grants free vote on cloning', *Australian*, 16 August 2006.

issues and this could explain the lack of Liberal Party support for the Prime Minister in the most recent conscience votes.

## Voting patterns

The results of divisions in four conscience votes (there were no divisions in the Prohibition of Human Cloning Bill 2002) are listed at Appendix 1.

The voting patterns by chamber, party and gender of the three most recent bills (the Stem Cell Bill, the RU486 Bill and the Therapeutic Cloning Bill) are presented in Table 4.<sup>17</sup> As two bills (RU486 Bill and the Therapeutic Cloning Bill) did not have 3<sup>rd</sup> reading divisions in the House of Representatives, we have used the final vote on each bill to maintain statistical consistency.

### Chamber voting

Table 4 shows that overall support for the bills was higher in the House of Representatives (66%) than in the Senate (59%). A majority of Liberal Party MPs supported the bills in the House of Representatives (57%) but rejected the bills in the Senate (54%). In other parties a majority of MPs either supported the bills in the Senate and the House of Representatives or rejected the bills in both chambers.

### Party voting

The strength of each major party's support for the bills probably reflected the public perception of each party's position on the liberal/conservative continuum. Table 4 reveals that party support ran from the Australian Democrats (100%), the Australian Greens (89%), the ALP (Reps: 85%; Senate: 72%), the Liberal Party (Reps: 57%; Senate: 46%), to the Nationals (Reps: 29%; Senate: 10%). Where a party had representatives in both chambers, support for the bills was always strongest in the House of Representatives.

### Gender voting

Perhaps the most outstanding feature of conscience votes under the Howard government has been the votes of women in the Senate and the House of Representatives. Women supported the bills in both chambers (Senate: 86%; Reps: 80%) much more strongly than men (Senate: 44%; Reps: 61%). In each party and the two chambers women supported the bills more than

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<sup>17</sup> In his paper, presented to the Australasian Political Studies Association (APSA) conference in September 2006, John Warhurst included the results of votes in the Euthanasia Bill, the Stem Cell Bill and the RU486 Bill. The Therapeutic Cloning Bill had not been debated when he presented his findings. He also dealt in some detail with religious identification and voting patterns which we have not included in this paper. See John Warhurst, 'Euthanasia, stem cell and RU486: conscience voting in the federal parliament during the Howard era', Paper delivered to Australasian Political Studies Association Conference, Newcastle, NSW 24–27 September 2006.

men. In the two major parties, strongest support came from Labor women members (97%) followed by Liberal women senators (87%), Labor women senators (81%) and Liberal women members (63%).

The biggest gap between men and women occurred among the Nationals senators where all the males voted against the bills and the single female senator supported them. The only other intraparty disparity occurred among Liberal Party senators where 87% of the women supported the bills compared with only 32% of the male senators. These were the only occasions in either chamber when both the majority of men and women did not vote together either in support of or against the bills.

**Table 4: Summary of final vote (%) in the Senate and the House of Representatives on the Stem Cell Bill, RU486 Bill and the Therapeutic Cloning Bill by party and gender<sup>18</sup>**

<b>House of Representatives</b>					
	<b>ALP</b>	<b>LP</b>	<b>NP</b>	<b>IND</b>	<b>Total</b>
<b>Men</b>					
<b>Ayes</b>	79	56	28	13	61
<b>Noes</b>	21	44	72	88	39
<b>Women</b>					
<b>Ayes</b>	97	63	33	n.a	80
<b>Noes</b>	3	37	67	n.a	20
<b>Total</b>					
<b>Ayes</b>	85	57	29	13	66
<b>Noes</b>	18	43	71	88	34

  

<b>Senate</b>								
	<b>ALP</b>	<b>LP</b>	<b>NP</b>	<b>AD</b>	<b>AG</b>	<b>FF</b>	<b>IND/ON</b>	<b>Total</b>
<b>Men</b>								
<b>Ayes</b>	64	32	0	100	67	0	0	44
<b>Noes</b>	36	68	100	0	33	100	100	56
<b>Women</b>								
<b>Ayes</b>	81	87	100	100	100	n.a	100	86
<b>Noes</b>	19	13	0	0	0	n.a	0	14
<b>Total</b>								
<b>Ayes</b>	72	46	10	100	89	0	25	59
<b>Noes</b>	28	54	90	0	11	100	75	41

18. Note: totals may not equal 100 due to rounding.

## General comments about the votes

The RU486 Bill<sup>19</sup> illustrates the power of women voting together in the Senate and the House of Representatives. The bill was co-sponsored by four female senators representing the ALP, Liberal Party, the Nationals and the Australian Democrats. The female vote in the Senate (89%) and the House of Representatives (81%) was extremely high. Journalist Anne Summers wrote that two things were remarkable about what she called this unprecedented exercise of multi-partisanship: it was composed entirely of women, and its purpose was to benefit women:

This collaboration by women, for women is a real breakthrough. The questions, is: was it a one-off or are politics going to be different from now on?<sup>20</sup>

Another journalist suggested that the exercise ‘demonstrated that change can be achieved outside the traditional structures of power’.<sup>21</sup>

It is not possible to determine if women have started to operate in a systematic cross-party fashion; these may simply be issues which women strongly support.

## Behaviour in the RU486 and therapeutic cloning debates

It is generally believed that in conscience votes members of parliament behave differently from the way they behave in debates along party lines. During the most recent conscience vote the Prime Minister noted that ‘as always, a free vote brings out the best in Parliament’.<sup>22</sup>

In the RU486 debate he said ‘I think parliament rises to its greatest heights when we have debates of this kind’.<sup>23</sup>

This may be true but in the last two conscience votes other behaviour also emerged.

In the RU486 debate there were reports that, while members of parliament were publicly proclaiming the ‘freshness’ of the conscience vote ‘out of the public eye, the wheeling and dealing was anything but fresh’:<sup>24</sup>

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19. See Appendix 1

20. Anne Summers, ‘You go, girls’, *Sydney Morning Herald*, 18 February 2006.

21. Michael Gordon, ‘Conscience vote damages Abbott, enhances Costello’, *Age*, 17 February 2006.

22. John Howard, House of Representatives, *Debates*, Prohibition of Human Cloning for Reproduction and the Regulations of Human Embryo Research Amendment Bill 2006, 6 December 2006, p. 117.

23. John Howard, House of Representatives, *Debates*, Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005, 16 February 2006, p. 33.

Anti-abortion activists threatened colleagues with retribution at preselections. Right-wing religious minor parties threatened to direct preferences away from MPs who lifted the ban on RU486.<sup>25</sup>

Some newspaper reports suggested that the Prime Minister was forced to:

... urge his MPs to be tolerant of each other's views on RU486 as debate heats up before the conscience vote ....<sup>26</sup>

There was talk of a rift between the conservative wing of the Liberal party, represented by John Howard and Tony Abbott, and the moderates, represented by Peter Costello:

Their public speeches betrayed some tension, but in private real anger crackled between the two groups.<sup>27</sup>

Health Minister, Tony Abbott had declared that passing the RU486 bill would be a reflection on the minister (Abbott) and the government. Abbott had reportedly lobbied his colleagues to back him in retaining the power to authorise the use of RU486.<sup>28</sup>

Senator Kerry Nettle (AG, NSW) continued the personal nature of the debate when she wore a T-shirt saying 'Mr Abbott: get your rosaries off my ovaries'. Senator Paul Neville (Nats, Qld) described the T-shirt as:

... unnecessary, offensive and bordering on bigoted sectarianism –using a man's faith to denigrate him as part of this debate.<sup>29</sup>

The next conscience vote, on therapeutic cloning, saw a number of public threats from religious figures and the disendorsement of a sitting senator, Senator Linda Kirk (ALP).

After the vote in the Senate, Senator Kirk was reported as saying that she was:

..the first political victim of the stem-cell dispute, linking her disendorsement by the South Australian Labor Party to her support for legislation allowing the research to go ahead.<sup>30</sup>

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24. Peter Van Onselen and Wayne Errington, 'With consciences to the fore, politics gets uglier', *Canberra Times*, 20 February 2006.

25. *ibid.*

26. 'Be tolerant in RU-486 vote: PM', *West Australian*, 8 February 2006.

27. Peter Hartcher, 'The Bitterness behind civil debate', *Sydney Morning Herald*, 17 February 2006.

28. Senator Ian Macdonald, Senate, *Debates*, Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005, 9 February 2006, p. 39.

29. Senator Paul Neville, Senate, *Debates*, Adjournment, 9 February 2006.

30. Jeremy Roberts, 'Stem-cell vote got me axed: senator', *Australian*, 12 June 2006.

She said that she:

was threatened by conservative pro-Catholic elements in the Labor Party, in particular Shop Distributive and Allied [SDA] Employees Association national secretary Joe de Bruyn. "Joe de Bruyn said that if I did not vote against the stem-cell legislation I could not expect support from the union for pre-selection."<sup>31</sup>

Senator Kirk acknowledged that she had been preselected for the 2001 election with the support of the conservative SDA union and that she had 'lived by the union and died by the union'. Another Labor source suggested a different reason for disendorsement saying that Senator Kirk 'had not paid enough attention to her electorate and did not have a high enough profile'.<sup>32</sup>

Dr Mal Washer (Lib) also reported that some Liberal senators were actively lobbied and were:

... allegedly a bit intimidated about how it will affect their preselections.<sup>33</sup>

The disendorsement of sitting members of parliament is not new. Senator Grant Tambling experienced the force of the Country Liberal Party when he failed to regain preselection in September 2001 for refusing to cross the floor as instructed by the Party over the internet gambling issue.<sup>34</sup>

Church leaders tried to influence the recent therapeutic cloning debates in the parliaments of NSW and WA. The Catholic Archbishop of Sydney, George Pell, was reported as saying:

[Cloning] ... is a serious moral matter and Catholic politicians who vote for this legislation must realise that their voting has consequences for their place in the life of the church.<sup>35</sup>

Pell's comments did not have an impact on the NSW vote, with the Legislative Assembly voting a convincing 65 to 26 in favour of the bill. The Bill also passed through the Legislative Council.

The Catholic Archbishop of Perth, Barry Hickey, made similar threats to WA members. Both Parliaments have investigated the comments of Pell and Hickey to determine whether or not they constitute contempt of parliament. The WA privileges committee subsequently decided

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31. *ibid.*

32. See also Annabel Stafford and Michelle Grattan, 'Union halts SA senator's right to life', *Age*, 8 June 2006

33. Matthew Franklin, 'Senators "won't risk their careers for cloning"', *Australian*, 30 October 2006.

34. 'Dumped senator slams party', *Australian*, 17 September 2001.

35. Nick Ralston, 'Pell warns MPs: don't reverse ban on cloning', *Canberra Times*, 6 June 2007.

that Archbishop Hickey's threat to MPs could be regarded as contempt.<sup>36</sup> In a letter tabled in the WA Parliament on 28 August 2007 Hickey said he had not intended to threaten MPs but reiterated his concern that the actions of Catholics be consistent with their beliefs.<sup>37</sup>

## Call for more conscience votes

As we have mentioned above, one reason for granting members of parliament a conscience vote is to accommodate a member's personal beliefs and philosophy.

This was developed further by Senator John Hogg (ALP) in a paper presented at the 38<sup>th</sup> Presiding Officers and Clerks Conference in July 2007. Senator Hogg argued that conscience votes should not be limited to 'life and death' issues. He suggested that there may be significant, sensitive social issues:

... where a parliamentarian's innate moral principles and values may have the over-riding dictate on how the individual parliamentarian should vote on such an issue'. These issues could include (but should not be limited to) the way 'our society is organised by way of family, marriage, relationships, conception, medical science.'<sup>38</sup>

Senator Hogg sees more conscience votes as a way in which the parliament can better represent the pluralistic Australian society.

In the recent annual Kenneth Myer lecture delivered by Michelle Grattan, she talked about the need for a better balance in the Parliament between 'collective discipline and individual thought'.<sup>39</sup>

Certainly there are a number of benefits in having a conscience vote. John Button, former Labor senator and minister, has explained some of the positive aspects of conscience votes for the individual and the party:

Individuals get better opportunities to speak. Parties are able to give the impression that they have no serious internal divisions. Even a minister who might seem to have a conflict of interest is able to remove the ministerial hat and speak and vote as an ordinary parliamentarian.<sup>40</sup>

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36. Jessica Strutt, 'Hickey apologises to pro-life catholic MPs', *West Australian*, 16 June 2007.

37. Reported in Ben Spencer 'Stemcell Bill divides MLAs', *West Australian*, 29 August 2007.

38. Senator John Hogg, *My Conscience-My Vote*, paper presented by Senator John Hogg to 38<sup>th</sup> Presiding Officers and Clerks Conference, Rarotonga, Cook Islands, 7 –14 July 2007.

39. Michelle Grattan, 'Is Politics still a vocation?', Kenneth Myer Lecture, National library of Australia, 9 August 2007.

40. John Button, 'Let the winds of principle blow through the house', *Sunday Age*, 26 March 2006.

But there are also problems. John Warhurst has pointed out that:

... conscience votes are, in practice, problematic while in theory very appealing.<sup>41</sup>

A deterrent in granting more conscience votes is the Westminster system where every vote is seen as a vote of confidence in the government of the day. A government must win all votes on the floor of the lower House. In conscience votes members of parliament rather than the government make the decisions and if more conscience votes were allowed it would be members rather than government who should be held accountable.<sup>42</sup>

If political parties agreed to a relaxation of the rules governing confidence there would be a possibility of more conscience votes. In theory this would mean that 'no longer would defeat of government bills be tantamount to a motion of no-confidence, so government MPs would be able to vote against their party without fear that such a vote would bring down the government'.<sup>43</sup>

But a practical reason for not increasing the number of conscience votes is the impact this would have on the operation of the Senate and the House of Representatives. Bob McMullan (ALP) referred to these problems when he spoke in the therapeutic cloning debate:

It is not possible for every matter that comes before the parliament to be considered as a conscience vote.

Some people in the community think it would be a good idea; I think there are all sorts of reasons of good governance why it could not possibly work. Just the time and the arrangements that would need to be made for such a thing to occur make it absolutely impossible.<sup>44</sup>

The view that government would become unworkable was expressed in a newspaper editorial during the RU486 debate:

Voters know that at most times party politics operates as a machine –because in the real world it has to.

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41. John Warhurst, 'Abortion politics are not for the faint-hearted', *Canberra Times*, 25 November 2005.

42. C.E.S. Franks, 'Free votes in the House of Commons: a problematic reform', *Policy Options*, November 1997, p.34.

43. Patrick Malcolmson and Richard Myers, *The Canadian regime: an introduction to Parliamentary Government in Canada*, 2<sup>nd</sup> edition, Broadview Press, 2002, p.138.

44. Bob McMullan, House of Representatives, *Debates*, Prohibition of Human Cloning for reproduction and the Regulations of Human Embryo Research Amendment Bill 2006, 5 December 2006.

Government would be unworkable if the MPs that make up its parts all worked towards their own, various, outcomes.<sup>45</sup>

In the therapeutic cloning debate, even though he called for more conscience votes, Senator Nick Sherry (ALP, Tas) also acknowledged the role of party discipline in our democracy:

I wish we had a few more conscience votes in the parliament. I do not see that they are a threat or will undermine party discipline or democracy as it has evolved and as we currently practice it in Australia.<sup>46</sup>

## The media and conscience votes

The media are great supporters of conscience votes. During these debates journalists make claims such as this is ‘democracy at its best’, that the debate brings ‘out the best in our elected representatives’ and shows ‘what parliament *could* be, but almost never is’.<sup>47</sup>

In their enthusiastic support of conscience votes, the media often imply that members of parliament do not exercise their conscience during debates along party lines. This issue was tackled by Julia Gillard during the 2002 stem cell conscience vote:

I will start with the question of the conscience vote. Obviously this debate has enlivened a lot of media interest because it is unusual in this parliament to have a conscience vote ... The line has almost been drawn in some of the media reporting that, as we go about the rest of our business in this parliament, voting on bills which might be to do with education or health or industrial relations, or making decisions perhaps about what role Australian troops should play in an engagement overseas—with Iraq having been debated back and forth of late—somehow we are not being guided by moral and ethical frameworks, that we are not being guided by our conscience. When we make the full suite of decisions in this place, we are guided by our ethical framework and by our conscience. I have not at any time been required by party discipline to vote in a way that I have found did not accord with my conscience. We really do need to say that to dispel the media spin that most of the time we are robots exercising votes and that there are very few occasions when we get our conscience out of the cupboard, scrub it down and use it to define our position in relation to a bill. We use our conscience, our moral and ethical framework, all the time.<sup>48</sup>

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45. Editorial, *Herald Sun*, 20 February 2006.

46. Senator Nick Sherry, Senate, Debates, Prohibition of Human Cloning for Reproduction and the Regulations of Human Embryo Research Amendment Bill 2006, 7 November 2006, p. 29.

47. See, for example, Janet Fife-Yeomans, ‘Unleashed pollies set good example-briefly’, *Daily Telegraph*, 8 December 2006, Editorial, *The Advertiser*, 18 August 2006 and Laurie Oakes, ‘Private members’ ills’, *Bulletin with Newsweek*, 28 February 2006.

48. Julia Gillard, House of Representatives, *Debates*, Research Involving Embryos and Prohibition of Human Cloning Bill 2002, 28 August 2002, p. 6083.

Another aspect of reporting on conscience votes is that the media sometimes confuse the concepts of conscience vote and crossing the floor. For example, a newspaper report of the recent therapeutic cloning debate in the Victorian Parliament described the vote in the following way:

Fifteen members of State Parliament crossed the floor as a Bracks Government push to legalise therapeutic cloning was supported in the lower house.

Members of the Labor Government, the Liberal party and the Nationals voted against party colleagues last night ....<sup>49</sup>

Even former leader of the Victorian Liberal Party, Robert Doyle, writing about the same debate, said:

Liberal members crossed the floor to join Labor members to pass the stem cell bill ...<sup>50</sup>

It is worth mentioning the distinction, identified by Laurie Oakes, between conscience votes and crossing the floor. Oakes described the Prime Minister's attitude to conscience:

Howard decides when Coalition MPs are permitted to have a conscience (and all hell breaks loose when someone follows his conscience without permission).<sup>51</sup>

So members of parliament who cross the floor are simply exercising their conscience without permission!

## Dilemmas facing MPs in conscience votes

John Warhurst has described the dilemma facing members in a conscience vote in this way:

[there is] really no such thing as an absolutely free vote. Parliamentarians are never free, in any meaningful sense of that term, to do whatever they like. They are never really free from their community responsibilities or from their personal values or from their political parties.<sup>52</sup>

In the most recent conscience vote, a number of senators and members talked about how they had reached their decisions. Some such as Mr Tony Windsor (Ind) decided their decisions represented the collective view of the electorate:

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49. Peter Ker, 'House supports cloning bill', *Age*, 19 April 2007.

50. Robert Doyle, 'When principles win out over politics', *Sunday Age*, 22 April 2007.

51. Laurie Oakes, 'Private members' ills' *Bulletin with Newsweek*, 28 February 2006.

52. John Warhurst, 'There is no such thing as a free vote', op. cit.

I am not here to represent my conscience; I am here to represent the conscience of the people who elect me.<sup>53</sup>

Similarly Senator Trish Crossin (ALP, NT) said that although she did not come to the debate with a Northern Territory perspective:

I do come here representing the views of people in my constituency who have lobbied me in respect of this legislation.<sup>54</sup>

Members, such as Anthony Smith (Lib), believed their decision was based on:

... my own consideration of the detail of what is proposed and my own conscience.<sup>55</sup>

Others, such as Andrew Southcott (Lib), used a number of sources:

When we weigh up a conscience vote ... we listen to the evidence and to our constituents and we look deeply to our own experiences.<sup>56</sup>

There was even a suggestion after the RU486 debate in the Senate that:

More than one [senator] was heard to suggest ... that they could get used to making decisions for themselves.<sup>57</sup>

## Closing remarks

The results of conscience votes we have considered in this paper show that women across all parties have, particularly in the last three bills, voted as an effective bloc. The voting patterns also show that, while there is still consistency in members of parliament voting with their leaders, some government backbenchers have pressed for change on some issues, contrary to the views of party leaders.

The conscience vote has become more of an issue in the last decade. Our earlier publication showed that there were only three conscience votes during the period of the Labor

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53. Anthony Windsor, Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006, House of Representatives, *Debates*, 30 November 2006, p. 41.

54. Senator Trish Crossin, Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006, Senate, *Debates*, 6 November 2006, p.40.

55. Anthony Smith, House of Representatives, *Debates*, op. cit., p.50.

56. Andrew Southcott, *ibid.*, p. 55.

57. Misha Schubert, 'Conscience – an acquired taste?', *Age*, 10 February 2006.

Government from 1983 – 1996.<sup>58</sup> It is only in the last decade that complex issues such as therapeutic cloning have emerged as issues for the federal and state parliaments.

The complexity of these issues will, no doubt, continue to challenge members of parliament. These challenges are illustrated by a Weldon cartoon that appeared in the *Age* during the recent therapeutic cloning debate in the Victorian Parliament.

The cartoon depicted a staffer knocking on the door of three MPs saying ‘ten minutes to the conscience vote, MP’. The first MP, reading furiously and surrounded by books on ethics and religion, says ‘I just need a few more hours’. The second MP is sitting in her office, wearing a cross around her neck and obviously prepared for the vote. The third MP is on the phone asking ‘which way are we leaning on this conscience thingy?’<sup>59</sup>

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58. McKeown and Lundie, *op. cit.*, p. 17. Liberal Party MPs were granted a conscience vote on Family Law Amendment Bill in 1983 and Sex Discrimination Bill in 1984. ALP MPs were granted a conscience vote on a Procedure Committee motion in 1987.

59. Andrew Weldon, cartoon, *Age*, 3 April 2007, p. 12.

# Appendix 1

Note: here were no divisions in the Senate and the House of Representatives on the Prohibition of Human Cloning Bill 2002.

## Euthanasia Laws Bill 1996

### House of Representatives

	Total		ALP		LP		NP (a)		IND		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
<b>2nd Reading</b>														
Ayes	91	71	22	50	55	81	12	86	2	67	75	69	16	76
Noes	38	29	22	50	13	19	2	14	1	33	33	31	5	24
Total	129	100	44	100	68	100	14	100	3	100	108	100	21	100
<b>3rd Reading</b>														
Ayes	88	72	22	51	53	83	11	85	2	67	73	70	15	79
Noes	35	28	21	49	11	17	2	15	1	33	31	30	4	21
Total	123	100	43	100	64	100	13	100	3	100	104	100	19	100

### Senate

	Total		ALP		LP		NP (a)		AD		AG		IND		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
<b>2nd Reading</b>																		
Ayes	38	53	9	32	21	75	5	100	1	14	0	0	2	100	31	63	7	30
Noes	34	47	19	68	7	25	0	0	6	86	2	100	0	0	18	37	16	70
Total	72	100	28	100	28	100	5	100	7	100	2	100	2	100	49	100	23	100
<b>3rd Reading</b>																		
Ayes	38	54	9	33	21	75	5	100	1	14	0	0	2	100	31	65	7	30
Noes	33	46	18	67	7	25	0	0	6	86	2	100	0	0	17	35	16	70
Total	71	100	27	100	28	100	5	100	7	100	2	100	2	100	48	100	23	100

(a) Includes Country Liberal Party

## Research Involving Embryos Bill 2002

### House of Representatives

	Total		ALP		LP (a)		NP		IND		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
<b>2nd Reading</b>														
Ayes	103	74	53	88	44	69	6	50	0	0	74	70	29	85
Noes	36	26	7	12	20	31	6	50	3	100	31	30	5	15
Total	139	100	60	100	64	100	12	100	3	100	105	100	34	100
<b>3rd Reading</b>														
Ayes	99	75	53	90	40	69	6	50	0	0	72	72	27	84
Noes	33	25	6	10	18	31	6	50	3	100	28	28	5	16
Total	132	100	59	100	58	100	12	100	3	100	100	100	32	100

### Senate

	Total		ALP		LP (a)		NP		AD		AG		IND/ON		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
<b>2nd Reading</b>																		
Ayes	43	62	20	71	14	52	0	0	7	100	1	100	1	33	25	52	18	86
Noes	26	38	8	29	13	48	3	100	0	0	0	0	2	67	23	48	3	14
Total	69	100	28	100	27	100	3	100	7	100	1	100	3	100	48	100	21	100
<b>3rd Reading</b>																		
Ayes	45	63	20	71	16	59	0	0	7	100	1	50	1	25	25	52	20	87
Noes	26	37	8	29	11	41	3	100	0	0	1	50	3	75	23	48	3	13
Total	71	100	28	100	27	100	3	100	7	100	2	100	4	100	48	100	23	100

(a) Includes Country Liberal Party

**Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005**

**House of Representatives**

	Total		ALP		LP (a)		NP		IND		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
2nd Reading														
Ayes	95	66	54	92	37	51	3	27	1	50	66	61	29	81
Noes	50	34	5	8	36	49	8	73	1	50	43	39	7	19
Total	145	100	59	100	73	100	11	100	2	100	109	100	36	100

**Senate**

	Total		ALP		LP (a)		NP		AD		AG		FF		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
2nd Reading																		
Ayes	45	63	21	81	15	45	1	33	4	100	4	100	0	0	21	48	24	89
Noes	26	37	5	19	18	55	2	67	0	0	0	0	1	100	23	52	3	11
Total	71	100	26	100	33	100	3	100	4	100	4	100	1	100	44	100	27	100
3rd Reading																		
Ayes	45	62	21	75	15	47	1	25	4	100	4	100	0	0	21	46	24	89
Noes	28	38	7	25	17	53	3	75	0	0	0	0	1	100	25	54	3	11
Total	73	100	28	100	32	100	4	100	4	100	4	100	1	100	46	100	27	100

(a) Includes Country Liberal Party

**Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Bill 2006**

**House of Representatives**

	Total		ALP		LP (a)		NP		IND		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
2nd Reading														
Ayes	82	57	43	73	38	54	1	8	0	0	54	50	28	76
Noes	62	43	16	27	32	46	11	92	3	100	53	50	9	24
Total	144	100	59	100	70	100	12	100	3	100	107	100	37	100

**Senate**

	Total		ALP		LP (a)		NP		AD		AG		FF		Male		Female	
	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total	Vote	% of total
2nd Reading																		
Ayes	34	52	17	68	10	34	0	0	4	100	3	100	0	0	14	34	20	83
Noes	31	48	8	32	19	66	3	100	0	0	0	0	1	100	27	66	4	17
Total	65	100	25	100	29	100	3	100	4	100	3	100	1	100	41	100	24	100
3rd Reading																		
Ayes	34	52	17	68	10	33	0	0	4	100	3	100	0	0	14	33	20	83
Noes	32	48	8	32	20	67	3	100	0	0	0	0	1	100	28	67	4	17
Total	66	100	25	100	30	100	3	100	4	100	3	100	1	100	42	100	24	100

(a) Includes Country Liberal Party

## **Appendix 2**

### **Euthanasia Laws Bill 1996**

#### **House of Representatives**

Bill introduced: 9/9/1996

2<sup>nd</sup> reading speech: 28/10/1996

2<sup>nd</sup> reading vote: 9/12/1996

3<sup>rd</sup> reading vote: 9/12/1996

#### **Senate**

2<sup>nd</sup> reading vote: 24/3/1997

3<sup>rd</sup> reading vote: 24/3/1997

**Assent:** 27 March 1997

### **Research Involving Embryos and Prohibition of Human Cloning Bill 2002**

#### **House of Representatives**

Bill introduced: 27/6/2002

2<sup>nd</sup> reading speech: 27/6/2002

Vote on motion to split the Bill into two bills: 29/8/2002

### **Prohibition of Human Cloning Bill 2002.**

#### **House of Representatives**

2<sup>nd</sup> reading vote: 29/8/2002 (no division)

3<sup>rd</sup> reading vote: 29/8/2002 (no division)

#### **Senate**

2<sup>nd</sup> reading vote: 12/11/2002 (no division)

3<sup>rd</sup> reading vote: 14/11/2002 (no division)

**Assent:** 19 December 2002

### **Research Involving Embryos Bill 2002**

#### **House of Representatives**

2<sup>nd</sup> reading vote: 16/9/2002

3<sup>rd</sup> reading vote: 25/9/2002

## **Senate**

2<sup>nd</sup> reading vote: 12/11/2002

3<sup>rd</sup> reading vote: 5/12/2002

**Assent:** 19 December 2002

## **Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005**

### **House of Representatives**

2<sup>nd</sup> reading vote: 16/2/2006

3<sup>rd</sup> reading vote: 16/2/2006 (no division)

## **Senate**

Bill introduced: 8/12/2005

2<sup>nd</sup> reading speech: 8/12/2005

2<sup>nd</sup> reading vote: 9/2/2006

3<sup>rd</sup> reading vote: 9/2/2006

**Assent:** 3 May 2006

## **Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006**

### **House of Representatives**

2<sup>nd</sup> reading vote: 6/12/2006

3<sup>rd</sup> reading vote: 6/12/2006 (no division)

## **Senate**

Bill introduced: 19/10/2006

2<sup>nd</sup> reading speech: 19/10/2006

2<sup>nd</sup> reading vote: 7/11/2006

3<sup>rd</sup> reading vote: 7/11/2006

**Assent:** 12 December 2006

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