

# Urban Mythology: The Question of Abortion in Parliament<sup>\*#</sup>

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The re-election of the Howard Liberal government in 2004 saw a return of the question of abortion to the Commonwealth parliamentary agenda. In regard to questions of the legality of abortion, the legislative role of the Commonwealth parliament is limited, given the responsibility of the states for criminal law. Abortion has been debated in federal parliament mostly in the context of the funding of terminations by Medicare (formerly Medibank). Although there has been some reform at the state and territory level, only the ACT has removed abortion altogether from the criminal code.

The slowness of abortion reform is somewhat puzzling. In particular, the reluctance of Australian parliaments to engage in reform of abortion law is difficult to explain given the high levels of public support in Australia for liberal access to abortion. In this article, I examine this apparent paradox of a high level of public approval of access to abortion alongside considerable parliamentary reluctance to act upon it.

I refer to a ‘mythology’ that has grown up around the issue of abortion, a central claim of which is that the public will take electoral revenge for pro-abortion views of or votes by politicians. My argument is rather that it is the beliefs of politicians that stand in the way of any reform, in part their view on the morality of abortion, but of even more weight, their views about how their constituents form and exercise their votes. I conclude by briefly looking at the 2006 RU486 debate in federal parliament, to suggest that it has decisively undermined any basis for the mythology of abortion.

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### *Legislative Background*

The most notable debate on abortion at the Commonwealth level was the attempt of Stephen Lusher (Lib, Hume) to end Medibank funding for abortions in 1979; the 'Lusher Amendment' was defeated on 22 March 1979 by 65 to 52 votes.<sup>1</sup> After the 2004 election, the Family First party signaled its intention to raise in parliament broader questions about the legality of abortion (Family First 2004).<sup>2</sup> Various Commonwealth parliamentarians also voiced their desire to restart a public and parliamentary debate on abortion, and began to express publicly their disquiet over the number of abortions performed in Australia. The most prominent of these were Tony Abbott, John Anderson, De-Anne Kelly, Christopher Pyne, Bruce Baird, Alan Cadman, and Ron Boswell.<sup>3</sup> The Prime Minister, Mr. Howard, noted, as he had done on several previous occasions, that he would not block such a debate, while conceding that it would be extremely unlikely to result in any change.<sup>4</sup> Indeed, as noted by Mr. Howard and other politicians, there is no public constituency for the restriction of access to abortion.

By the end of 2006, the flurry of activity over abortion seemed to have come to an at least temporary pause, marked by the passing of the *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Act 2006* (Cth), which removed the approval of decisions on the drug RU486 from the Minister of Health. The legislative outcome of the RU486 bill was not however a foregone conclusion, given the widely held view of many analysts that the general question of abortion is simply too difficult for Australian legislatures to address. Although there is widespread recognition that there is little public support for restricting access to abortion, many politicians such as Mr. Howard also seem to believe that there is little public support for widening access either.

For example, the Committee of the Model Criminal Code, in summing up one of the most recent high-level discussions of the reform of Australian abortion law, claimed in 1996, 'With the exception of South Australia and the Northern Territory, the political process in Australia has been unable to deal with the issue [of abortion] for a century, and that position is unlikely to change' (Model Criminal Code Officers Committee 1996: 80–81).

The Model Criminal Code project is a comprehensive attempt to make criminal law uniform across Australia, steered by a committee of the Standing Committee of Attorneys-General chaired by Judge Rod Howie of the NSW District Court. The Committee published its Discussion Paper on non-fatal offences against the person

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<sup>1</sup> In 1989, 1990 and 1992, Alasdair Webster (Lib, Macquarie) introduced the *Abortion Funding Abolition Bill* as a private member's bill into the House of Representatives, but the bill never came to a vote. See more recently the efforts of Senator Brian Harradine in regard to Medicare funding, for example, Question with Notice, *CPD (Senate)*, 15 September 2003.

<sup>2</sup> See also Grattan and Nicholson 2004, Grattan 2004, and Schubert 2004.

<sup>3</sup> Grattan and Wroe 2004, Karvelas 2004a, and Dodson 2004.

<sup>4</sup> Lewis and Karvelas 2004: 1, Metherell and Todd 2004: 1, and Maiden 2005.

in 1996, and its Report in 1998, addressing abortion under Division 29 of the proposed model code. The Discussion Paper recommended following 'as closely as possible' the South Australian legislation on abortion, given the difficulty of getting reform through Australian legislatures. By the time of its *Report* on non-fatal offences in 1998, however, the Committee simply recorded its decision not to present a recommended legislative position, but rather 'to record background information' for Ministers wishing to make a decision on this issue (Model Criminal Code Officers Committee 1998: 147 and 155).

By 1998, the pessimistic assessment of the Criminal Code Committee's Discussion Paper had been undercut by a number of developments: the reform of the law on abortion in Western Australia by the *Acts Amendment (Abortion) Act 1998 (WA)*,<sup>5</sup> followed in 2001 by Tasmanian reform through the *Criminal Code Amendment Act (No 2) 2001 (Tas)*,<sup>6</sup> and by important legislative bouts in the Australian Capital Territory, in 1998 with the *Health Regulation (Maternal Health Information) Act 1998 (ACT)*,<sup>7</sup> and in 2002 with the *Crimes (Abolition of Offence of Abortion) Act 2002 (ACT)*.<sup>8</sup>

While it is not the case that the political process has proved unable to deal with the issue of abortion, it *has* proved difficult for parliaments to remove the issue of abortion from the province of the criminal law, and in that respect only the Australian Capital Territory has succeeded in doing so, by the *Crimes (Abolition of Offence of Abortion) Act 2002 (ACT)*. The ACT reform is particularly striking given that the foundations of modern legislative reluctance to deal with the issue of abortion rest in part on the experience of the failure of reform in the Commonwealth parliament in 1973, when a proposal for abortion reform in the ACT, the *Medical Practice Clarification Bill*, was sponsored by Labor backbenchers David Charles McKenzie and Tony Lamb. The bill was defeated by a vote of 98 to 23 (*CPD*, 10 May 1973).

As noted above, the reluctance of Australian parliaments to engage in reform of abortion law is difficult to explain in light of the high levels of public support in Australia for access to abortion. In the next section of the article, I sketch out the state of public opinion in this area.

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<sup>5</sup> See *WAPD*, 10 March–21 May 1998 passim. Also see Davenport 1998, Black and Phillips 1999, Teasdale 1999, Brankovich 2001, Kirkby 1998, and Rankin 2001: 246–248.

<sup>6</sup> See *TPD*, 19 December 2001 (House of Assembly), and 20 December 2001 (Legislative Council), passim. Also see Rankin 2003: 317–326.

<sup>7</sup> See *ACT Legislative Assembly Debates*, 26 August 1998 ff. See also Rankin 2001: 249–251. In 2001, the Executive issued the *Maternal Health Information Regulations Repeal 2001 (ACT)* to repeal the 1999 Regulations to the Act attempting to mandate the inclusion of foetal pictures in the pamphlet required to be given to women contemplating abortion: Rankin 2003: 329.

<sup>8</sup> See *ACT Legislative Assembly Debates*, 12 December 2001–21 August 2002. Also see Rankin 2003: 327–335.

### *Australian Public Opinion on Abortion*

Putting the question of legislative change in regard to abortion in a comparative context reveals a rather distinctive set of circumstances in Australia. In the United States, for example, public opinion on the question of abortion is deeply polarised, with a sizeable proportion of the population claiming to take the question into account in forming their voting preference.<sup>9</sup> In Australia, there is no such deep or intense division in public opinion. On the contrary: a substantial majority of Australians supports very liberal access to abortion, and this has been the case for at least the last 30 years.

After the 2004 federal election, at the time when various Liberal and National MPs were re-opening the debate on abortion, a Newspoll taken on 17–19 December 2004 found that 50% of Australians supported access ‘under any circumstances’, with a further 39% supporting access ‘if it is proven the pregnancy will cause psychological or medical harm to the mother’ (which is the test of the lawfulness of abortion in Victoria, New South Wales and Queensland). These figures were almost identical to those in a Newspoll taken eight years before, on 20–22 September 1996 (Karvelas 2004b).

To some extent of course, as in other areas, survey results will reflect the way in which the question is posed. However, the Newspoll figures show no significant differences from other polls with differently phrased questions. For example, the Australian Election Study 2001 (Question E3, ‘Feelings about abortion’) comprised 2,010 respondents, who were asked which of a set of statements came closest to ‘how you feel about abortion in Australia’. The study found 57.6% support for the statement ‘Women should be able to obtain an abortion readily when they want one’, with a further 32.5% supporting the statement ‘Abortion should be allowed only in special circumstances’. Again, the 2003 Australian Survey of Social Attitudes (AuSSA) found that 42.4% of respondents ‘strongly agree’ and 38.8% ‘agree’ that women should have the right to choose an abortion. Only 9% ‘disagree’ or ‘strongly disagree’ that women should have that right.<sup>10</sup> These studies mapped the constituencies for the opening of the debate on abortion before the 2004 election, and the later studies in the series show no significant changes.

In recent Australian opinion surveys on the question of abortion, moreover, religious affiliation is not aligned with significant differences in support for liberal access to abortion, with the exception of Evangelicals. However, a majority in *each* major religious category, *including* Evangelicals, either ‘strongly agrees’ or ‘agrees’

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<sup>9</sup> For a useful analysis of recent US polls on the question, see Pew Research Center 2005. For the primacy of abortion in regard to voting intentions in the 2003 presidential election, see Seelye 2004, and Pringle and Thompson, 2004; for a dissenting view, see Langer 2004. It should be noted that while the issue of abortion is very influential in terms of how ‘single issue’ voters cast their votes, a majority of Americans declares themselves in favour of choice on abortion.

<sup>10</sup> Australian Survey of Social Attitudes 2003. See also Kelley and Evans 1999: 83–90, based on International Social Science Surveys from 1984/5 and 1996/97.

that women should have the right to choose an abortion (AuSSA). While further analysis of the surveys would be an interesting project, my goal in this section is simply to indicate the majority support of abortion, even among those groups whose counterparts in the United States are solidly opposed to abortion.

Religious conviction *does* seem to have an influence on opinion as to the human status of the embryo or of the foetus. And recent surveys show some shift in perceptions, with more Australians moving to the view that embryos are human at a stage earlier than they previously believed. This shift was charted in an Australian National University survey of 7579 people spanning 1993 and 2001 (reported in Burke 2002), and gains some support from a 2005 report on surveys conducted by the Southern Cross Bioethics Institute (Fleming and Ewing 2005). The shift in opinion as to the status of the embryo does not seem to have any effect on opinion in regard to whether abortion should be *legal*, although it might have an effect on opinion in regard to the *morality* of abortion. The Southern Cross Bioethics Institute report found most Australians to be ‘deeply conflicted’ on the *morality* of abortion, where there was much less ambivalence on the question of its *legality* (Fleming and Ewing 2005: 13–15). This ambivalence has been picked up in a 2005 opinion poll commissioned by the Australian Federation of Right to Life Associations, which found that 60% of those polled supported abortion on demand, but when asked about abortion for ‘non-medical reasons’, only 39% of the same sample supported access (2006: 8).<sup>11</sup>

Going back a little further, Kelley and Evans found little change in public opinion on abortion from 1984 to 1996/97, with particularly little shift, for example, in opinions on whether to allow abortion in circumstances of foetal disability, or maternal poverty. Kelley and Evans did, however, find what they call a ‘dramatic moderation of opinion’, that is, a shift away from extreme views on abortion (Kelley and Evans 1999: 86). From the early 1970s on, no poll has found a majority of Australians opposed to abortion under any circumstances. Table 1 sets out the changing pattern of beliefs from 1972 to 1980 (adapted from Betts 2004a: 23).

Given the state of Australian public opinion as to abortion, few obstacles are in the way of parliamentary reform of the law on abortion; yet there is a marked and continuing reluctance on the part of the major parties to endorse a particular legislative orientation to the question, as noted below, or to place the question in the province of party discipline.

In this context, perhaps the most striking feature of opinion polls on abortion is that the beliefs of parliamentary candidates differ *significantly* from public opinion. The Australian Election Studies show that while Australians across party lines support liberal access to abortion, there are significant differences by party affiliation among parliamentary candidates. Labor candidates were more in favour of wide access than were Labor voters, but Liberal or National Party candidates were

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<sup>11</sup> The survey notes but does not explore further this inconsistency, and it would seem an important problem for further research.

considerably less in favour than Liberal voters, as the following table indicates, drawing on the work of Katharine Betts (note that the figures for 1996 and 2001 do not distinguish between Liberal Party and National Party candidates) (Betts 2004a: 25–26). The question was phrased slightly differently in different years; the numbers in the table are those who think ‘women should be able to obtain an abortion easily/readily when they want one’ (the other options were ‘only allowed in special circumstances’ or ‘not allowed under any circumstances’).

**Table 1: Percentage of respondents on the question of the legality of abortion, 1972–1980 — Abortion should be legal ...**

	1972	1973	1975	1978	1980
In all circumstances, that is, ‘abortion on demand’	19	23	29	31	28
In cases of exceptional hardship, either physical, mental or social	23	20	23	23	23
If the mother’s health, either physical or mental, is in danger	27	21	24	22	22
Only if the mother’s life is in serious danger	15	19	14	13	12
Abortion should not be legal in any circumstances	11	13	9	8	8
No opinion/no response	5	4	0.4	3	7

**Table 2: Percentage by party preference in favour of easy access to abortion**

Year	Labor Party		Liberal Party		National Party		Total	
	Voters	Candidates	Voters	Candidates	Voters	Candidates	Voters	Candidates
1987	40	59	38	13	36	15	38	36
1990	56	73	48	20	43	11	50	39
1993	59	78	59	32	55	12	55	57
1996	62	75	52	25	40	25	53	62
2001	63	72	59	30	54	30	56	59

In regard to other issues, such as race, immigration, the death penalty and economic redistribution, Betts has pointed out there is also disparity between the views of voters and candidates, but in those cases the voters generally espouse considerably more 'conservative' views than do the candidates (Betts 2004b).<sup>12</sup>

There is no evidence to suggest that a significant number of Australians rate the issue of abortion highly when formulating their political allegiance or voting preference, and no evidence to suggest that they cast their vote depending on the candidates' views on abortion. Hence, there is really no sense in which a parliamentary 'mandate' could be constructed for *any* position on abortion on the basis of people's expressed voting intentions. And in the almost complete absence of specific party commitments, and reluctance to impose party discipline on this issue, the voting intentions and actions of parliamentarians on abortion become subject to individual commitments, often of a religious character.<sup>13</sup> It seems possible that religious convictions are more aligned with the position on abortion of parliamentarians than are the religious convictions of Australians as a whole, although why this should be so is not clear. This question of the weight of religious convictions is probably best explored in further qualitative research.

### *Politicians and Public Opinion in Australia*

In general, both sitting and aspiring politicians in Australia seem to regard the chief obstacle to abortion reform not as their own beliefs and the beliefs of their colleagues, but as the beliefs (and voting patterns) of their constituents. Two examples are relevant here.

First, in the wake of the Western Australian reform of abortion law in 1998, various women's groups, including the Women's Electoral Lobby, EMILY's List and the Family Planning Association, decided to ascertain whether parliamentarians in the eastern states would be willing to introduce private member's bills to remove abortion from the criminal law. The speed of the reform in Western Australia seems to have taken such groups by surprise, given the long-standing view that abortion reform was too difficult and might instead issue in new restrictions on abortion. For example, in the wake of the WA changes, Joan Kirner, organiser with EMILY's List and former Victorian premier, argued that most politicians are uncertain as to whether a commitment to abortion reform is a liability, noting,

The Menhennitt ruling [handed down by a judge in the Victorian district court]<sup>14</sup> has never been challenged and politicians act on the idea that if it's not broke, don't fix it. It wouldn't have happened in Western Australia except that someone was silly enough to charge the doctors (quoted in Powell 1998).

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<sup>12</sup> The figures for these other issues paint a considerably more complex picture than I have indicated, but these questions are outside the scope of this article.

<sup>13</sup> For a useful survey of the religious allegiances of politicians, see Warhurst 2006.

<sup>14</sup> Interpolation in original; the reference is to *R v Davidson* [1969] VR 667.

The New South Wales MLC Meredith Burgmann argued similarly at that time that parliamentarians think that reform is too risky, and could cost them their seat at elections. Burgmann cited the case of Michael Maher as central to ‘Labor mythology’ on this question. Maher lost the marginal seat of Lowe for the ALP in the 1987 federal election, allegedly because the Right to Life campaigned vigorously against him for refusing to support an amendment to the *Human Rights Bill* that defined life as beginning at conception (cited in Powell 1998).

Michael Maher’s defeat does not support this cautionary myth; however Right to Life Australia did indeed target the seat of Lowe, using part of its (rather small) total electoral budget of \$25,000. However, Maher was a devout Catholic father of five children, a supporter of NSW Right to Life, and an outspoken critic of abortion (‘I believe that abortion is an evil thing and philosophically wrong’, he noted). Members of the ALP called him ‘Father Maher’ (Cameron 1987). Maher had won the seat of Lowe at a by-election in 1982, after it had been held by William McMahon for 32 years (McMahon himself had taken an active part in speaking against the Lusher Amendment in 1979: *CPD*, 21 March 1979, 891). Going into the 1987 election, Maher held Lowe with a margin of 2.3%. He lost the seat by 80 primary votes, and his own explanation of the defeat referred to opposition to the proposed national ID card, pensioner anger with government policies, and the general swing against Labor in Sydney (Coulthard 1987). The 3.8% swing against Maher was no greater than the average swing against the government in metropolitan Sydney (Cockburn 1987). The place of Michael Maher’s defeat in abortion mythology seems entirely unwarranted.

My second example concerns Pauline Hanson. Hanson was asked about her view on abortion at a public meeting on the Darling Downs on 29 May 1988, and replied, ‘It is every woman’s right to determine her own body’ (Franklin and Monk 1998). After her comment was interpreted as meaning that in her view women should be able to choose abortion, Hanson claimed that she had been misquoted. Her then chief adviser David Oldfield claimed that Hanson had not fully understood the difference between the letter of the law in Queensland and its application, and explained her position in these terms: ‘She was of the impression that it related to serious situations where a woman’s life was at risk, ... She does not advocate abortions for abortion’s sake and, God forbid, that they would be used as some type of contraceptive.’ The reporters of these comments added, ‘Mr Oldfield said Ms Hanson believed abortion was a deeply personal issue of choice for women. But her comments were made in the context of her understanding of existing Queensland law, he said’ (Franklin and Monk 1998). A week after Hanson’s public about-turn on the issue, it was reported that several One Nation candidates in Queensland had responded to a survey by the Women’s Electoral Lobby and the Queensland Women’s Interest Coalition asking for their views on women’s issues. Of those who replied, six argued that abortion should be removed from the Criminal Code and brought under the Queensland Health Act. Four of the candidates supported a woman’s right to choose (Monk 1998).

Several years later, David Oldfield attributed much importance to this incident. In late 2003, Oldfield announced that he would publish a book on Hanson (*Prisoner of the Nation: Hanson the False Prophet*) before she stood again for parliament. He described the project of the book: 'The whole concept of the book is to break down the entire urban myth of Hanson, blow by blow, fact by fact, day by day from start to the end, that's the intention' (Griffiths 2003). The example Oldfield gave of the myth of Hanson was her stance on religion and abortion:

For example, Hanson's an atheist and is an absolute believer in abortion on demand and that was a particular problem we had in the lead-up to the 1998 election because this sort of material started to leak out — statements she made about a woman's body being her temple. We had a lot of trouble hosing that down. I'm happy when it's all done to have Hanson try and deny the truth of any it, because she won't be able to (Griffiths 2003).

In interviews at that time, Oldfield reiterated the truth of Pauline Hanson, arguing that many of her supporters were religious and conservative, and were angered by her inadvertent revelation of her views on abortion: 'She got cornered and was asked these questions. She started to give answers along the lines of how a woman's body was her temple. People freaked out.... It probably cost two seats in the 1998 State election' (Wright 2003). However, there is simply no evidence to support such a claim of the electoral repercussions of Hanson's 'slip', nor did Oldfield provide any.

The mythology of popular retaliation for support of abortion reform seems to have a tenacious hold on the imagination of many politicians, whether pro- or anti-abortion. The infrequency of reform proposals seems to be more attributable to this mythology rather than to any basis in fact. In particular, those politicians who are *not* (personally) opposed to abortion often argue against raising the question by reference to electoral retaliation.

For example, throughout the 1970s and into the 1980s, a persistent topic of debate at ALP national conferences was the status of the 'conscience vote' on 'social issues' like abortion. At the 1977 conference, the then South Australian Premier Don Dunstan opposed the abolition of the conscience vote for questions of abortion because of his assessment of his electoral chances: 'I don't want to go to an election faced with the fact that I am going to lose three Cabinet ministers at least before an election over an issue like this' (Frykberg 1977). For Dunstan, retention of the conscience vote was the primary way of insulating the ALP from retaliation to the party as a whole if any of its members were to propose abortion reform in parliament.<sup>15</sup> Reserving a conscience vote for abortion has some basis in a respect for differing deeply-held views on the issue, but it is also founded in the mythology of popular retribution on politicians for their support of abortion reform.

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<sup>15</sup> It is a common misconception that it was Dunstan who initiated abortion law reform in South Australia, a misconception that I also mistakenly perpetuated in Pringle 1997.

### *The Conscience Vote and the ALP 'Ladies'*

The Liberal and National parties, as well as the Australian Democrats and the Greens, do not make a *specific* exception for abortion as a conscience issue. The Liberal and National parties in practice however, concede special status to abortion as a conscience issue. For example, in May 1998, John Howard was asked his view on late-term abortions. Howard is one of the three coalition politicians still sitting who voted to restrict Commonwealth funding for pregnancy terminations in the 1979 parliament (the others being Philip Ruddock and Alan Cadman). In reply to Neil Mitchell's question about late-term abortions, Howard answered:

Well, I have a personal view. These things are always regarded as conscience issues in the Liberal Party and I'm, therefore, speaking as John Howard and I'm not speaking as the Leader of the Federal Government. Well, they make me profoundly uneasy, to say the least. I'm quite uneasy. I know this is not a popular view with probably the majority of the community, but I'm a conservative on these issues.... I know it's a very difficult social issue and I know the pressures that are placed on many women and men in relation to this and I don't seek to ram my own personal views of conscience down the throats of others (Howard 1998).

Again, when asked about his view on abortion in July 2004, Howard replied:

My view on abortion is that it's a non party political issue. I personally have a very conservative view but I'm not somebody who runs around the country foisting his views on others. But whenever its come before the Parliament in the past I've voted in a quite conservative fashion. But I don't see it becoming a party political issue in this country, if it ever were to come up in the future I would always want the Liberal Party to allow its members a free vote (Howard 2004a).

As noted at the beginning of this paper, in November 2004, when asked about the possibility of a debate on abortion, Mr. Howard replied in similar terms:

There will be no Government-sponsored change at a federal level to current arrangements. It is always open, if somebody wishes to on an issue like this, to bring forward a Private Member's Bill and the Liberal Party for its part, and I'm sure also the National Party, would allow all of its members a free or open vote as we have in the past. These are not issues that can be determined in accordance with political philosophy. There are strong views on both sides and I respect those views.... But I stress there will not be any Government-sponsored change because we have a situation and inherently [sic] it is a matter of a free vote and a matter of conscience (Howard 2004b).

The Labor Party has allowed a conscience vote to its members on questions of abortion and the unborn since the early 1970s, with rare exceptions. In 2005, for example, New South Wales Labor MPs were not permitted a conscience vote on the *Crimes Amendment (Grievous Bodily Harm) Act 2005*, in regard to the protection of pregnant women and the unborn against violence or road rage; the Attorney-General framed the issue as a legal issue (Noonan 2005).<sup>16</sup>

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<sup>16</sup> Amendments to the law in this context were mooted after a case concerning Renee Shields, who lost her unborn child in a road rage incident in 2001. The changes were recommended by Finlay 2003,

The ALP national conference at Surfers Paradise in 1973 first expressly stipulated that abortion should be a conscience issue (Frykberg 1977). That decision was contested by women in the ALP at subsequent national conferences. In 1976, the NSW Labor Women's Conference passed a resolution calling for the abolition of all laws against abortion (and prostitution), with the resolution adding, 'No man is being asked to violate his conscience, but merely to cease oppressing women' (*SMH* 1976). This remained the position of a majority of ALP women throughout the 1970s and 1980s: that is, that the issue was not one of 'men's consciences' but of 'women's bodies', and should be the subject of party policy and party discipline like any other issue.

At the 1977 national conference, the leader of the federal opposition Gough Whitlam, his likely successor Bill Hayden, the NSW premier Neville Wran, and the South Australian Premier Don Dunstan combined to intervene against a motion from the ALP Health, Welfare, Repatriation and Migrant Affairs Committee to legalise abortion, which would have bound party members. All four pronounced themselves 'personally' in favour of abortion, but argued that it should remain a matter of individual conscience in parliamentary votes. The Committee motion was defeated by 25 to 18 votes, with 6 abstentions (Frykberg 1977). At the 1979 conference, there was another unsuccessful move to end the conscience vote, led by the Victorian branch of the ALP (*SMH* 1979c).<sup>17</sup>

In 1981, the first National Labor Women's Conference was opened by Paul Keating, then a Labor front-bencher, who began his address to the conference by welcoming the 'ladies'. The Conference called for a policy of abortion on demand and an end to the conscience vote on the matter (as well as calling for a refusal to take part in Right to Life questionnaires or debates) (*SMH* 1981).

After a change in party rules, women participated in greatly increased numbers at the 1982 Labor national conference, leading to fears that pressure on the abortion issue could split the unity of the party and spoil its electoral chances (Walsh 1982, and Kelly 1982). At the ALP national conference in 1984, the Labor Party platform on women was amended so that the phrase 'including abortion' was added to endorsement of 'the particular right of women to choice of fertility control' (Buckley 1984a).<sup>18</sup> Senator Pat Giles then sought to introduce a motion at the conference that would have allowed only members who had been elected or preselected prior to the conference to abstain from votes on the question; the motion

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and initiated in the wake of the case of Philip King's assault on Kylie Flick and her unborn child: *R v King* [2003] NSWCCA 399, and *R v King* [2004] NSWCCA 444.

<sup>17</sup> See also *SMH* 1979 (noting Victorian ALP decision to ask federal ALP to end conscience vote on abortion), and *SMH* 1979b.

<sup>18</sup> The federal Labor Party platform now notes, 'Labor will support the rights of women to determine their own reproductive lives, particularly the right to choose appropriate fertility control and abortion; ensure that women have a choice regarding their reproductive lives on the basis of sound social and medical advice' (ALP National Platform and Constitution).

was defeated 58 to 35 (Buckley 1984b). The change in platform was hence not binding on Labor members, candidates or parliamentarians.

Throughout the 1970s and into the 1980s, many Labor women identified the conscience vote as perhaps the major obstacle to reform of the abortion law. They argued against the continued framing of abortion as an issue of conscience, and maintained that the Labor Party should adopt a policy, and subject its members to the ordinary processes of party discipline, on the matter. Without the engine of party initiation and backing, the women argued, no reform would be contemplated, or successful. The reluctance of the party to impose discipline on such matters was itself, of course, formed in part against the background of the ‘mythology’ of popular retaliation, just as it fed into the myth.

It therefore seems puzzling that the first Commonwealth parliamentary bill in the 21<sup>st</sup> century that concerned abortion was successfully passed on a conscience vote — just as abortion reform in WA, Tasmania and ACT had come about through free votes in parliament. The reason for this seems to be that women’s consciences as well as men’s consciences have increasingly come into contention in the debate and the vote. When the House of Representatives voted against the Lusher Amendment in 1979, there were no women members in the House. By 2006, the gender balance of the parliament had changed decisively in both the House and the Senate. Of course, it was less the outcome of the vote that differed; rather, the difference was in the readiness to contemplate a vote on the issue of abortion.

### ***The RU486 Debate and Gendered Consciences***

In 2006, a private member’s bill was introduced into federal parliament, to transfer the approval of the abortifacient RU486 from the Minister of Health to the Therapeutic Goods Administration. The bill was introduced by four women senators: Judith Troeth (Lib, Victoria), Fiona Nash (Nat, NSW), Claire Moore (ALP, Queensland), and Lyn Allison (AD, Victoria), in December 2005, and was then referred to a Senate Committee. The Committee received 2,500 submissions, but made only one recommendation, on education.

In tabling the Senate report, the Chair of the Committee, Senator Gary Humphries, pointed to the difficulty of the question of approval of the drug on the grounds that ‘Who makes that decision is inexorably tied up in the question of what’s your view about abortion, what’s your view about this abortion-inducing drug’. Senator Humphries pronounced himself as anti-abortion and in favour of the approval power remaining with the Minister for Health, and thereby ‘accountable to the Australian community’ (ABC World Today 8 February 2006). Even though the ensuing parliamentary debate did not directly concern questions about the legality of abortion, the debate on RU 486 took place against the backdrop of the debate on that very question that had begun after the 2004 election.

In 2005 and 2006, the debate on abortion focussed around the question of the allegedly high number of abortions in Australia. The estimate of 100,000 abortions a year seems first to have been raised by the Minister for Health in a speech in early 2004, when he noted 'the fact that 100,000 Australian women choose to destroy their unborn babies every year' (Abbott 2004: 13).<sup>19</sup> In early 2005, Senator Ron Boswell placed a series of questions on notice to the Health Minister, asking for information about the numbers of abortions, and the grounds on which they are provided and/or funded (*CPD*, 31 January 2005). Senator Boswell and others maintained that their aim was not to change the law, but simply to debate the issue, and/or to allow the public to do so. One last event that played into the debate was the long-running case concerning a late term abortion in Victoria in 2000, in which a foetus suspected of dwarfism (skeletal dysplasia) was aborted at around 32 weeks (the facts of the case are usefully set out in Legge 2005). The doctor administering the lethal injection in that case, Professor Lachlan de Crespigny, published a paper arguing that it was necessary to reform the law on abortion in order to protect the actions of doctors involved in such procedures (de Crespigny and Savulescu 2004). A series of subsequent court actions, involving the National Party Senator Julian McGauran, concerned whether the hospital should be required to turn over the documents in the case.

Hence, the RU486 debate in the context of these circumstances was not simply about the powers of decision of the Health Minister, but was in part a debate about abortion, as Senator Humphries noted. Of course, there were certain complicating factors that do not allow a straightforward reading of the RU486 vote as *simply* a vote on abortion. Some Liberal and National Party members, notably Alexander Downer and Jackie Kelly, did not phrase their positions in whole or in part in terms of abortion at all, but in terms of the power of parliament. Other factors that may have come into play in voting preferences were a sense of party loyalty, either to the Minister for Health, or to the Prime Minister (who was known to oppose the bill), and perhaps even some personal antipathy to the Minister for Health in the case of certain members.

Nevertheless, some patterns are clear. The figures in Table 3 set out figures for the Senate vote on the third reading of the bill on 9 February 2006, and the House of Representatives vote on the second reading of the bill on 16 February 2006. In the Senate, the second reading had passed by 45 to 26 votes, after which two sets of amendments were put in the Committee stage of the debate, the first set on behalf of Senators Barnett and Humphries, which was lost by 28 to 44 votes, and the second on behalf of Senators Colbeck and Scullion, which was lost by 33 to 41 votes. In the House, amendments proposed by Jackie Kelly were defeated 49 to 96 votes, as were amendments proposed by Andrew Laming, 56 to 90 votes. The third reading of the bill in the House was passed on the voices, so final voting figures are not available in that case.

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<sup>19</sup> See also Dunne 2004: 38–40. Pratt, Biggs and Buckmaster (2005: 17 fn 2) suggest how Abbott might have reached this figure. See also Pringle 2005.

No ALP women in the House, and only two ALP women Senators, voted against the bill. In parliament as a whole, ALP men were significantly more strongly in favour of the bill (80%) than were Liberal/National Party women (70%). The group most opposed to the bill was Liberal/National Party men, with only 40% of the total members of this group in parliament voting for the bill. The figures for this last group suggest that neither gender nor party affiliation *in itself* provides a sufficient explanation of voting patterns on issues like abortion. The voting patterns in the RU486 debate are consistent with those evident in the abortion reforms in the state and territory parliaments noted above. That is, votes in parliament on such matters are moving into closer alignment with public opinion. Without the evidence of a post-debate election to draw upon, it is premature to say that there is no electoral cost to politicians who took a less conservative stand on these issues. However, it is noteworthy that there is no mention of the issue in media coverage of the lead-up to the 2004 election or in anecdotal polling of reasons for voting intentions in that election.

**Table 3: Voting on the RU486 legislation in the Senate (3<sup>rd</sup> reading, 9 February 2006) and House of Representatives (2<sup>nd</sup> reading, 16 February 2006)**

	Senate Yes	Senate No	Senate Abstain/ Absent	HR Yes	HR No	HR Abstain/ Absent
Lib/Nat men	8	19	3	32	38	1
	27%	63%	10%	45%	54%	1%
Lib/Nat women	8	1		10	6	1
	89%	11%		59%	35%	6%
ALP men	10	5		33	5	1
	67%	33%		85%	13%	2%
ALP women	11	2		19		
	85%	15%		100%		
AD + Green men	3					
	100%					
AD + Green women	5					
	100%					
Family First men		1				
		100%				

Ind men				1	1	1
				33%	33%	33%
TOTAL	45	28	3	95	50	4

Perhaps the most striking outcome of the RU486 debate, however, is not the particular numbers of votes for and against, but rather that the issue was debated and voted upon, which makes it clear that it is not the alleged conservatism of voters that stands in the way of abortion reform. Rather it is primarily the timidity of their elected representatives.

### ***Conclusion***

Australian popular opinion has remained in favour of liberal access to abortion over the last 30 years. The voting intentions of parliamentarians, at least at the federal level, now seem to be more closely aligned with popular opinion on this issue. The practice of conscience voting on abortion and reproductive matters, once considered by many women's groups as a serious obstacle to abortion reform, now seems much less so, given the greater numbers of women in parliament, who — across party lines — are overwhelmingly in favour of easier access to abortion. In these circumstances, the mythology of popular retribution for pro-abortion views or votes by legislators can no longer be relied upon by members of parliament to explain their reluctance to undertake abortion reform in Australia.

Women and women's groups that are interested in the legalisation of abortion no longer need fear a free vote on the issue in parliament. While the leadership of the major parties remains reluctant to require party discipline on issues of abortion, a free vote seems to be the only way in present circumstances of both getting the issue onto the parliamentary agenda and having it considered in parliamentary debates. ▲

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