Corrupt Cops, Crooked Docs, Prevaricating Pollies and ‘Mad Radicals’: A History of Abortion Law Reform in Victoria, 1959 - 1974

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Declaration:

I certify that except where due acknowledgment has been made, the work is that of the author alone; the work has not been submitted previously, in whole or in part, to qualify for any other academic award; the content of the thesis is the result of work which has been carried out since the official commencement date of the approved research program; and any editorial work, paid or unpaid, carried out by a third party is acknowledged.

Signed:

[Signature]

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Date: 18 April 2005
Acknowledgments

Researching and writing a dissertation is, by its nature, a solitary task. And yet I would have found it impossible to accomplish this without the support, encouragement and assistance of quite a crew. I would like to acknowledge some of those people personally.

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<th>Full Form</th>
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<tr>
<td>ALP</td>
<td>Australian Labor Party</td>
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<tr>
<td>ALRA</td>
<td>Abortion Law Reform/Repeal Association</td>
</tr>
<tr>
<td>AMA</td>
<td>Australian Medical Association</td>
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<tr>
<td>AMG</td>
<td>Australasian Medical Gazette</td>
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<tr>
<td>AMJ</td>
<td>Australian Medical Journal</td>
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<tr>
<td>AN</td>
<td>Accession Number</td>
</tr>
<tr>
<td>ARNA</td>
<td>Abortion Rights Network of Australia</td>
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<tr>
<td>BMA</td>
<td>British Medical Association</td>
</tr>
<tr>
<td>BMJ</td>
<td>British Medical Journal</td>
</tr>
<tr>
<td>CIB</td>
<td>Criminal Investigation Bureau</td>
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<tr>
<td>CPA</td>
<td>Communist Party of Australia</td>
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<tr>
<td>CPD</td>
<td>Commonwealth Parliamentary Debates</td>
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<tr>
<td>DLP</td>
<td>Democratic Labor Party</td>
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<tr>
<td>DPP</td>
<td>Department of Public Prosecutions</td>
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<tr>
<td>FCC</td>
<td>Fertility Control Clinic</td>
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<tr>
<td>FPA</td>
<td>Family Planning Association</td>
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<tr>
<td>HR</td>
<td>House of Representatives</td>
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<tr>
<td>HREOC</td>
<td>Human Rights and Equal Opportunity Commission</td>
</tr>
<tr>
<td>LA</td>
<td>Legislative Assembly</td>
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<tr>
<td>MDA</td>
<td>Medical Defence Association</td>
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<tr>
<td>MHR</td>
<td>Member of the House of Representatives</td>
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<tr>
<td>MJA</td>
<td>Medical Journal of Australia</td>
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<tr>
<td>MLA</td>
<td>Member of the Legislative Assembly</td>
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<tr>
<td>MLC</td>
<td>Member of the Legislative Council</td>
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<td>MS</td>
<td>Manuscript</td>
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<tr>
<td>NH&amp;MRC</td>
<td>National Health and Medical Research Council</td>
</tr>
<tr>
<td>OPP</td>
<td>Office of Public Prosecutions</td>
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<tr>
<td>PROV</td>
<td>Public Records Office of Victoria</td>
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<tr>
<td>RHA</td>
<td>Racial Hygiene Association</td>
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<tr>
<td>RTLH</td>
<td>Right to Life Association (also RTL for Right to Life group)</td>
</tr>
<tr>
<td>RWH</td>
<td>Royal Women’s Hospital</td>
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<tr>
<td>SL</td>
<td>Spartacist League</td>
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<td>SLV</td>
<td>State Library of Victoria</td>
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<tr>
<td>SWP</td>
<td>Socialist Worker’s Party</td>
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<tr>
<td>VCCL</td>
<td>Victorian Council for Civil Liberties</td>
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<tr>
<td>VPD</td>
<td>Victorian Parliamentary Debates</td>
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<td>VPF</td>
<td>Victoria Police Force</td>
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<td>VWLLFA</td>
<td>Victorian Women’s Liberation and Lesbian Feminist Archives</td>
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<tr>
<td>WAAC</td>
<td>Women’s Abortion Action Coalition</td>
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<td>WAC</td>
<td>Women’s Action Committee</td>
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<tr>
<td>WEL</td>
<td>Women’s Electoral Lobby</td>
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<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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<tr>
<td>WLM</td>
<td>Women’s Liberation Movement (also called WL)</td>
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<tr>
<td>ZPG</td>
<td>Zero Population Growth</td>
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SYNOPSIS

This dissertation explores the history of abortion law reform in Victoria between 1959 and 1974, contextualised in a feminist politics of reproduction. The aim of the research is to investigate the extent to which the history of abortion law reform in this state can be understood as part of the struggle of women for sexual self-determination and hence for full citizenship. As a result, one of the principal objectives of the thesis is to analyse the basis on which abortion is available in Victoria. The research draws on historical data, using the records of relevant contemporary organisations, the press, and interviews with some of the key people involved in advocating abortion law reform. In particular, the dissertation documents the abortion law reform experiences and struggles of Victorian women, including the attempts they made to contest their historic exclusion from participation in policy formulation and legislation related to reproduction. It begins with the consolidation of the Crimes Act in 1958 and ends in 1974 with the passing of the national health and associated bills, which ensured public funding for abortion procedures.

Social, political and economic changes in the preceding century led to overwhelming public support for abortion law reform in line with changing social mores and advances in reproductive science. But this did not result in legislative change enacted by a responsive and democratic government. Rather, the history of abortion law reform in Victoria is shown to be a case study of conflict, co-operation, co-option and collusion in five main arenas of vested interest. The first of these was state interest in fertility control, and thus women's sexual behaviour, as a reflection of national concerns about the size and composition of the Australian population. The second was a struggle for industrial control of a lucrative abortion industry, supported by systemic police corruption, medical corruption and collusion by politicians and officers of the Crown Law Department. The third factor was the political manoeuvring of a government determined to retain power by framing abortion as a medical rather than a legislative problem. Conflict between community calls for abortion law reform to protect doctors from prosecution on the one hand, and a political requirement for preference votes from the Democratic Labor Party on the other, was resolved in favour of the latter. The fourth factor was the professional struggle for medical control over reproduction, supported by civil liberties activists and liberal feminists seeking access to abortion without engaging in questions of political control over decision-making. The struggle by an increasingly organised feminist movement to reframe abortion as a political issue related to women's sexual self-determination, expressed as control over reproductive decision-making,
was the final factor. As such, the dissertation is as much a case study of the factors at play in attempting to effect change in a capitalist patriarchy, as it is about abortion law reform per se.

The thesis is organised within a historical framework that provides both an overview of the time period under consideration and a detailed account of the various struggles that took place within that period. The chapters are set out around the key events that shaped and were shaped by the struggle for law reform. These include the Menhennitt Ruling in 1969, the Kaye Inquiry into police corruption in 1970, the Medical Practices Clarification Bill in federal parliament in 1973 and the Proposed Abortion Inquiry in state parliament in 1973. I focus on those groups that had control over abortion policy and practice, as well as the main groups that worked to influence those bodies. These include churches, the media, political parties, and social movements – in particular the actions and attitudes of civil liberties and feminist groups.

The conclusion locates the history of abortion law reform within the current socio-political and economic context, encouraging an examination of contemporary questions regarding women’s control over reproductive decision-making. This includes an exploration of whether sexual self-determination and the human rights necessary to achieve full citizenship are possible for women given the deleterious impact of neo-liberal ideology on funding those programs and policies that work towards equality, rather than ‘choice’, and freedom from oppression, rather than individual ‘rights’.
INTRODUCTION

CORRUPT COPS, CROOKED DOCS, CONNIVING POLLIES AND ‘MAD RADICALS’: a history of abortion law reform 1959-1974

"The past leads to us if we force it to. Otherwise it contains us in its asylum with no gates. We make history or it makes us."  

This dissertation presents the findings of a carefully reconstructed history of abortion law reform in Victoria between 1959 and 1974, contextualised in a feminist politics of reproduction. My particular interest is the extent to which the history of abortion law reform in this state can be understood as part of the struggle of women for sexual self-determination and hence for full citizenship. An exploration of the basis on which abortion is available in Victoria and the impact this has had on women’s struggle is one of the principal objectives of this thesis.

1. Rationale

In April 1990 I commenced a social work position at the Royal Women’s Hospital (RWH) in Melbourne. This involved working with women and their families across a broad spectrum of ages, cultural backgrounds, abilities and socio-economic circumstances, in the obstetric and gynaecological units of the hospital.

As part of this work, I was responsible for administering the social work component of the Pregnancy Advisory Service (PAS), the RWH’s public abortion service, and for supervising the counselling staff attached to the Reproductive Biology Unit (RBU), through which women accessed reproduction-aiding technology. At first glance this appeared to be a contradictory role. However, in discussion with colleagues Jenny Blood, Kay Oke, Kim Robinson, Desley Scott and Theresa Lynch, it soon became clear that there was little conflict between the roles. We each found that the women we worked with experienced a profound loss of control over their lives as a result of either an unplanned pregnancy, or an inability to become pregnant. Each of the women found herself having to reassess her life plan. The social taboo that surrounded discussion of both abortion and reproductive technologies left them largely silenced, while each felt the stigma of her ‘failure’ either to prevent a pregnancy.

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or to produce a child. This occurred equally among women who used contraception religiously, or whose partners were infertile. The women found themselves completely preoccupied by reproductive decisions that were not their own. Decision-making and access to services ultimately lay in the hands of medical personnel, who implemented programs according to legislative guidelines.

The main differences between the women were, first, that the desire for a child was assumed to be a more worthy pursuit than a request for an abortion. Second, the regaining of control over their lives was a much quicker and more certain process for women seeking an abortion, at least as far as reproduction was concerned.

Counselling in both the RBU and the PAS was compulsory for all women. While legislation determined what occurred in the RBU, it was a lack of legal clarity that led to compulsory counselling in the PAS. A woman's circumstances, her reasons for seeking an abortion, or indeed whether she desired to see a social worker, were immaterial. This largely bureaucratic procedure had developed, in part, to ensure that the medical staff had a clear defence under the law. In 1969 the Menhennitt Ruling clarified that an abortion was lawful if the medical practitioner honestly believed on reasonable grounds that an abortion was necessary to preserve the woman from serious danger to her life or her physical or mental health.

I came to the RWI after three years of working in a women's refuge, largely at the insistence of friend and colleague Wendy Weeks. The department was undergoing restructure and my task was to help build a service that responded to feminist concerns about mainstream health services. It was patently clear to me that power and control were central to women's lives both politically and individually. Many of the women that I had worked with in refuge had been trained by years of abuse to assume that they had no control over their lives. As a result, they did not feel able to take responsibility for their lives either, making it impossible for them to escape a violent partner. If they did leave, the responsibility that accompanied their newfound control was often overwhelming.

At the RWI, our aim was to build a service that assisted women through the crisis of an unplanned pregnancy without furthering the loss of control over their lives already experienced as a result of that pregnancy. Compulsory counselling not only reinforced a lack of control, it sparked anger among women that they were assumed to be incapable of making a considered decision. The majority of women had of course made up their minds prior to
contacting the hospital. Further, our theoretical framework suggested that placing control over decision-making with the woman was crucial to effective counselling and indeed to her ability to take responsibility for her decision. A woman who felt pressured into either continuing or terminating an unplanned pregnancy was more likely to experience regret. It also seemed that participating in a counselling process that compelled women to justify their decision as sound, unselfish and moral colluded in the oppression of women.

We restructured the PAS into a telephone intake service, where relevant information was gathered about each woman before she was offered a medical and a counselling appointment. Many women made their decisions interdependently, often with the active and supportive assistance of a partner or parent. These women largely declined counselling. Some women continued to face ‘compulsory’ counselling, but this time on the basis of information enabling the service to target those women most likely to experience pre- and/or post-abortion difficulties. For example, dependent women under eighteen without parental consent, women whose pregnancies were beyond twelve weeks and women who indicated that they did not feel in control of the decision to seek an abortion were booked in for counselling. A number of women also chose more in-depth counselling for a range of reasons of their own.

We experienced a great deal of satisfaction in working with women who were taking control over decision-making, sometimes for the first time in their lives, whatever the outcome of that decision. We also learnt a great deal about the way in which women make decisions about abortion. The analogy of the hub-and-spoke configuration of a wheel seems the best description of this process. While the woman was, by necessity, the hub of decision-making – after all, she would bear and probably rear any child born – she made her decision by considering the impact of the pregnancy on her partner, parents, existing children, career, education, physical, mental and emotional health, and so on. This included consideration of socio-economic circumstances, age, marital status, citizenship, and other factors that influenced the quality of life she could offer a child, or that made parenting possible. The constructed notion of ‘foetal rights’ did not feature a great deal in most women’s deliberations, except where religious conviction was an important factor.

While we supported women’s ‘right to choose’, we couldn’t help but note that choice was a poor term to describe the individual decisions women made. There was a dearth of literature discussing the effects of socio-cultural or politico-economic circumstances on women’s choice, and so we tried to build our own knowledge through a system of peer support and

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2 Wendy Weeks died on 31 July 2004. Her death is an enormous loss to women’s services, policy and
review. Abortion literature at the time also tended to argue only for or against abortion rather than grapple with the complexity of circumstances leading to an abortion. I came to believe that, for many women, choice was the intellectual capacity to imagine a range of possibilities, but the ability to ‘choose’ only one in the current circumstances. The women we counselled rarely had control over the economic, political, cultural, social or emotional context that allowed real reproductive choice. These women often grieved for the circumstances that might have allowed them to continue a pregnancy, such as a loving and supportive partner, good health or financial independence. I was struck by US academic and reproductive rights activist Rosalind Petchesky’s argument that ‘the much discussed “ambivalence” of many women toward the experience of abortion (not the right) is a smokescreen that obscures a dense web of losses and sorrows relating to aging and childbearing and the precariousness of sexual relationships, as well as the longings for family ties and emotional commitment that a “baby” may symbolize’. This eloquently summarises what we discussed in the counselling process at the RWH.

For the majority of women, the process of decision-making had positive consequences, perhaps all the more so for elucidating what was, and what was not, within each woman’s ambit of control. Being supported and challenged to take responsibility for a decision about whether or not to continue a pregnancy commonly led women to consider other aspects of their lives that felt out of control. For instance, some women chose to leave a violent partner; other women recognised that they had not, up to then, felt that they had a choice about the circumstances leading to the pregnancy; still other women recognised that their ambivalence resulted from the abortion symbolising a previous loss not yet confronted.

The percentage of women who found it difficult to make a decision to have an abortion was small compared with the overall rate of abortion, but, in building a feminist practice, we chose to concentrate on those women. Women who came from countries where abortion was freely available took a much more matter-of-fact approach to abortion, seeing it as a legitimate form of contraception, and were somewhat amused by the rigmarole involved in accessing an abortion in Victoria. This led us to question whether it was the taboo of abortion, coupled with propaganda about long-term psychological problems and physical danger, that actually led to some of the difficulties that women from cultures with more restrictive abortion laws expressed.

practice, as it is to her friends and family.

The PAS medical team was led by then head of obstetrics and gynaecology, Michael Kloss. Kloss had worked at the RWH prior to the Menhennitt Ruling, treating women with septicaemia and gas gangrene. He had regularly performed illegal abortions on poor women living in Fitzroy, Collingwood and Carlton to prevent these consequences. Kloss had been a target of the Right to Life Association (RTLA) and he, his patients and his family had been consistently harassed. He remained committed to ensuring women’s access to safe abortion and went to great lengths to ensure the service was well supported prior to retiring.

Nevertheless, access to abortion remained a vexed question for many women. The RWH performed a limited number of public abortions each week and other public hospitals even fewer, if any. Young women who were unable to obtain parental consent, women from rural areas (particularly the ‘Catholic belt’ from Ballarat to Warrnambool where contraception was also difficult to come by if you were unmarried) and women with a pregnancy in the second trimester, faced the greatest difficulties accessing an abortion. Abortion was clearly more or less available in Victoria, but it remained a crime, and the doctors I worked with remained nervous enough about the possibility of prosecution to deny an abortion to any woman whose circumstances fell into legally ‘grey areas’. It seemed that the most vulnerable women often had greatest difficulty accessing an abortion.

A woman also relied on the good will, good practice and personal views of the doctor whom she first saw. For most women this turned out well, but this was not always the case. One RWH doctor was well known for refusing to refer women for an abortion, arguing that it was his decision which clinic should treat her. These women were treated sympathetically and given every encouragement to continue with a pregnancy, including time to reconsider their decision – so much time, that some women then found their pregnancy was too far advanced to permit an abortion. It was not just his presumption that he should control women’s decision-making that outraged me – he was well known for espousing the ‘fact’ that pregnant women are not emotionally capable of rational thought – it was that the hospital administration supported his claim to medical and administrative control at the expense of the woman’s interests, while she retained responsibility for the outcome.

These experiences led me to ask the questions on which this dissertation is based. How did a legal situation arise that gave ultimate decision-making control to individual medical practitioners who did not have to take responsibility for the consequences of their actions? Further, the Menhennitt Ruling, on which access to abortion in Victoria had been based since 1969, struck me as a fairly flimsy guarantee of women’s ongoing access to terminations. What would happen if this ruling were challenged and overturned? It seemed that women
were subject to the attitudes and opinions of their doctors, yet those doctors did not feel particularly confident either. My interest in exploring the politics surrounding access to abortion grew.

Two other incidents confirmed my interest in exploring a history of abortion law reform in the context of reproductive politics. One was a conference held at the RWH about the ‘abortion pill’, RU486, which attracted opposition from anti-abortionists and feminists alike. Why was it that feminists were fighting to prevent the distribution in Australia of a pill that appeared, on face value, to give women greater access to abortion and therefore greater reproductive control? The same feminists had also fought strongly against legislation allowing the development of reproductive technologies in Victoria, as had anti-abortionists. When that legislation was being developed I was completing a social work placement in the Women’s Policy Coordination Unit of the Department of the Premier and Cabinet and was involved on the periphery of those discussions. It was the potential danger to women’s health as a result of side effects, that the technologies were in the hands of the medical profession not women, and the reinforcement of a woman’s destiny as mother that drove feminist opposition. I shared a number of concerns about the individual health and broader political implications of the new technologies for women. The state government supported them on the basis of expanding women’s reproductive choices. This led me to ask whether the idea of ‘reproductive choice’ might have been coopted as a way of disguising increased medical control.

The second incident followed an increasing number of requests for sex-selective abortions. These came from women who were planning to return to countries where one-child policies or son-preference dominated reproductive ‘choices’. As feminists, we reflected on how we could sanction the ‘choice’ to abort female foetuses, without implying that women should have control over only some choices. It was a constant struggle within the RWH to deal with the stigma attached to abortion, let alone to try to increase the availability of public abortions for women, without supporters raising questions about limiting abortion under certain circumstances. As with the limitation on real choice referred to earlier, it seemed that women’s reproductive freedom lay not so much with free access to abortion as in challenging and dealing with the fundamental material conditions and power relationships within which women make the choices that they do.

These experiences increased my interest in exploring abortion law reform, women’s choice, and a less than well-articulated question that more recent writers have referred to as the
building of a feminist morality of abortion. My decision to focus on a history of abortion law reform means that I have researched, analysed and interpreted data from the time period under study. I have not, in this dissertation, grappled directly with a feminist morality of abortion or unpicked the meaning of women’s choice. While some activists touched on these questions in the time period under consideration, the individuals, groups and organisations that concentrated on making abortion available to women within the political and social climate of the day had little time to grapple with theoretical questions. It is only really as women have begun to take access to abortion for granted that those issues have been raised.

Nonetheless, I do explore some of these questions in the conceptual chapter, as well as in the body of the thesis when relevant, drawing on the work of a range of writers who have more recently engaged with a broader politics of reproduction. I have done so to make explicit the guiding principles underlying my interpretation of the historical sources. Patricia Grimshaw reminds us that historians cannot make any claim to definitive argument or interpretation. Their conclusions, albeit based on laboriously reconstructed ‘relics of the past’, are nevertheless interpretations ‘necessarily moulded by the historian’s own social context’. They cannot, therefore, claim to discover the ‘truth’. For this reason, my thesis is presented as a history, rather than the history of abortion law reform in Victoria.

Appendix one outlines the methods of analysis and sources of data used in this dissertation. In the main, my research is based on an examination and analysis of historical data, using the records of relevant organisations, the press, and interviews with some of the key people involved in advocating abortion law reform to analyse the events.

2. Structure of the Dissertation

The period I discuss begins with the consolidation of the Crimes Act in 1958 and ends in 1974 with the passing of the national health and associated bills, which ensured public funding for abortion procedures. Most of the agitation for law reform occurred within this time period.

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The chapters are structured around the key events that shaped and were shaped by the struggle for law reform. From the point of view of current practice the Menhennett Ruling is considered to be most significant. But a series of other events shaped current practice in a way that the ruling alone could not have achieved. The Kaye Inquiry into Police Corruption in 1970, the Medical Practices Clarification Bill in federal parliament in 1973 and the proposed abortion inquiry in state parliament in 1973 are equally important to understanding the nature of the arguments for law reform. Similarly, the changes that occurred in practice and in public discourse cannot be understood without consideration of the actions and attitudes of civil liberties and feminist groups. While the thesis is arranged chronologically around the key law reform events, the focus is on the ways they contributed to pressure for reform. Each of the chapters is briefly outlined below.

2.1 Questions and concepts

In the first chapter I outline the theoretical framework for the thesis and present the key research problems, building on the range of ideas that Australian and overseas writers have articulated in the last few decades. Australian historian Judith Allen notes that feminist theorists have identified the relationship between sex, power and sexuality as a fundamental object of their inquiry.7 The genealogy of ideas, from a sex-related framework to one that considers abortion in the context of broader reproductive politics, informs the structure of this thesis, and is shaped by the work of a number of key writers.

I have contextualised women's struggle for sexual self-determination within the broader struggle for citizenship. For this reason, I have taken time to explore definitions in this chapter, noting the shift from national to social and political citizenship. I have also examined the place of motherhood in women's historical attempts to be recognised as citizens and its impact on community reactions to women who choose abortion. More broadly, I explore the symbolic meaning of abortion in relation to women's changing roles and opposition to abortion.

It is important to note that it is not simply access to abortion that I am interested in, but the basis on which that access exists and how this impacts on women's status as citizens. To this end, an exploration of the role of the state in fertility control is crucial. I discuss this in

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relation both to the contradictions between state policies, actions and rhetoric, and to Australian women’s success in ignoring pressure to procreate. Definitions of the state as both a ‘body’, incorporating administrative arms such as the police, judiciary and parliament, and as a constantly intervening series of relationships contribute to understanding the various facets of state power and their impacts. The social movements that contested state power in this period developed strategies that helped modify that power and are also considered here.

Finally, the chapter suggests directions for a politics of reproduction, examining women’s ‘right to choose’ as a framework for accessing abortion and considering issues that may contribute to a feminist morality of abortion decision-making.

2.2 The Victorian context

Victorian women have sought abortion largely in response to their changing circumstances, which cannot be disconnected from the broader context in which they live their lives. Support for, tolerance of, or opposition to, abortion has also existed within a broader historical context. Chapter two traces the socio-economic circumstances, the changing social-sexual position of women within and outside marriage, the broad political context in Victoria that contributed to the changing nature of the debate, and developments in the politico-legal situation in relation to abortion from white settlement to 1959. There is a wealth of material to frame an analysis of women’s attempts to gain reproductive and sexual self-determination. Some of the historical research deals directly with the politics of reproduction in Australia, while other analyses provide extensive evidence about the processes of change to women’s social-sexual position. I use this secondary data, as well as primary data from various sources, to survey the historical background.

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Any analysis of the contemporary public discourse around abortion would suggest that abortion is a relatively recent phenomenon, that it was universally dangerous prior to the medical profession assuming control, and that it was always viewed within a moral and legal context that outlawed the procedure. On the contrary, much of the evidence shows that abortion has a very dynamic history, with changes in public perception, policing and policy occurring regularly over the decades since white settlement. Victorian women, like their predecessors in other parts of the world, used abortion and other forms of birth limitation with few legal or social sanctions. This continued up until the time that the success of these methods engendered political concerns about the impact of Australia’s declining fertility rate on the economic prosperity and defence needs of the nation. However, as Rosalind Petchesky notes, given that most abortions were either self-induced or performed by midwives, lay healers, female kin or neighbours prior to the twentieth century, they have only a limited recorded history. It was not until the ‘rising male-dominated medical profession exposed the practice of abortion and its lay practitioners to scrutiny and attack’ that abortion acquired a ‘history’.12

The history of abortion policy and practice in Victoria suggests a dynamic interplay between protection of women, regulation of abortion practices, and tolerance of abortion, given its role in helping families cope with socio-economic and social circumstances beyond their control. Chapter two focuses on exploring differences at different time periods and is organised accordingly. Within each of these time periods, particular themes emerge. Others are common to the entire history of abortion.

2.3 The lead-up to the Menhennitt Ruling

Karen Coleman has examined the institutional arenas in which the initial battles for abortion rights were fought in Australia in the late 1960s and early 1970s, arguing that abortion presents party systems with an unresolvable dilemma, ‘juxtaposing women’s right to choose and to control their own lives and bodies, against a public interest in regulating sexuality, population, public health and the rights of the foetus’.13 She found that the outcomes of party political abortion struggles ‘were less the result of debates over abortion per se, than they were the result of the electoral and party politics and considerations of politicians’.14

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12 Petchesky, Abortion and Woman’s Choice, p. 30.
In chapter three I survey the political, social and economic conditions in Victoria in the decade leading up to the Menhennitt Ruling, using primary data derived from the key players seeking to prevent or enact law reform. I discuss the effect of overseas legislation, analyse the role of political parties, and document the other major influences on abortion law reform. These include the attitudes of the various churches in Australia, the media, and relevant professional groups such as the Australian Medical Association (AMA). The activities of medical and 'backyard' abortionists as well as the role of the Victoria Police Force (VPF) in investigating abortion are also crucial to understanding this time period. Finally, I discuss public opinion and the opinions of women, although they were probably the least influential of the factors discussed in affecting law reform at this stage.

Findings from this and subsequent chapters indeed suggest that part of the history of abortion law reform involved political manoeuvring by a state government determined to retain power. The government was caught between a community concerned about the lack of clarity in the law for medical practitioners, the profits being generated by medical abortionists and the threat of non-medical abortion to women and to the medical profession on the one hand, and the vehement opposition of the Roman Catholic Church on the other. The church campaigned through sermons, school and community networks and exerted considerable influence over Democratic Labor Party (DLP) policy. The DLP, a largely Roman Catholic party that derived from the split in the ALP in February 1955, held sway over the Liberal government, which could not win an election in Victoria without DLP preferences. DLP leaders had stated clearly that they would not allocate preferences to a party that supported legal abortion.

Government efforts were thus aimed at securing an expanded legal definition of therapeutic abortion incorporating liberal definitions of ‘life’ that took into account its social, emotional and intellectual aspects. Framing abortion as a medical problem allowed the government to ignore community pressure for reform, while appearing to attend to it.

2.4 Bertram Wainer and the Kaye Inquiry

Important contributions to the history of women in the last fifteen years have revealed the interconnections between the criminal justice system, sexual politics and the 'so-called "social

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15 This thesis utilises the title Victoria Police Force, as this was the correct title up until 1971, the time period during which the VPF is discussed. The word ‘force’ was dropped from the title by the time the annual report was published in December 1971.
control of women”. Nevertheless, as Allen noted in 1990, “apart from rare moments, such as the Queensland Fitzgerald Enquiry into Police Corruption of 1987 and 1988, police have not provided historians with clear evidence of their efforts as extortionists of prostitutes and abortionists”. An analysis of the events surrounding the Kaye Inquiry in 1970 point to systemic police corruption maintained, in part, by a struggle for industrial control of a lucrative abortion industry. The struggle was fought out between individual abortion practitioners and was supported by corrupt police officers, officers of the Crown Law Department and political manoeuvring.

Chapter four examines the government’s attempt to ignore evidence of police officers’ construction and regulation of a “criminal” workforce in the face of concerted efforts by abortion law reform advocate, Bertram Wainer, for a royal commission. The eventual appointment of the Kaye Inquiry into corruption and its findings, outcome and effects are also discussed.

In this chapter I theorise the role of the police force in policing moral laws – and thus in controlling women’s sexual behaviour – and the impact this has had on the development and maintenance of systemic corruption. For this purpose I have utilised studies of police corruption both in Australia and in the United States of America (USA). It is important, however, to keep in mind that the focus on police corruption may have served to divert the government, media and opposition from the ‘real’ fight for law reform, as many advocates claimed. It may also have contributed to the fact that medical corruption was largely ignored, and legal and political involvement in the policing of abortion laws was hardly commented upon.

2.5 The driving forces behind abortion law reform

A history of abortion law reform also reflects, in part, a professional struggle for medical control over reproduction. This struggle was supported by a welfare state with an interest in

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18 Allen, Sex & Secrets, pp. 252-53.
population control and by civil libertarians and liberal feminists seeking access to abortion without engaging with political questions regarding women’s sexual self-determination. The rise of the medical profession in Victoria from the late nineteenth century is of particular note in the ability of the state to shift the problem of abortion into the professional purview.  

The campaign for abortion law reform began as the result of civil libertarian beliefs that all women had the right to access good quality medical care regardless of economic circumstances, as well as an abhorrence of state intervention in the lives of citizens. Reform focussed on clarifying medical practice in a climate of advances in medical science that had made it increasingly difficult to justify an abortion as necessary to save a woman’s life. Campaigns thus built on an existing medical discourse that encouraged community support for a medical practitioner to perform an abortion to save the life or protect the mental health of the woman, or in the case of rape, incest, or foetal deformity. As well as portraying abortion as a last resort for desperate women, reformers stressed contraceptive responsibility to limit abortion requests and, in this chapter, I consider the impact of such emphases on women’s struggle for reproductive freedom.

While various members of the Women’s Liberation Movement (WLM) supported medical practitioners and reformers in their attempts to ensure that all women could access a safe medical abortion, it was the political issue of control over decision-making that was intrinsic to the pursuit of liberation. In taking to the streets calling for ‘abortion on demand’ the women’s movement challenged the political meaning of the abortion law reform campaign, framing it as a woman’s ‘right to choose’ rather than a fight to extend the interpretation of a therapeutic abortion.

Despite the moderate reforms initially sought, reformers became politicised by the opposition they encountered. The political, legal and medical arenas targeted proved to be not only highly resistant to change, but blatantly unresponsive to women’s calls for equality. There was clear evidence that failure to secure reforms helped shift activists to a woman’s ‘right to choose’ position, as it became increasingly evident that reform was not a potent vehicle for liberation, and nor was parliament a sympathetic forum for consideration of women’s rights. Concerns also centred on whether limiting campaigns to abortion law reform increased their

pp. 185-86. In this case Allen was discussing prostitution, although as she herself makes clear, there is a great parallel between the histories of prostitution and abortion. See Allen, Sex & Secrets, p. 215.
effectiveness, or hindered the development of an analysis of abortion linked to wider goals for women's liberation. In chapter five I consider those questions in detail.

I have used primary data to briefly survey the part played by abortion law reform in the history of the Victorian Council for Civil Liberties, the Abortion Law Reform Association, the Women's Electoral Lobby, and Women's Liberation and the Women's Abortion Action Coalition. In this process I have traced the shifts in political ideology and practice within and between the groups, in particular noting a shift from law reform to law repeal, a growing sense of pessimism about change, and a subsequent shift from law reform to access to services.

2.6 Parliamentary debates

Rebecca Albury argues that while abortion has been the subject of major moral debates in the legislatures of many liberal democratic countries since the mid-1960s, women have largely been excluded from decision-making. Because of their absence from parliamentary debates, women's knowledge and experience of abortion have not been included in the development of public policy, and, while they now mostly have access to abortion, it is neither conceptualised nor provided within a framework of female autonomy.

An assumption about public opinion as it was likely to shape voting patterns, together with those issues and circumstances that most captured the politician's attention or impacted upon his understanding of national interest, are reflected in the parliamentary debates of the late 1960s and early 1970s. An analysis of those debates is therefore a useful tool for understanding the ways in which abortion was conceptualised by those who controlled legislative change. Similarly, those questions avoided in parliament provide useful information about anticipated electoral consequences. Interestingly, little of the agitation for abortion law reform during the period under study produced fruit in Commonwealth or state parliament. The only significant debates affecting Victoria occurred in federal parliament in 1973 with a private member's bill aimed at clarifying medical practice in relation to abortion, and, in the same year, in Victorian parliament following a private member's bill proposing an abortion inquiry.

23 Parliament was a near-exclusive male affair in the time period under study.
In chapter six I analyse the Victorian and Commonwealth parliamentary abortion debates of 1973 looking to both the strategies employed by individual speakers in supporting or opposing law reform and the impact of the debates on women's access to abortion in Victoria. In particular, the analysis centres on clarifying the conceptual basis on which abortion is now available to women in Victoria. This analysis locates the debates within this political and social context, including the historical tradition of Catholicism in Australian politics and its influence on the interplay between party politics and individual parliamentarian's views on abortion law reform. Further, the role of abortion law reform groups in attempting to influence parliament, parliamentary parties and individual politicians is considered, as is the range of groups, individuals and organisations that acted on and influenced abortion policy and practice. The role of the Right to Life groups (RTL), which featured strongly in opposition to abortion law reform, is considered briefly at this point, particularly its success in linking opposition to abortion per se with opposition to abortion on demand. While the government's refusal to support law reform because of politico-religious opposition ironically left women in Victoria with greater access to abortion than would otherwise have occurred, this did little to resolve political questions of control over reproductive decision-making.

2.7 Conclusion

The final chapter draws together the analyses of the various factors that impacted on women's struggle for sexual self-determination, concluding that the history of abortion law reform in Victoria can be understood as a case study of conflict, co-option and cooperation between the vested interests outlined above.

The outcome of those struggles has resulted in abortion being generally safe and accessible to women in Victoria, although variations in access remain. Further, abortion practice generally reflects public agreement that women have the 'right to choose'. However, there remain specific conditions under which women are permitted to control reproductive decision-making, suggesting that support for the 'right to choose' abortion has not translated into support for women's control over reproductive decision-making generally. Largely, this has occurred because the liberal demands for freedom and autonomy that characterised the struggle for abortion law reform are not in conflict with a neo-liberal agenda. Full reproductive freedom entails political, economic and sexual self-determination, through access to education, employment, health, and reproductive choice. But neo-liberal policies actively discourage consideration of the conditions necessary to make those demands possible, while coopting interpretations of 'choice' and 'rights' to their own ends. Under
these circumstances, ‘women’s choice’ is simply a mechanism for locating responsibility for reproductive control with women.

While, for women as a sex, access to safe, legal abortion is indicative of greater freedom and autonomy, those women who benefit from a neo-liberal agenda are more likely to view access to abortion in freedom-enhancing terms. For women who have little control over life choices, safe abortion is important, but unlikely to be seen as any more than token. As a result, women’s struggle for full citizenship can be seen as all the more important in a context where autonomy, rather than interdependence, and the rights of the individual, rather than the common good, predominate. Locating abortion and reproductive rights as part of the fight against all forms of inequality and oppression across and within nation states is part of a collective struggle to develop a ‘just society’. 24

As Petchesky notes, ‘charting the development of reproductive politics in the past, especially abortion, and rigorously analyzing their conditions in the present, ought to help us transform those politics in the future’. 25 It is with this grand goal that this dissertation begins.

CHAPTER ONE

QUESTIONS AND CONCEPTS

Anyone who has spoken publicly about abortion from the feminist point of view knows all too well this it is feminism – not abortion – that is the really disturbing idea.¹

1. Introduction

In May 1969, in the Supreme Court of Victoria, Mr Justice Inch Menhennitt ruled that an abortion was lawful if it was carried out to preserve a woman from serious danger to her life or her physical or mental health.² The Menhennitt Ruling gave Victoria the status of being the first state in Australia to ‘legalise’ abortion, albeit on de facto grounds. In theory, medical practitioners had gained protection under common law and were now free to perform lawful abortions. In practice, doctors continued to be charged, and women found it just as difficult to access an abortion after the ruling as they had before, leaving Victoria a site of intense and ongoing agitation. Claims that women’s bodies were being dumped in barrels in Port Phillip Bay following botched abortions by backyard abortionists, that Victorian police officers were regularly demanding thousands of dollars in graft from medical abortionists, and that the abortion industry was a multi-million dollar affair, were rife. Women were the centre of that industry as clients, but had little control over outcomes.

Those groups and individuals who campaigned for abortion law reform in this climate left behind a wealth of primary material documenting their efforts, little of which has to this point been used to provide an accessible history of reform in Victoria. Australian researcher Rebecca Albury, for example, claims she was struck by the lack of knowledge, other than personal experience, that women have about past reproductive struggles.³ Women’s struggle for reproductive control has continued for well over a century, with access to information about and public acceptance of birth control one of the critical issues facing women at the

² The Menhennitt Ruling is explained in detail in chapter three. Briefly, it was a common law ruling in Victoria in 1969 that resulted in the clarification of the term ‘unlawful’ abortion in relation to the Victorian Crimes Act 1958. This allowed a medical practitioner, acting in good faith, to perform an abortion if he or she deemed this less harmful to a woman’s health than continuation of the pregnancy.
turn of the last century.4 Yet there has been comparatively little historical research into this facet of women’s lives. Similarly, Australian doctor and birth control advocate Stefania Siedlecky points out that there has been little research into abortion policy and practice in Australia since 1970, citing only a handful of articles.5 And yet abortion is experienced by more than a third of women in their reproductive lives, with one in four pregnancies in Australia ending in abortion.6 Because the practice of abortion is controversial, research into this topic is often discouraged.7 As a result, a growing body of literature and other evidence suggests that the knowledge and experiences of women have been largely missing from policy and legislative debates regarding reproduction. If this is so, it has profound consequences for their political, social and economic rights and seriously affects claims that women have achieved full citizenship.

UK sociologist Nickie Charles points out that, while equal citizenship rights might exist within the public-political domain, ‘inequalities of gender, class and “race” within the economy and civil society … prevent women, the working class and minority groups from exercising those rights’.8 Unna Liddy adds that criminalisation of abortion undermines women’s status by implying that they are incapable of making sound, logical and rational decisions.9 I argue that the right to choose abortion or motherhood is intrinsic to the citizenship status of women as a key indicator of autonomy and freedom.10 This is all the more telling because control over reproductive decision-making remains contested, and

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10 The conditions necessary for women to gain true reproductive choice are discussed below, in conceptualising a politics of reproduction.
because it is not derivative of rights originally extended to men.¹¹ Stanford sociologists Francisco Ramirez and Elizabeth McEneaney explore these ideas further, arguing that most research regarding the status of women presupposes that women are citizens on the basis of the right to vote and seek public office, thus comparing women’s life chances relative to those of men on this basis.¹² While suffrage can easily co-exist with asymmetries and inequalities between men and women, however, control over reproductive choice ‘strikes directly at the foundation’ of many of those inequalities.¹³ This thesis, then, examines the extent to which a history of abortion law reform in Victoria can be understood as part of women’s struggle for full citizenship.

Barbara Baird compared the difficulties she faced accessing historical records for her history of abortion in South Australia prior to 1970 with Judith Allen’s difficulties in undertaking similar research in New South Wales (NSW). Allen commented that ‘it seems clear that to ignore the history of abortion is effectively to ignore the agency of women in momentous, demographic changes that concerned their bodies and material circumstances’.¹⁴ Other writers researching the area of women’s sexual politics have also cited difficulty in accessing relevant historical records. Collection, maintenance and indexing of public records of this nature have only assumed importance since mainstream history began to incorporate the private sphere and the study of sex roles and sexual power in its purview.¹⁵

In order to redress this, Allen proposed the development of a ‘woman-centred’ history that ‘takes the prevalent structures and experiences of women’s lives at least as seriously as historians have taken those of men’s lives’.¹⁶ In aiming to contribute to such a history, my research documents the abortion law reform experiences and struggles of Victorian women. This includes an examination of attempts made by women to contest their historic exclusion from participation in policy formulation and legislation related to reproduction. The history of abortion law reform in Victoria from 1959 to 1974 is the principal focus for analysis of women’s struggle for sexual self-determination given the wealth of material available in that

¹⁵ Baird, “I Had One Too...”, pp. 5-7.
state and its importance as a site of political activity. This history cannot be understood without considering theories of feminism, social movements, and women’s reproductive role and rights. Through this historical exploration the aim is to elucidate the role and purpose of state intervention in women’s fertility, and the nature of the contemporary relationship between women’s reproductive rights and women’s status as citizens.\textsuperscript{17}

The thesis is premised on the view that abortion and control over reproductive decision-making generally is central to women’s sexual identity and power and therefore to their sense of freedom and equality. The struggle for the ‘right to choose’ must, however, be contextualised in a broader politics of reproduction.\textsuperscript{18} Otherwise it risks individualising women’s political needs and masks the reality that directing resources towards ensuring women’s freedom and equality is rarely a priority for governments. This has been the subject of a significant amount of recent research, which shapes the theoretical framework of this dissertation.

2. Framework

Consideration of the significance of abortion and campaigns for abortion law reform can be seen as lying at the intersection of a number of disciplines and theoretical discourses. In reviewing relevant literature, the remainder of this chapter is dedicated to exploring a conceptual framework within which the history of abortion law reform in Victoria will be discussed.

The chapter is set out under a series of subheadings that relate directly to the objectives of the thesis. This begins with a review of previous writings on the history of abortion law reform and an exploration of the importance of abortion as a topic for women. Next, theories guiding understandings of women’s struggle for self determination are explored, beginning with the politics of purity and women’s struggle for citizenship and moving towards the more recent politics of reproduction, incorporating arguments about ‘motherhood’ and ‘women’s rights versus foetal rights’. Theories and discourse pertaining to the role of the state in


\textsuperscript{17} The definition of citizenship applied in this thesis is outlined below. Of course, the term ‘reproductive rights’ itself is open to a range of interpretations, with multicultural feminists putting quite some effort into exploring the meaning across different cultures. I aim to outline my own definition of the term in the process of setting out the theoretical framework for the thesis.
Australia are explored in the context of the purpose of state intervention in women’s fertility as well as an examination of social movements that contested that role. To do this I have organised the thesis around two areas. The first focuses on those groups that had control over abortion policy and practice, such as state authorities (police, judiciary, government) responsible for legislating, policing or implementing laws, and the medical profession, which controlled practice. The second is directed to examination of the influences acting on those bodies, including the church, the media, political parties, and pressure groups, especially those arising from second wave feminism.¹⁹

Finally, in conceptualising a politics of reproduction in the period under study, I examine liberal notions of ‘rights’ and ‘choice’ as a framework for accessing abortion, consider ambivalence and the moral issues associated with abortion, and examine the interplay between abortion and ‘family planning’. These are considered in the context of the impact of the actions and agenda of the emerging women’s liberation movement on attitudes towards abortion and the shaping of law reform.

Setting the terms

Discussion of abortion in the popular press and academic writings during the period under study referred to the ‘abortion debate’. This immediately sets the terms for a polarised and adversarial argument involving two sides that slug it out until one is declared the winner. As Virginia Husting argued in her research regarding media coverage of abortion in the United States of America (USA), the construction of polar positions portrays abortion as a ‘war between two clearly defined enemies’, keeping the conflict unsolvable.²⁰ More importantly, she points out that this construction neglects structural problems such as poverty and racism that are fundamental to the issue of abortion and marginalises activism as a legitimate critique of society and politics.

¹⁸ Rebecca Albury, Leslie Camold and Judith Allen have written specifically about Australia, while Rosalind Petchesky, Janet Hadley, Victoria Greenwood and Jock Young, Linda Gordon, Kristen Luker, Nickie Charles and others write variously about the USA, UK and other countries including Australia. ¹⁹ I have used the term first- or second-wave feminism in this thesis because it quickly and recognisably comotes the time period under discussion, acknowledging, however, that historians such as Judith Allen and Marilyn Lake suggest that the ‘wave’ metaphor is less than accurate. Allen notes that the term assumes first, that nineteenth-century feminists were the original feminists, when evidence suggests much earlier action by women, and second, it suggests a hul between first and second-wave feminists, rather than ongoing action. See J. Allen, 1994, Rose Scott: Vision and Revision in Feminism, Oxford University Press, Melbourne, pp. 12-16. See also M. Lake, 1999, Getting Equal: The History of Australian Feminism, Allen and Unwin, Sydney.
British reproductive rights advocate Janet Hadley suggests that calling it a debate implies a dialogue, when it was more a ‘slanderous cacophony’, given the emotive and accusatory language used by anti-choice groups to describe the actions of pro-choice advocates.\textsuperscript{21} Debate also suggests two fairly evenly balanced points of view.\textsuperscript{22} In fact, both anecdotal and research evidence suggests first, that there is a broad spectrum of opinions regarding abortion and second, that the overwhelming majority of the community supports the need for abortion under at least some circumstances. The two ‘sides’ are generally presented as ‘pro-abortion’ and ‘pro-life’. Leslie Cannold suggests that a much clearer statement of the aims of each ‘side’ is ‘pro-choice’ and ‘anti-choice’.\textsuperscript{23} I will use those terms where relevant, while also aiming to acknowledge evidence of a broad spectrum of views.

The term abortion law reform is also used in this thesis for simplicity, rather than switching between reform and repeal of abortion laws. Although ‘reform’ does not always reflect the aims, ideology or actions of the individuals or groups under consideration, it does reflect the outcome of the various campaigns.

3. History of Abortion Law Reform

3.1 Historiography of abortion law reform in Victoria

There is very little written that specifically examines the broad history of abortion law reform in Victoria in the time period under consideration. What does exist is either generalised from other countries or from other Australian states, focuses on earlier or later time periods, or focuses on specific events during that time period. Critiques of the action of campaigners for abortion law reform are included in a number of more recent writings regarding the politics of reproduction, although, again, they are generalised rather than specific accounts.

Bard notes that there are few abortion-specific historical investigations published in Australia and those that exist centre on the situation in NSW.\textsuperscript{24} Allen’s work, for example,

\textsuperscript{22} Nickie Charles adds that the idea of competing rights also sets up an ‘irreconcilable and seemingly evenly balanced conflict’. Charles, Feminism, p. 165.
\textsuperscript{23} Cannold, The Abortion Myth, p. 110.
\textsuperscript{24} Bard, “I Had One Too...”, p.9.
presents a thorough history of abortion and other reproduction-related crimes in NSW since 1880. In *Sex and Secrets*, she traces the rise of the medical profession in Australia and its state-sanctioned takeover of abortion practices within the context of a modern history of crime, which also throws light on the dynamics of Australian culture and politics. Her work has been useful in setting the historical context in the following chapter given the similarity between the NSW and Victorian abortion experience in terms of medical provision of abortions and evidence of police involvement in abortion practice.

Law reform activist and medical practitioner Bertram Wainer wrote a first-hand account of the abortion industry in Melbourne in *It Isn’t Nice*, published in 1972. Wainer’s account, like that of Margaret Berman describing her experiences of the Kaye Inquiry into police corruption in Victoria in 1970, is a useful participant’s recollection of the abortion law reform process, although neither Berman nor Wainer wrote from a theoretical base and in both cases personal opinion is often presented as fact. Similarly, Rodney Bretherton’s anecdotal account of his involvement in abortion and law reform is of interest, although it glosses over many important details, leaving out dates and ignoring significant events such as the Kaye Inquiry.

Another doctor, Kelvin Churches, worked at the Royal Women’s Hospital (RWH) in Melbourne from 1948 to 1974, and also provides a first-hand account of the role of medical practitioners in abortion provision in Victoria. Churches documents the backyard abortion trade and social attitudes that led to a very low rate of therapeutic abortion from the mid-1930s.

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25 Allen, *Sex & Secrets*.
26 Baud, "I Had One Too...", p. 15. I have, where appropriate, generalised from NSW to Victoria while recognising that there are dangers in assuming too much similarity between the colonies. For instance, the quite different backgrounds of the population, with, largely, NSW as an ex-convict colony and Victoria as a free settlement, shaped somewhat different cultures. Further research regarding abortion in Victoria from 1850 to 1959 is needed to be undertaken.
31 Churches notes that therapeutic abortion remained at only 1 per cent of abortion in Australia up until the 1960s. See Churches, ‘120 Years of Abortion’, p. 13.
Journalists Gloria Frydman,32 and Margaret Bowman together with Michelle Grattan,33 have written short accounts based on their interviews with Victorian campaigners Bertram Wainer and Beatrice Faust respectively. Their work included their subjects’ experiences and opinions on the topic of abortion law reform in Victoria. While both articles provide useful insights into the abortion law reform campaign, they are not intended to be theoretical examinations.

Verity Burgmann’s well-regarded examination of movements for change in Australian society includes a history of the women’s movement in Australia.34 She pays brief attention to the campaign for access to abortion as one of six specific sites of action. Burgmann’s work is useful more for her theorising of social movements in Australia than for her insights into access to abortion per se. In particular, her observation that many feminists denounced the state while looking to it to provide solutions is important in theorising the actions of women fighting for the right to control reproductive decision-making.35 Albury also summarises social movement interventions in abortion politics in her recent book, which looks more broadly at the politics of reproduction than the history of abortion law reform.36 Using women’s stories and slogans, along with contemporary literature, she explores and illuminates the complexity of reproductive politics in Australia since the 1960s.

In 1991 Australian sociologist Karen Coleman completed a doctoral dissertation exploring discourses on sexuality and sexual politics in Australia from the 1960s to 1985.37 She focussed on abortion as a primary issue in the politics of sexuality and examined public conflicts and struggles over abortion using the press media, particularly the Sydney Morning Herald, and parliamentary debates. Her work includes an examination of the intra- and inter-party and electoral politics surrounding abortion, concluding that the outcomes of conflicts were a function ‘not of the internal dynamics of the abortion issue itself, but of governments and politicians pursuing quite separate agendas and interests’.38 While Coleman concentrates

33 Beatrice Faust was the subject of a chapter in M. Bowman & M. Grattan, 1989, Reformers: Shaping Australian Society From the 60s to the 80s, Collins Dove, Melbourne, pp. 55-67.
on NSW, she also looks briefly at Wainer’s campaign in Victoria and the impact on party politics in that state, as well as analysing the 1973 federal abortion bill.\textsuperscript{39}

Focussing on an earlier period, Lyn Finch and Jon Stratton examine the abortion practices of working-class women in Australia from 1880 to 1939.\textsuperscript{40} They note a cultural shift in the meaning of abortion from a well-utilised and largely accepted means of population control to a form of murder. Finch and Stratton link this change in attitude to changing perceptions of ‘the child’ and concomitant changes in assumptions about the commencement of ‘human-ness’.\textsuperscript{41} Their research shows that widely held beliefs that abortion was always treated both in law and in practice as the moral equivalent of murder are inaccurate.

As Lyndall Ryan and Margie Ripper point out, Allen, Finch and Stratton, and Baird each found that white women constructed their own private discourses about fertility control, which included the widespread practice of illegal abortion.\textsuperscript{42} Further evidence of this comes from a survey of over two hundred women patients seeking abortion, carried out by the Almoner’s Department at the RWH in Melbourne in 1956.\textsuperscript{43} The survey found that abortion information was easy to come by and women’s knowledge extensive. Similarly, in 1944, 1400 women responded to the National Health and Medical Research Council’s (NH&MRC) invitation to comment on why they limited their fertility.\textsuperscript{44} The women’s letters confirmed that they had extensive networks and knowledge of birth limitation.

We, the mothers, hold this power in our hands we have a freemasonry among ourselves that is colossal. If we find out any birth control hint, we pass it on. I myself know of an easy, safe method of abortion. I know of hundreds of ideas that have been passed on to me by desperate and despairing mothers of hungry children.\textsuperscript{45}

\textsuperscript{39} I do the same in chapter six of this thesis and more broadly in other chapters. Coleman’s findings in relation to the outcomes of the abortion debates confirm my own findings.


\textsuperscript{41} Finch & Stratton, ‘The Australian Working Class’, pp. 45-46.


\textsuperscript{43} E. Gruber, 1956, ‘Social Study of Patients Admitted for Abortions: Royal Women’s Hospital, 1 March - 31 May 1956’, unpublished paper by Almoner (Social Work) Department, RWH, Melbourne.


In 1994 Lyndall Ryan, Margie Ripper and Barbara Buttfield undertook the most extensive Australian study of abortion so far. They claimed that abortion providers were responsible for most of what was written about abortion, leading to a polarised debate that focussed on anti- or pro-abortion as the only possible positions, and that did not reflect the varied experiences of women themselves. Ryan et al summarised that the medical profession’s attitude was one of discomfort with abortion, which was separated from all other fertility control strategies, and promotion of oral contraception as an alternative. Women were not considered ‘moral subjects’ and so were assumed to be unable to speak for themselves on the topic of abortion. Jo Wainer also found in her sociological study of the abortion decision and its consequences that the literature available prior to the 1970s mostly dealt with medical, psychiatric and demographic studies of abortion, or focussed on moral or psychosocial questions. She commented some years later that questions regarding abortion have always been couched in abstract terms, rather than allowing women’s personal history and experience to guide debates.

3.2 The historical importance of abortion for women

Researchers agree that abortion has always been important to women's attempts at birth limitation. John Riddle’s comprehensive history of contraception and abortion in the west is both academically rigorous and fascinating reading for lay people. He traces the practice of abortion back to ancient times, noting for instance, that ‘women in England had for more than a thousand years been free to abort an unformed or “pre-quick” fetus’. His work suggests that, in the west, ‘even in the nineteenth century, a woman enjoyed a substantially broader right to terminate a pregnancy’ than she did by the 1950s. Information about abortion and contraception was readily available to women, who ‘made deliberate decisions’ about

46 L. Ryan, M. Ripper & B. Buttfield, 1994, We Women Decide: Women’s Experiences of Seeking Abortion in Queensland, South Australia & Tasmania, Flinders University, Adelaide. A 1996 review of services for termination of pregnancy in Australia also offered useful information about women’s access to abortion in the different states of Australia although it has subsequently been withdrawn. See footnote 7 above.
47 Ryan et al, We Women Decide, pp. 30, 39.
48 Ryan et al, We Women Decide, p. 1.
52 Riddle, Eve’s Herbs, p. 4.
whether and when to have children, whereas ‘today, this knowledge is mainly in the hands of the experts’. Angus McLaren and Linda Gordon, who have also written extensively on the history of birth control, found the same pattern.

Men have largely controlled public debate about the philosophical and religious morality of abortion. On the other hand, women have tended to accept the practice of abortion, an acceptance often linked to their obligation to control and take responsibility for the consequences of male sexuality.

Because of variations in law and practice, there are no accurate figures as to the number of abortions performed annually worldwide. However, in 2003 the World Health Organisation (WHO) estimated the figure at forty-six million, with around one in three pregnancies ending via abortion. Globally, 13 per cent of all maternal deaths are due to complications associated with unsafe pregnancies, although this is as high as 50 per cent in some countries, resulting in the death of sixty-seven thousand women each year, primarily in third world countries. In Australia, approximately eighty thousand abortions are performed each year, about twenty thousand of them in Victoria. Consensus among writers and researchers suggests that the legality of abortion has little bearing on the rate of abortion, but a significant relationship to the quality and therefore safety of abortion services.

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53 Ruddle, Eve's Herbs, p. 259.
54 See chapter two for further details of their work.
55 Mary Boyle points out that even in the late 1990s in England 90 per cent of members of parliament who developed legislation were male, as were 80 per cent of gynaecologists who performed abortions and 75 per cent of general practitioners who were first approached. M. Boyle, 1997, Re-thinking Abortion Psychology, Gender, Power and the Law, Routledge, London, pp. 6-7.
57 WHO, Safe Abortion, p. 10. The report relies on figures from WHO, 1998, Unsafe Abortion: Global and Regional Estimates of Incidence of and Mortality Due to Unsafe Abortion with a Listing of Available Country Data, WHO publications, Geneva, WHO/RHT/MSM/97.16. See also WHO, 1995, Complications of Abortion, WHO publications, Geneva, pp. 13-14. In October 2000 at the United Nations Millennium Summit, there was an agreement to target improvements in maternal health, particularly a reduction in the levels of maternal mortality, by 2015. This was part of a global imperative to reduce poverty and inequality, recognising that the risk of death from abortion is several hundred times higher in developing countries than abortion performed professionally under safe conditions. See WHO, Safe Abortion, pp. 3, 10.
58 Health Insurance Commission, July 2002 to June 2003. See table 1, appendix 2 for the rate of abortion as a ratio of the total child-bearing population of Victoria in 1990 and 2003, and table 2, appendix 2 for the number of Medicare claims for abortion in Australia from July 2002 to June 2003.
59 Figures suggest that the rate of abortion has actually decreased since the Menhennitt Ruling. In 1976 the Royal Commission on Human Relationships estimated that between fifty and one hundred thousand illegal abortions were performed in Australia each year prior to legalisation of abortion, when the population was much lower. See Wainer, 'Abortion and the Dignity of Women', p. 12. Siedlecky claims that only 11 per cent of the decline in births from 1971-81 was the result of an increase in legal abortion, while 89 per cent were the result of improved contraception. Siedlecky cites J. Caldwell,
According to Canadian social worker Paul Sachdev, as abortion laws change, so do the trends in abortion. Banning abortion results in a disastrous increase in abortion-related death and injury. After reviewing international abortion practices, Hadley also concluded that, generally, if the law allows abortion, it is likely to be safer for women. Legal abortion allows for professional development, improvements in service quality, lower costs, more accessible services and the opportunity for women to explore whether or not abortion is the right decision for them. Jo Wainer also notes a direct correlation between access to safe, legal abortion and the increasing acceptance of equality for women in social and economic terms. As Anne Oakley observes, ‘repossession of female control over reproductive care is a basic prerequisite for all other freedoms’, and therefore central to women’s struggle for liberation.

However, it is not just the availability of abortion that is important, but the basis on which access to abortion exists – conceptualised as control over decision-making – that is of interest in this thesis. While in developed countries and among wealthy populations, abortion is conceptualised in liberal terms as a ‘right’, women in developing countries or marginalised women in developed countries have a different experience of abortion and other birth-limiting technologies. This results from state responses to changes in the size and composition of the population and the introduction of oppressive policies that deny access to, or force poor, disabled or non-white women to use these technologies for eugenic or cost-saving purposes. Ample evidence is available to support claims that Aboriginal women in

61 Hadley, Abortion, p. 48.
62 Hadley, Abortion, pp. 48-49
65 Cuba and many Asian nations, for example, introduced incentives to encourage women to use abortion to curb significant rises in fertility rates. See Sachdev, International Handbook, p. 4. In the 1970s in the USA, Black and Hispanic women were offered sterilisation after abortion and often as a condition of abortion, while today policies and laws link fertile women’s welfare eligibility to their willingness to use contraceptive implants. Similarly, large numbers of poor women were sterilised in Puerto Rico, Brazil, Bangladesh and India, without adequate information, facilities or consideration of the desires, circumstances and health status of those women. New contraceptives have been tested on women in developing countries since the 1960s, while routine injections of depo provera were given to Aboriginal women in Australia even in the 1980s. See I. Smyth, 1998, ‘Gender Analysis of Family Planning Beyond the “Feminist vs Population Control” Debate’, in C. Jackson & R. Pearson, eds, Feminist Visions of Development: Gender Analysis and Policy, Routledge, London, p. 221. For further
Australia had easy access to abortion and contraception at a time when white women’s ‘choice’ in this regard was limited. Further, Aboriginal women were regularly sterilised without their consent or knowledge, particularly in the Northern Territory and Queensland.\textsuperscript{66}

Internationally, a sharp decline in the birth rate in Eastern Europe led to more restrictive policies in relation to abortion. In Romania, for example, from 1966 to 1989, abortion and contraception were banned under the Ceausescu regime in order to increase the birthrate. During this period, ten thousand women died following illegal abortions and up to two hundred thousand children were abandoned.\textsuperscript{67} On the other hand, for Chinese women, state-imposed birth quota aimed at reducing the size of the population have meant that women are coerced into having abortions, sometimes as late as the third trimester.\textsuperscript{68} Ann Anagnost maintains that the One-Child policy was a plan born of economic development – an attempt to attain first-world status by the year 2000 – rather than a plan born of demographic imperatives.\textsuperscript{69} Nevertheless, Anagnost comments that this policy gives us the chance to see ‘our own dilemmas about abortion and personal choice curiously inverted’, allowing a


\textsuperscript{67}For example, tubal ligations were performed on Aboriginal women, who signed an authority for this or a hysterectomy without understanding the significance of the operation. Similarly, the contraceptive pill was given out free to Aboriginal women without explanation, examination, or recognition of the higher incidences of diabetes, high blood pressure and early heart disease among Aboriginal women. See J. Bacon, 1974, ‘Aboriginal Women’, Right to Choose, no. 5, p. 3, box 1, Karina Veal papers, AN93/68, University of Melbourne archives. See also H. Goodall and J. Huggins, 1992, ‘Aboriginal Women are Everywhere: Contemporary Struggles’, in K. Saunders & R. Evans, eds, Gender Relations in Australia: Domination and Negotiation, Harcourt Brace Jovanovich Publishers, Sydney, p. 402; and M. Buggmann, 1982, ‘Black Sisterhood: The Situation of Urban Aboriginal Women and their Relationship to the White Women’s Movement’, Politics, no. 17, pp. 23-37. See also newspaper article regarding ‘National Abortion Mobilisation’, (undated, unsourced), box 2, Sally Mendez/Alva Geike papers, AN100/215, VLLWF archives, University of Melbourne and ‘Abortion – A woman’s right to choose’, AUS publication, undated circa 1976, box 2, Sally Mendez/Alva Geike papers, AN100/215, VLLWF archives, University of Melbourne.

\textsuperscript{68}Hadley, Abortion, p. 39.


feminist response to the ultimate question about 'who has the authority and the right to make choices: the state, the patriarchal family or women as individuals'.

Many other countries have adopted policies to limit or expand population size, often leading either to the banning or to free availability of abortion. Under such policies, overpopulation is conceptualised as the primary cause of poverty, with family planning used to lessen social and economic problems. Such population control policies are often backed by developed countries in order to maintain their own global commercial interests. Christabelle Sethna, in her history of the Canadian abortion law reform movement, notes that a left-wing critique of birth control in the 1970s identified the US-financed Zero Population Growth (ZPG) lobby as a 'eugenically-driven racist threat to human rights ... wielding birth control as a weapon of white supremacy against poor, nonwhite populations they exploited for profit'. According to Victoria Greenwood and Jock Young, oppressed groups can experience legalisation of abortion as a victory for white middle-class families and for a ruling class that refuses to engage with social issues of poverty and inequality among oppressed peoples.

A major feminist criticism of family planning programs is that they are developed and implemented with the explicit or implicit aim of reducing fertility rates and population growth, rather than promoting women's health and reproductive freedom. UK sociologist Ines Smyth argues that a commitment to women's reproductive autonomy is actually deemed to be counterproductive within a framework of policy objectives based on a country's demographic or economic conditions, leaving women vulnerable to political or economic shifts of interest at the national and international levels.

An analysis of different women's experiences of abortion confirms that just because abortion is legal does not necessarily mean that it will be safe and accessible, even though both have

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71 In 1952, for example, David Rockefeller compiled a report for President Eisenhower that concluded that a rise in the birthrate in poorer nations would create instability and endanger US access to important resources. The Population Council was established that year to reduce the birthrate everywhere except in the USA, Western Europe and a few other countries. See the National Abortion Mobilisation, 15 September 1976, untitled article, box 2, Sally Mendes/Alva Geike papers, Accession number 100/215, Victorian Women's Liberation and Lesbian Feminist Archives (VWLLFA), University of Melbourne.
74 Smyth, 'Gender Analysis of Family Planning', p. 224.
75 Smyth, 'Gender Analysis of Family Planning', pp. 227-8.
tended to improve over all with legality.76 Similarly, just because abortion is widely available, does not necessarily mean that women have autonomy over sexuality or reproductive decision-making. As a result, many women need a right to refuse rather than to choose abortion.

Rosalind Petchesky argues, on this basis, that abortion is both ‘minimal and indispensable’ for women. Minimal because abortion does not, in itself, create reproductive freedom. Indispensable because access to abortion is one of the conditions necessary for women to be able to achieve economic and sexual self-determination, access to education, employment, health, and reproductive choice.77 If abortion is available because social consensus deems it an indispensable condition of women’s freedom and equality, the meaning of abortion will be quite different for women than availability of abortion in order to control and regulate populations. Those who have examined the basis on which abortion is available agree that conceptualising abortion as one of the requirements for women’s freedom and equality within a broader liberal framework of human rights, encompassing reproductive, social and political rights, is paramount. An exploration of the basis on which abortion is available in Victoria and the impact this has had on women’s struggle for sexual self-determination and citizenship is one of the principal objectives of this thesis.

4. Theorising Women’s Struggle for Self-Determination

4.1 The politics of purity and women’s struggle for citizenship

From the nineteenth century, sex became a major focus of political and economic interventions, as well as ideological campaigns to raise standards of morality and responsibility. Michel Foucault argues that medical writers in the eighteenth and nineteenth centuries had been preoccupied with ways of differentiating between males and females through reference to sexuality.78 Although he failed to come ‘to grips with the way access to knowledge and power was gendered through ideologies of sexual difference’, Foucault’s

76 For example, in the USA under President Clinton access to abortion declined dramatically, with only 14 per cent of counties now having access to abortion, despite the existence of Roe VS Wade. See Age, 4 September 1999, ‘Bush beats about’, Gay Alcorn, p. 7; Age, 30 September 2000, ‘Abortion back on the political agenda’, Gay Alcorn, p. 20.
assertion that a preoccupation with sex was a political response to new techniques of power was nonetheless useful.\textsuperscript{79}

Eugenacists insisted that the blood relation was the most important element in determining the purity and strength of the race. This made sex the repository of power and fear, and control over women’s sexuality, in particular, came to be central to the survival of the race. Sex, as a political issue, was therefore best understood as a target of power, with medical scientists asserting the necessity to control and regulate sex in order to regulate populations.\textsuperscript{80}

According to Thomas Laqueur it was not until the creation of a bourgeois public sphere that the question of which sex(es) ought legitimately to occupy it arose.\textsuperscript{81} Since that time, a woman’s place has been determined largely by her reproductive physiology. Those ‘who opposed increased power for women -- the vast majority of articulate men -- generated evidence for women’s physical and mental unsuitability for such advances’.\textsuperscript{82} Carole Pateman and Ruth Lister each argue that women were assumed to be incapable of developing the ‘male’ qualities necessary for citizenship by virtue of their reproductive role, which was equated with emotionality rather than rationality.\textsuperscript{83} Pateman also argues that the basis for women’s protection by the state was precisely their lack of citizenship rights, a circular argument, which, she says, justified women’s construction as the property of men.\textsuperscript{84} While male citizens held autonomy over their own bodies, they also exercised control over women’s bodies either through marriage or fatherhood.\textsuperscript{85} As a result, women were denied the formal status and rights of citizens as men gained them in the nineteenth century.\textsuperscript{86}

It was the concept of religious duty, together with the evangelical stress on active Christianity and women’s role as guardians of morality, not ‘women’s rights’ that initially justified women’s involvement in public activities. Further, as Foucault points out, a campaign focussing on the health of the race, involving a thorough medicalisation of women’s bodies

\textsuperscript{80} Foucault, \textit{The History of Sexuality}, pp. 146-47.
\textsuperscript{82} Laqueur, \textit{Making Sex}, p. 194.
\textsuperscript{84} Pateman, \textit{The Sexual Contract}, p. 139, cited in Charles, \textit{Feminism}, p. 22.
\textsuperscript{85} Pateman, \textit{The Sexual Contract}.
\textsuperscript{86} Thomas Marshall’s work remains influential for elucidating the fact that women were not considered to be full citizens, unlike men, whose freedom and status as citizens was enshrined in law. See T.H.
carried out in 'the name of the responsibility they owed to the health of their children, the solidity of the family institution and the safeguarding of society',\(^8^7\) allowed women 'a major role in the advancement of humanity'.\(^8^8\) The 'dignity and centrality of motherhood' became the major justification for women's access to the rights of citizenship.\(^8^9\) Nearly all of the leading women's organisations defined women in terms of their biological potential, concerning the period prior to marriage and maternity – and thus true citizenship – as a perilous journey requiring protection against the 'unbridled sexuality of men'.\(^9^0\) As nineteenth-century evangelical reformists pointed out, control of male passion required the moral strength of women.\(^9^1\) Early Australian feminists also urged the importance of 'impressing upon men ... the selfish wickedness of tampering with and the great necessity of protecting young girls',\(^9^2\) who were, after all, 'the future mothers of the race'.\(^9^3\)

Marilyn Lake points out that, in their quest for citizenship, Australian first-wave feminists planned to harness the state's power and resources to provide for the security and independence of women citizens, protecting and empowering 'otherwise defenceless women against tyrannical, too powerful men'.\(^9^4\) She adds that feminists imagined citizenship as a condition of personal inviolability and self-determination, challenging their contemporaries to see marriage as a relationship akin to feudal bondage.\(^9^5\) Right into the 1930s and 1940s feminist citizenship organisations proposed schemes to provide women, especially married women, with an income. They included campaigns for Aboriginal women's rights on the same basis, arguing that it was their lack of economic independence that rendered them

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\(^8^7\) Foucault, *The History of Sexuality*, p. 147.


\(^9^0\) J. Smart, 1998, ‘Sex, the State and the “Scarlet Scourge”: Gender, Citizenship and Venereal Diseases Regulation in Australia During the Great War’, *Women’s History Review*, vol. 7, no. 1, p. 14.


\(^9^2\) Allen, *Rose Scott*, p. 188.


vulnerable to sexual abuse and systematic degradation. Lake claims that ‘feminists were innovative in drawing attention to the implications of the citizen being both a relational and individual self, and revolutionary in their equating of individuality with sexual inviolability’. The ‘figure of “the mother” in the discourse on maternal citizenship was of key strategic importance in linking the assertion of rights to the assumption of responsibility’. 

While the liberal concept of the citizen constructed participation in the public sphere as both a right and an obligation, it also stressed freedom and equality for individuals. Pateman argues that feminism tended to adopt liberal and socialist notions of freedom and equality without recognising their sexual particularity.

The meaning of citizenship has recently been reconsidered in the context of the dismantling of the welfare state, a shift to economic globalisation, and an era of migration and multi-ethnic populations that calls membership of national communities into question. Barbara Hobson and Ruth Lister argue that citizenship is no longer conceptualised as simply the formal relationship between an individual and the state, but ‘as a more total relationship, inflected by identity, social positioning, cultural assumptions, institutional practices and a sense of belonging’. Citizenship rights are not fixed, but remain the ‘object of political struggles to defend, reinterpret and extend them’. In other words, citizenship should be seen as both a status and a practice. As a status it involves ‘carrying a set of rights including social and reproductive rights’; as a practice it involves political participation, which includes

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102 Hobson & Lister, ‘Citizenship’, p. 23.
103 Lister, Citizenship, p. 199.
the ‘informal politics in which women are more likely to engage’.\textsuperscript{104} Within Lister’s framework, citizenship as a practice encourages the development of social movements to pursue goals for reproductive rights across national borders. This is a more sophisticated notion of reproductive rights than the slogan a woman’s ‘right to choose’, and casts women as actors on the political stage. Petchesky, too, argues,

*Without the ability and means to control their fertility and to be self-determined, experience pleasure, and be free from abuse in their sexual lives, women and girls cannot function as responsible, fully participating members of their families and communities – they cannot exercise citizenship.*\textsuperscript{105}

Like Petchesky, Lister’s notion of citizenship involves a closer link with human rights, a link that is explored further below in conceptualising a politics of reproduction and the part played by the state.

4.2 The politics of ‘motherhood’ – ‘women’s rights versus foetal rights’

Questions about sexual identity and power have continued to be central to women’s political activism, though the focus has shifted emphasis since the late nineteenth-century from the politics of purity to the politics of reproduction. Although control over reproduction was a prominent theme in first-wave feminism, it was not the dominant voice in the way it was to become.\textsuperscript{106} By the 1960s reproductive control was indisputably at the forefront of second-wave feminist activism and debate, as one of the conditions necessary for women to participate equally in the public sphere. Motherhood has continued to be central to the constitution of womanhood and definitions of women as citizens. Rebecca Albury points out that denying motherhood by choosing abortion has thus been viewed as an abrogation of

\textsuperscript{104} Lister, *Citizenship*, p. 196.
responsibility. Men have not similarly been constructed as citizen-fathers and male sexuality has been conspicuously absent from debates about reproductive rights.\textsuperscript{108}

Former US Catholic priest turned birth control advocate, Patrick Sheeran, argues that this is because the ‘abortion debate’ is only about abortion on the surface. The ‘real issue is not the status of the foetus … but traditional family, societal values and morals … are the more subtle and basic issues involved’.\textsuperscript{109} A number of other writers argue similarly that it was anxiety about women questioning that motherhood was their primary role that lay behind opposition to abortion.

US feminists Evelyn Reed and Claire Moriarty claim, for instance, that the Catholic church’s ‘fanatical insistence on enforced motherhood’ has little to do with abortion as such and more to do with the threat posed by women to the authority of the church.\textsuperscript{110} ‘For all that the Church claims to be a moral force representing the “law of God”, it has never been squeamish about allying itself with the coercive power of reactionary civil authorities to impose its particular moral beliefs on others.’\textsuperscript{111} Academic theologian Paul Badham\textsuperscript{112} adds that the Roman Catholic Church said little about abortion until 1588 when Pope Sixtus V decreed that animation followed immediately on conception and declared abortion murder and therefore a sin deserving of excommunication.\textsuperscript{113} The main subject of philosophical and ecclesial debate about abortion had for centuries been focussed on whether the foetus was ‘alive’.\textsuperscript{114} Sixtus V’s opinion was reversed three years later by his successor, Gregory XIV, who believed that the penalty was too severe in light of the ongoing debate on animation. It was not until 1869 that Pius IX restored the policy of Sixtus V. Badham adds


\textsuperscript{110} E. Reed & C. Moriarty, 1973, Abortion and the Catholic Church: Two Feminists Defend Women’s Rights, Pathfinder Press, New York, box 53, Wainer papers, MS13436, State Library of Victoria (SLV)

\textsuperscript{111} Reed & Moriarty, Abortion and the Catholic Church.

\textsuperscript{112} At the time Paul Badham was the Chair of Church History and Senior Lecturer in Theology and Religious Studies at St. David’s University College, UK.


\textsuperscript{114} Generally theologians agreed that when the foetus began to move at around sixteen week’s gestation, referred to as ‘animation’ or ‘ensoulment’, the soul had entered the body and life had thus begun. John Connery, a Catholic theologian and historian, provides a comprehensive early history of abortion. Cited in Sheeran, Women, Society, the State and Abortion, pp. 49-53.
that the mid-nineteenth-century dictum coincided with an upsurge in the popular advertising of abortifacients and women's use of them.\[115\] Albury argues that as the medical profession became more permissive of abortion and birth control, churchmen (especially the Roman Catholic Church) became more repressive.\[116\] Siedlecky and Wyndham also link the availability of abortion, advertisements for abortifacients and the accompanying decrease in the birthrate late in the nineteenth century, with expressions of anxiety about women's morality.\[117\]

Kristen Luker, who has studied the abortion law reform movement in California, argues that it was not until women entered the 'abortion debate' that moral concern about the right to life of the foetus really came to the fore.\[118\] Given that the foetus could only survive if the rights of the mother were subordinated to it, a number of writers have claimed that a preoccupation with foetal rights reflected discomfort with the emancipation of women and was in fact an attempt to control women. A number of convincing arguments support this interpretation.

Albury argues that a focus on the foetus 'draws attention away from the social context of women's lives by making each woman individually morally responsible for honouring human life'.\[119\] Anti-choice advocates in thus reifying motherhood render the woman herself invisible.\[120\] In stressing the hypocrisy of this argument, Hadley points out that, in conceding the right to destroy a foetus conceived through crimes such as rape or incest, the anti-choice position implies that abortion can be tolerated and foetal rights overridden as long as the woman is not somehow responsible.\[121\] Cannold makes a similar point, noting that her research demonstrates that it is the motives and intentions of aborting women, not the destruction of foetal life, that is at the heart of what opponents find so wrong about

\[117\] S. Siedlecky & D. Wyndham, 1990, *Populate and Perish: Australian Women's Fight for Birth Control*, Allen & Unwin, Sydney, p. 67. Kristen Luker points out that major advances in the understanding of embryology had occurred some decades prior to concern about abortion being raised, and debates about whether pregnancy was a biologically continuous process had similarly been resolved at the beginning of the nineteenth century. While these facts were later used as evidence in the abortion debate, their emergence did not cause the debate. See K. Luker, 1984, *Abortion and the Politics of Motherhood*, University of California Press, Berkeley, pp. 24-25.
\[120\] Like Albury, Rosalind Petchesky has explored the way in which anti-choice activists project an image of the foetus as a symbol of life. In reifying the autonomous and primary symbol of the foetal image, women have been rendered absent or peripheral. See R.P. Petchesky, 1987, 'Foetal Images: The Power of the Visual Culture in the Politics of Reproduction', in M. Stanworth, ed., *Reproductive Technologies: Gender, Motherhood and Medicine*, Polity Press, Oxford.
\[121\] Hadley, *Abortion*, p. 73.
abortion. Cannold suggests renaming the ‘abortion debate’ the ‘motherhood debate’ to highlight the real issue at stake – that is, what priority women should give to motherhood.

Abortion provides the means for women to consider motherhood not as destiny but as choice … making abortion a crime is merely the means through which society both restricts women’s capacity to make this choice and voices its disapproval of it. Luker similarly describes abortion as a symbol of the conflict between two world views – one, that biology is destiny and motherhood the primary role of women; the other, that motherhood is only one option in the choices available to women. She argues that the degree of passion brought to the abortion debate reflects its status as ‘a referendum on the place and meaning of motherhood’. Anti-choice activists frame the conflict in terms of foetal rights in order to assert that women claiming the right to an abortion are denying the right of the foetus to life, rather than admitting discomfort with the emancipation of women, a singularly less defensible position.

Albury elaborates on this argument, stressing that moral debates about abortion are also about ‘male control over women, the moral meanings of human foetuses, trust in women as ethical decision-makers, [and] the role of powerful social institutions in the constitution of femininity and masculinity’. Petchesky, too, observes that ‘abortion is the fulcrum of a much broader ideological struggle in which the very meanings of the family, the state, motherhood, and young women’s sexuality are contested’. The change in abortion clientele from married women with two or more children prior to 1960 to unmarried women under twenty-five, for instance, marked a shift in the sexual meaning of abortion, from women spacing births, to delaying motherhood until they had established educational and workplace independence. Petchesky comments that abortion on this basis renders visible the sexual activity of unmarried daughters, often with the open blessing of the state. This causes outrage among anti-abortionists, who, she argues, are more concerned about sex and

125 Charles, Feminism, p. 173.
129 Charles, Feminism, p. 173.
130 Allen, Sex & Secrets, p. 247.
132 Journalist and author Carl Hiaasen also notes that one of the anti-choice groups in the US – Operation National Rescue – has now included a fight against homosexuality as part of its advocacy.
the sexual control of women than the right to life. Charles agrees, claiming that abortion questions the very sexual contract on which liberal democratic states rest by challenging the right of the state, via the church, the law or the medical profession, to limit women’s ability to control their bodies in the interests of the nation.

It is the meanings accorded to abortion by the different groups involved in campaigning for or against law reform in Victoria that is of interest in this thesis. I aim to explore those meanings through an examination of public abortion debates, including those held in parliament, in the popular press and the journal of the Australian Medical Association (AMA), among church leaders, and in polls that explored public opinion. The examination will include the language used and the basis upon which access to abortion was sought or opposed. Interest also lies in whether, and for what purpose, the state might intervene, or be encouraged to intervene, in women’s decisions regarding their fertility. The section below explores this issue, as well as defining the meaning of ‘the state’ used in this dissertation.

5. Theories and Discourse pertaining to the Role of the State in Australia

5.1 ‘The state’ and intervention in women’s fertility

According to Petchesky the institutionalised state has three often-conflicting motives for intervention in fertility. These are: concern with the size and composition of the population; an interest in controlling sexual behaviour – especially that of women; and the maintenance of internal order and its own legitimacy. Allen questions Petchesky’s analysis, arguing that women’s use of abortion and birth control to flout the law and ignore entreaties to increase the birth rate suggests that the state in Australia ‘had little force and


134 Charles, Feminism, p. 174. This argument is also central to Carole Pateman’s argument in The Sexual Contract.


legitimacy."  Certainly, while purposeful intervention had obvious consequences in Ceausescu’s population policies in Romania and China’s One-Child policy, state intervention in Australia did not lack purpose just because it was more subtle and less effective. For example, Albury argues that the role of abortion policies in controlling women’s sexuality is often ignored in Australia, where the stated emphasis has been on concern over the size and composition of the population. But the fact that the idea of a female heterosexuality with open access to safe abortion, as articulated by the contemporary feminist movement, seemed to threaten patriarchal authority suggests that control over women’s sexuality was indeed important. Coleman also argues that the state claims an interest in, and rights over, women’s bodies through the very act of legislating against abortion. Even assuming that women in Australia largely ignored abortion legislation, what might the existence of that legislation mean to women’s consideration of themselves as state-citizens?

Bettina Cass also points to ‘the ways in which the architects of and commentators on the Australian welfare state conceptualised the desirability and limits of state intervention into the very heart of domestic relations’. She cites the NH&MRC Inquiry into the Decline in the Birth-Rate published in 1944, and the migration-focused National Population Inquiry established in 1970, to demonstrate significant continuities in relation to population policies in Australia. While government rhetoric espoused pro-natal policies, contradictory economic and political decisions led to population policies that ‘considerably constrain and circumscribe the range of possible options for women and preclude others entirely’. Sociologist Helen Marshall adds that an ‘ambiguous pronatalism’ had been a recurrent public issue in Australia from the early twentieth century. This continued to depict women who chose to limit their families as selfish, while increasingly supporting the idea of rational decision-making in relation to numbers and timing of births. However, government reports from the mid-twentieth century also reflected an understanding that women choose to limit their family for their own sake.

The NSW Royal Commission into the Decline of the Birth-Rate in 1904 and Octavius Beale’s 1907 Royal Commission on Secret Drugs and Cures led to a series of parliamentary


\[\text{\textsuperscript{139}}\] Coleman, ‘The Politics of Abortion in Australia’, p. 75.


acts outlawing advertising of contraception or abortion and making common abortifacients available on prescription only. But the later reports eschewed direct intervention. Instead, they recommended family packages of economic, social welfare and medical services to provide a positive incentive to motherhood. According to Cass this was based less on liberal-democratic protestation against intervention than on the recognition that such intervention simply did not work.

Finch and Stratton also argue that the development of the welfare state in particular led to increasing attempts to regulate the productive and reproductive behaviour of populations. State regulation assisted ‘the imposition of middle-class values upon … working-class women’. Thus the police force, judiciary and medical profession worked to eliminate an intricate women’s community network, while condoning the parallel rise of the physician in abortion. Of course, the welfare state also provided the means to collect information about birth rates and abortions, contributing still further to a preoccupation with women’s reproductive behaviour.

Charles notes along with Burgmann that the state is central to feminist politics in Australia, with demands for change directed at the state, while simultaneously identifying ‘it’ as supporting social relations that are oppressive to women. Sara Dowse too has long argued that, while the state is characterised as an instrument of social control and oppression, the paradox in Australia is that the feminist quest for equality has been largely directed to its functionaries. Hester Eisenstein claims that this has arisen out of a socialist-feminist praxis linked to the politics of the welfare state. The structure of the welfare state in Australia is such that much of women’s lives, at home and in the paid workplace, is determined by the operations of the state. Consequently, as Carol Bacchi points out, the dominant framing of the state in both liberal and left accounts in Australia is as a ‘body’ that identifies and

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147 Charles, Feminism, p. 5.
responds to social problems.\textsuperscript{151} She argues that this benevolent view of the state ignores the way in which policies are framed ‘not as a response to existing conditions and problems, but more as a discourse in which both problems and solutions are created’.\textsuperscript{152} In relation to abortion, for example, handing surveillance over to the medical profession justifies the state stepping out of the decision-making process and, through deference to doctors’ claims ‘of professional autonomy and of technical expertise’, constructs abortion as a medical problem.\textsuperscript{153} Bacchi argues that feminists therefore have little option but to engage with the state, and with extra-state institutions such as the law and the medical profession, in contesting disempowering constructions of problems.\textsuperscript{154}

The usefulness of ‘the state’ to understanding a history of abortion law reform

The work of Michel Foucault has been particularly influential in feminist theorising about the state and the role of state-designated experts, although writers have different interpretations of his views on the usefulness of the concept of ‘the state’. Charles, for instance, notes that Foucault is widely cited as supporting the argument that a concept of the state is not useful, although she is not clear that this is so.\textsuperscript{155} In Foucault’s own words:

\begin{quote}
I don’t want to say that the state isn’t important: what I want to say is that relations of power, and hence the analysis that must be made of them, necessarily extend beyond the limits of the state. In two senses: first of all because the state, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations, and further because the state can only operate on the basis of other, already existing power relations.\textsuperscript{156}
\end{quote}

Sophie Watson argues that Foucault recognised the state as an important focus of power, but accorded ‘it’ no ‘unity, individuality or rigorous functionality’, given the changing terms on

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\item \textsuperscript{155} Charles, \textit{Feminism}, p. 14.
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which ‘the state’ might exist over time. Certainly any analysis of the state that assumes ‘it’ to be a coherent network of institutions or apparatuses ignores that the state is both historically contingent and constituted by people. Bacchi uses the work of both Foucault and Nicholas Rose to explain the state as a constantly intervening series of relationships. They argue that either directly through disciplinary instruments like prisons, or more subtly through policies, the relationships between the state and non-state actors, particularly the professions, has led to a regime of governance that produces self-regulating citizens engaging in ‘desirable’ behaviour. For instance, while traditional controls over women’s reproduction were highly visible, including chastity belts, chaperones and the like, these have been replaced by less visible mechanisms operating through social institutions, relationships and practices. Strategies to achieve this have included the development of ‘scientific’ knowledge about sexuality and the deployment of this knowledge ‘throughout society so that those who are able (such as the medical profession) can use it to define and contain others within particular categories’. The Kinsey reports in 1948 and 1953, for instance, and the strength of the pseudo-science of eugenics in justifying control over women’s sexuality, are of particular note.

Confusion can arise when the state is ‘defined and experienced both as a set of institutions standing over and above us and as something which permeates our everyday lives and in which we all, wittingly or unwittingly, participate’. Charles notes that this has led some feminists to question the existence of the state and its utility for feminist political practice. Judith Allen, for instance, has argued that ‘the state’ as a category of explanation in feminist theorising has assumed far greater significance than warranted since the 1970s. She claims that this was understandable given the fact that so many feminist objectives appeared to hinge

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160 Boyle, Re-thinking Abortion, pp. 7-8.


163 Charles, Feminism, p. 5.

on legal and policy reforms. However, Allen suggests that 'the state' is 'a category of abstraction that is too aggregative, too unitary and too unspecific to be of much use in addressing the disaggregated, diverse and specific (or local) sites that must be of most pressing concern to feminists'. On the basis of research into the histories of crimes involving women, she suggests not so much that the state is absent or irrelevant, but that 'eliding together government, police, judiciary, coroners, courts, and relevant bureaucracies in terms of "the state" may obscure vital historical specificities of each of these categories'. For instance, she argues that it was not so much the state in Australia as the contest over the organisation and medical control of abortion provision that led to a marked reduction in women's access to abortion in the 1950s and 1960s.

Allen's argument is similar to Foucault's in so far as she suggests that there are other forces at play, other relationships and thus other categories apart from 'the state' that require examination. As Watson points out, however, if the state is theorised as a complex set of interrelated but distinct institutions, relations, hierarchies, discourses, interest and players, it follows there will be a diversity of discourses and practices. It is not only individual categories but also the connections between those categories that are important. Further, as Zygmunt Bauman points out, while once we defended private autonomy from the 'advancing troops of the public domain, almost wholly subsumed under the rule of the all-powerful, impersonal State and its many bureaucratic tentacles ... it is now the defence of the vanishing public realm' to which feminist theory must turn. Individuals alone do not possess the resources to close the gap between their circumstances and the possibilities for action to take control over their own lives. To this end, an active and powerful state made up of 'interested citizens' focussed on supporting the 'common good' is a key element in the struggle for equality.

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166 Allen, 'Does Feminism Need a Theory of 'the State?'', p. 22.

167 Allen, 'Does Feminism Need a Theory of 'the State?'', p. 30.


Charles suggests that viewed externally the state can be seen as a set of institutions that together constitute the state apparatus, which has power over civil society. Viewed internally the state appears as a set of social relations, which are in continual flux—a process rather than a thing. This dissertation works within a conceptualisation of the state that recognises both formal state institutions and the more subtle processes that work to control and influence individuals. My aim is to localise the analysis of abortion law reform by exploring the role of those institutions that regulated and controlled the practice of abortion in Victoria during the period under study. I also recognise that those institutions are made up of individuals, some of whom might contest the dominant framing of abortion as a crime. Similarly, the processes of the state will be examined through an exploration of the key organisations and professions that influence and assume some part in state control. This includes a number of the categories that Allen suggests may be more elucidating than the state per se, including ‘policing’, ‘law’ and ‘legal culture’, ‘medical culture’, ‘bureaucratic culture’, and ‘organised crime’. Polic ing and the legislature will be discussed in detail in later chapters, as will medical culture. Here it is necessary in the context of the evolution of the modern state to engage in a brief discussion of ‘medical dominance’.

**Medical discourse**

Any satisfactory analysis of the provision of legal abortion should clarify the connection between the practical means of controlling social problems and the role of state-designated ‘experts’ (largely medical practitioners) in limiting the availability of abortion. The idea that responsibility for social control should be in the hands of ‘experts’ began with the emergence of the sciences of society, especially from the middle of the nineteenth-century, and continued unabated. Writing nearly half a century ago, Robert Wiebe pointed out that, with the massive transformation of society that occurred following industrialisation, values of ‘continuity and regularity, functionality and rationality, administration and management’ developed in order to cope with the confusion and problems that arose. Both the need for ‘a government of continuous involvement’ and an assumed requirement that responsibility

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173 Allen, ‘Does Feminism Need a Theory of ‘the State’?’, p. 34.
174 Evan Willis coined this term to describe the medical profession’s systematic process of exclusion of competition. See E. Willis, 1983, *Medical Dominance: The Division of Labour in Australian Health Care*, George Allen & Unwin, Sydney.
175 Greenwood & Young, *Abortion in Demand*, pp. 22-23.
for social control should be in the hands of ‘experts’ ensured increasing regulation in economic, social and political arenas as well as in the ‘pattern of ideas’.  

Writing more recently, Frank Mort also links the ascendancy of the medical profession with its assertion of ‘intellectual monopoly over key explanations of human affairs and social progress, notably over the rapid cultural transformations taking place within urban society’.  

This fostered identification of medical science with moral philosophy and political economy. The development of the urban-industrial system demanded the identification of required skills accompanied by increasingly formal and exclusionary entry requirements into professional occupations in order to protect the prestige of members. ‘No part of the process’, Wiebe argued, ‘came with such force or exercised such profound influence as the one in medicine’. Following their identification of disease transmission processes and the resultant drop in infant mortality, doctors became public heroes. Rebecca Albury adds that advances in science and medical technology outstripped the general public’s ability to recognise the essentially moral decisions underpinning many medical procedures. As a result, medical practitioners have met little resistance in setting the criteria by which moral as well as medical decisions are made. The consequent right of the medical practitioner to exercise, in effect, a social control as well as a public health function was thus firmly established and, as one part of this process, by 1939 abortion in Australia, as elsewhere, was largely provided and regulated by the medical profession.

Barbara Ehrenreich and Deirdre English note in this context that contemporary ‘medical practitioners are acknowledged as experts about the functioning of female bodies and thus occupy a privileged place in defining the standards of normality and deviance’. But of equal interest, as Foucault pointed out, is the ways in which those whose behaviour is defined as deviant resist containment. To counter such resistance, legal or medical control of abortion has become a potent method of controlling women’s sexuality. For instance, even

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177 Wiebe, The Search for Order, p. viii.  
178 Mort, Dangerous Sexualities, p. 27.  
179 Wiebe, The Search for Order, p. 113.  
180 Wiebe, The Search for Order, p. 113.  
182 Albury, ‘Speech and Silence’, p. 53.  
183 Allen, Sex & Secrets, p. 164.  
185 See Charles, Gender in Modern Britain, p. 12.  
where abortion is available, a woman must persuade a medical expert that she is ‘unfortunate, inadequate, deserving and contrite’. This has an enormous impact on her sense of self and autonomy over reproductive decision-making.

It is clear that a close examination of the role of the organised profession of medicine in abortion policy and practice would be illuminating. To this end, I examine the role of the medical profession in either restricting or facilitating women’s access to abortion in Victoria, and the importance of medical discourse to supporting its ability to do so.

5.2 Social movements contesting the role of the state

State power is challenged or accorded legitimacy through the attitudes and actions of members of the community. In the case of abortion, the churches in Australia, the media, pressure groups such as the Australian Medical Association (AMA), the Right to Life groups (RTL)\textsuperscript{188} and the Victorian Council for Civil Liberties (VCCL) have interacted in either minimising or enhancing the power of the state to effect control. Thus any analysis of the role of the state must also include an examination of the actions taken by various groups and organisations to increase or lessen control. In particular, the impact of such actions on attitudes towards women’s fight for freedom and equality is central to the dissertation. The attitudes towards the state of the various women’s groups campaigning for abortion law reform, and their actions in attempting variously to ignore or utilise state mechanisms, are central to this issue.

Petchesky situates women as integral to, rather than separate from, state power. Power is both socially constructed, she argues, and dynamic, fluid and always engaged in contestation through a wide range of tactics deployed by the ‘oppressed’, including subversion, subterfuge and outright resistance.\textsuperscript{189} Such an analysis recognises the nature of power and the fact that ‘no single actor’ totally controls ‘the historical conjuncture within which we operate’.\textsuperscript{190} Petchesky’s liberating view of women as agents, rather than victims of a monolithic state, provides a means for understanding possibilities for action and advocacy. While political, cultural and socio-economic structures combine to constrain women’s actions, it is

\textsuperscript{187} Hadley, Abortion, pp. 166-79.
\textsuperscript{188} The anti-abortion forces are referred to as ‘Right to Life’ (RTL) in this thesis. They first organised in 1970, with the Right to Life Association forming in Victoria in 1979 following a split between Victoria and other state branches as a result of discomfort with the militant tactics used by Victorian leader Margaret Tighe. See Coleman, The Politics of Abortion in Australia for further details.
\textsuperscript{189} Petchesky, Global Prescriptions, p.11.
nevertheless clear that women have contested and thus made visible those structures. This thesis examines the women’s and abortion law reform movements as social movements, although recognising, as Luker points out, that ‘this is an artificially well-ordered way of studying a movement that was in many ways spontaneous, amorphous and intermittent’.\textsuperscript{191}

Linda Gordon suggests that advocacy for birth control became a social movement in four stages.\textsuperscript{192} The first was the campaign for ‘voluntary motherhood’ in the second half of the nineteenth century, with the women’s rights movement unifying around choice, freedom and autonomy for women. The second stage, from 1910 to 1920, produced the term ‘birth control’ to include all methods of preventing birth. Feminist leagues were created to promote birth control, influenced by the socialist movement’s focus on transforming gender and class order through empowering the powerless – namely the poor and women. The third stage involved a move away from radicalism to the liberal reforms of the 1920s to the late 1960s, with an emphasis on ‘planned parenthood’. Fourth, a revival of feminism from the late 1960s emphasised women’s reproductive rights. Gordon notes that the decline in women-identified political activism in the third stage paradoxically coincided with greater independence for western women.\textsuperscript{193} ‘This produced the ‘kind of contradiction often at the root of a social movement: greater opportunity and raised aspirations met by continued discrimination and frustration’.\textsuperscript{194}

The considerable body of literature that describes and examines the emergence of social movements increasingly links this to particular political contexts and processes and the nature of the state in which the movements operate.\textsuperscript{195} This literature suggests that the emergence of the abortion law reform, civil libertarian and feminist women’s movements can be understood as both stimulating, and being stimulated by, social change. Charles reviews the body of new social movement theories, summarising the trends in thought about what triggers their development and noting the lack of a gender analysis in much of the literature.\textsuperscript{196} Of particular relevance to the emergence of an abortion law reform movement is

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\item\textsuperscript{190} Petchesky, \textit{Global Prescriptions}, p. 26.
\item\textsuperscript{191} Luker, \textit{Abortion and the Politics of Motherhood}, p. 95.
\item\textsuperscript{193} Marilyn Lake disputes this in the Australian context. She argues that Australian feminists were very active in the 1930s and 1940s, although not around reproductive rights so much as human rights.
\item\textsuperscript{194} Gordon, \textit{The Moral Property of Women}, p. 298.
\item\textsuperscript{195} Charles, \textit{Feminism}, p. 58.
\item\textsuperscript{196} See in particular her chapter ‘Theorising Social Movements’, in Charles, \textit{Feminism}, pp. 30-53.
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Claus Offe's location of new social movements in the context of increasing levels of state intervention in everyday life and citizens' resistance to this control.197

For many theorists, the emergence of second-wave feminism is linked to previous social movements in a cycle of protest that began in the late 1950s/early 1960s.198 Charles asks, though, what was happening to women, what changes were occurring in their lives and what was causing the changes that prompted women to take to the streets in protest?199 She concludes from her review of the literature that attention has to be paid not only to the political opportunities, resources and forms of organisation that facilitate the emergence of a social movement, but to the important part played by consciousness in the generation of discontent and subsequent mobilisation of women.200 For example, like Gordon, Charles sees the strength of the birth control movement in advocating wider availability of contraception from the beginning of the twentieth century as crucial to women’s current understandings of the importance of abortion rights. Charles argues that changes in gender identity and consciousness are both the outcomes of feminist social movements and the necessary precursors of their emergence.201 It follows then that the abortion law reform and women's movements both emerged as a result of socio-economic, political and cultural change, and served also to hasten that change.202

Overview of feminist theories of reproduction

A brief overview of the predominant feminist theoretical frameworks that drove social movements advocating abortion law reform is useful to an analysis of women's actions during the period under study. This includes the different ways that feminists have theorised the impact of motherhood on women's status and thus the relative importance of control over reproduction to women in their pursuit of freedom and equality. Feminist action and reaction during this time can loosely be divided into liberal, radical and socialist-feminist traditions.

Ines Smyth notes that liberal feminist interest in control over fertility was expressed as a legal right required to enable women to participate in society as autonomous individuals, alongside

198 Charles, Feminism, p. 74.
199 Charles, Feminism, p. 75.
200 Charles, Feminism, pp. 78, 82.
201 Charles, Feminism, p. 72.
202 Charles, Feminism, p. 213.
men.\footnote{203} For liberal feminists, the focus was on reforming the ‘system’ in order to eliminate policies that discriminated against women, rather than broader questions of reproductive politics. Liberal feminists aligned themselves with the humanitarian and civil liberties movements, at least initially, stressing the importance of individual autonomy. In this context, Rosemarie Putnam Tong draws a contrast between women’s rights and women’s liberation groups, associating the former with liberal feminism and the latter with radical feminism.\footnote{204}

Verity Burgmann argues that liberal ideas of equality of rights for women has had the greatest impact on mainstream society being ‘the least challenging of the feminisms’ socially or politically.\footnote{205} Accordingly, liberal feminists have received the most public recognition and support, while other feminisms were portrayed as ‘anti-motherhood’.\footnote{206} Ryan and Ripper argue that access to abortion was thus mainly debated within a liberal humanist discourse, urging a woman’s right to seek an abortion, and a medical practitioner’s right to recommend and perform the procedure or to refuse to do so.\footnote{207}

On the other hand, radical feminists urged women to demand control over reproduction and their own bodies as the primary route to liberation. Radical feminists viewed men’s preoccupation with women’s bodies as central to male domination. Writers such as Gena Corea and Mary O’Brien argue that male-controlled medicine is a method of social control and political rule, with conception, gestation and birth, and now the new reproductive technologies, firmly in the hands of men and medicine.\footnote{208} According to Putnam Tong, radical feminists urged women to seize the means of reproduction in order to achieve a biological revolution in much the same way that socialism encouraged men to seize the economic means of production.\footnote{209}

\footnotetext[203]{Smyth, ‘Gender Analysis of Family Planning’, p. 222.}
\footnotetext[205]{Burgmann, Power and Protest, p. 83.}
\footnotetext[206]{Burgmann, Power and Protest, pp. 83-84.}
\footnotetext[207]{Ryan & Ripper, ‘Women, Abortion and the State’, p. 73.}
\footnotetext[209]{Putnam Tong, Feminist Thought, p. 72.}
Differences between radical feminists led to some women supporting sexual freedom, while others claimed that male sexuality was 'intrinsically flawed' and set the stage for male domination and female subordination, rape, prostitution and violence against women. This may explain why some women supported abortion while others remained firmly of the opinion that men would use abortion to further their control over women's bodies. The latter writers argue that, without other forms of progress in terms of equality, abortion lets men 'off the hook'. Critics of this position argue that this portrays women as victims, rather than as sexual beings with their own desires and capacities for decision-making.

Socialist-feminist traditions identify women's oppression in the social, economic and political structures within which people live and work, thus locating women's position in the nexus between the relations of production and reproduction. Putnam Tong claims that socialist feminists criticised radical and liberal feminists for insisting that everything is a choice when women's ability to choose was precisely what was in question in a capitalist patriarchal context. Burgmann notes that a socialist feminist analysis of the importance of class and capitalism to understanding women's position was increasingly unpopular within the women's movement, members of whom regarded left-wing participation in feminist campaigns with suspicion. Burgmann quotes Ann Curthoys, who argues that the unpopularity of a class analysis within the women's movement reflected its middle-class base.

Despite their political differences, second-wave feminists largely emphasised the universal, rather than the specific, experience of abortion. Betsy Wearing points out that over the past twenty years, a paradigm shift has occurred in feminist thinking, with post-structuralist and post-modernist critical theories influencing feminists to 'analyse the local, specific and particular in seeking to understand women's lives and experiences'. Putnam Tong argues that post-modern feminists are suspicious of any mode of feminist thought that aims to provide the explanation for women's oppression or liberation. Multicultural and global feminists have taken that analysis further. They argue that whether reproduction-controlling technologies such as contraception, sterilisation and abortion, and reproduction-aiding

210 Putnam Tong, Feminist Thought, pp. 64-65.
211 Putnam Tong, Feminist Thought, p. 87.
212 Burgmann, Power and Protest, p. 87.
technologies such as donor insemination and in vitro fertilisation (IVF) are women-liberating or women-oppressing depends largely on a woman's class, race, sexual preference, religion and nationality.\textsuperscript{216} Such an approach recognises that women's quest for citizenship relies not on sexual or reproductive freedom alone, but on removal of all forms of inequity and oppression, both nationally and internationally, in order that women can control their lives within and outside the home.

It is important to bear in mind that the women's movement during the period under study was largely a white, middle-class movement. As Julia Kristeva claims, 'the politics of liberation' can quickly become the 'politics of exclusion and counterpower' unless the feminist movement recognises that it 'has worked to exclude women whose interests and needs are somehow different'.\textsuperscript{217} While acknowledging that a universalist view of abortion can mask women's different experiences, other writers equally encourage feminists not to lose sight of universal links. As Jo Wainer argues, public debate about abortion is a debate about the way in which women are valued in our society – their moral worth, relationship with men, capacity to make sound moral decisions and the readiness of the ruling group to accept that women are autonomous individuals.\textsuperscript{218}

While I acknowledge that attention must be paid to both the universal and the particular, this dissertation focuses on the specific example of abortion law reform, which is contextualised in a white capitalist patriarchy in which abortion was seen in freedom-enhancing terms. Aboriginal women's experience of abortion, as of the white women's movement, was quite different. It was not until the decade after white women began to agitate for abortion law reform that the different reproductive experiences of Aboriginal women began to emerge. Historians Katie Holmes and Marilyn Lake noted in 1995 that there was a time lag between white reformers raising concerns about women's health in the white community and Aboriginal women's gaining of a political voice in order to raise similar concerns in the Aboriginal community.\textsuperscript{219} Indigenous women found other issues, such as land rights or

\textsuperscript{216} Putnam Tong, \textit{Feminist Thought}, p. 231. Marilyn French found that in 1972 alone, 1-200,000 people had been sterilised in the US with federal funding, the majority minority groups. See M. French, 1985, \textit{Beyond Power: On Women, Men and Morals}, Jonathan Cape, London, p. 361.


\textsuperscript{218} Wainer, 'Abortion and the Dignity of Women', p. 9.


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family reunification, more pressing, and it is therefore important to acknowledge that ‘feminism might not be the most appropriate or urgent politics for all women’.  

Charles’ stress on the socio-economic, cultural and political changes that preceded the emergence of the women’s movement, as well as those changes that can be attributed to its emergence, influenced the decision to begin this thesis by reviewing the historical context within which women’s struggle for reproductive control in Victoria emerged. Those historians whose work informs the following chapter all note Australia’s strongly pro-natalist stance, at least in relation to white women’s responsibility to populate the country through natural increase rather than recourse to immigration, and the concomitant moral outcry provoked by women’s attempts to reduce their fertility. The chapter thus sets the pattern for women’s reproductive struggle and provides a framework within which an analysis of women’s attempts to gain reproductive and sexual self-determination can proceed.

Charles notes that measuring the success or assessing outcomes of social movements is difficult, especially when dealing with movements concerned with cultural as well as political change. She points out that feminist social movements are not only engaged in struggles (with the state and other political actors) over the distribution of resources within society, but over the meaning of that distribution. As such, their struggles are both political and cultural, as they call into question the legitimacy of the public-private distinction that underpins the liberal state and results in women’s unequal access to resources in both public and private domains. This is particularly pertinent to abortion, where women’s lack of control over seemingly private reproductive choice has limited their ability to control their private lives and their ability to participate in the public domain. Further, the meaning of who controls decision-making is important to women as a sex, as it reflects women’s status and the limitations imposed on them as citizens.

It is important then to examine not only the struggle over access to abortion for individuals, but also the struggle for hegemony over abortion policy and practice.

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221 See Judith Allen, Stefania Siedlecky & Diana Wyndham, Shurlee Swain, Renate Howe, Kay Daniels & Mary Murnane, Judith McCalman, Marilyn Lake, Judith Smart and Marie de Lepervanche.
222 Charles, Feminism, p. 63.
223 Charles, Feminism, pp. 204-06.
224 Charles, Feminism, p. 212.
Conceptualising a Politics of Reproduction

Those who have examined abortion law reform across the world reveal that feminist social movements have rarely been responsible for putting legalisation of abortion on the policy agenda. Dorothy Stetson, who compared the development of abortion policies in eleven democratic countries, found that in only one of those countries was abortion policy initially framed round its impact on women.225 The typical pattern, she found, was to juxtapose women's rights to autonomy and equality against the life of the unborn, with doctor's rights, or the state's integrity in the face of rising rates of illegal abortion, also determining the outcome for abortion policy.

Petchesky also found that abortion laws were formed largely in response to political pressures and the failure of existing legislation to regulate women's abortion practices given changing social, demographic and employment patterns.226 In Australia, Karen Coleman suggests that crucial changes to abortion law practices actually pre-dated the emergence of the Women’s Liberation Movement (WLM).227 While this holds some truth, it ignores the continuing existence of women’s organisations throughout the twentieth century and the impact women within broader organisations such as the VCCL and the labour movement had in placing abortion on the political agenda. For instance, as early as 1964 Tasmanian health minister, William McNeil, sought legal abortion for girls under the age of sixteen, referring to the backing of ‘some of the powerful and thinking women’s organizations’ in Tasmania.228 His identification of abortion as a ‘women’s issue’ points to the existence of an organised women’s movement some years before this was generally recognised.229 Legislative change did not occur in Victoria, and the Menhennitt Ruling of 1969 did little to alter abortion practice at the time. It is only now in retrospect that the ruling is used to date changes in women’s access to abortion. In fact it was a series of events in the late 1960s and early 1970s that shaped actual changes in women’s access to abortion during the period under study.

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226 Petchesky, Abortion and Woman’s Choice, p. 102, cited in Charles, Feminism, p. 159.
227 Coleman, 'The Politics of Abortion in Australia', p. 76.
228 Truth, 22 February 1964, 'Minister's move rocks health men', Les Teese; Truth, 22 February 1964, 'Women back move for operations. Hush hush by politicians'.
229 The continuity of post-suffrage feminism has been an important contribution of recent historical research in Australia. See the work of Marilyn Lake and Judith Smart referenced herein. See also Fiona Paisley, including F. Paisley, 2002, 'Cultivating Modernity: Culture and Internationalism in Australian Feminism’s Pacific Age', Journal of Women's History, September 22.
many of those strongly influenced by an organised women’s movement, as detailed in chapter five.

In most Western nations, the limited impact of an organised women’s movement on abortion legislation means that access to abortion on demand is not a feature of legislation where, instead, the ‘right’ to an abortion is exercised under the control of the medical profession.\textsuperscript{230} As in Victoria, while feminist groups argued for abortion in terms of women’s reproductive rights, the medical and legal professions argued for abortion law reform in terms of an expanded definition of what constituted a therapeutic abortion, and asserted their exclusive expertise to make that judgement.

Luker agrees that abortion law reform was a narrow and clear-cut search for regulation supported by ‘elite professionals, public health officials, crusading attorneys, and prominent physicians’.\textsuperscript{231} However, while agreeing that the abortion debates of the 1970s initially conceptualised abortion within a medical framework, she argues that, as the movement developed, a broader understanding emerged.\textsuperscript{232} As a result, medical control of abortion became ‘nothing more than a legal fiction’ with most women who wanted an abortion able to access one.\textsuperscript{233} Petchesky expresses scepticism about this interpretation, arguing that abortion became available because ‘the pressure of popular practice on doctors, health facilities, and finally the state had become irresistible’, not because the population had swung behind a woman’s right to choose.\textsuperscript{234}

This thesis traces the development of the feminist argument, from access to abortion to control over reproductive decision-making. In particular, the support for or contesting of feminist demands such as a woman’s ‘right to choose’, is key to understanding the development of abortion policy and practice.

6.1 Examining ‘rights’ and ‘choice’ as a framework for accessing abortion

Rebecca Albury notes that feminism as a social movement organised its campaigns around slogans calling for reproductive freedom for women.\textsuperscript{235} One of the best known of those was the ‘right to choose’. This slogan challenged individual women and communities to rethink

\textsuperscript{230} Charles, Feminism, p. 158.
\textsuperscript{231} Luker, Abortion and the Politics of Motherhood, p. 66.
\textsuperscript{232} Luker, Abortion and the Politics of Motherhood, p. 98.
\textsuperscript{233} Luker, Abortion and the Politics of Motherhood, p. 94.
\textsuperscript{234} Petchesky, Abortion and Woman’s Choice, p. 123.
the problem of an unplanned pregnancy, representing women as actors in charge of their lives. As Albury and other writers have pointed out, however, an individual ‘rights’ discourse is a limited tool for advocating access to abortion. This is because a rights discourse tends to exclude ‘discussion of the power relations within which the rights are exercised’.\(^{236}\)

Hadley argues that it is understandable that abortion was framed in terms of ‘rights’. Where women as a group continue to be responsible for child-rearing, the ‘right to decide’, or control over their own reproduction, is vital to women’s efforts to achieve social, political and economic equality.\(^{237}\) However, a rights discourse leads to a construction of abortion as an individual civil liberties issue, resulting in an abstract legal right without necessarily ensuring the resources available to implement that right. On the other hand, advocating abortion as one aspect of reproductive health in the context of decent healthcare for all women highlights the necessity of establishing and resourcing programs that redress inequality.

Shifting from an individualistic perspective to one that still retains the notion of self-determination in child-bearing is crucial.\(^{238}\) This implies acceptance of the fact, as Smyth expresses it, that ‘individual reproductive behaviour is influenced by systems of gender relations and those are embedded in social, economic and political norms and structures’.\(^{239}\) Soma Corrêa and Rosalind Petchesky suggest that reframing abortion as a human rights, rather than individual rights issue, would do both.\(^{240}\) Abortion is necessary, not just in terms of women’s health and self-determination, but also for control over their lives in both the public and private arenas. As such, it is not simply an ‘individual right’ or even a ‘welfare right’ but a ‘social right’, in the same way as education and health benefits are social rights.\(^{241}\)

Other writers are nervous about such a framing because civil and political rights are more easily defined by law and thus take precedence over protection of social and economic rights,
which are largely relegated to the arena of social policy. As a result, women tend to be neglected. Further, according to Katarina Tomasevski, there remains a widespread tendency to reduce the human rights of women to motherhood, rather than assuming their entitlement to full protection of rights and freedoms as human beings. Joanna Kerr adds that the growing conviction among women activists that women’s rights are human rights has tended to lead to a fight for legal rights as the path to equality. Bauman argues further that the only thing that ‘human rights’ can deliver is to let everyone go her or his own way in peace. Rather than a focus on the rights of a group of individuals, he argues for the development of the ‘common good’ or the ‘just society’.

Petchesky points out, though, that individual rights have increasingly come to be understood as deeply connected to social justice. She understands the suspicion of those who note that women’s rights have often been treated as means towards other social goals, as in the case of population policies. However, in order for reproductive and sexual rights to become a maternal reality, ‘we can no longer afford to think of macroeconomic regimes (finance, trade, fiscal policy) and human rights regimes as entirely separate discourses’. Rights are ‘merely the codification of needs, reformulating them as ethical and/or legal norms and thus implying a duty on the part of those in power to provide all the means necessary to make sure those needs are met’. Charles similarly argues that a feminist claim for the right to control over our own bodies involves both a right in law and resources to enable those rights to be translated into reality by social provision of services to all women. As US researcher and activist Carol Maxwell points out, legal rights become irrelevant when access to abortion is restricted.

Like ‘rights’, ‘choice’ can be stripped of radical context and treated as ‘a consumer good rather than as a category for political or moral analysis’ or an expression of personal

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244 Kerr, Ours by Right, p. v.
245 Bauman, The Individualized Society, p. 49.
247 Petchesky, Global Prescriptions, pp. 9, 12.
249 Petchesky, Global Prescriptions, pp. 17-18.
250 Charles, Feminism, p. 168.
liberty. As one of the main liberal democratic values, choice is far more popular with the economic right today than the core feminist value of equality. As Albury argues, the rhetoric of choice is used ‘as if the fact of choice itself is a solution to the social problems arising from relationships between women and men, the limitations of contemporary medicine or the realisation that fertility is not always subject to rational control’. Hadley argues further that setting women up as making either ‘good’ or ‘bad’ decisions assumes we always make rational, informed choices and are never muddled or ambivalent about our relationships or lives. It also assumes that fertility ought to be 100 per cent controllable. The ability to control one’s social circumstances is neither a prerequisite for determining the validity of a choice nor the capacity to make choices. Hadley adds that abortion is not so much a choice, as part of the sexual division that assigns women responsibility for pregnancy and child-rearing.

Petchesky too criticises the rhetoric of ‘choice’, which, she believes, falsely implies that abortion is unnecessary. Dawn Currie, who studied women’s responses to the abortion decision in Canada, claims that the very language of ‘choice’ leads women to internalise this framing of the problem, resulting in feelings of guilt rather than recognition of the structural factors that determine the ‘choices’ available to them. This individualising of the problem ensures that ‘inequality comes to be popularly perceived as the result of individual inadequacy or an unfortunate aberration’. Bacchi notes that this results in self-monitoring in a Foucaultian sense and that choice is therefore inadequate as the means of achieving reproductive freedom in the context of social and cultural arrangements. Cannold also argues that the claim that women choose abortion for their own ‘convenience’ and for reasons of ‘immorality’ allows responsibility for socio-economic and political problems to be shifted from the culture collectively to women as individuals. For the vast majority of women, economic and social pressures severely constrain choice, because alternatives are not possible. Given that individuals do not determine the social framework in which they act,
women, according to Petchesky, need to 'focus less on "choice" and more on how to transform the social conditions of choosing, working and reproducing'.

Keeping these arguments in mind, I aim to examine here the framework within which the feminist women's movement and abortion law reform groups argued for reform. Was abortion represented simply as an issue of access for women, of individual choice, or were campaigns for abortion law reform linked more broadly to the range of social, political, cultural and economic exigencies to be considered in order for all women to achieve equality in public and private spheres? For what reasons did they adopt particular approaches and strategies? This examination involves consideration of campaign frameworks, focusing on the language used to describe abortion and the way in which those groups and individuals that urged law reform framed their struggle ideologically. It also includes analysis of changes that took place in both ideology and strategy as the campaign progressed. And it includes the attitude of law reform campaigners to abortion itself.

6.2 Ambivalence and moral questions

A number of writers have pointed to the fact that even pro-choice women did not portray themselves as pro-abortion. They argue that opponents of abortion exploited the ambivalence that was portrayed by law reform groups, highlighting their distaste for abortion and equating abortion with 'murder'. Both Hadley and Albury note separately that even organisations that maintained a pro-choice stance claimed publicly that contraception was preferable to abortion. According to Hadley, 'women seeking abortions are depicted as unfortunates whose circumstances are so far from the ideals of motherhood that abortion must be their tragic option'. This resulted in a campaign that, first, assumed that motherhood is the preferred state of being for women, and, second, ignored the political question of control over decision-making and thus over reproduction in favour simply of access to abortion. As Hadley comments, it did not do 'women any favours to defend abortion by portraying it as a "necessary evil", resort of the desperate, unlucky and foolish rather than as a legitimate means of birth control'. In fact, this colluded with those who sought to portray abortion as simply a moral issue about the circumstances under which medical practitioners should permit a woman's needs to override the 'rights of the foetus'.

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261 Petchesky, Abortion and Woman's Choice, p. 11.
263 Hadley, Abortion, p. 164.
Hadley argues that women do and should treat abortion as a moral issue, but their decision-making processes and decisions will reflect not only their moral values and personal differences, but also the complex social and financial realities of their lives. Those who have examined women's motivations for seeking terminations have highlighted particular ways in which women approach the decision. Carol Gilligan concluded from her study, for instance, that women think about uncertain moral issues in a different way from men. Although Gilligan can be criticised for essentialism, her insights on gendered approaches to decision-making have particular resonance in relation to abortion. She found that women made decisions about abortion in terms of their sense of responsibility to others, describing this as an 'ethic of care' rooted in the concerns of everyday life rather than in 'abstract universal axioms'. Gilligan claims that men's emphasis on separation and autonomy leads them to develop a style of moral reasoning and thinking that stresses justice, fairness and rights, norms that are then taken as the base measure for both men's and women's moral development. Gilligan's framework does not deny the value of the foetus or the intrinsic value of life, but notes that a conventional moral philosophy approach is gender-biased in its failure to take the reality of women's ethics into account. The fact that women's decisions are often deemed 'trivial' or a matter of 'convenience' demonstrates this point.

Work by Gilligan and others has allowed an examination of abortion as both a moral and a political issue. This encourages exploration of women's reproductive requirements beyond the 'right' to 'choose' an abortion, while also considering the range of reasons women seek an abortion, including in consequence of sexual exploitation.

I will examine the bases on which access to abortion has been sought in Victoria, analysing in what way the campaign impacted on broader conceptions of women's reproductive role.

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264 Hadley, Abortion, p. 164.
265 Hadley, Abortion, p. xxx
267 Gilligan, In a Different Voice, cited in Hadley, Abortion, p. 78.
268 Gilligan, In a Different Voice, cited in Hadley, Abortion, p. 78.
269 Hadley, Abortion, p. 79.
270 Hadley, Abortion, p. 80.
271 Allen, Sex & Secrets, p. 216. Allen refers to Petchesky, Abortion and Women's Choice, and her own paper, 'Abortion (Hetero)Sexuality and Women's Bodies', for further exploration of this point.
and thus the women’s movement’s demands for freedom and equality. This will include an
analysis of the ways in which questions of morality affected the abortion debate and the
outcome of the campaign for abortion law reform in the 1960s and 1970s. The specific
contexts are parliamentary debates, the framing of abortion laws, and the regulation of the
practice of abortion.

6.3 Family planning and abortion

Much of the argument about control over reproduction has taken place in terms of the
interplay between abortion and other forms of birth control. Johanna Schoen, in her review
of recent abortion literature in the USA, notes that few writers examine the relationship
between abortion, birth control and sterilisation, thereby obscuring their common history and
political context. She suggests that, as women often use all three technologies at different
times during their reproductive lives, it is essential to acknowledge a broader politics of
reproduction.

A review of the literature suggests a somewhat difficult relationship between the three.
Siedlecky points out, for instance, that it was not until abortion was more widely available
that governments adopted policies on ‘family planning’ in a bid to reduce the need for
abortion. Even the term suggests the implicit ideology, so it is not surprising that Margie
Ripper found that abortion and contraception were often cast as opposites, with contraception
portrayed as success and abortion as failure. Leslie Cannold found in her research that
those who opposed abortion seemed to believe that unplanned pregnancies simply did not
happen to women who acted responsibly.

Ripper’s research also indicates that the assumption of women’s irresponsibility pervades
service providers’ perceptions towards women seeking abortion and in turn shapes women’s

Before and After Roe V. Wade’, Feminist Studies, vol. 26, no. 2, pp. 349-64. See also J. Schoen, 1996,
“A Great Thing for Poor Folks”: Birth Control, Sterilization, and Abortion in Public Health and
UMI ProQuest Digital Dissertations – full citation and abstract:
http://wwwlib-global.umi.com/dissertations/fullcit/9631980

273 M. Ripper, 1993, ‘Changes Needed in Abortion Service Provision: Perspectives of Women and
Service Providers in Three States’, in Abortion Rights Network of Australia (ARNA), Abortion: Legal
Right, Women’s Right, Human Right, proceedings of 1st national conference, Queensland, p. 58.

own interpretation of their experience.276 'An unplanned pregnancy is seen as an opportunity for health professionals to educate deviant women who must atone as a condition of receiving an abortion.'277 Risk, in family planning terms, only equals the risk of an unplanned pregnancy – not the risk of contraception on women's health.278 Lyndall Ryan adds that this attitude remains despite comparative research by the World Health Organisation that shows that the combination of simple barrier methods with back-up abortion is the safest method of contraception for women.279 Further, the reality is that for many women control over whether and when to have sex or use contraception is limited socially, economically, culturally, psychologically and politically.

Some feminists became increasingly wary of the motives of governments and the contraceptive industry as women's demands for reproductive control were coopted for the purposes of controlling populations. Similarly, punitive medical reactions to women's 'failure' to use contraception while ignoring women's concerns at the side effects or 'failure' of the contraception itself, added to concerns. However, because contraception, like abortion, can be co-opted for reasons that are woman-controlling, rather than woman-emancipating, does not make the technology itself problematic. As with abortion, what is at issue is who controls and who can access that technology. Greenwood and Young argue that it is important to avoid blaming women's struggle for self-determination as naively playing into the hands of the system.280 Instead, examining the political, social, economic and cultural context within which decisions are made, and by whom, is paramount. This thesis aims to do just that, exploring the ways in which availability of abortion was conceptualised in Victoria and examining political questions of control over decision-making in the period 1959 to 1974. At the crux of the thesis is an interest in what the history of abortion law reform in Victoria during the period under study can tell us about the nature of and challenges to women's status as social and political citizens.

276 Ripper, 'Changes Needed in Abortion Service Provision', p. 58.
277 Hadley, Abortion, p. 163.
278 Hadley, Abortion, p. 63.
280 Greenwood & Young, Abortion in Demand, p. 105.
CHAPTER TWO

THE VICTORIAN CONTEXT
1850 to 1959: a brief history of reproduction in Victoria

[Men's] need for manly exertion cannot find unambiguous objects; they have no definite view of the future; and their awe of women, so important for subduing their grosser impulses, disappears with the contraceptive control of the consequences of the sexual act.¹

1. Introduction

The context in which abortion policy and practice developed between 1959 and 1974 arose as a result of a series of political shifts, economic circumstances and broad social change in the preceding century. In particular, the rise of science and increasing dominance of medical discourse, the effects of two world wars on the economy and on gender relations, and the impact of first-wave feminism on sexuality and reproduction are pertinent. The history of reproduction in Victoria from white settlement suggests that, while the state periodically intervened to increase the birthrate in the national interest, individual women chose to limit the number of children they bore for a range of reasons.

While making no claims to be comprehensive, this chapter provides a survey of relevant issues in relation to socio-economic circumstances, the social-sexual position of women within and outside marriage, the broad political context in Victoria and the shifting politico-legal situation in relation to abortion from white settlement to 1959. It thus sets the context for the major part of the dissertation, which will analyse the subsequent struggle by women for sexual self-determination in relation to abortion law. The chapter draws on a number of writers whose research has provided the basis from which this analysis of women’s attempts to gain reproductive and sexual self-determination proceeds. In particular, Judith Allen, Shurlee Swain and Renate Howe, Stefania Siedlecky and Diana Wyndham, Janet McCalman and Kay Daniels and Mary Murmane provide both primary and secondary sources of information about the politics of reproduction. Other historians including Marilyn Lake, Ray Evans and Kay Saunders, Patricia Grimshaw, Judith Smart and Kereen Reiger have engaged in vigorous debate and provide extensive evidence of women’s changing social-sexual position during the century considered in this chapter. I have also incorporated some primary

data in order to compare and contrast the Victorian situation with New South Wales, from where much of the abortion-related research originates.²

2. Legal Situation in Relation to Abortion

According to Peter Brett and Louis Waller, it is virtually certain that abortion was not a crime at common law prior to 1803, ‘notwithstanding some vague passing references to the contrary in works of authority’.³ In 1803 following Lord Ellenborough’s Act, civil law in England replaced the previous canon laws, and abortion after quickening, or the first movements of the foetus, became a felony punishable by death. Abortion before quickening was likely to be punished by transportation or pillory.⁴ This was modified by Lord Lansdowne’s Act, 1828, which specified an offence of unlawful termination after quickening only.⁵ Jeffrey Weeks adds that the series of abortion laws passed in the nineteenth century suggest a ‘new sensitivity to the subject’, reflecting the growing popularity of the practice.⁶

The wording of the 1803 act, and a number of judgements since, have been cited as evidence that abortion laws were in fact set up to protect women, rather than to punish them for undergoing an abortion.⁷ Any surgical intervention at the time held considerable risk for the patient. For example, the fact that a crime was committed whether or not the woman was pregnant made it clear ‘that one, and perhaps the chief evil which the legislature wished to prevent was the possibility of harm being done to the woman’.⁸ Similarly, unlike other crimes, there is no distinction in law between an attempted or a complete abortion.⁹ It was not until the late 1960s, following advances in the safety and availability of abortion, a growing concern to counter the declining birthrate and the continuing determination of women to terminate unwanted pregnancies, that emphasis shifted to protection of the foetus on moral grounds, rather than protection of the mother.¹⁰ Pro-natal exhortations suggest that

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² Further research on the history of abortion prior to 1959 needs to be undertaken to provide fuller understanding of women’s fight for reproductive freedom in this state.
⁷ For example, in an 1898 ruling, R v Hyland, C.J. Madden referred to ‘injuruous interference with the health of women’, also alluding to the use of legislation to protect women.
⁹ Brett & Waller, Criminal Law, p. 102.
¹⁰ Brett & Waller, Criminal Law, p. 70.
the law was protecting society’s interest in the citizen that the foetus could become rather than the legal rights of the foetus itself.\textsuperscript{11}

Brett and Waller note an anomaly in relation to the law dealing with a woman’s death following abortion. Abortion deaths have a special rule that is actually harsher than the general rule of felony-murder. If the general rule were applied to abortion, it is extremely unlikely that a conviction for murder could be obtained, as abortion is not an ‘act of violence’ that produces death. In fact the abortion rulings were originally devised to soften the general felony-murder rule, given juridical and legislative perception that those accused were trying to help the woman. The woman’s role in seeking an abortion is further reflected in the fact that she is deemed an accomplice to the crime.

By act of parliament at Westminster in 1828, all laws then in force in England were made law in NSW and therefore Victoria, which was, at the time, the Port Phillip District of NSW.\textsuperscript{12} This statute also established a legislature within NSW, with the power to make further laws. As Bruce Kercher points out, local practices did not always deem English laws suitable to local conditions, leaving room for innovation and interpretation.\textsuperscript{13} Nevertheless, English legal precedent remained influential.

In 1851 the Port Phillip District separated from NSW and formed the colony known as Victoria. In 1855 the Victorian Constitution was proclaimed giving full legislative power to Victorian parliament and declaring that all England’s laws and statutes remain in force until repealed by an act of the Victorian parliament. In 1861 the \textit{Offences Against the Person Act} was passed in the United Kingdom, also making abortion illegal in Australia.\textsuperscript{14} As in NSW, English legal precedent was also crucial. Thus as late as 1938, the McNaughton Ruling affected legal and medical teachings in relation to abortion in Victoria. In 1938, London obstetrician Aleck Bourne performed an abortion on a fourteen-year-old who had suffered multiple rape at the hands of the King’s horsemen, and then invited the attorney general to prosecute him. Justice McNaughton ruled that abortion was not unlawful if the physician believed it necessary to save the life of the mother or prevent her becoming a ‘physical or

mental wreck’. Physicians were able to use their discretion in interpreting the law following this ruling and so the practice of ‘therapeutic abortion’ grew.15

The consolidation of the Victorian Crimes Act in 1958 confirmed abortion as a criminal act as it had in 1864, incorporating, without defining, the notion of ‘unlawful abortion’.16 Section 65 of the Victorian Crimes Act (1958) states that:

Whosoever being a woman with child with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing or unlawfully uses any instrument or other means, and whosoever with intent to procure the miscarriage of any woman whether she is or is not with child unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with the like intent, shall be guilty of an indictable offence.17

Both British and Victorian laws and precedent allowed lawful abortions to be performed and medical teaching and practice reflected this, with physicians left to interpret their own definition of lawful. Necessity and proportion became the principle to apply to determine whether a therapeutic abortion was lawful or unlawful within the meaning of the relevant part of the Victorian act.

3. Themes Spanning the Period from White Settlement

Pro-natalism

In 1904 the editor of the Australasian Medical Gazette (AMG) stated that young married women must be made to feel that

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15 Greenwood & Young, Abortion in Demand, p. 21.
17 Freckelton, Indictable Offences in Victoria, p. 82. Under section 65 of the Crimes Act 1958, unlawfully supplying or procuring poison or instruments to be used for an abortion is also an offence, with poison defined as a broad range of noxious substances. Ibid, p. 86. Freckelton notes that the other possible offences in relation to abortion may be murder (common law), manslaughter (common law), infanticide (s 6 Crimes Act 1958), child destruction (s 10 Crimes Act 1958), administering substance to another (s 19 Crimes Act 1958) and concealing the birth of a child (s 67 Crimes Act 1958). Ibid, pp. 84, 87-88
barrenness is a disgrace and a sign of weakness, the glory of motherhood must be emphasised, and a woman who enters the married state with the deliberate intention of having no children, who seeks gratification of the sexual passions without the responsibility of motherhood, should be regarded as no better than a mistress or a prostitute.  

This widely held view was maintained by medical practitioners, church officials, members of parliament, the media and many citizens, particularly those who preferred to expand the population through natural increase rather than recourse to immigration. Women faced a great deal of criticism for their attempts to reduce their fertility, most notably during the Royal Commission on the Decline of the Birth-Rate and on the Mortality of Infants in New South Wales in 1904, although this did not dampen their efforts.

Not all women in Australia, however, were deemed to be equal in government endeavours to populate the land in the 'national interest', with inequalities of class and ethnic origin affecting the extent to which women were encouraged, or even permitted, to establish and maintain families. As Marie de Lepervanche notes, the existence of the people already inhabiting the continent was officially denied. Further, Aboriginal 'protection' policies from the late nineteenth century permitted the forcible removal of Aboriginal children, who were 'trained' as domestic servants and workers for white settlers. The White Australia Policy prevented Asian and Melanesian women from joining their menfolk, so that in 1901 about 93 per cent of Chinese and Japanese and 94 per cent of Indian settlers were male. Increasingly punitive 'family' policies forced poor single women to give up their babies for adoption, and eugenic theory in the first half of the twentieth century stimulated legislation to allow segregation and forced sterilisation of those deemed 'unfit' to bear children. This impacted most on Aboriginal women who were regarded as 'morally feeble-minded' and requiring segregation to protect the white race.

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20 De Lepervanche, 'The Family', p. 149.
21 De Lepervanche, 'The Family', pp. 149-50.
Despite the fact that white women were urged to reproduce, reproductive health care was limited in the Australian colonies and childbirth posed a high degree of danger to women. Stedlecky and Wyndham, for example, refer to the history of Australian white settlement as ‘first and foremost the medical history of uncontrolled infection’, noting that from 1788 to 1888 more women died in labour or from its after-effects than from any other single cause. As historian Janet McCalman observes, poverty and malnutrition also led to many women’s pelvises being too small or misshapen for the baby to pass through, making childbirth dangerous, with caesarean deliveries rare until the late nineteenth century. High rates of maternal mortality and morbidity continued into the mid-twentieth century. Nevertheless, governments demanded an increase in the population for the country to prosper and expand and so white women were expected to be ‘good’ wives and mothers.

The Victorian ideal of separate spheres underpinned the stance taken by Australian men in relation to women’s behaviour. State policies and programs legitimated male dominance within the family as well as in civil society, repeatedly ignoring the consequences of this for women. Marriage was the reason women were transported for less severe crimes than their male counterparts once it became clear that there were three times as many males as females following settlement. There were very high rates of illegitimacy in the new colony, leading colonial governments to advocate marriage ‘as a means of curbing rebelliousness of male convicts and redeeming and reforming women’. Similarly, those women who arrived on assisted passage from 1821 were expected to ‘exert a sobering influence over the moral debauchery held to be rampant in the colony as a result of the excess of single men’. Support for marriage continued with Caroline Chisholm’s work for assisted passage of female partners for male settlers from the 1850s.
For most women, marriage was a better option than prostitution or domestic service. Further, the hegemonic pressure to conform meant that working-class and middle-class women alike were subject to an increasingly repressive idea of respectability policed largely by philanthropic women of the middle classes.\(^3\) This included harsh institutional responses to illegitimacy. Increasingly, abortion allowed women to avoid the stigma of single parenthood.\(^3\) Decisions in regard to labour relations – the ‘family wage’ for men and a single wage for women enshrined in the Harvester judgement of 1907 – reinforced women’s subservient role.\(^3\) Similarly, the law left women and children the property of the husband, enshrining this in custody decisions, conjugal rights, property rights and overt permission for men to beat their wives.

Women were also, in varying degrees, strongly influenced by broader societal assumptions about their role. Australian feminists, from the 1880s, campaigned to reform and purify society motivated by a belief that women were morally superior to men and were naturally maternal carers.\(^3\) They aimed for a more moral and compassionate social order – expressed as ‘protection for women and children in employment, their support and protection through welfare, and the concept of equality and justice before the law’.\(^3\) A number of early feminists, such as Bessie Harrison Lee, aimed to engender purity among men too, in recognition of the effects on women of financial hardship, men’s drinking and male violence.\(^3\)

\(^{31}\) Carmichael, ‘So Many Children’, p. 163.


\(^{33}\) This impacted more strongly on working-class women as middle-class single women increasingly had some degree of autonomy through independent work. See K. Holmes, 1998, ‘“Spinsters Indispensable”: Feminists, Single Women and the Critique of Marriage, 1890–1920’, Australian Historical Studies, vol. 29, no. 110, April, pp. 68–90.

\(^{34}\) The first suffrage society in Australia was formed in Melbourne in June 1884, preceding the Woman’s Christian Temperance Union, which began in November 1887. A Melbourne innovation, the ‘woman’s club’, was also formed in May 1888. See K. Spearritt, 1992, ‘New Dawns: First Wave Feminism 1880–1914’, in K. Saunders & R. Evans, eds, Gender Relations in Australia: Domination and Negotiation, Harcourt Brace Jovanovich Publishers, Sydney, p. 326.

\(^{35}\) K. Daniels & M. Murnane, 1980, Uphill All the Way: A Documentary History of Women in Australia, University of Queensland Press, Brisbane, p. 261. Lake notes that Victoria’s feminists had been successful in securing a series of amendments to the Crimes Act in 1891, including having the age of consent raised from twelve to sixteen and defining incest as a criminal offence. It was not until reform of the divorce laws in the second half of the twentieth century, however, that women’s refusal of sexual intercourse as grounds for divorce was repealed.\(^3\) M. Lake, 1999, Getting Equal: The History of Australian Feminism, Allen & Unwin, Sydney, p. 24.

Maternalist campaigns for emancipation

When the Woman Movement ‘emerged in the late nineteenth century as a major political force in the Australian colonies, it was the condition of married women that most captured its imagination’.

The unending burden of child-bearing, domestic labour and women’s lack of bodily autonomy particularly disturbed many feminists.

As a result of male sexual exploitation of women within marriage, decent, hard-working women suffered ‘shattered health and premature death from repeated childbearing’.

Feminists argued that the legal subjecton of women to men’s sexual demands reduced women to the status of ‘sex slaves’.

This led first-wave feminists to urge ‘voluntary motherhood’ and women’s control over their own bodies.

Patricia Grimshaw suggests that a substantial part of the decline in the birthrate was effected by sexual abstention in the early decades of the twentieth century as a result of this new discourse. Feminists campaigned for legislation that would give married women economic independence, redefining marriage as a ‘legal and economic partnership’ rather than a sexual contract.

This built on work by feminists such as Rose Scott, who challenged male dominance of public institutions and culture and sought female suffrage and citizenship in order to gain women’s ‘emancipation’.

Nineteenth-century women were not so much anti-sex, as against sex dominated by and defined by males, without pleasure or contraception.

As Angus McLaren points out, there is much evidence to suggest ‘that women’s fear of becoming pregnant effectively checked their experiencing any sense of sexual freedom’.

Some feminists, however, aimed at women freeing ‘themselves from biological slavery which could best be accomplished

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37 Lake, Getting Equal, p. 19.
38 Holmes, “Spinsters Indispensable”, p. 70.
40 The rate of marriage of women also declined from 1890, with only 7 per cent of women unmarried in 1891 rising to 21 per cent in 1921. Katie Holmes argues that many of those women actively and consciously refused marriage. See Holmes, “Spinsters Indispensable”, pp. 68-90.
through birth control'. Others opposed contraception as encouraging the sexual exploitation of women and exhorted abstinence and self control instead. Linda Gordon argues that acceptance of birth control depends on a morality that separates sex from reproduction and, in the repressive Victorian era of the nineteenth century, this separation was considered immoral.46

Renate Howe and Shurlee Swain argue that the central focus on women's bodies by feminists and the state alike arose from a vision of domestic respectability reinforced by the 'ideology of population' that dominated Australia from the 1890s to the 1930s.47 Women were first and foremost mothers. This ideology was inimical to the interests of women, limiting their ability to become socially and economically independent outside the home.48 Chris McConville argues that, by reinforcing women's role as mothers, reformers curtailed women's free movement.49 They did this by concentrating on the moral perils of women's casual employment and presence in public bars, rather than concentrating on their material exploitation. Placing women under surveillance through encouraging their employment in domestic rather than factory work, for example, was easier than chasing after the fathers of illegitimate children.50 This led ultimately to a strengthening of the conviction that a woman's place was in the home. On the other hand, many first-wave feminists referred to the responsibilities of motherhood to justify their political demands for suffrage and therefore citizenship.51 When Australian women gained the vote – Victoria being the last Australian state to accede in 1908 fourteen years after South Australia – Rose Scott claimed that the 'enfranchisement of women gave political voice to “the National Motherhood of women”'.52 Similarly, 'the belief that women had rights as mothers proved a powerfully unifying

52 Lake, Getting Equal, p. 50.
principle” among women activists between the wars. Lake adds that these feminist claims expressed a yearning to reconcile activities and aspects of the self that citizenship had traditionally set apart — rights with responsibilities and individuality with belonging.

For first-wave feminists, then, women’s rights and opportunities for citizenship were bound up in their role as wives and mothers. Sexual self-determination was not simply about reproductive control, which many first-wave feminists believed might benefit men and the state rather than women themselves, but about control over their bodies generally. Over the course of the twentieth century opinions regarding the means for achieving sexual self-determination changed, although there remained broad agreement that this was key to achieving citizenship. The following section details the contexts within which first-wave and postsuffrage feminists fought for sexual self-determination for women, outlining the changing influences in different time periods.

4. The Changing Dynamics of the Arguments

4.1 1850 – 1900

In the fifty years following the settlement of Victoria, the main themes in relation to women’s reproductive control were the transition from infanticide to abortion as the most common method of family limitation and the concomitant beginnings of the medicalisation of abortion.

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Lake, Getting Equal, p. 72. See also J. Smart, 1998, ‘Sex, the State and the “Scarlet Scourge”: Gender, Citizenship and Venereal Diseases Regulation in Australia During the Great War’, Women’s History Review, vol. 7, no. 1, pp. 5-36.

Reproduction in the new colony

Victoria was one of the last settled colonies in Australia, separating from NSW following the 1850 Australian Colonies Government Act. Only 15 per cent of the adult population of Melbourne were convicts or discharged convicts, with the bulk of the population relatively skilled and educated assisted immigrants. This resulted in a more conservative and 'respectable' culture in Melbourne than in Sydney and the ideology that resulted shaped social trends and policies accordingly. Following the discovery of gold Victoria's population increased dramatically, with daily arrivals peaking at 250 between 1850 and 1860. Melbourne and other densely settled areas did not have the infrastructure of water and sewerage to cope with the enormous growth in population, and diseases such as typhoid and gastro-enteritis caused many deaths. Poverty, unemployment and overcrowding were rife and newcomers lived in 'tented squalor south of the river; in tenements on the fringe of the town - in the sprawl of Newtown [now Fitzroy and Collingwood], in the purlieus of low quarters at the top of Bourke Street ... in hutsments that had grown beyond the brickfields and the mud flats south of the river, and along the edge of the swamps to the north'.

The Royal Women's Hospital (RWH) (originally the Lying-In Hospital) was established in Melbourne in 1856 to provide separate facilities for maternity care for poor women, largely because of fears about the danger that women posed to other people's health through puerperal fever. Information about the way in which infection and disease spread was minimal at this time, although by 1880 medical responsibility for puerperal infection was clear. A series of articles in the AMG noted that the 'hands and instruments of the obstetrician ... [had] become known to be especially dangerous bearers and disseminators of the poisons'. Nevertheless, medical men were cautioned from assuming the whole responsibility 'so long as any woman, however stupid or ignorant' is permitted to practise as

55 McCalman, Sex and Suffering, pp. 3-4.
57 C.E. Sayers, 1956, The Women's ... A Century of Service: A Social History to Mark the 100th Anniversary of the Royal Women's Hospital, Melbourne, 1856-1956, Renwick Pride, Melbourne, p. 2.
58 See tables 3 & 4 below for statistics regarding maternal mortality in Victoria from 1871 to 1974.
a midwife. 60 Midwives posed the greatest competition to general practitioners trying to establish a practice. 61

Single pregnant women were increasingly encouraged to attend newly established lying-in hospitals, which had clear disciplinary, as well as welfare, functions. 62 They were encouraged to put their children up for adoption, but only after looking after them for six months. 63 According to Daniels and Murnane, this was because the baby was thought to have a ‘humanizing influence’ on the mother, but it was also likely to have been an attempt to reduce the infant mortality rate. 64

There were a large number of single women with children, as a result of the death of or desertion by a husband. McCalman points out that a number of couples had married quickly before sailing to Australia, in a bid for a new life. Other women ‘sucedbed to the promises of strange men and found themselves pregnant and alone’ after hoping for employment and a husband. 65 There were few job opportunities available to women, apart from prostitution, sewing, washing or wet-nursing as out-work, or live-in domestic service. 66

61 The Melbourne District Nursing Society (MDNS), founded in 1885, began a midwifery service that was inaugurated in September 1907 and aimed at the ‘really deserving and necessitous’ of inner-city Melbourne in order to keep the home together and ‘the children from the streets’. MDNS, Report 1907/08-1911/12, Ford & Son, Melbourne, p. 5. MDNS nurses were essentially health missionaries and visitors who focused on sanitation and ‘domestic hygiene’, operating as a precursor to the Maternal and Child Health Centres. Mein Smith, Mothers and King Baby, p. 67.
62 Small private lying-in hospitals were established for single pregnant women. Both Sayers’ and McCalman’s histories of the RWH point to the initial control by women committee members who went to great lengths to ensure that only patients ‘worthy’ of admission were admitted, checking marriage lines and references to confirm a need for charity. Sayers, The Women’s, p. 35. The Ladies’ Committee was mindful of the need for public good will in order for the hospital to prosper, given the government’s refusal to provide funding, assuming that respectable folk would withdraw financial support unless largely ‘respectable and clean’ women were admitted. McCalman, Sex and Suffering, p. 9.
63 Both the Victorian Infant Asylum and the Protestant refuge in Melbourne allowed women who nursed their babies to stay for this length of time. See Editor, ‘The Care of Illegitimate Children in Victoria’, AMJ, vol. 16, 20 May 1894, pp. 246-49.
64 Daniels & Murnane, Uphill All the Way, p.120. Prior to allowing a woman to stay with her child and stipulating that she must nurse it for six months the Victorian Infant Asylum had a deathrate of 80 per cent. Editor, ‘The Care of Illegitimate Children’, pp. 246-49.
65 McCalman, Sex and Suffering, p. 8.
66 Howe & Swain, ‘Fertile Grounds for Divorce’, p. 163. For an excellent overview of women’s employment from 1788 to 1974, featuring the struggle for economic, industrial, social and political justice for women, see E. Ryan & A. Conlon, 1989, Gentle Invaders: Australian Women at Work, Penguin, Melbourne (first published in 1975 by Nelson, Victoria). B. Kingston, 1975, My Wife, My Daughter and Poor Mary Ann: Women and Work in Australia, Nelson, Melbourne, also documents women’s movement into the workforce from the 1860s to the 1930s, encompassing women’s work as factory workers, domestic servants, nurses, teachers, sales and clerical workers, as well as women’s unpaid work in the home as mothers, wives and ‘dutiful’ daughters.
Table 3: Maternal Mortality in Victoria 1871-1974

[Copyrighted material omitted. Please consult the original thesis.]

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67 Victorian Year-Book, 1932/33 to 1975, Government Printer, Melbourne, unless otherwise specified.
68 Changes in the way in which statistics were recorded reflect changes to the International Classification of Diseases and Causes of Death, revised in 1909, 1920, 1929, 1938, 1948, 1955 and 1965, with those revisions impacting on statistical recording a year or two after those dates. The revisions in turn reflect the fine-tuning of medical knowledge and the discovery of diseases and cures.
69 R.G. Worcester presumed from his studies at the Women’s Hospital in Melbourne in the 1930s that 40 per cent of spontaneous abortions were also likely to be the result of criminal interference, given that the women lived in circumstances of extreme poverty and stated that they did not want more children. See R.G. Worcester, ‘The Problem of Abortion’, Appendix II, Report of the National Health and Medical Research Council, 3rd session, November 1937, L.F. Johnston, Commonwealth Government Printer, Canberra, p. 25.
70 Criminal abortion includes an illegal operation, a self-induced abortion and abortion from an unspecified event, the latter being the most likely event recorded. Women rarely admitted to criminal interference in order to protect themselves and others from prosecution.
71 The figure in brackets does not include 1930, which was not listed separately.
72 The figure in brackets does not include 1939, which was not listed separately.
73 Vital statistics for 1954 and 1955 were not recorded in the Victorian Year-Book.
74 Abortion-related figures for 1954 to 1967 are sourced from F.J. Hayden, 1970, ‘Maternal Mortality in History and Today’, Medical Journal of Australia, vol. 1, no. 3, 17 January, pp. 100-09. They are likely to be an underestimate, as his 1953 data is only half the numbers recorded in the Victorian Year-Book and in 1968 only one third. The yearbooks do not record abortion-related deaths from 1954-1967.
75 All of the recorded deaths from abortion occurred in the triennium 1970-72.
All were low-paid, insecure and vulnerable positions. Judith Allen notes that the majority of illegitimate births in Sydney were to urban domestic servants under twenty-five years of age, who would be sacked without reference once their pregnancy became known. She is also clear that most of the women became pregnant by a male living within the household, given the women’s long hours and relative immobility. Barbara Burton found a similar pattern in Victoria in her research into infanticide. While Victoria’s illegitimacy rate was lower than

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76 Victorian Year-Book, 1932/33 to 1975, Government Printer, Melbourne, unless otherwise specified.
77 See footnote 66 above. The impact of the discovery of antibiotics in the late 1930s on puerperal infection was of particular note.
78 All of the recorded deaths from abortion occurred in the triennium 1970-72.
the ex-convict colonies, the higher rate of separation of mothers from their children in Victoria highlights the moral condemnation of single women.81

Unwanted pregnancy was thus a major problem for women, who used a variety of methods to limit their numbers of offspring, including abstinence, herbal remedies, pessaries, withdrawal, abortion and infanticide.82 As Allen notes, all available methods of preventing pregnancy required varying degrees of ‘male responsibility, cooperation and inconvenience’, although men assumed women would be responsible for birth control.83 According to the later royal commission into the birthrate in NSW in 1904, women, since at least 1875, ‘knew what to use and how to make their own’ pessaries and other contraceptive remedies.84 Siedlecky and Wyndham note that by the mid-1850s abortion and advertisements for abortifacients were widespread in Australia.85 Swain argues that these advertisements were ‘thinly disguised in newspapers’, while chemists were strongly linked to referrals to abortionists.86 Up until 1895 chemists also offered a variety of herbal methods that promised to ‘restore regularity’.87 This led the editor of the AMG to suggest that:

> Abortion must be put down, indecent advertisements must be suppressed, quack literature must be prevented from falling into the hands of our young people. Our wives and daughters must not have their senses offended by the announcements in the press and placarded throughout our chief thoroughfares that “Dr. So-and-So treats

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81 As a proportion of all live births the illegitimacy rate rose from 13.7 per 1,000 in 1855 to 60.3 in 1913. By 1941 it had fallen to a low of 33.0 per 1,000 live births before rising again. See Swain, Single Mothers, p 4.
82 See chapter five, ‘Waiting’, in B. Ashbell, 1995, The Pill: A Biography of the Drug that Changed the World, Random House, New York, for a description of both amusing and gruesome methods of birth control used over the centuries. These include creating a ‘disdain for sex’ by rubbing the woman’s loins with ‘blood taken from the ticks upon a black wild bull’, or an oral contraception made from a decoction of willow mixed with ‘the burned testicles of castrated mules’. Ibid, pp. 68, 70. The methods suggest that women have been willing to go to any lengths to avoid conception.
83 Allen, Sex and Secrets, p. 105. A number of writers note that birth control missionaries encouraged women to use contraception that centred on female responsibility, such as diaphragms and spermicides, rather than those that were reliant on male cooperation, such as condoms, abstinence and withdrawal. While this was encouraged in the interests of putting women in control, it resulted in giving women sole responsibility. See Asbell, The Pill, p. 66. See also McLaren, Twentieth-Century Sexuality, p. 72, who notes that it was the commonly used methods of the working class that were discouraged, while female methods were overstated (and over-priced).
85 Siedlecky & Wyndham, Populate and Perish, p. 67.
86 Swain, Single Mothers, p. 40.
87 Swain, Single Mothers, p. 43. Attempts to restore menstrual regularity had long been viewed as legitimate and were not considered to be abortions.
Private and Nervous Diseases”, or removes irregularities from whatever cause arising. Given that effective contraception was expensive and thus largely purchased by middle-class women, the pre-occupation with it no doubt reflected eugenic anxiety about the decline in the middle-class birthrate. Working-class women faced either abortion or infanticide.

Reproduction-related crime

Because of the moral norms of the times and the dire poverty that faced her, the unemployed woman went to great lengths to conceal her pregnancy, then dispose of the newborn baby. According to Swain, throughout the nineteenth century, twenty to thirty infant bodies were found each year without identification, ‘in the lanes, drains and riverbanks of Melbourne’, although these numbers were thought to be a small proportion of newborn deaths. Police Gazette figures revealed a fairly constant ratio of two babies found dead for every one found alive, suggesting both infanticide and abandonment. In 1893 the coroner found that thirty-two cases of infanticide were proven. Dr Neild, who gave evidence to the Victorian Royal Commission on Charitable Institutions in 1892-93, suggested, however, that out of 500 post mortems undertaken, in 250 cases the deaths were the result of ‘wilful child destruction’. He added that there were many more bodies that were never discovered. Philippa Mein Smith found that one third of deaths in Australia and New Zealand between 1884 and 1905 were children under two. Although death rates were linked to socio-economic class, the highest number were illegitimate babies regardless of the class of the woman. In Kathy Laster’s view, this was evidence of the inability of nineteenth-century society to provide even the most rudimentary support for women in need.

90 Argus, 21 December 1870, cited in Swain, Single Mothers, p. 91.
93 Mein Smith, Mothers and King Baby, p. 18. Mein Smith adds that by the 1930s this had dropped to 7 per cent of deaths as a result of a national focus on motherhood as central to children’s lives.
94 Mein Smith, Mothers and King Baby, p. 23.
95 Laster, ‘Frances Knorr’, p. 155.
The practice of infanticide became increasingly controversial in the late nineteenth century. In 1886 the editor of the *AMG* wrote that private lying-in establishments in Melbourne kept by unauthorised persons for ‘accommodating women, in the majority of cases unmarried, during their confinement’ were ‘without doubt, in very many cases, furnished facilities for the undetected criminal destruction of unwelcome offspring’. Although death certificates were not required for still births, medical jurists estimated that newborn murders occurred at a rate around fifty-five times that of adult murders. Victorian women from country areas were more likely to be convicted for abortion and infanticide. Swain argues that rural women had more difficulty concealing pregnancies and disposing of their newborn given the smaller communities in which they lived and the higher likelihood of scrutiny. Allen, however, views it as a result of rural women’s limited access to abortion. Supreme Court indictments against women in NSW were dominated by reproduction-related offences. Allen points out that in practice, however, the rate of prosecution was not high. More important was who was prosecuted. From 1880 to 1900 12 per cent of babies born were illegitimate, yet 85 per cent of defendants in infanticide and 92 per cent of defendants in abortion cases were unmarried women, the majority domestic servants or working-class women. Victorian abortion-related indictments were a fraction of those in NSW, although other sources suggest that the rate of abortion was substantial. However, the conviction rate in Victoria was nearly double that of NSW. Numbers of infanticide indictments were similar in the two colonies, yet again the conviction rate in Victoria was twice that of NSW. One can only speculate on the reasons for these differences.

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96 Editor, ‘Private Lying-In Establishments’, *AMG*, October 1886, p. 23.
97 Allen, *Sex and Secrets*, p. 31. Allen notes that there was ample evidence available to pursue cases if the authorities had wanted to. Burton’s research indicates a similar rate of infanticide in Victoria as NSW. See Burton, ‘‘Bad’ Mothers?’, p. 53.
98 Burton, ‘‘Bad’ Mothers?’, p. 42.
99 Allen, ‘Octavius Beale Re-considered’, p. 115. See also Allen, *Sex and Secrets*, p. 30. Allen found that rural women were over-represented among women who died as a result of an abortion in NSW, particularly one that was self-induced. Yet there was little evidence of police action against rural abortionists. Allen, *Sex and Secrets*, pp. 165, 200.
101 For instance the numbers of women who died as a result of abortion in Victoria did not impact on the rate of arrests and convictions for abortion. See table 5 below for a comparison of the arrest and conviction rate between NSW and Victoria from 1880 to 1939.
102 The Victorian conviction rate varied between 33 and 75 per cent, with a mean of 47 per cent, while in NSW it varied between 12 and 52 per cent, with a mean of 26 per cent. See table 5 below for details.
103 See table 6 below for a comparison of the arrest and conviction rate between NSW and Victoria from 1880 to 1939.
104 Victoria, for instance, had a harsher moral climate than NSW and judgements might have reflected that climate, although this would not explain the lower numbers of abortion-related arrests compared with NSW. Burton suggests that committal procedures in Victoria might have allowed fewer, more watertight, cases to be heard. Burton, ‘‘Bad’ Mothers?’, p. 26.
Table 5: Numbers of Indictments and Convictions, and Conviction Rates, for Abortion-related Crimes in NSW and Victoria 1880-1939

Table 6: Numbers of Indictments and Convictions, and Conviction Rates for Infanticide and Concealment of Birth in NSW and Victoria 1880-1939

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Nevertheless, the overall numbers of abortion-related convictions were extremely low, averaging about one every two to three years in Victoria between 1880 and 1939. During this time women reduced the numbers of children they bore from six, to little more than two. It appeared that the police were reluctant to pursue charges and judges to indict women, suggesting acknowledgment of the need for abortion and an understanding of the socio-economic conditions facing women. The AMG claimed that ‘the abortion-monger [was] looked upon as a public benefit rather than a “common nuisance”’ by juries. Similarly, in 1896 the committee of the Melbourne Women’s Hospital passed a regulation that no information was to be given to the police with respect to any woman admitted for treatment. This followed the arrest and sentencing to death of a woman for ‘performing an illegal operation’ arising from information received from hospital authorities. The committee considered the hospital a sanctuary for women who might otherwise refuse care. This led the coroner, inquiring into the death of a newborn in 1909, to accuse the hospital authorities of hiding away many crimes. The editor of the AMG expressed sympathy for the women involved, but added ‘we cannot shut our eyes to the fact that there are a very large number of illegitimate children who are murdered, and hundreds of abortions procured to save exposure and disgrace’. 

Meredith Sussex, researching social legislation in Victoria, noted the growing awareness of the moral double standard in Victoria in the late 1800s. She was particularly struck by the

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105 The number of newspaper articles relating to charges against abortionists from 1910 to 1940 suggests many more abortionists came to the attention of the authorities than those convicted. Charges were often dropped, nolle prosseques given or defendants acquitted for lack of evidence. See boxes 1, 3 & 5, Wamer papers, MS13436, State Library of Victoria (SLV).
107 The editor of the AMG noted that in New York the district attorney had so much difficulty securing a conviction he had decided to try some offenders on a charge of being common nuisances. Editor, ‘The Abortion-Monger a Common Nuisance’, AMG, vol. 26, no. 3, 20 March 1907, p. 130.
108 Editor, ‘Protection of Child Life’, AMG, 20 September 1909, pp. 492-93. Leslie Reagan points out that, in the US, the police at this stage relied on the declarations of dying women in order to prosecute abortionists and so hospital authorities were under some pressure to call the police when illegal abortion was suspected. See L.J. Reagan, 1997, When Abortion was a Crime: Women, Medicine and the Law in the United States, 1867-1973, University of California Press, Berkeley, p. 161.
genuine search for a solution to women's desperate circumstances. As Swain comments, 'it was the result rather than the behaviour which attracted disapproval of sex outside marriage'. This left infanticide, and by the same logic abortion, a lesser crime for a woman than keeping a child born out of wedlock. Punitive responses toward single mothers among the state and charitable bodies attested to the stigma of single motherhood, while fathers of illegitimate children avoided 'even the limited legislative requirements to support offspring'.

Single women with children had to work to support themselves and so relied on other disadvantaged women to care for their newborn, given the lack of affordable organised childcare. This form of care was referred to as 'baby farming'. Laster points out that baby farming developed as a 'cottage industry' in nineteenth-century Victoria to accommodate the growing numbers of women who relied on regular childcare in an industrialising economy. Baby farming was also a convenient permanent or semi-permanent dumping ground for children of poor, single or overburdened mothers. While midwives and baby farmers were blamed for infant deaths, it was likely that the mothers were also involved. While some baby farmers made a living by quickly disposing of infants, it was usually poverty, inexperience or lack of education that were the chief causes of loss of life. Assigning blame to baby farmers sidestepped both the issue of mothers killing their infants in order to survive themselves, and the circumstances of the carers, who were equally likely to be single mothers living in poverty.

Over the late nineteenth and early twentieth centuries Australian women reduced their fertility markedly. An editorial in the AMG in November 1898 lamented the 'disinclination

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113 Swain, Single Mothers, p. 3.
114 Swain, Single Mothers, p. 59.
115 Swain, Single Mothers, pp. 92-93.
117 Laster, 'Frances Knorr', p. 149. The first creche opened in Collingwood in 1888 and the second in Prahran in 1890. Each centre catered for only twenty-six children. There were few other support services available for women in their role as mothers. See Sussex, 'The Victorian Infant Life Protection Act 1890', p. 22.
118 Swain, Single Mothers, p. 93.
119 The circumstances of the women carers were such that babies often starved. Laster, 'Frances Knorr', p. 150.
120 Swain, Single Mothers, p. 100.
121 Overall fertility rates in Australia were actually consistently higher than in England or Wales, with women lagging five to ten years behind in reaching lower fertility rates. See E.F. Jones, 1971, 'Fertility
on the part of young married women to become mothers. After marriage they do not wish to be troubled with children, and they either make use of artificial checks to conception or call in the aid of the abortionist. In 1913, United States (US) temperance activist, Jessie Ackerman, who had spoken with mothers on her four visits to Australia in the 1870s and 1880s, published her views that the reduction in family size was the result of the ‘emerging struggles for women’s rights, female objection to repeated childbirth, and parents’ wish for the greater opportunities each child in a smaller family would have’. Education for children was compulsory by the late nineteenth century, resulting in large numbers of children being an economic drain, rather than an asset. This pattern began well before the economic depression of the 1890s. Bettina Cass and Heather Radi agree that limitations to family size among working-class populations can be attributed to an economic system that held out the promise of economic betterment, largely through the education of children. Hugh Jackson also notes a change in moral attitudes in the community around this time, despite religious calls for piety. He suggests that by 1880 organised religion, the traditional engine of moral constraint, showed signs of diminishing influence over even regular worshippers, with more radical change evident among the non-attending population. Medical witnesses to the 1904 Royal Commission into the Decline of the Birth-Rate in NSW believed that women, including respectable married women, had found prevention of conception and use of abortion ‘morally unobjectionable’ for at least the last two decades.

Lyn Finch and Jon Stratton argue that, as fertility rates and infant mortality declined in the late nineteenth century, ‘the child’ took on central importance. This produced a ‘drastic change in the means approved for the disposal of a child’, leading to a reduction in infanticide rates. Edward Shorter adds that breakthroughs in knowledge about women’s bodies between 1880 and 1930 also made abortion safer than it had been. Cultural changes as well as increasing surveillance over childbirth lessened a woman’s capacity to conceal a

Decline in Australia and New Zealand 1861-1936', *Population Index*, vol. 37, no. 4, October-December, p. 324. Nevertheless, the pattern was still one of remarkable decline and the fact that the country was so large and empty led to a preoccupation with populating it for the defence and development of the nation.

122 Editor, ‘The Decreased Birth-Rate in New South Wales’, *AMG*, 21 November 1898, pp. 502-03.
125 Jackson, ‘Fertility Decline in NSW’, p. 268.
pregnancy. As a result, working-class women increasingly sought the ‘manipulator of the deathful darning needle’ to limit births, where previously baby-farming and infanticide were common. As Finch and Stratton point out, a ‘general change in attitude towards conception, pregnancy, birth and the “child”’ also led to a shift in attitudes toward abortion. This impacted significantly on working-class women, who had abortions more frequently than middle-class women did and relied on traditional female abortionists, rather than the medical profession. Greater ease of access to birth control and medical abortion meant that, while ‘vice was rampant among the upper classes … illegitimate children were almost unknown’. Finch and Stratton point out that increased regulation led to the marginalisation of traditional midwife abortionists and the parallel rise of the medical practitioner in abortion in the early 20th century. This seriously curtailed safe access to abortion for working-class women.

Medical takeover of reproduction

Ann Oakley points out in her account of British midwifery that the medical profession engaged in two ‘takeovers’. One, from the fourteenth to the seventeenth centuries, saw European medicine emerge as a predominantly male profession and the resulting suppression of the traditional female lay healer. The other, of particular importance to this work, was in the nineteenth and twentieth centuries, when female control of reproduction was eroded following the inclusion of obstetrics in medical school curricula. Prior to this time, midwifery was seen as a business that no ‘proper’ doctor would concern himself with. The President of the British Royal College of Physicians, for example, stated in 1827 that obstetrics was an activity ‘foreign to the habits of a gentleman of enlarged academic

130 Allen, Sex and Secrets, p. 245. A shift towards the medicalisation of reproduction, including hospital births and the registration of births and adoption arrangements, along with increasing sexual knowledge and less secluded employment for women combined to make it more difficult for a woman to conceal a pregnancy. For discussion of the rapid growth of gynaecology and the organisation of pregnancy and childbirth from the 1880s to the 1930s see K. Reiger, 1985, Disenchantment of the Home: Modernizing the Australian Family, 1880-1940, Oxford University Press, Melbourne, pp. 84-103.
133 Liberator, first quoted in P. Quiggin, 1988, No Rising Generation: Women and Fertility in Late Nineteenth Century Australia, Department of Demography, Research School of Social Sciences, Australian National University, Canberra, p. 109, cited in Swain, Single Mothers, p. 36.
education’. Dr Richard Tracy, of the Women’s Hospital in Melbourne, also noted that physicians and surgeons had disdained the male midwife as ‘a timid surgeon, a very mild physician, with a dash of the old woman, or, in other words – a ladies’ doctor’. According to the AMG there were between ten and fifteen thousand midwives practising in the 1880s. A great number of midwives, who delivered babies largely for working-class women, were also single women supporting a family. As Allen points out, abortion was a natural part of the ‘obstetric and gynaecological services performed by midwives within working-class communities’. They operated with skill and experience, with a low rate of complications. Nevertheless, the question of midwives’ role in obstetrics featured in a number of articles and editorials in the AMG from 1883. One editorial denounced the ‘ignorant midwives’ allowed to set up professionally, who ‘without training, knowledge, or even common sense assume the great responsibility of the care of women in labour’. The women who employed midwives were described as ‘ignorant or foolish’ women of a class possessed with a ‘low degree of mental culture’. Yet the British Medical Association (BMA), of which Australian doctors formed state branches, opposed the training and registration of midwives in NSW in the 1890s. According to the editor of the AMG, the BMA was worried that ‘an inferior class of partially educated practitioners, “legally” qualified to practice [sic] midwifery, would be thrust upon the public, with a result that would be disastrous to the future mothers of NSW’. Of course, doctors’ greatest fear was competition from legally qualified midwives with the skills and legitimacy to work independently of medical men. The first medical school had been established in Melbourne in 1862 as a five-year course. Training and accreditation of doctors, along with

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137 Cited in Oakley, ‘Wisewoman’, p. 31.
138 Cited in McCalman, Sex and Suffering, p. 37.
139 Editor, ‘Ignorant Midwives’, AMG, 15 April 1883, p. 150.
140 Allen, Sex and Secrets, p. 246.
141 For instance the MDNS had no infant mortalities and only one maternal death in over 800 deliveries. MDNS, Report, pp. 5-6. See also N.H. Rosenthal, 1974, People Not Cases: The Royal District Nursing Service, Thomas Nelson, Melbourne, p. 24.
142 Editor, ‘Ignorant Midwives’, p. 150.
144 Editor, ‘Midwifery Nurses Bill of NSW’, AMG, 20 October 1898, pp. 452-53. Dr James Graham, MLA, introduced a Midwifery Nurses’ Bill into the Legislative Assembly of NSW in 1895. The bill, providing for the better training and registration of midwifery nurses, was rejected. Graham successfully introduced it again in 1898. A similar bill was rejected in England because of opposition from the government and the medical profession in that country. Ibid.
145 Editor, ‘Midwifery Nurses Bill’, p. 453.
146 Editor, ‘Midwifery Nurses Bill’, p. 453.
147 Evan Willis notes that it is a common ploy of a group trying to establish its professional credibility to set up an overly-long training program. At the time a medical degree in the UK took four years. See

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the development of the curette and cervical dilators, ensured their increased technical expertise and authority, despite a lack of empirical evidence to support doctor’s claims in the field of obstetrics and gynaecology. On the contrary, there is evidence that they initially did more harm than good, with women’s deaths directly attributable to delivery in a maternity hospital and the medicalisation of abortion.

In 1890 the coroner noted ‘the recent phenomena of institutions devoted to procuring abortions’. The conditions of the private hospitals varied widely but they did provide some after-care and backup care for women. This followed the development of curettage – and, in turn, surgical abortion – and the funding of lying-in hospitals for maternity care for single mothers. ‘Practical midwives’ performed more interventionist abortions in these hospitals, largely on single women for whom medical abortion was out of reach. Curettage was forbidden to non-medical practitioners and the medical profession had been quick to portray any other form of abortion as dangerous and ineffective, despite a lack of statistical evidence to support this position. At this stage, however, many general practitioners were under- or unemployed, having yet to establish a strong professional presence. As a result, some doctors were willing to perform curettes as backup for the midwives, allowing the midwives to perform more dangerous abortions and the doctors to avoid being implicated in the crime.

Despite evidence of increasing medical involvement, the editor of the AMG blamed women and unqualified men for performing this ‘illegal and despicable operation’ for ‘a pound or two’. McCalman also notes in her history of the RWH in Melbourne that, despite the fact that abortion was widely practised, one of the founding doctors, Richard Tracy, never commented on induced abortion.

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E. Wilks, 1983, Medical Dominance: The Division of Labour in Australian Health Care, George Allen & Unwin, Sydney, p. 54.
148 McCalman, Sex and Suffering, p. 15.
150 Dr Youl, City Coroner, Royal Commission on Charitable Institutions, VPP, 1892-93, vol. 3, p. 311, cited in Swain, Single Mothers, p. 43.
151 Swain, Single Mothers, pp. 43-44.
152 Allen, Sex and Secrets, pp. 160-61.
153 Swain, Single Mothers, pp. 43-44. Shorter states that professional abortionists only called in qualified midwives or doctors in the case of complications. See Shorter, A History of Women’s Bodies, pp. 191-92.
154 McCalman, Sex and Suffering, p. 40. See diagram 1 below for numbers of abortions treated at the Women’s Hospital from 1900 to 1936.

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With a few vile exceptions the medical profession has never stooped to practice of this description, but this fact remains, that women, both single and married, in large numbers, to avoid disgrace, or to avoid an inconvenient addition to their families, demand that pregnancy shall be prematurely terminated for them ... They are indeed often under the mistaken impression that most doctors are in the habit of prescribing appropriate drugs for women who do not wish to allow a pregnancy to run ... Moreover, there are indications of their becoming educated in the methods of instrumental abortion. Many women know how to pass an instrument into their own wombs, and they teach one another their dangerous tricks.\textsuperscript{155}

The article called for the police, ‘too often lethargic in these matters, [to] take steps to suppress a nefarious and dangerous trade that is becoming increasingly common in these colonies’.\textsuperscript{156} Legislation that entitled registration only to legally qualified medical practitioners boosted efforts undertaken by that profession to ensure a monopoly over obstetric practice.\textsuperscript{157} Similarly, efforts to have ‘quacks’ prosecuted, ostensibly to protect the public, resulted in a decline in the network of practitioners who attended working-class communities.\textsuperscript{158}

4.2 1900 – 1920

The first two decades of the twentieth century saw the victory of medical dominance over women’s reproduction. Coupled with eugenics and associated social reform policies, this dominance led to a general increase in state regulation of sexuality and reproduction. In the early decades of the twentieth century infanticide continued to decline and abortion increased, although there is evidence that infanticide was still employed by many women in Victoria.\textsuperscript{159} The poverty and unemployment consequent on the depression of the 1890s continued to affect women’s ability to care for large families and there was thus widespread resistance to pronatalist propaganda.

\textsuperscript{155} Editor, ‘Alleged Criminal Abortion in the Australasian Colonies’, \textit{AMG}, 20 October 1898, p. 454.

\textsuperscript{156} Editor, ‘Alleged Criminal Abortion’, p. 454.

\textsuperscript{157} See \textit{Victorian Medical Practice Statute, 1865, 1889, Medical Act 1890, 1906, 1915}. Unlike the \textit{NSW Medical Practitioners Amendment Act 1900}, unqualified persons were not expressly restricted from practising in Victoria, but they were restricted from licensing or using the term doctor, which over time had the same effect on a population seeking the aura of expertise. See Editor, 1900, ‘The Medical Practitioners Amendment Act 1900 (NSW)’, \textit{AMG}, 20 October, p. 437. Nevertheless, as one doctor wrote, there was fear that the act recognised quacks if they did not pretend to be qualified. See W.L. Mullen, ‘The Prosecution of Quacks, with Remarks on the New Medical Bill’, \textit{AMJ}, vol. 13, 1891, pp. 335-41.

\textsuperscript{158} For discussion of efforts by the medical profession to exclude a range of competition, including midwives, homoeopaths and chiropractors, see Willis, \textit{Medical Dominance}.  

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Diagram 1: Numbers of Women Confined and Treated for Abortion, 1900-1936\textsuperscript{160}

[Copyrighted material omitted. Please consult the original thesis.]

Diagram 2: Numbers of Maternal Deaths from Specified Sources, 1900-1936\textsuperscript{161}

[Copyrighted material omitted. Please consult the original thesis.]

\textsuperscript{159} Infanticide in Victoria peaked during the depression of the 1890s, dropped away and then rose again immediately before the Great War during a period of drought. See Burton, ‘“Bad” Mothers?’, p. 21.


State responses to a declining birthrate

At the Women’s Hospital in Melbourne the percentage of patients admitted as a result of abortion trebled between 1910 and 1920, coinciding with the war.\textsuperscript{163} By 1920, for every two confinements at the Women’s Hospital there was one abortion, the majority occurring among single women or married women with three or more children.\textsuperscript{163} Despite the fact that abortion and other means of birth control had led to a decline in the birthrate, and women were having fewer children, there was an increase in maternal mortality, largely due to poor training and hygiene among doctors.\textsuperscript{164} Information was contradictory, however, with one estimate suggesting one in three and another one in three hundred women dying as a result of an abortion in Victoria.\textsuperscript{165} Edward Shorter comments that while professional abortionists were quite competent, the real butchers were the physicians – ‘rushed, guilt-ridden, and unpractised in abortion procedures’.\textsuperscript{166} As a result of high rates of septicaemia arising out of increasingly interventionist abortions and poor hygiene among obstetricians, the Women’s Hospital in Melbourne had arranged to admit septicaemia patients separately after 1903-04 and the building of a septic ward was completed in 1912.\textsuperscript{167}

The disparity between the birthrate and maternal mortality rate led to the Royal Commission on the Decline of the Birth-Rate and on the Mortality of Infants in New South Wales in 1904, and Octavius Beale’s 1907 Royal Commission on Secret Drugs and Cures.\textsuperscript{168} Allen describes the 1904 royal commission as a ‘pronatalist theatre’.\textsuperscript{169} All the commissioners were men and the majority of witnesses were male physicians, pharmacists, chemists and ministers of religion. Feminists boycotted the commission,


\textsuperscript{164} Swain, Single Mothers, p. 37.

\textsuperscript{165} See for instance the British Report of an Investigation into Maternal Mortality, HMSO, 1937, p.11, cited in Oakley, ‘Wisewoman’, p. 46. See also diagrams 1 & 2 below.

\textsuperscript{166} Swain, Single Mothers, p. 37. This sort of disparity continued to bedevil discussion of abortion and maternal mortality and was usually linked to exaggeration by reformers in a bid to either liberalise abortion laws or bring about stricter controls. In this case the Melbourne coroner, Dr Richard Youl, was probably exaggerating the figures to the Royal Commission on Charitable Institutions in order to bring about stricter controls over abortion.

\textsuperscript{167} Shorter, A History of Women’s Bodies, p. 207. For instance, in Hamburg from the end of World War \textsuperscript{1} until 1930, 78 per cent of abortion-related deaths were the result of doctor’s errors, particularly perforation of the uterus, 18 per cent from self-abortion and only 4 per cent caused by professional abortionists, largely as a result of infection. Ibid, p. 208.

\textsuperscript{168} Sayers, The Woman’s, p. 138.

\textsuperscript{169} For an extremely thorough discussion of the royal commissions and population debates generally see N. Hicks, 1978, This Sin and Scandal: Australia’s Population Debate 1891-1911, Australian National University Press, Canberra.

\textsuperscript{169} Allen, Sex and Secrets, p. 72.
arguing in advance that its findings were predictable. In summary, the commissioners found that "the doctrine of artificial limitation of families was vicious because it would destroy the family as a training ground in individual morality and as a bastion for social morality" preventing Australia from developing into a great nation. One clerical witness went as far as to classify prevention, as well as abortion, as 'murder'. The royal commission found that the decline in births was largely the result of the 'selfishness and pleasure-seeking' of women, resulting from a 'wave of popular feeling across the civilised world to control the size of families'. Jackson suggests that this finding may have been quite valid, although other writers claim that the commissioners ignored the impact of social and economic imperatives for limiting the size of families, especially increases in the cost of living and the difficulties of obtaining regular employment.

Two notable opponents to the findings of the commission were Mary Gilmore, who argued that 'religious leaders holding up their hands in horror at the empty cradles would do better to pay attention to the empty cupboards', and Rose Scott, who stated that it was 'a Commission composed of men, a Report in which the only evidence was as these men approved of, a Commission which, like Adam of old, wound up very contentedly with assuring the public that everything was the fault of the woman'. The commissioners emphasised the dangers of all methods of abortion and birth control, with any evidence from witnesses about safe methods effectively suppressed. While condemnation of birth control was popularly rejected, there were attempts in some quarters to restrict women's activities to those that

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171 Jackson, 'Fertility Decline in NSW', p. 264. In 1935 during discussion of the Victorian Police Offences (Contraceptives) Bill one member of parliament also stated that contraception was the equivalent of abortion and infanticide. See *Victorian Parliamentary Debates (VPD)*, Legislative Assembly (LA), vol. 197, 10 October 1935, James Murphy, p. 3470.
172 Commissioners, cited in Jackson, 'Fertility Decline in NSW', pp. 260, 263.
175 R. Pringle, 1973, 'Octavius Beale and the Ideology of the Birth-Rate', *Refractory Girl*, no. 3, winter, p. 20. See also Octavius Beale's comments that only twelve copies of the 1904 report of the NSW royal commission were produced and all jealously guarded. O.C. Beale, 1907, *Report of the Royal Commission on Secret Drugs, Cures, and Foods*, Government Printer, NSW, p. 9. The report generally is worth reading, if only for Beale's moralising and florid turn of phrase in demonising advocates of birth control. See Volume 1, Division 1, 'Prevention of Conception, and Foeticide', ibid, pp. 9-68.
176 Pringle cites the *Bulletin*, for instance, which acknowledged the desirability of children and the virtues of family life, but rejected the sweeping proposition that women should produce as many children as possible as fanaticism. Pringle, 'Octavius Beale', p. 25.
encouraged their 'original physiological intention' and 'special mental endowment to tend to children in infancy and childhood'.\textsuperscript{177} The editor of the \textit{AMG} advocated legislation prohibiting employment of girls and women in any 'walk of life which is not unquestionably women's work'.\textsuperscript{178} This was because work outside the home encouraged independence and frivolity in women, leading to lack of interest in marriage and motherhood.

In a direct attempt to increase the birthrate, the federal \textit{Maternity Allowance Act} of 1912 legislated to give £5 to all mothers, married or unmarried, who gave birth to a live or viable child, unless they were 'Asiatics, aboriginal natives of Australia, Papua or the Islands of the Pacific'.\textsuperscript{179} Failure to discriminate between married and unmarried mothers was fiercely opposed by church and charity groups.\textsuperscript{180} There was no protest at the exclusion of Aboriginal, Asian or Melanesian women, given the consensus that "good quality" citizens were required.\textsuperscript{181} Policies and attitudes that led towards increasing state regulation of the population were generally most disastrous for Aboriginal women. While a small number of Aboriginal children had been removed from their families in the nineteenth century, a process arguably largely motivated by humanitarian views about a 'dying race', twentieth-century policies were clearly politically motivated. Coral Edwards and Peter Read point out that governments realised the 'wild race of half-castes' was growing, not dying out, and implemented a policy aimed at dispersing adults from areas populated by white communities.\textsuperscript{182} One of the administrative tools was forcible removal of children from their families, the aim being to re-socialise them as whites. In Victoria the 1869 \textit{Aborigines Protection Act} had given the Board for the Protection of Aborigines broad powers to remove children, without explicitly stating a policy for removal.\textsuperscript{183}

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\textsuperscript{177} Editor, 'Female Labour and the Birth Rate', \textit{AMG}, 6 January 1912, pp. 13-14; Editor, 'Women's Work and Women's Duty', \textit{AMG}, 15 March 1913, pp. 234-35.
\textsuperscript{178} Editor, 'Women's Work', p. 235. See also Editor, 'Female Labour', pp. 13-14; Editor, 'Race Suicide', \textit{AMG}, 9 March 1912, pp. 255-56.
\textsuperscript{179} Cass & Radd, 'Family, Fertility and the Labour Market', p. 194. See also Swain, \textit{Single Mothers}, p. 142.
\textsuperscript{180} Swain, \textit{Single Mothers}, p. 112.
\textsuperscript{181} Swain, \textit{Single Mothers}, p. 112.
\textsuperscript{182} C. Edwards & P. Read, 1989, \textit{The Lost Children: Thirteen Australians Taken from their Aboriginal Families Tell of the Struggle to Find their Natural Parents}, Doubleday, Sydney, pp. xii, xiv.
\textsuperscript{183} See Human Rights and Equal Opportunity Commission (HREOC), 1997, \textit{Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torrell Strait Islander Children from their Families}, HREOC, Sydney, pp. 57-67. Aboriginal children could be and were removed under the \textit{Neglected Children's Act 1887}, which stated that 'any child found by police in circumstances which make it neglected can be immediately apprehended without warrant'. The child could then be 'boarded out', 'placed at service' or 'apprenticed', among other actions. See 51 Vict. No. 941, 1887.
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While the medical profession was implicated in the removal of Aboriginal children, it also opposed the maternity allowance, although on the grounds that the universal provision of assistance was expensive and ineffective in improving public health. The editor of the *Australian Medical Journal* (AMJ) claimed that 'the medical practitioner is proverbially a bad businessman, but the half-trained or wholly untrained midwife is as keen as any shark in the cities'. He argued that paying poor women a 'fiver' would result in an increase in the patronage of midwives and thus puerperal fever. In fact, as Evan Willis points out, the proportion of midwife-attended births halved in the decade that followed while deaths from puerperal fever remained unchanged.

Most feminist organisations preferred that the women themselves receive the allowance. But they did not want all mothers to receive it, as this would only encourage poor women to have larger families, or disabled and 'feeble-minded' children. According to Howe and Swain, though, the allowance was less about encouraging pregnancy and more about reducing infant and maternal mortality by enabling mothers to pay a doctor or midwife to attend the birth. While the allowance had little or no effect on the birthrate, it was thus an important impetus to medicalisation of childbirth. The medical profession promoted doctors attendance at births by portraying childbirth as a 'dangerous event', despite the fact that medical interference in childbirth itself contributed to the high rates of death and injury.

Information gathered from the 1904 royal commission confirmed that members of the medical profession also 'played a central role in both procuring abortion and shielding others'. They did this through a preparedness to avoid reporting abortion deaths, issuing certificates disguising the cause of deaths, and providing back-up care for midwives. Articles in the *AMG* suggested that the public, including many members of the medical profession, considered abortion to be an everyday event and the authors lamented the

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184 Daniels & Murnane, *Uphill All the Way*, p. 127.  
186 In 1912 1 in 200 women died from puerperal fever and in 1922 the figure was exactly the same. See Willis, *Medical Dominance*, p. 113.  
190 Willis, *Medical Dominance*, p. 119. See also footnotes 252 & 253.  
192 Burton, '“Bad” Mothers?', p. 43; Swain, *Single Mothers*, p. 46. Swain argues that this resulted as much from an aversion to capital punishment and a belief that the penalty for an abortion was too high as it did from an understanding of the necessity of abortion for women.
complacency among physicians. It was not always a case of complacency, however. As early as 1901 Sir James Barrett had told the Medical Society of Victoria that many doctors welcomed abortion and contraception as ‘affording a means of adopting a reasonable and medium course’, rather than the disaster of women’s ‘incessant child-bearing’.

Public tolerance of abortion, coupled with legislation banning the procedure, led to the beginning of an underground practice. Swain notes that between 1885 and 1915 there were twelve midwife abortionists and five medical practitioners working cooperatively in Melbourne. As early as 1890 the Age had described Collins Street as "the very head centre of illegal operations" ... left largely undisturbed by both police and Parliament, its activities hidden from public view”. The midwives were largely well organised and well-known proprietors of private hospitals who had been free of police intervention except in the case of a woman's death. This changed after the war, however, although policing of abortion was selective, with working-class women midwives vulnerable to prosecution in NSW and Victoria, while ‘wealthy and “reputable” doctors ... had little to fear’. As an indication of attitudes, a Melbourne judge, when sentencing a midwife to five years jail for attempted abortion, stated ‘a lot of miserable creatures, – I cannot call them women – resort to persons of your description’. An increase in policing midwife abortionists also contributed to abortion gaining a reputation as a dangerous operation.

The NSW Private Hospitals Act 1908 ‘rendered midwives ineligible for licensing’ despite their greater experience in performing abortions. In Victoria the Midwives Act 1915 ensured the regulation, supervision and restriction of midwifery practice, despite the existence of a professional, independent midwifery service in Melbourne since 1894. This

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195 Age, 26 June 1890, cited in Swain, Single Mothers, pp. 44-45.
197 Allen, Sex and Secrets, p. 106. See also Swain, Single Mothers, pp. 43-46 and McCalman, Struggletown, p. 131. In NSW women abortionists were more likely to come to the attention of the courts and, if so, three times more likely than men to be indicted. Allen, Sex and Secrets, p. 101. Information available suggests a similar pattern in Victoria, although further research is required before any definitive claims can be made. See Burton, "‘Bad’ Mothers?" and Sussex, ‘The Victorian Infant Life Protection Act 1890’.
198 Judge Eagleson, cited in Argus, 7 October 1910, ‘Race Suicide’.
200 Allen, Sex and Secrets, p. 72.
201 One letter from a midwife, read during the parliamentary debate, claimed that the legislation was a ‘diabolic attempt ... got up in the interests of a clique of trained nurses and a few medical men who
service had contributed to the supervision and training of medical students from the Melbourne Lying-in Hospital. During debate on the bill many speakers incorrectly linked maternal mortality with midwifery deliveries in Victoria. In fact the MDNS had attended over 800 deliveries between 1907 and 1912 with no infant mortalities and only one maternal death, which resulted three weeks after the woman had been hospitalised. Where midwifery had previously existed as an independent occupation within the health system, the act subordinated it to medicine, effectively controlling the medical man’s main competitor. Legislation that limited the operation of experienced midwives in the field of obstetrics, together with the policing of midwife abortionists, added to a high rate of mortality and morbidity associated with abortion for two main reasons. First, it reduced the numbers of midwives available making access to abortion more difficult, particularly for poor and rural women. Allen found in her study of abortion in NSW that those charged with abortion-related offences were generally performing high-risk abortions for women with advanced pregnancies, often following the women’s initial, unsuccessful use of herbal or medicinal products bought via mail order. Second, the quality of the service provided deteriorated, object to midwives’, to rob the poor of midwifery services and deprive women of their living. VPD, LA, vol. 141, 22 September 1915, J.R. Jewell, pp. 2494-95. For details of the bill, see VPD, LA, vol. 140, 11 August 1915, pp. 1803-06 and VPD, LA, vol. 141, 22 September 1915, pp. 2491-500, 2937-45. For further discussion see Rosenthal, People Not Cases, especially pp. 23-25, 49-51, 55-59; Mein Smith, Mothers and King Baby, pp. 67, 208; Reiger, Disenchanted of the Home, pp. 84-103, 120-24. Reiger notes that the Melbourne District Nursing Society was set up as a charitable service and was not meant to compete with doctors. Reiger, Disenchanted of the Home, pp. 91-92. The annual report of the MDNS instructed that the subcommittee should ‘be careful to check any hostility to or disregard of the medical men’s advice, and to impress on the nurses that … their duty is not to take the doctor’s place, but to see that his orders are carried out’. MDNS, Report, p. 12. Nevertheless, the midwifery branch was separate to the general branch and there was evidence of tension between that service and the Women’s Hospital in the area of obstetrics. VPD, LA, vol. 140, 11 August 1915, James Membrey, pp. 1803-06. Membrey linked incompetent midwives with ‘irreparable injury, septic poisoning and loss of life’. See also VPD, LA, vol. 141, 22 September 1915, James Jewell, pp. 2491-92. Jewell did admit, however, that there were no figures to actually link deaths with either midwives or doctors and argued that in every instance the bill showed a desire to look after the doctors. MDNS, Report, pp. 5-6. The journal contains the annual report of the MDNS each year for five years and statistics are recorded from pages 5 to 6 in each year’s report. Willis, Medical Dominance, pp. 94, 116. Willis notes that the 1915 act put considerable restrictions on midwives, unlike physicians, were not given the right to sue for non-payment of fees, had to pay an annual fee to practice, had to prove they were of good character and were required to bathe regularly in disinfectant. Ibid, pp. 114-15. In 1928 the Victorian Nurses Registration Act formally incorporated midwifery into nursing, effectively ending its independent status. See also A. Summers, 1995, ‘For I Have Ever So Much Faith in her Ability as a Nurse: The Eclipse of the Community Midwife in South Australia 1936-1942’, PhD thesis, Flinders University. While early abortion is regarded as safe, with deaths only occurring as a result of gross negligence or carelessness, late abortion is associated with an increased risk of complications, such as perforation of the uterus. Allen, Sex and Secrets, p. 104. See also Allen, Sex and Secrets, pp. 38-39, 246. Although there is little information about the incidence or nature of abortion in Victoria at this time, Shorter notes that the western trend was for women to move from the least to the most dangerous form of abortion progressively. Shorter, A History of Women’s Bodies, p. 178. See also Swain, Single Mothers, p. 37.
partly as a result of those with the most experience being eliminated from practice and partly because after-care suffered as midwives took measures to avoid detection.

Eugenics

In 1893, birth control advocate Brettena Smyth wrote that 'children of parents who indulge in over-production … are peculiarly liable to idiocy'.\(^{207}\) Little was known about genetics and inherited diseases, therefore much was assumed and, from the early twentieth century, ideas derived from eugenics increasingly formed the background to debates about health, welfare, population and immigration policies. Ross Jones points out that eugenics as a science developed in Victoria after the 1914-18 war from a simplistic justification of racist and class-biased social Darwinism into an organised movement concerned with also using environmental reforms to help Australians reach their full potential.\(^{208}\) Rob Watts and Stephen Garton both argue that eugenicists were positive, reform-oriented social campaigners.\(^{209}\)

Michael Roe demonstrates that eugenics in Australia grew out of attempts by progressivists to bring about health reforms. Progressives believed social problems such as health, housing, education, industrial conditions and poverty could be solved rationally, rejecting earlier forms of positivism and determinism.\(^{210}\) They approached problem-solving 'scientifically' through data collection and production of guides for effective action to be pursued by bureaucratic and other elites.\(^{211}\) Progressives held women in high esteem, but only as potential mothers, with motherhood itself demanding training and efficiency.\(^{212}\) Christopher Lasch argues that the 'new radicals were torn between their wish to liberate the unused energies of the submerged portions of society and their enthusiasm for social planning, which


\(^{211}\) Roe, Nine Australian Progressives, p. 11.

\(^{212}\) Roe, Nine Australian Progressives, p. 14.
led in practice to new and subtler forms of repression. Both radical and conservative, their enthusiasm for planning reflected confidence in themselves as disinterested elites together with an ‘abiding anxiety lest the voice of reason be overwhelmed by the uproar of social conflict’. In fact, Roe argues that part of the appeal of progressivism was its ability to simultaneously invoke ‘liberation and order, democracy and elitism, change and continuity, welfare and asceticism, worship of both technology and Nature’.

State regulation of sexuality, and eugenic thinking, was also evident in relation to venereal diseases policies in Australia. Judith Smart argues that questions about gendered duties of citizenship ‘ran parallel to the changing assessment of the defence needs of the … nation’. Requirements for the involvement of the whole population in the first total war of 1914-1918 suggest that control of young women’s bodies was necessary in the interests of defence because of the ‘perception of women’s sexuality as dangerous and debilitating’ to the fighting strength and future population needs of the nation.

The influence of eugenics on medical thinking in relation to child-bearing was evident in both the AMJ and the earlier AMG. The Inspector General of the Insane in Victoria wrote, for instance, of the certainty of the ‘connecting link between insanity and crime’, leading to his recommendation to segregate the ‘feeble-minded’ from the rest of the population. Eugenic thinking paralleled the rise of faith in ‘objective scientific fact’ and the concomitant rise of medical science, as well as a highly idealistic belief in the ultimate perfectibility of the human race. Feminists were also proponents of eugenics in many instances. For example, Rose Scott, in criticising the NSW royal commissioners for blaming the selfishness of women for the declining birthrate, stated that there should be less emphasis on quantity and more on producing ‘a population … of worth, physically, mentally and morally’. Where family limitation policies were designed to control the ‘quality’ of the population, many feminist groups lent support to such programs. What was particularly worrying for eugenicists was the decline in the birthrate among the upper class.

Pestilence, wars and famine have decimated us in the past, but while they have taken their toll mostly from the lower and weaker stocks, the falling birth rate is preventing

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216 Smart, ‘Sex, the State and the “Scarlet Scourge”’, p. 5.
217 Smart, ‘Sex, the State and the “Scarlet Scourge”’, p. 9.
tens of thousands from coming into existence among the best elements of the people.220

The fact that the birthrate among working-class women had not fallen as dramatically led to the spectacle of a mean-spirited, under-sized, diseased little man, quite incapable of earning a decent living even for himself, married to some under-fed, ignorant, ill shaped, plain and diseased little woman, and guilty of the lives of ten or twelve ugly, ailing children.221

In fact some working-class men and women were suspicious of the mainly middle-class advocates of birth control because of the identification of the working classes with undesirable racial characteristics.222 Where working-class women chose to limit their family, they continued to do so using traditional methods such as abortion or infanticide.223

Eugenics continued to guide reproductive politics up until the 1940s and remained influential in the abortion debate in the United Kingdom as late as the 1960s. It acted as a further constraint on the control women were able to exercise over their own fertility in the face of state propaganda to increase the healthy white Australian population to avoid ‘race suicide’.224

4.3 1920 – 1945

The period between the wars and until the end of the World War II saw the continuing influence of eugenic thought as well as the domination of medical discourse. The circumstances of war had also shifted men and women’s attitudes towards sex outside of marriage to some degree. This led to greater attempts by the state to control women’s

219 Rose Scott, Presidential Address to the Woman’s Political Education League, August 1904, cited in Daniels & Murnane, Uphill All the Way, pp. 76, 131-32.
222 Some working-class advocates were fearful that ‘the employing classes might use contraception to manipulate the working-class population for political and industrial ends’, or that birth control was a device of the upper classes to put off other kinds of social reform. See Daniels & Murnane, Uphill All the Way, p. 76; Rowbotham, Hidden from History, p. 37. See also J. Damousi, 1992, ‘Marching to Different Drums: Women’s Mobilisations, 1914-1939’, in K. Saunders & R. Evans, eds, Gender Relations in Australia: Domination and Negotiation, Harcourt Brace Jovanovich Publishers, Sydney, pp. 365-69. For discussion of the impact on Aboriginal women see Goodall & Huggins, ‘Aboriginal Women are Everywhere’, pp. 398-99.
224 See for instance, Editor, ‘Race Suicide’, AMG, March 9, 1912, p. 256.
sexuality, although there were equally strong moves for accessible birth control and some sympathy towards women’s attempts to limit their offspring.

The ongoing influence of eugenics

After the war, reform eugenicists attempted to institute legislation in Victoria that was aimed at ‘denying a significant proportion of the population the most basic rights of citizenship, including the right to reproduce’. Legislation included moves to institutionalise or sterilise ‘mentally defective’ white people in order to restrict their opportunity and capacity for procreation, although, as Ross Jones notes, the instigators of the bills also believed that Aborigines and other ‘coloured’ races were mentally, and therefore racially, inferior. White women were portrayed as virtuous and in need of protection, particularly from ‘Asiatic’ men. Eugenics underplayed the part of poverty, malnutrition or inadequate health care in the general health of the population. The Victorian government passed bills to segregate the ‘mentally deficient’ in 1926, 1929 and 1939, although the legislation was never proclaimed. Women’s organisations, including the Country Women’s Association and the National Council of Women of Victoria, supported the 1939 bill. At a conference in Sydney in 1929 organised by the Racial Hygiene Association (RHA), the precursor to the Family Planning Association, Victorian eugenicist Angela Booth advocated curbing crime and unemployment via involuntary sterilisation and segregation of the ‘feeble-minded’. The Truth (Sydney) claimed, with strong racist overtones, that Australia should be warned about ‘Breeding a Colony of clever aliens’.

Eugenic policies and attitudes continued to have a disastrous effect on Aboriginal women. While no accurate figures were kept, estimates suggest that one in three Aboriginal children were removed from their families in Victoria. Although there was no explicit policy in force to secure the removal of Aboriginal children in Victoria, the ‘effect of the

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228 Jones suggests the failure to do so was a result of the horrors of the Nazi eugenic program uncovered after the 1939-45 war. See Jones, ‘The Master Potter’, pp. 324, 340.
230 Siedlecky & Wyndham, Populate and Perish, p. 112.
232 See E. Hunter, 1995, "Freedom’s Just Another Word": Aboriginal Youth and Mental Health', Australian and New Zealand Journal of Psychiatry, vol. 29, no. 3, pp. 374-84, cited in HREOC, Bringing Them Home, pp. 36-37. Swain notes that the size of the Koori population in Victoria was low because disease, warfare and open massacre leading to a death rate higher than any colony except
Institutionalised racism of the "normal" child welfare system led to Aboriginal children still being separated from their families. By 1940 the Australian population assumed that this was preferable to leaving them in the poverty and ill-health that had resulted from policies and attitudes towards the Indigenous population generally.

Those who publicly supported abortion and contraception usually did so for eugenic reasons—that is, limiting the births of the 'unfit'. However government and other social agencies argued that birth control damaged the national interest overall and was individually immoral.

The impact of medicalisation on abortion safety

Between 1929 and 1934 the rate of decline in fertility more than doubled, primarily as a result of the 'hardship, distress and insecurity of economic depression'. A 1937 report to the newly established National Health and Medical Research Council (NH&MRC) found that the incidence of abortion and deaths associated with abortion had been steadily increasing at the Women's Hospital during the 1920s and 1930s. The number of abortions performed doubled between 1920 and 1936, with twice as many deaths in 1936 as there had been in 1925. Between 1931 and 1935 there were 190 deaths reported and by 1936 abortion-related deaths comprised 31 per cent of maternal mortality at the Women's Hospital. Deaths largely resulted from septic infections, but also from non-septic causes such as haemorrhage.

Tasmania had decimated the Victorian Koori population, which did not begin to recover until after the 1930s. See I'swain, Single Mothers, pp. 4-5.

Goodall & Huggins, 'Aboriginal Women are Everywhere', p. 413. Separation on the grounds of neglect continued up until 1985. See HREOC, Bringing Them Home, pp. 57-67. See also footnote 85.


See Worcester, 'The Problem of Abortion', pp. 25-33, for details of the studies undertaken. The Women's Hospital in Melbourne was (and remains today) the main referral point for therapeutic abortion. Women with botched abortions were usually taken there as well. As a result, abortion-related data from the hospital is a good indication of trends in abortion generally. See also diagram 2, above.

Worcester, 'The Problem of Abortion', p. 25. See also Victorian Year Book, 1931-32 – 1936-37. Abortion-related deaths were not recorded in the yearbooks prior to 1926.

Worcester, 'The Problem of Abortion', p. 25. This compared with 10 per cent of maternal deaths in the period 1910-1919. Between 1930 and 1933 doctors at the Women's Hospital treated 1,069 cases of septic abortion, of which 136 patients (12.7 per cent) died, 98 following criminal abortion. Worcester, 'The Problem of Abortion', p. 25.

See diagrams 3 & 4 below for maternal mortality rates and numbers of abortion-related deaths in Victoria from 1926 to 1946/49. From 1933 to 1937, the Women’s Hospital in Melbourne reported
seventy-seven cases of gas gangrene, sixty-five of those following an abortion, with thirty-nine of the abortion cases resulting in death. Siedelecky & Wyndham, *Populate and Perish*, p. 73.

241 *Victorian Year-Book*, 1932/33 to 1945/46.

242 *Victorian Year-Book*, 1932/33 to 1949/50.
Diagram 5: Comparison of Married and Unmarried Women who Died as a Result of Abortion in Victoria 1931-1953

From 1926, when abortion-related deaths were first recorded in the *Victorian Year-Book*, to 1945, there were 751 such deaths from septic abortion alone, 615 following criminal abortion. The numbers of deaths following criminal abortion peaked at 338 between 1934 and 1941 when the maternal mortality rate had otherwise halved. It was also during this period that the medical takeover of abortion was virtually completed.

Of those women who admitted to having an abortion, 82 per cent had used contraception, and only 11.8 per cent were unmarried, although unmarried women comprised 27 per cent of deaths. On the basis of two studies of patients of the Women’s Hospital, R.G. Worcester estimated that there were about eight thousand abortions carried out in Victoria each year in

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243 *Victorian Year-Book*, 1932/33 to 1953/54. Figures comparing married and unmarried women were only reported during the years indicated. The terms married and unmarried are the terms used in the yearbooks. The higher number of married women dying as a result of abortion indicates that greater numbers of married women sought abortion. This suggests that factors other than the stigma of single parenthood controlled decision-making. It is worth noting that, while marriage remained an important measure of respectability, unmarried women were not necessarily single and married women not necessarily partnered.

244 Victorian Year-Book, 1932-33 to 1950-51, Government Printer, Melbourne.

245 See diagrams 3 & 4 below.

246 In Worcester’s study, out of 89 women who admitted to criminal interference, 11 said they had an abortion performed by a nurse, 5 by a lay person and 2 a ‘medical man’. The rest claimed self-abortion. Worcester, ‘The Problem of Abortion’, p. 26. Data from other studies suggests it is unlikely that 80 per cent of abortions were self-induced, leading to speculation that a high proportion of women were protecting medical abortionists.

247 Worcester, ‘The Problem of Abortion’, p. 26. Between 1931 and 1953, 25 per cent of women who died as a result of an abortion were unmarried and 75 per cent married. See diagram 5 above. The
the 1920s and 1930s. He added that given the social conditions under which the women lived the ‘incidence of abortion is of little surprise’.\textsuperscript{248}

Willis argues that the short and poor training of medical students in the area of obstetrics as well as an over-enthusiasm in using new medical technology contributed to the high rate of maternal mortality.\textsuperscript{249} A study carried out in the US around 1932 found that doctors’ errors were responsible for 41 per cent of deaths following childbirth and midwives’ errors for only 2 per cent.\textsuperscript{250} While there were no similar studies undertaken in Victoria, there was much evidence to suggest that midwife-assisted home births were far safer for women.\textsuperscript{251} But the medical lobby continued to fight for increased prosecution of midwives, blaming the mortality statistics on their continued prevalence in both abortion and obstetric care.\textsuperscript{252}

A police crackdown in Melbourne between 1928 and 1932 largely resulted in midwives appearing before the court, regardless of their skills or the quality of their practice.\textsuperscript{253} This was convenient for physicians trying to establish professional credibility in obstetrics; they might otherwise have been the targets for concern over the increasing rate of maternal mortality despite growing medical involvement. Midwives were also more likely to be prosecuted because backup was no longer available from increasingly busy medical practitioners. Kelvin Churches, a doctor at the RWH from 1948 to 1974, also believed that social attitudes led to a very low rate of therapeutic abortion performed in hospital settings from the mid 1930s, leaving women to seek illegal abortions.\textsuperscript{254} Only Dr Albert Bretherton was openly known to perform abortions on poor women and, as a result, he faced a series of

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{249} In an attempt to shorten labour physicians were more likely to use anaesthesia and forceps, which midwives were prohibited from using, resulting in a proliferation of injuries to the mother and the child. Willis, Medical Dominance, pp. 120-21.
\item\textsuperscript{250} Maternal Mortality in New York City, report of the New York Academy of Medicine, 1933, cited in Oakley, ‘Wisewoman’, p. 47. Oakley explains that part of the reason for this was that a doctor was paid 10 shillings for a delivery unless instruments were used, when the fee rose to £2. Doctors were therefore tempted to use forceps even when they were unnecessary.
\item\textsuperscript{251} See annual reports of the MDNS that indicate an almost nil maternal mortality rate. MDNS, Report, pp. 5-6. See also the 1935 debate on the contraceptives bill, discussed below. James Jewell noted that there was a ‘growing belief that childbirth problems were due to the fact that doctors, to save time and trouble, unnecessarily use instruments’. He noted that they were actually paid more if they did so and argued that control over midwives should not be entrusted ‘to those who must share responsibility for injuries inflicted’. See VPD, LA, vol. 141, 22 September 1915, J.R. Jewell, p. 2497.
\item\textsuperscript{253} McCalman, Struggletown, p. 131. An occasional doctor also appeared before the court, but as a result of investigations into women’s deaths. See McCalman, pp. 130-31.
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murder charges in the 1930s. His family claim that he was hounded by the police as well as by other medical practitioners.

As Allen points out, medicalisation of abortion inevitably meant masculinisation. Since the provision of professional services had become associated with men, the competitive position of non-medical male abortionists improved relative to that of midwives, even when the women were trained and experienced and the men were not. Men, including pharmacists, mechanics, travelling salesmen and plumbers, charged higher fees than skilled midwives and often presented themselves as trained doctors. Their success, Allen argues, is a "testament to the force and market value of medical discourse."

Both Ann Oakley in the UK and Leslie Reagan, who traced the history of abortion in the US, found that abortion became problematic for women following the medical profession's attempt to exclude midwives and lay healers and use abortion practice to establish both technical and moral professional expertise. Childbirth, contraception and abortion were increasingly defined as scientific and technological matters, controlled by male medical practitioners, within a structure of control that "invests the male obstetrician with ultimate power." Allen points out that midwives were not eradicated via prosecution so much as through the undermining of confidence in women without medical training. Medical practitioners were able to access a number of treatment resources and to design false or vague death certificates to obscure their responsibility. Midwives, on the other hand, often had to admit patients to hospital to seek assistance, where hospital authorities would call the police.


\[255\] In 1931 Dr Bretherton argued that the woman who died was not his patient, but one who had been sent to his rooms following a botched abortion. The woman gave a dying deposition and her mother and father evidence that she was his patient. Bretherton was acquitted. See Argus, 1 April 1931, 'Death of Young woman', p. 9. In 1932 Bretherton stated that he had performed three operations on a woman for a bowel obstruction. He had unsuccessfully recommended to the woman's father that she be cremated, and had subsequently performed an autopsy in which he had removed and ordered burnt organs that destroyed evidence of whether an illegal operation had taken place. Witnesses claimed the woman was "in a certain condition" but there was no evidence available on which to base a conviction. See Argus, 15 October 1932, 'Benella girl's death', p. 25. Bretherton was also charged in 1933. See Argus, 19 May 1933. Rod Bretherton maintains that other doctors dumped their patients on his father. See W. Lowenstein, 1998, Weevils in the Flower: An Oral Record of the 1930s Depression in Australia, Scribe Publications, Melbourne, pp. 292-94 (first published in 1978 by Hyland House).

\[256\] According to Rod Bretherton, his father faced Prahran court hundreds of times but was never convicted. Lowenstein, Weevils in the Flower, pp. 292-94. See also R.C. Bretherton, 1997, Abortion: RU486: Aneecdotes of Anguish and Hope, Rodney Bretherton publisher, Daylesford, pp. 2-5, 34-35.

\[257\] Allen, Sex and Secrets, pp. 166-67.

\[258\] See Reagan, When Abortion was a Crime; Oakley, 'Wisewoman'.

\[259\] Oakley, 'Wisewoman', p. 21.
Of course, the vast majority of abortions performed successfully by midwives were not recorded, making it impossible to draw statistical links between an increase in abortion deaths and an increase in the number of women actually having abortions. 261

By the 1920s and 1930s abortion was widespread, and abortion services had become lucrative businesses. Churches reports that a medical abortion in Melbourne in 1936 cost 50 guineas ($110), when the basic wage was around £3 6s ($7.20) per week. 262 Despite this there was little policing or prosecution, with abortion-related indictments remaining fairly constant in Victoria up until the mid-1960s. 263 The fact that the police were, in essence, turning a blind eye to abortion suggests in part that they understood women’s dependence on safe abortion to limit the size of their family. Allen notes that, increasingly, women were using abortion to ‘negotiate new kinds of personal life and family arrangements’ that generally also suited their male partners. 264

Birth control arguments

Contraceptives were still largely unavailable, with regulations under the federal Customs Act 1923 prohibiting their importation. Physicians also had difficulty obtaining effective contraceptives for their patients. Daniels and Murnane refer to one doctor who wrote directly to birth control pioneer Marie Stopes in England, requesting her assistance to contact British chemists in order to buy contraceptives for his patients. 265 This illustrates the often-sympathetic response from doctors, who understood first-hand the difficulties facing women in relation to child-bearing and rearing.

Despite the dearth of contraceptives, the Victorian Police Offences (Contraceptives) Act 1935 instituted a total ban on their advertisement on the grounds that the publicity might arouse sexual curiosity among children. 266 One politician feared that the ‘unnatural sex practices’

261 Allen, Sex and Secrets, p. 168.
262 Churches, ‘120 Years of Abortion in Melbourne’, p. 3.
263 Burton, “‘Bad” Mothers?”, p. 53.
264 Allen, Sex and Secrets, p. 165.
265 Dr Eric Jeffreys to Dr Marie Stopes, 30 November 1922, cited in Daniels & Murnane, Uphill All the Way, p. 150. Weeks argues that Marie Stopes actually ‘displayed ... a deep ignorance of working-class life’, although she did succeed in making advocacy of birth control acceptable. Weeks, Sex, Politics and Society, p. 191.
266 H. Pye, speech to the Victorian Legislative Council, 23 October 1935, cited in Daniels & Murnane, Uphill All the Way, p. 151. The act also supported the right of bona fide ‘medical men’ to control contraception, although some parliamentarians were wary of this. John Cain senior, for instance,
that accompany contraceptive use might render women ‘more or less neurotic’, leading to
divorce or institutionalisation. In 1942 the wartime National Security Regulations
(Contraceptives and Venereal Disease) ensured that other states also banned advertising and
dispatch of contraceptive devices by mail.

Sheila Rowbotham argues that attempts in the UK to spread birth control information prior to
the 1914-1918 war led to closer relationships between feminists, socialists and the birth
control movement. In Canada, socialist feminist Stella Browne, a member of the
Communist Party until 1923, fought for birth control within a framework of women’s right to
choose, as well as to sexual enjoyment. She left the party because it would not support
abortion on demand. Browne ‘realised that women’s control over reproduction and the
means of defining and determining female sexuality were as essential as the creation of a
society where the material conditions for child bearing and rearing were not oppressive’. She
claimed that capitalist ‘morality’ preferred ‘baby farming, infanticide and the systematic
blackmail, the moral and physical septicaemia of widespread clandestine abortions,
performed under ignorance and filth’. According to Joy Damousi, Australian women in the
1920s and 1930s were more radical than their British or North American sisters and achieved
a number of progressive reforms, although these were diminished by the onset of the
depression in the 1930s. Rebecca Albury argues that a radical women’s rights approach to
abortion disappeared generally with the suppression of socialist and anarchist politics from
the 1920s.

By the early 1930s, the Central Women’s Committee (CWC) of the Australian Communist
Party (CPA) was in favour of birth control information being disseminated, but concerned

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related to the monopoly over the exclusive sale of contraceptives by chemists and druggists on
Julia E. Johnsen, Birth Control, USA, cited in VPD, LA, vol. 197, 10 October 1935, Thomas Hayes,
p. 3468.
Daniels & Murnane, Uphill All the Way, p. 75.
Rowbotham, Hidden from History, p. 149.
152. See also F. Mort, 1987, Dangerous Sexualities: Medico-Moral Politics in England since 1830,
Routledge and Kegan Paul, London, p. 148. Mort argues that Browne’s radicalism also carried
problems, however, particularly her use of the language of sexology and its inevitable assumption of
compulsory heterosexuality for women, organised around penetration, which led to a discourse of
‘normal sexual relations’.
Rowbotham, Hidden from History, p. 152.
S.F.W. Browne, The ‘Women’s Question’, The Communist, 11 March 1922, cited in Rowbotham,
Hidden from History, p. 153.
Damousi, ‘Marching to Different Drums’, p. 364.
that it might be seen as the solution to social problems. At their conference on birth control in 1932, members passed a resolution that this idea is nothing but an illusion which sections of the ruling class openly foster at this period, when the supply of labour power far exceeds the demand. Only a degenerate class commits suicide ... we must fight for our right to bear and rear large or small families, according to our desires. 275

Joy Damousi claims that the CPA was ambivalent at best about abortion. On the one hand they argued it was part of bourgeois ideology, on the other that the working class should not reproduce at all, as it was only in the interests of capitalism that they brought future wage slaves into awful poverty. 276 McLaren suggests too that whether birth control was defined as coercive or liberating in Canada depended on the role it was assumed to play in the class struggle. 277

CWC member Jean Devanny argued women had a right to be mothers ‘through choice and not compulsion’, echoing earlier calls for ‘voluntary motherhood’. 278 The CWC claimed the right of individuals to access birth control knowledge monopolised by the rich. Those contraceptive devices that were available, such as the Dutch cap, were expensive, as was the doctor’s fee to measure and fit them. Committee members also noted deaths from illegal abortion largely affected working-class women. This led them to demand abortion on request under skilled medical attention in public hospitals, although only after consideration by a committee of women workers. 279

In 1934 the MDNS supported the establishment of the surreptitiously named Mothers’ Welfare Clinic in Melbourne to supply contraceptives to its married women patients. 280 However, Dr Victor Wallace’s attempt to open a recognisable birth control clinic in

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279 Damousi, ‘Marching to Different Drums’, p. 368.
280 Victor Wallace notes, though, that they ‘dared not speak about family planning, or “birth control”’ and had, instead, to find a respectable name. V.H. Wallace, ‘Family Planning in Melbourne’, *MJA*, vol. 1, no. 13, 29 March 1969, letters to the editor, pp. 706-07. The MDNS emphasised the importance of birth control to the health of future generations. See Daniels & Murnane, *Uphill All the Way*, pp. 75-76.
Melbourne in 1939 was surrounded by controversy.\textsuperscript{281} As some Victorian parliamentarians had commented in 1935, by banning contraceptive advertising the government was implicitly condoning birth control.\textsuperscript{282} This raised concerns that a 'young man may marry a girl who has fallen one hundred times, but was able to hide her irregularities by the use of preventives'.\textsuperscript{283}

\begin{quote}
\textit{Sexualisation and state regulation}
\end{quote}

Marilyn Lake claims that by the late 1930s there was a new discourse on femininity, centring on the scrutiny of women's bodies and incitement to sexual pleasure.\textsuperscript{284} This sexualisation of women in Australia grew with the conditions of war, which further 'undermined traditional restraints and disciplines'.\textsuperscript{285} The influx of American soldiers into Melbourne and other capital cities during the 1939-45 war stimulated consideration of Australian women's reproductive freedom. Sexually active women were no longer necessarily either prostitutes or married women.\textsuperscript{286} Lake claims that the women challenged not only male definitions of appropriate sexual behaviour for women, but feminist interpretations of the danger for and exploitation of women arising from the 'male vice' of sexual activity.\textsuperscript{287} For first-wave feminists, sexual emancipation meant chastity rather than 'sex indulgence'.\textsuperscript{288} As a result, women divided across age, rather than traditional class lines, in condemning or condoning younger women's behaviour.\textsuperscript{289} Kay Saunders and Geoffrey Bolton agree that older feminists had no sympathy for young women's desire for sexual adventure. They claim that the sudden

\textsuperscript{281} Reiger, \textit{Disenchantment of the Home}, pp. 123-24. Wallace notes that a member of the Eugenics Society offered £100 towards the cost of establishing a birth control clinic in one of Melbourne's slums, for eugenic and economic, as well as medical reasons. There was a 'storm of protest', including from Archbishop Mannix, who was 'astounded ... to read that certain busybodies proposed to ... help people send Australia all the faster tobogganing down into disaster'. \textit{Sun}, 24 April 1939, cited in Wallace, 'Family Planning in Melbourne', pp. 706-07. Some concern centred on the Eugenics Society's focus on limiting the births of the 'unfit' rather than tackling their socio-economic circumstances. \textit{Herald}, 27 April 1939, 'Birth control opposed. Member explains reason of bill', p. 13. The clinic eventually opened at 167 Collins Street Melbourne, but was forced to close during the war because the rubber shortage made it difficult to obtain suitable pessaries. Wallace, 'Family Planning in Melbourne', p. 707.

\textsuperscript{282} VPD, I.A, vol. 197, 10 October 1935, Thomas Hayes, pp. 3466-69.

\textsuperscript{283} VPD, I.A, vol. 197, 10 October 1935, James Murphy, p. 3470.

\textsuperscript{284} There was also a decline in illegitimate births in Victoria from the early 1930s as a result of an increase in the marriage rate, pointing to the contradictory factors at play. See Darian-Smith, \textit{On the Home Front}, p. 199.


\textsuperscript{286} Lake, 'Female Desires', p. 276.

\textsuperscript{287} Lake, 'Female Desires', p. 279.

\textsuperscript{288} Lake, 'Female Desires', p. 281.

\textsuperscript{289} Judith Smart also found that conflict between feminists was most notable in relation to young single women's search for 'affirmation and acknowledgement', in her research on Australian beauty quests. See J. Smart, 2001, 'Feminists, Flappers and Miss Australia: Contesting the Meanings of Citizenship, Femininity and Nation in the 1920s', in R. Nile, ed., \textit{ShowGirl and the Straw Man}, an issue of the \textit{Journal of Australian Studies}, no. 71, University of Queensland Press, Brisbane, pp. 1-15.
preoccupation with moral issues and the marked increase in the policing of sexual encounters during the 1939-45 war can be best understood in the context of a society in the throes of crisis, as women became socially and economically independent.290

Allen describes the attitude of the Australian population towards abortion during the war as one that focused on the assumed disloyalty or infidelity of Australian women who went with US serviceman. This attitude gave police a 'popular mandate' to continue to harass abortionists.291 Arthur Calwell, a devout Catholic, had raised the issue of the high number of abortions in Melbourne in 1941 together with the role of the medical profession in engaging in abortion practices. Ironically, in the middle of the war, Calwell praised the governments of fascist Germany and Italy in strengthening abortion laws.292 Concern about women's fidelity, raised consistently by politicians at this time, also placed concern about sexually transmitted diseases, first tackled during the 1914-18 war, back on the agenda.

From 1942 state regulations against women as carriers of venereal disease (VD) led to 'delinquent girls with VD' and 'women who had infected personnel of our fighting forces' being arrested by police, inspected by medical staff and given treatment if infected.293 In 1943, 105 women were detained in Queensland.294 VD was seen as a medical problem for servicemen, and a moral problem for servicewomen. VD also heightened concern about racial purity, given deformities in babies born to women with untreated syphilis. Early feminist groups believed that chastity before marriage and fidelity within marriage was the only way to eliminate VD, suggesting that abstinence, rather than condom use, was preferable.295 The United Associations of Women (UAW), one of the most articulate and prominent feminist organisations in Sydney, regarded maternal mortality, the decline in the birthrate and the incidence of venereal disease as aspects of the same problem. This group recommended further restriction on the sale of contraceptives and sought legislation to make compulsory the exchange of medical certificates showing the state of health of people about

291 Allen, Sex and Secrets, p. 200.
292 Siedlecky & Wyndham, Populate and Perish, p. 75.
294 Siedlecky & Wyndham, Populate and Perish, p. 119.
to marry. Following the discovery and use of penicillin, VD became less serious and anxiety about women’s morality declined. Concern was not so much with women’s health or morality per se, but with long-held beliefs that they were a ‘source’ of contagion that would be passed on to subsequent generations, threatening the viability of the nation.

In February 1939, with the opening of a pathology department at the Women’s Hospital in Melbourne, ‘the fear of puerperal and abortion sepsis – one of the most numerous maternal killers … greatly lessened’. According to a NSW medical committee appointed in 1939, a great reduction in maternal mortality in the 1940s followed the ‘introduction of antibiotics, of modern principles of ante-natal care, of improved obstetric care generally, of the improved social and economic conditions affecting the mother, and other factors’. From 1939 to 1959 maternal deaths at the RWH declined by 85 per cent, with the proportion caused by septic abortion falling from 50 to 20 per cent. An epidemic of rubella (German measles) reported in 1939 also led to the 1941 recognition of the link between congenital abnormality and an early pregnancy rubella infection. An NH&MRC committee set up in 1944 to investigate this problem defined the risk of substantial damage to the foetus as a new ground for therapeutic abortion. This medical ground was also linked to the effect on the mother’s health of having to care for a severely disabled child, the quality of the child’s life, and the community cost of providing care.

The NH&MRC’s separate 1944 Inquiry into the Decline in the Birth-Rate found that women were deliberately limiting their families through the use of contraception and abortion, and

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296 Resolutions of the United Associations of Women’s Committee on Maternal and Infant Mortality, 14 April 1937, cited in Daniels & Murnane, Uphill All the Way, p. 136.
297 Siedlecke & Wyndham, Populate and Perish, p. 120.
298 Smart, ‘Sex, the State and the “Scarlet Scourge”’, pp. 8-9.
299 Sayers, The Women’s, p. 147.
300 G.J. Cuthbert Browne, ‘Report by the Special Medical Committee Investigating Maternal Mortality on 319 Deaths Associated with Pregnancy and Childbirth Occurring in New South Wales, 1950 to 1956’, MJA, vol. 1, no. 1, 2 January 1960, p. 2. The committee compared maternal mortality rates from 1920 to 1954, finding the greatest reduction followed the period 1935-1939, when 5.3 deaths occurred per 1000 live births, to 1945-49 when there were 1.69 recorded deaths per 1000 live births. Ibid, p. 2. See also diagrams 3-5 above, which show the dramatic decrease in deaths from 1939.
301 Siedlecke & Wyndham, Populate and Perish, p. 74.
302 Kristen Luker points out that Australian epidemiological studies published in 1941 first made clear the correlation between rubella and infant deformity, with rubella then accounting for around 20 per cent of all legal abortions performed. See K. Luker, 1984, Abortion and the Politics of Motherhood, University of California Press, Berkeley, pp. 81-82.
303 Siedlecke & Wyndham, Populate and Perish, p. 76. The committee was set up specifically to investigate the effects and management of rubella, separate from the 1944 NH&MRC committee set up to inquire into the decline in the birhtrate.
this caused grave anxiety about the future of the Australian people.304 Interestingly, the report also found that doctors were increasingly prepared to perform abortions for women at a time when medical indications for abortion were declining.305 This suggested public sympathy towards women choosing abortion for reasons of poverty, as well as acknowledgment (if not approval) of changes in ‘social outlook’ reflected in middle-class and wealthy women limiting family size out of ‘the modern desire for pleasure, and freedom from household responsibilities’.306 The report acknowledged that it was not a woman’s selfishness alone that had led to the decline in the birthrate, but her desire:

first to be a good companion to her husband and a good mother to her children [as well as] some opportunity for the cultivation and expression of her own gifts and powers, and to be able to make a contribution to the life of the community in her own right as it were, and not only as a child-bearing and child-rearing human being.307

The report concluded, with little gender analysis or attention to women’s requests for birth control, that social conditions required profound alteration if the ‘nation is to survive’.308

Given the demise of midwife abortionists, women became increasingly reliant on medical practitioners, the majority of whom were not keen to devote their practice to abortion. Allen describes four options emerging at this time. Suburban general practitioners either performed curettes for their own patients, referred their patients to a reliable colleague to perform a therapeutic abortion, sent them to a practitioner whose sole practice was abortion, or refused to help women who then turned to other referrals or word of mouth.309 Only the third of these was in practice subject to policing. The success of the medical profession in taking over reproductive services is demonstrated by the fact that, by 1939, abortion was largely provided and regulated by the medical profession.310 The average family size was just over two children and illegitimacy rates were the lowest they had been that century.311

305 Siedlecky & Wyndham, Populate and Perish, p. 76.
308 Siedlecky & Wyndham, Populate and Perish, p. 27.
310 Allen, Sex and Secrets, p. 168.
311 Swain, Single Mothers, p. 4.
The decade or so after the second world war was one of massive social change. Fascination with science and its possibilities for economic growth was a feature of the period, adding to the strength of medical discourse and the monopoly of medicine over reproduction. In 1946, a US physicist described science as a ‘largely unexplored hinterland’ that would provide the ‘essential key’ to the economic prosperity of the post-war years.\footnote{Le Fanu, \textit{The Rise and Fall}, p. 193.} Antibiotics and steroids, similarly, offered positive proof of the apparently limitless ‘possibilities of science’.\footnote{Le Fanu, \textit{The Rise and Fall}, p. 193.} Even the most difficult of problems in society were seen to be eventually soluble with the contribution of clinical science to post-war medical achievement. The domination of medical science changed the power relationship between doctors and patients, with doctors losing sight of the fact that they were ‘servants of the patients whom [they] have undertaken to care for’.\footnote{W.H. Ogilvie, 1952, ‘Whither Medicine?’, \textit{The Lancet}, vol. 2, p. 820, cited in Le Fanu, \textit{The Rise and Fall}, p. 204.} This had grave implications for women seeking abortions after the war. The medicalisation of reproduction had become so thorough that in the early 1950s the MDNS discontinued its midwifery services. The ‘tide had swung so far against home deliveries’ that the service was no longer viable.\footnote{Reiger, \textit{Disenchantment of the Home}, p. 97.}

During the 1939-45 war, over two hundred thousand additional women had entered the work force, gaining work experience, independence and better pay.\footnote{In 1944 a wartime peak of over 855,000 women was employed, constituting one third of women aged 15 to 65 years. See Darian-Smith, \textit{On the Home Front}, p. 57.} Government propaganda temporarily legitimised the paid labour of women and encouraged their movement into new areas of employment.\footnote{Of course, as Darian-Smith points out, working-class women had long worked, but what changed was the visibility of and encouragement for women to work. Darian-Smith, \textit{On the Home Front}, pp. 59-60.} However, the assumption was that women would return to the home – or to lower paid jobs - when the war ended, enabling men to return to their jobs. Many women ‘surrendered their wartime jobs and returned to a domestic role’, but with a growing realisation that this role was unsatisfying and limited.\footnote{Ryan & Conlon, \textit{Gentle Invaders}, p. 139.} An increasing number of married women entered, or re-entered, the work force, and have continued to do so, although largely in casual or part-time positions.\footnote{See B. Probert, 1989, \textit{Working Life: Arguments about Work in Australian Society}, McPhee Gribble, Ringwood, Victoria, pp. 89-108; C. Fox & M. Lake, eds, 1990, \textit{Australians at Work: Commentaries and Sources}, McPhee Gribble, Melbourne, pp. 143-86.}
With the end of the war and the depression, Australians hoped for prosperity and improvement, and feared another war or depression. John Murphy demonstrates that contradictions such as growth and full employment, along with inflation and shortages, shaped the decade that followed the war.\textsuperscript{320} Middle-class values of home ownership, marriage, patriotism and citizenship extended into working-class life and, along with a mass post-war migration program, led to significant social change.\textsuperscript{321}

Murphy argues that portraying the fifties as a seamless decade ignores the complexity and turbulence of the period. He suggests the time could be better conceptualised as two periods, the first characterised by the crises, alarm and economic instability of a postwar decade from 1945 to 1955, the second by a more prosperous and complacent period of relative stability after 1955. Even so, the onset of discontent by the end of the decade paved the way for the more radical cultural and political eruption of the 1960s, alongside the continuation of the ‘post-war project of domesticity, as measured by rates of marriage and home ownership’.\textsuperscript{322} David Hilliard demonstrates that religion continued to play a significant role in forming the culture of postwar Australia, with a strong sectarian divide between Protestants and Catholics running through urban society.\textsuperscript{323} This divide was to have a significant impact on the policing of abortion laws in the 1960s.

In the post-war period, despite the ‘baby boom’ of the 1950s, Australian women maintained a low fertility rate. In fact the increase in the birthrate was quite deceptive and relied more on a ‘marriage boom’ and changes in the timing and spacing of first births and subsequent children, as well as an increase in ex-nuptial births.\textsuperscript{324} According to Cass and Radi, by the late 1950s there was an entrenched ideology that it was selfish to have either fewer than two or more than three children.\textsuperscript{325} Yet contraception remained expensive and was not widely available, particularly to single women, while ‘sexological discourses’ such as the Kinsey report, promoted male sexuality and ‘discovered’ female ‘frigidity’, made negotiating

\textsuperscript{320} J. Murphy, 2000, \textit{Imagining the Fifties: Private Sentiment and Political Culture in Menzies’ Australia}, Pluto Press, Sydney, pp. 5-6.

\textsuperscript{321} A housing boom increased the rate of home ownership, for example in Sydney the rate of owner-occupied dwellings rose from 40 per cent just after the war, to 70 percent by the start of the 1960s. Ownership of motor cars also trebled during the 1950s. See D. Hilliard, 1991, ‘God in the Suburbs: The Religious Culture of Australian Cities in the 1950s’, \textit{Australian Historical Studies}, vol. 24, no. 97, October, p. 404.

\textsuperscript{322} Murphy, \textit{Imagining the Fifties}, p. 219.


abstinence difficult for women. Abortion therefore remained very important. For example, by 1957 the Racial Hygiene Association’s (RHA) family planning clinic ‘absorbed most of the activities of the Association’. Up until the 1960s the education of married couples, or those contemplating marriage, in family planning and ‘scientific contraception’ had revolved around use of the diaphragm and spermicides. The introduction of the contraceptive pill and intra-uterine device (IUD) into Australia coincided with the RHA’s name change to the Family Planning Association of Australia in 1960, reflecting a new focus.

The incidence of abortion among single women in particular was an indication of the continuing stigma faced by unmarried mothers. The alternative was forced marriage, although by the 1960s this was largely out of fashion. As Swain points out, ‘the vulnerability of such marriages was well known and underlay both parental and governmental opposition to young marriage in the 1960s’, although divorced women remained more respectable than single mothers. Taboos relating to sexuality and sexual expression were marked during the 1950s, where a ‘desexualised marriage’, glorified as an institution in itself, arose as a ‘veil was drawn over the war years and sex for women became very much a means to motherhood’. Murphy adds, though, that marriage was not so much desexualised, as proclaimed to be the sole means of sexual identity and expression.

Although abortion was publicly condemned, ‘behind the facade of respectability there was societal acceptance of abortion’. Abortion served a social function, protecting the reputation of the families of single pregnant women and protecting men who would otherwise be expected to take responsibility for paternity. In NSW the rate of prosecution for abortion

327 National Library of Australia, entry no. 1319, Racial Hygiene Association of Australia, excerpt box 7, Wainer papers, MS13436, SLV.
328 See footnote 85.
329 Swain, Single Mothers, p. 47. Of those women who died as a result of an abortion in Victoria between 1931 and 1953, 75 per cent were married and 25 per cent unmarried. See diagram 5, above.
330 Swain, Single Mothers, p. 58.
332 Murphy points to talk in popular magazines about sexuality and intimacy in the 1950s, as well as the ‘dedication to enlightened and frank discussion of sexual relationships within marriage by Marriage Guidance Councils’ as evidence that sexual expression had become seen to be crucial to a stable and happy marriage. Murphy, Imagining the Fifties, pp. 56-58.
333 Siedlecky & Wyndham, Populate and Perish, p.70.
from 1940 to 1959 was only half the inter-war rate. Women abortionists continued to be charged more frequently than men, at about twice the rate. Following the discovery of antibiotics the rate of maternal mortality resulting from septic abortion had dropped substantially. But the continuing illegal status of abortion led to a subculture of corruption and collusion, with ‘chemists, taxi drivers, hotel keepers, and hired touts’ forming a network of information for women.

**Diagram 6: Abortion-related Deaths in Victoria 1946-1958**

A survey of over two hundred women patients seeking abortion, carried out by the Almoner’s Department at the RWH in 1956, confirmed this. It found that information about abortionists

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334 Allen, *Sex and Secrets*, p. 202. Although I was unable to access accurate statistics, available evidence suggests that the situation in Victoria was similar.

335 See diagram 6 below.


337 *Victorian Year-Book*, 1946/47 to 1960/61 and Hayden, ‘Maternal Mortality in History and Today’, pp. 100-09. There are inconsistencies between Hayden’s data and that recorded in the *Victorian Year-Book* during the same period. The Consultative Council on Maternal and Perinatal Mortality, of which Hayden was a member, recorded a higher rate of maternal mortality, while Hayden recorded a lower rate of abortion death, than the yearbooks. The council included all deaths ‘occurring during pregnancy, childbirth, or in the 42 days of the puerperium’; the yearbook differentiated between complications of pregnancy and other causes. See Consultative Council on Maternal and Perinatal Mortality, 1976, *Survey of Perinatal Deaths and Report on Maternal Deaths in Victoria: 15th Annual Report*, F.D. Atkinson, Government Printer, Melbourne, p. 38. Hayden does not source his data on abortion-related deaths. See also footnote 74 above. As the yearbooks do not record abortion-related deaths from 1954 to 1967 I have used Hayden’s figures noting that they are likely to be an under-estimate. There is also no breakdown in these years between criminal and non-criminal abortion, or abortion from septic or other causes. I have included those figures available as criminal abortions – septic, to account for the underestimate, and have left other figures blank.
'seemed easy information to come by and some women knew more about this than they knew about contraceptives'. 338 The women in the study knew they were being urged by policy makers to have more children, but this did not sit comfortably with their knowledge of their own circumstances. 339 The almoners quoted a 1939 London abortion report that stated that 'women, law-abiding by temperament and up-bringing, faced with the dreadful dilemma of an unwanted pregnancy or breaking the law, do not hesitate to break the law and in doing so, do not feel they are acting immorally'. 340

The small group of city-based doctors who dominated the practice of abortion by the end of the war, 'forging an unholy alliance with the few remaining midwives and some untrained practitioners to whom they referred high-risk cases', continued to monopolise abortion practice at least until the early 1970s. 341

5. Conclusion

In reviewing women's fertility practices across this time, what stands out is that the history of abortion is dynamic, rather than static. As writers including Reagan, Gordon and McLaren point out, neither the law nor medical practice in relation to abortion was fixed. Rather, changes in medicine were influenced by changes in legal definitions of crime, just as the law shaped medical thinking and practice. 342 Legislation defining abortion as a criminal act was one in a number of government interventions that targeted women's sexuality with the purpose of ensuring women's reproductive health for the future of the nation. There was ample evidence to suggest that concern about women's morality decreased once the threat of infection rendering women sterile was removed with the introduction of antibiotics.

Similarly, women's abortion practices, as well as the meaning of abortion, shifted over the century, reflecting class and ethnic differences, unequal access to contraception, and changing political interests and social concerns. 343 The social history of sexuality, and the

338 E. Gruber, 1956, 'Social Study of Patients Admitted for Abortions: Royal Women's Hospital, 1 March - 31 May 1956', unpublished paper by Almoner (Social Work) Department, RWHH, Melbourne, p. 23. In fact, Gruber found that single women thought it far more decorous to claim ignorance of contraceptive knowledge. Ibid, p. 19.


341 Swain, Single Mothers, p. 45.

342 Reagan, 'When Abortion was a Crime', p. 5.

343 McLaren, Bedroom and the State, p. 156.
increasing dominance of medical and legal discourse, is important to any understanding of these changing meanings of abortion.\textsuperscript{344}

Since the late nineteenth century, Australian women have maintained low rates of fertility despite 'a climate of moral and legislative repression of contraception, where motherhood was applauded as the only natural role for women and a direct service to the state.'\textsuperscript{345} Cass and Radi argue that 'advanced industrial capitalism appears to have accomplished what the eugenicist propagandists of the turn of the century could not – the control and limitation of working class fertility, while allowing the more advantaged classes greater reproductive freedom.'\textsuperscript{346} Other writers see working-class women as more self-determining than this, arguing that they avoided 'the burdens of biological reproduction and childcare imposed on them by patriarchal gender relations and the sexual division of labour within the family'.\textsuperscript{347}

Whether beginning with a class or a gender-based analysis, it is clear that abortion was crucial to women's ability to reduce their fertility. There was little attempt by the institutionalised state to eliminate the practice of abortion; rather, it focused on increased regulation by the medical profession. As Allen argues, politicians no doubt saw abortion as preferable to pursuit of fathers for child support, or 'worse still', state support for illegitimate and unwanted children.\textsuperscript{348}

The 'persistent use of abortion by women of all social groups', with broad public sympathy for this choice, points to 'the existence of an alternative popular morality in conflict with the law.'\textsuperscript{349} Similarly, government policy has not always been consistent in supporting espoused pro-natal attitudes. While middle-class white women have been consistently urged to procreate, social, economic and political policies have either directly limited or at the very least shaped attitudes that have actively discouraged childbirth among poor and non-white populations and single women. For these reasons abortion was both tolerated and widespread, although women's right to control reproductive decision-making was not acknowledged. However, there were no attempts to decriminalise the practice, allowing the conditions for an illegal market to flourish. As Allen suggests, too many interests benefited

\begin{itemize}
\item \textsuperscript{344} Reagan, 'When Abortion was a Crime', p. 7.
\item \textsuperscript{345} Cass & Radi, 'Family, Fertility and the Labour Market', p. 194.
\item \textsuperscript{346} Cass & Radi, 'Family, Fertility and the Labour Market', pp. 203-04.
\item \textsuperscript{347} Allen, 'Octavius Beale Re-considered', p. 112.
\item \textsuperscript{348} Allen, 'Octavius Beale Re-considered', p. 128.
\end{itemize}
from the fact that abortion was ‘illicit, yet tacitly condoned’, to make decriminalisation an option.\textsuperscript{350} Further, the cultural dominance of Christian ethics in Australian society at the time would have made decriminalisation politically difficult.

The following chapters examine the interests at play and outline the struggle for abortion law reform from 1959, the year after the \textit{Victorian Crimes Act} confirmed abortion as a crime, until 1974, when Medicare – the national health insurance scheme introduced by the federal Labor Government – ensured public funding of abortion and other health services.

\textsuperscript{350} Allen, ‘Octavius Beale Re-considered’, p. 129.
CHAPTER THREE

THE LEAD-UP TO THE MENSENITZ RULING
1959-June 1969: activity and influence in the early stages of law reform

The question is how to make abortion available to certain categories of women without allowing women to ‘degenerate into free-for-alls with the sleazy comfort of knowing’.¹

1. Introduction

As we have seen, the history of abortion in Victoria was dynamic and fluid, with women’s direct experiences of abortion differing according to their class, ethnicity, culture, age, marital status and geographic location. Social, economic and political changes that had occurred over the decades before 1960 had in some respects begun to blur those differences, leading to an increasing sense of women’s shared experiences. The Second World War, in particular, had helped to shift women’s expectations from a purely domestic role, to one encompassing paid employment. The introduction of the oral contraceptive pill in Australia in 1961 heralded the possibility of sexual and reproductive freedom for women and by the early 1960s there was growing discussion of the need for abortion law reform, in order to bring the law in to line with changing social conditions.²

In 1958 the Crimes Act had confirmed that unlawful abortion was a crime in Victoria, although, generally, abortion was only investigated following complaints, or the death or injury of a woman. This began to change in the 1960s, stimulating action and discussion. In 1962, the Humanist Society of New South Wales (NSW) spoke openly about the need for freedom of choice for all women and the liberalisation of abortion laws.³ They helped establish the Abortion Law Reform Association (ALRA) and the Council for Civil Liberties in NSW in 1963, with other states and the Australian Capital Territory following suit.⁴

² Stefania Siedlecky and Diana Wyndham point to a debate on abortion at Sydney University in 1954 between Dr S.T. John Hommer, a Catholic gynaecologist, and A.K. Stout, professor of philosophy and later president of the Council for Civil Liberties, as one of the first indications of change in relation to abortion. See S. Siedlecky & D. Wyndham, 1990, Populate and Perish: Australian Women’s Fight for Birth Control, Allen & Unwin, Sydney, p. 78.
³ Siedlecky & Wyndham, Populate and Perish, p. 79. See also NSW Humanist Society, Sub-Committee on Sex, Marriage and Divorce, 1962, Report on Termination of Pregnancy, Humanist Society, Sydney. The study was presented to the Humanist Society in May 1962 and published in 1966. The report recommended a phased introduction of law reform, leading to abortion on request.
⁴ The NSWCCCL was established in 1963. See S. & D. Campbell, NSW Council for Civil Liberties: A Brief History, online at http://www.nswcl.org.au/about/history.php#BriefHistory The VCCL was established in 1966, although the Melbourne group can trace links back to 1936, after Brian Fitzpatrick, Max Meldrum, (Sir) John Barry, (Sir) Eugene Gorman and others formed the Australian Council for Civil Liberties (known as CCL) in Melbourne in 1935. The CCL wound up after Fitzpatrick’s death in
Discussion was also stimulated by and coincided with changes across the western world. Of most relevance to Australia, governments in the United Kingdom (UK) and the United States of America (USA) embarked on an examination of demands for legislative change.

From 1964 Melbourne newspapers began to publish lead articles and editorials exploring the problem of abortion and law reform, as did the Medical Journal of Australia (MJA). These articles aimed to stimulate public discussion and influence abortion policy and practice. Journalists sought the opinions of key reform groups and researchers, church leaders, the medical hierarchy and the police in order to validate their own articles and, in the process, they provided much useful information about the opinions of these bodies. This chapter draws on that material. Letters to the editors also provided some evidence of public opinion in relation to law reform.

There were two main centres of activity in the decade leading up to the Menhennitt Ruling. These were the Victoria Police Force (VPF), in particular the homicide squad, which was responsible for investigating criminal abortion, and the state Liberal government, which controlled legislative change. The strongest influences on these bodies were the various churches, the media, other political parties, pressure groups such as the Australian Medical Association (AMA) and precedents in other western countries.

In this chapter I analyse the key areas of activity and influence, and review public opinion, the shifting discourse about women and morality, and the position of the churches in the lead-up to the Menhennitt Ruling in 1969. The role of organised civil liberties, humanitarian and women's groups, set up in the late 1960s, is dealt with in a subsequent chapter, more particularly for their role following the Menhennitt Ruling.


The Victoria Police Force was the official title during the period under consideration in this chapter.
2. Overview of Abortion Practice in Victoria during the 1950s and 1960s

While researchers agree that abortion was a widespread and largely accepted form of birth limitation in Australia in the twentieth century, the silence surrounding its performance reflects the social taboo attached to abortion at the time.6

In mid-1961, Reg Worthy, a research assistant in the Criminology Department at the University of Melbourne, was working on what he hoped to be the first factual report on abortion in Victoria. His aim was to uncover the incidence of abortion, its dangers and the consequences, in order to report on a subject ‘clouded in fear and ignorance’.7 He found that, contrary to public opinion, married women, some with children, formed most of the clientele of illegal abortionists.8 These findings suggested that abortion was not so much about ‘relieving girls of the stigma of unmarried motherhood’ as about women controlling the number of children they bore.9

An inquiry into the Kyneton District Hospital in 195210 and the Healesville Hospital in 1962 clearly indicated that doctors were performing medical abortions well before the Menhennitt Ruling and were expected to protect each other’s reputations. In Healesville, for example, it was said to be a ‘sacking offence’ for a doctor to allege that a colleague had performed illegal operations.11 Given the wording of the law and the general acceptance of the McNaughton Ruling, medical schools had long taught that an abortion performed in a hospital setting with the agreement of two medical practitioners was lawful. Despite the secrecy surrounding abortion, it played a necessary role in medical practice in 1950s Australia.12 Many doctors had become more willing to perform abortions, given their insight into women’s lived

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6 While abortion was discussed relatively openly early in the century, by the 1950s discussion had been curtailed. The media generally referred to abortion euphemistically, using terms such as ‘an illegal operation’, ‘an illegal interference’ or ‘illegally using an instrument’. Betram Wainer later commented that using the term abortion at that time was tantamount to saying ‘fuck, fuck, fuck’. See G. Frydman, 1987, Protestors, Collins Dove, Melbourne, p. 40.


8 In 1964 Faust also noted that 83 per cent of abortions were performed on married women in the USA. See Australian, 31 December 1964, ‘A problem for the married’, Beatrice Faust, p. 6.

9 See diagram 5 in chapter 2 for the proportion of married to unmarried women who died as a result of an abortion in Victoria between 1931 and 1953. The greater proportion of married women confirms that abortion was more common among married women.

10 In September 1952, the Member for the Legislative Assembly (MLA) for Carlton, William Barry, caused a sensation when he alleged that locals knew the Kyneton District Hospital as ‘the abortion institute of Victoria’. See Sun, 4 September 1952, ‘Grave charges on hospital: Hot denial’, p.3; Sun, 5 September 1952, ‘Demand for facts’, editorial.

11 Herald, 13 July 1962, ‘Counsel hits at doctor at inquiry’.

12 Janet McCalman notes in her history of the Royal Women’s Hospital, that the doctors never commented on induced abortion, even though it was widely practised. See J. McCalman, 1998, Sex and Suffering: Women’s Health and a Women’s Hospital, Melbourne University Press, Melbourne, p. 40.
circumstances and having seen the impact of illegal abortion on women's health. However, advances in medical and obstetrical science meant that few women now required abortion as a life-saving measure—unless, paradoxically, they faced septicaemia from a botched abortion. As estimates of abortions taking place became public, medical consensus, which rested on the fictitious notion that abortion was only performed to save a woman's life, began to break down, leaving doctors without professional protection.

From 1959 the MJA published an increasing number of articles, editorials and letters by members of the medical profession relating either directly or indirectly to abortion. These indicate a shift in community and medical thinking during the period under study and reflect an increasing polarisation of medical views, expressed either through emotive language and an appeal to 'humanity', or through the discourse of 'logic' and 'rationality' typical of scientific study. Whatever the style, the conclusion was similar. Those who supported abortion law reform (no one stated that they supported abortion) found from their studies that abortion was safe, uncomplicated and rarely resulted in psychological problems for women. Those who were opposed to abortion found from their studies that abortion was dangerous, complicated and resulted in long-term psychological harm to women. There was a small and consistent group of anti-abortion writers, suggesting an equally small but more vocal core of anti-abortion doctors, yet support for law reform was broad. The articles initially reflected state concern with maternal mortality and morbidity. Later, they focussed on contraception, family planning and population control, as well as psychosocial, legal, ethical and moral aspects of abortion and law reform. By the 1950s, following the introduction of antibiotics and improved social and health conditions generally, the maternal mortality rate had, as we have seen, fallen significantly. The Health Department remained committed to lowering maternal mortality further still. Special committees were set up to inquire into maternal mortality in Victoria, NSW, South Australia (SA), Western Australia (WA) and Queensland in the 1950s and 1960s. The committees found that death from abortion remained fairly

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13 The Medical Journal of Australia is the official journal of the AMA and has been published in Melbourne since 1914.
14 See tables and diagrams in chapter two, which depict maternal mortality and abortion-related deaths in Victoria from 1871 to 1959.
constant even into the early 1960s, although maternal mortality as a whole had declined markedly in the previous two decades. With maternal mortality generally decreasing, physicians turned their attention to morbidity rates and the impact of complications on women’s fertility. Where statistics indicated that legal abortion resulted in low complication rates, anti-abortion doctors proclaimed them false. On the other hand, they questioned pro-reform claims that illegal abortion attracted high mortality and morbidity rates.

The Victorian Consultative Council for Maternal Mortality, studying all deaths associated with pregnancy and childbirth from 1953 to 1969, found that just under 10 per cent were attributable to abortion, most to criminal abortion. This led Frank Hayden, a gynaecologist from St Vincent’s Hospital in Melbourne and later vice president of Right to Life (RTL), to conclude in 1970 that abortion did not pose a great threat to Victorian women, as this amounted to ‘only’ 2.5 deaths per year. ‘From all the publicity regarding abortion, the public is being led to believe that women are dying by the score, but this is completely false’, particularly given that over 80 per cent of deaths reported in the sixteen-year study occurred in the first eight years. Hayden added that the low number of deaths indicated that backyard abortion was not a problem in Victoria either. On the other hand, Sue Rhodes estimates that

deads were ‘more of a social problem than a medical one’ although abortion was a common cause of maternal death. See p. 509.

18 See diagrams 1-4 and tables 3-4 in chapter 2. The studies by the special committees also indicated that women seeking abortions were older than women giving birth and that nearly half the women were married, pointing to socio-economic rather than marital status as an important consideration. See footnote 15.


18 The council was later referred to as the Consultative Council on Maternal and Perinatal Mortality, reflecting the shift in interest from the mother to the foetus.

19 F.J. Hayden, ‘Maternal Mortality in History and Today’, MJA, vol. 1, no. 3, 17 January 1970, pp. 100-09. See also table 3 in chapter 2. There are inconsistencies between Hayden’s data and that recorded in the Victorian Year-Book during the same period. The Consultative Council on Maternal and Perinatal Mortality, of which Hayden was a member, recorded a higher rate of maternal mortality, while Hayden recorded a lower rate of abortion death. The council included in its rate all deaths ‘occurring during pregnancy, childbirth, or in the 42 days of the puerperium’, even if the death was the result of a motor vehicle accident, while the year-book differentiated between complications of pregnancy and other causes. Consultative Council on Maternal and Perinatal Mortality, 1976, Survey of Perinatal Deaths and Report on Maternal Deaths in Victoria: 15th Annual Report, F.D. Atkinson Government Printer, Melbourne, p. 38. Hayden does not source his data on abortion-related deaths and the council reports do not include those figures. Hayden’s 1953 data are only half the numbers recorded in the Victorian Year-Book and in 1968 only one third. However, the yearbooks do not record abortion-related deaths from 1954 to 1967 and so I have used Hayden’s figures in table 3 and diagram 6 in chapter 2, and diagram 7 below, noting the figures for those dates might be an under-estimate.


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about fifty women died from backyard abortions each year in Australia up until the early 1950s, raising the question of how many women's deaths were not recorded.22

A large study of abortion conducted in Sydney from 1963 to 1965 had shown that septic abortion was increasing.23 A World Health Organisation (WHO) study released in 1964 had also shown Australia to have the highest death rate due to abortion among twelve countries studied.24 In 1963 abortion accounted for 24 per cent of all maternal deaths, while in 1953 it was less than 18 per cent.25 In Victoria illegal abortion was among the top four causes of death in pregnancy. In 1966 the Royal Women's Hospital (RWII) in Melbourne treated 126 cases of septic abortion.26 The majority of women suffering septic abortions were either young, single women with no children or women of any age with a large number of children – in essence, poor women. While most cases of septic abortion were considered to be criminal in origin, it did not follow that criminal abortion led automatically to sepsis.27

The high rate of sepsis among poor women suggests they faced abortions under the least favourable circumstances, although there was little clarity about those circumstances generally. On one hand, claims of an extensive backyard abortion network resulting in large numbers of deaths led to support for law reform based on medical practitioners performing abortions. On the other hand, there was evidence that the majority of abortions were already carried out by physicians who sometimes ignored medical protocols in their attempts to avoid prosecution and pursue profits.28 The fact that poor women were over-represented among

23 W.R. Jones, 'Septic Abortion: Social and Clinical Aspects', MJA, vol. 1, no. 24, 11 June 1966, p. 1017. Abortion-related complications were also attributable to non-septic causes such as haemorrhage or toxemia, and, given knowledge of infection control, infection from septic causes suggest that abortions were being performed under less-than-sterile conditions.
24 Australian, 23 December 1964, 'Abortion in Australia', Geoffrey Griffiths, p. 9. While I could not find a copy of the study, I extracted data from the World Health Statistics Annual for 1964 and undertook my own comparison. Of eight western countries, Australia had the second highest rate of death as a result of septic abortion after New Zealand, which was not included in the study cited above, and the highest in relation to non-septic abortion. Note also the extraordinary rate of death as a result of septic abortion in non-western countries with restrictive abortion laws. See diagrams 8 & 9 below.
25 Australian, 23 December 1964, 'Abortion in Australia', Geoffrey Griffiths, p. 9. Again this figure contradicts Hayden's claim that just under 10 per cent of deaths were attributable to abortion.
26 Age, 29 February 1968, 'Abortion crisis', Insight, Geoffrey Barker and John Larkin, p. 4. See also Truth, 15 March 1969, 'The real hold-up on abortion reforms'.
28 A 1962 study for instance, indicated that 85 per cent of women surveyed in the US in 1959 had their operation performed by a physician. See P.H. Gebhard et al, 1958, Pregnancy, Birth and Abortion, Harper & Brothers and Paul B. Hoeber Medical Books, New York. See also NSW Humanist Society, Report on Termination of Pregnancy, A University of Melbourne study indicated that 100 per cent of
those killed or injured suggests that illegality led to very poor standards of abortion practice, regardless of the qualifications of the operator.  

Despite this, the VPF categorised abortionists into four groups. These were legally qualified medical practitioners; trained nurses or other persons with some formal medical knowledge; unqualified persons without training; and pregnant women. ‘Backyard’ abortionists referred

**Diagram 7: Maternal Mortality in Victoria 1959-1974**

![Diagram of Maternal Mortality in Victoria 1959-1974](image)

Abortions were performed by medical practitioners, no doubt reflecting the middle-class population from which the students were drawn. See *Farrago*, 21 June 1968, ‘Abortion survey’, pp. 9-15. In a Gallup poll conducted in October 1967, however, only 23 per cent of women said a doctor performed their abortion, while another 23 per cent induced the abortion themselves and 21 per cent saw an unqualified operator. See *Herald*, 5 March 1968, ‘Most back abortion ruling change’, p. 11. This low rate of doctor-induced abortion is not repeated elsewhere and most researchers agree that Australia’s relatively high standard of living resulted in the majority of women accessing medical abortions. Nevertheless, the poorest and most marginalised women continued to access abortion under the worst conditions.

In the Gebhard study there were clear class and race differences in access to physician-induced abortions. In the US, predominantly, affluent white women saw physicians, while poor and black women faced self-induced abortion. See L.J. Reagan, 1997, *When Abortion was a Crime: Women, Medicine and the Law in the United States, 1867-1973*, University of California Press, Berkeley, p. 137. Prior to legislative changes in the US, white women were between 5 and 23 times more likely to obtain a legal abortion than black women and half the women that died as a result of an illegal abortion were black, with a mortality rate ratio of 4:1 blacks to whites. See E. Gold et al, ‘Therapeutic Abortions in New York City’, *American Journal of Public Health*, no. 55, 1965, and H. Pilpel, ‘The Abortion Crisis’ in A. Guttmacher, ed., 1967, *The Case for Legalized Abortion Now*, Diablo Press, Berkeley, cited in Greenwood & Young, *Abortion in Demand*, p. 110.


Diagram 8: Comparison of Mortality Rates Across 8 Western Countries, 1964

[Copyrighted material omitted. Please consult the original thesis.]

Diagram 9: Comparison of Abortion Deaths Across 11 Countries, 1964

[Copyrighted material omitted. Please consult the original thesis.]

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to unqualified people who performed abortions as an organised business.\textsuperscript{33} From the police force’s point of view, medical practitioners presented ‘the most difficult problem where they confine themselves to their professional rooms or private hospitals’.\textsuperscript{34} Excuses of medical necessity were usually advanced to justify their conduct and lack of evidence or willing witnesses regularly led to medical abortionists being acquitted.\textsuperscript{35} Even with willing witnesses, juries were instructed to keep in mind that the witness was likely to be a ‘girl … who bore the doctor a serious grudge for causing her critical illness’.\textsuperscript{36} The status and respectability of doctors were important in determining the outcome of a trial, and physicians were referred to as a separate category of person, denoting the social and moral superiority attributed to them. The norm for both headlines and copy was evident in comments such as ‘a doctor, another man and three middle-aged women were sent for trial’, ‘a man, a woman and a doctor’ were charged with conspiracy, or ‘two women, a doctor and a caterer’ were charged with conspiring to perform an illegal operation.\textsuperscript{37}

Male physicians were also the peers of those trying them, no doubt colouring the process and outcome of trials. In the trial of doctors Charles Sizeland and Peter Bayliss in 1965, for example, the defence lawyer submitted that the hearing should be closed ‘because professional men were involved’.\textsuperscript{38} The judge agreed that justice would best be served this way. Even former or retired doctors were treated as superior to women nurses or midwives. In February 1961, for example, a ‘former Polish gynaecologist’ was released on a good behaviour bond after pleading guilty to illegal abortion charges.\textsuperscript{39} The judge stated that it was in his favour that he had ‘used his considerable medical skill and knowledge to expose the women to a minimum of danger’.\textsuperscript{40}

Men generally had an easier time before the court. In 1957 John Brookes, a backyard abortionist, was convicted but released on probation following testimonies to his good

\textsuperscript{33} While the police used the term ‘backyard’ abortion to refer only to those performed by unqualified operators as part of a business, others used the term to refer to all illegal abortions, causing some confusion. To add to the confusion, medical abortionists argued that all of the operations they performed were legal within an agreed upon interpretation of the law (either Menthemitt or McNaughton depending on the date), while the AMA referred to all abortions, bar those performed in a hospital to save the life of the mother or as a result of foetal deformity, as illegal.

\textsuperscript{34} VP, ‘Abortion, Child Destruction, Concealment of Birth’, p. 13.


\textsuperscript{36} \textit{Sun}, 1 July 1950, ‘Doctor, housekeeper on illegal operation charge’.


\textsuperscript{38} \textit{Sun}, 9 September 1965, ‘Two doctors for trial’.

\textsuperscript{39} \textit{Herald}, 9 February 1961, ‘Bad health saves ex-doctor from gaol: Given bond’. 129
character. On the other hand, in 1956 Florence Donovan had been sentenced to nine months jail for procuring miscarriages. In 1965, aged 74, she was sentenced to a further three years' jail as a result of six prior convictions, having 'been a considerable time in the trade of abortions'. The fact of Donovan's continued work was seen to be evidence of a deplorable character, rather than skill and experience. Assumptions about women's legitimate roles were reflected in the judge chastising Donovan for performing abortions on married women, as well as for economic, rather than altruistic, motives. It would be interesting to compare her earnings with the 'former gynaecologist' or the male 'backyarder'. US historian Rickie Solinger also found in her investigation of court cases and press coverage of the 1950s and 1960s in Portland Oregon that both the courts and the press treated female defendants particularly harshly. She argues that abortion trials served to 'punish women for their social and sexual transgressions'. Male defendants, on the other hand, were portrayed as almost normal and legitimate businessmen.

Regulation of the health care industry had accorded medical practitioners pre-eminent authority, and a concomitant power and status assisted them to avoid conviction, or certainly jail terms, if charges could not be avoided. As the police manual noted, the investigator must be 'conscious of the fact that these crimes often implicate people of good standing in the community who have the financial ability to strongly defend charges'. On the other hand, members of the nursing profession and unqualified practitioners could not 'adopt the same excuses ... nor ... justify possession of medical instruments and apparatus'. Although some

40 Herald, 9 February 1961, 'Bad health saves ex-doctor from gaol: Given bond'.
41 Herald, 24 September 1957, 'Man goes free on probation', p. 5. See also Argus, 3 August 1955, 'Nurse, two men held: Police raid a mansion'; Truth, 7 September 1957, 'Draughtsman convicted: "Operation" racket in two homes', p. 8. It was alleged during the Kaye Inquiry that Brookes bribed a police officer in order to achieve this result. Brookes' brother, James Glennon Brookes, 23, who was charged alongside him, jumped bail and was reported to be hiding in Canada. See Public Record Office Victoria (PROV), VA 724, Victoria Police including Office of the Chief Commissioner, VPRS 2400/P1 General Correspondence, unit 23, item 17/2 Abortion 1952-1956, police files on Brookes et al. According to witnesses at the Kaye Inquiry, John Brookes immediately recommenced a successful career as a backyard abortionist. His accomplice, Mary Ann Schafer, 65, described by police as a 'persistent offender' argued that she only looked after the patients, although her age and previous charges suggest otherwise. The newspapers did not follow proceedings against her.
42 Sun, 7 November 1956, 'Judge gaols woman, 64'.
43 Herald, 7 December 1965, 'Woman, 74, gets gaol'.
46 VP, 'Abortion, Child Destruction, Concealment of Birth', p. 21. See also ibid, p. 1.
women continued to work as abortionists up until the mid-1960s and later, they faced increasing marginalisation and prosecution, as medical practitioners moved into the lucrative field.\textsuperscript{48} A low rate of prosecution resulted in a thriving underground industry for medical abortionists.\textsuperscript{49}

As Lyn Finch and Jon Stratton point out, women from different socio-economic groups accessed abortion from different categories of abortionist. Wealthy women accessed private gynaecologists, middle-class women increasingly sought the services of physicians, and working-class women utilised self-abortion or backyard abortionists once midwives were effectively removed from the trade.\textsuperscript{50} Journalist Geoffrey Griffith suggested in 1964 that information about abortionists was freely available, with women making appointments via a midwife or chemist.\textsuperscript{51} His claim is confirmed by the 1956 RWH study carried out by the almoner’s department.\textsuperscript{52}

The most vilified category of abortionist in the 1950s and 1960s was the ‘backyard’ abortionist. Members of this group were often male or included a ‘male associate of the nurse’, who was used to confuse women into believing that a doctor was present.\textsuperscript{53} Backyard abortionists cost between £11 and £30 in the late 1950s, although males who tricked women into thinking they had accessed a trained doctor charged much higher rates.\textsuperscript{54} Of course medical abortionists also operated for profit and not all had postgraduate qualifications, resulting in widely varying medical standards. Illegality meant that backyard abortionists were not always the most dangerous option. Australian criminologist Paul Wilson found in his research that so-called ‘backyarders’ were often sympathetic suburban midwives operating in working-class communities, many with a ‘good knowledge of anatomy and


\textsuperscript{49} See table 5, chapter 2, for a comparison of NSW and Victorian convictions from 1880-1939.

\textsuperscript{50} Elizabeth Gruber’s study at the RWH suggested that neighbours and relatives were ready with advice about how to procure self-abortion and some had done so at the rate of about one a year. See E. Gruber, 1956, ‘Social Study of Patients Admitted for Abortions: Royal Women’s Hospital, 1 March – 31 May 1956’, unpublished, Almoner (Social Work) Department, RWH, Melbourne, pp. 24-25. Barbara Baird states that women have performed self-abortion for generations. She argues that it was acceptable for women to tell of extreme suffering, but not anything that challenged the popular orthodoxy about self-abortion, as their construction as victim was necessary to middle-class advocacy for law reform and medicalisation of abortion. See B. Baird, ‘The Self-Aborting Woman’, Australian Feminist Studies, vol. 13, no. 28, 1998, pp. 322-37. Of the eleven deaths from abortion reported between 1953 and 1968, one resulted from a doctor, three from self-induced abortions and seven were the result of ‘backyard’ abortions, according to Barker and Larkin, ‘Abortion crisis’, p. 4.

\textsuperscript{51} Gruber, ‘Abortion in Australia’, p. 9.

\textsuperscript{52} Ibid., ‘Social Study of Patients Admitted for Abortions’, p. 23.


\textsuperscript{54} Gruber, ‘Social Study of Patients Admitted for Abortions’, p. 23.
considerable manual dexterity’. The women charged low fees, took pride in their years of ‘successes’ and were sincere in feeling that ‘women have to help each other’. Increasingly, however, men operating simply for profit had entered the ‘backyard’ industry.

As it was more difficult to prosecute medical abortionists, the police did not act decisively against a doctor unless forced to by ‘outside pressures or investigation into the death of a patient’. Political scientist Henry Mayer argued that medical abortionists were tolerated because they were assumed to be preferable to amateur abortionists. It appears likely that this and prosecution difficulties resulted in police officers in the 1940s and 1950s coming to an arrangement that allowed doctors to practise with relative immunity. For some police officers, this would have been in recognition of the social necessity of abortion. For others, an underground industry would have been an opportunity to cash in on a lucrative business. By 1959, following two decades of relative immunity from prosecution, there were approximately twelve medical practitioners performing abortions as the major part of their prosperous, inner-city Melbourne gynaecological practices, most commonly following referral from a local general practitioner. Their services became more accessible in the 1960s as the introduction of the contraceptive pill led to competition for patients and a lowering of prices. The price of an abortion continued to vary, however, with the circumstances of the pregnancy – or the risk to the doctor – and the patient’s perceived ability to pay. By 1968, a medical abortion cost between $120 and $220, with some as high as $2,500 in later stages of pregnancy.

In the second half of the 1960s, however, the police began to change their apparently tolerant attitude. In the period 1960-71, a crackdown on medical practitioners working as abortionists in NSW resulted in the overall rate of prosecution tripling the 1940-59 rate, with twice as many men as women being prosecuted. In Victoria the crackdown began in 1965, with four times as many prosecutions that year as in each of the previous six years.

57 Griffith, ‘Abortion in Australia’, p. 9. See also VP, ‘Abortion, Child Destruction, Concealment of Birth’, pp. 1-21. For example, Dr Lewis Phillips and nurse, Melinda Woolcott, were charged when the husband of a ‘mother of seven’ opposed his wife’s decision and went ‘like a bullet for the police’ to protect her. Phillips was found guilty and released on a £500 bond. See Herald, 14 November 1958, ‘Wife’s operation: Man tells police’; Age, 3 July 1959, ‘Judge puts doctor on £500 bond’.
61 Truth reported that hospital admission for septic abortion also tripled. See Truth, 15 March 1969, ‘The real hold-up on abortion reforms’. This suggests either that police action had curbed the activities
Beatrice Faust, researching abortion for a doctorate, and John Birrell, the police surgeon, cited figures of between ten and thirty thousand abortions being performed each year in Victoria in the 1960s. Not only did this suggest a lucrative underground industry to Faust. It also indicated that, if so many women had sufficiently strong reasons for wishing to terminate a pregnancy to make them become party to a criminal act, the need for reform of abortion laws was long overdue.

3. **Key Areas of Activity**

3.1 **The impact of overseas legislation**

The case for legalised abortion in Victoria was strengthened in the 1960s, following publicity to moves by the UK and the USA towards legalised abortion under specific circumstances. The American Medical Association proposed in November 1965 that abortion be legalised under certain conditions, well in advance of the Australian association, which was, at the time, largely denying knowledge of abortions taking place. British law was liberalised with the passage of the Medical Termination of Pregnancy Act on 14 July 1967. In theory, this provided abortion on 'social' or economic grounds within a framework that focused on decreasing state welfare costs through limiting childbirth within families likely to produce juvenile delinquents.

Many of those opposing the UK bill did so out of concern that social problems were being ignored. One opponent attacked the concept inherent in the bill of the ‘inadequate mother’, referring to its eugenic undertones as the ‘beginning of Nazi racialism’: ‘I have known too many Tory doctors who really think that the “lower classes” ought not to be allowed to reproduce themselves, though of course they would not put it like that’. Members of the

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of physicians, with a resultant rise in backyard and self-abortions, or that medical practitioners were compromising the safety of their patients in a bid to avoid detection. Lynette Finch argues that doctors were more willing to sacrifice the safety of their patients for their own legal protection than traditional female working-class abortionists had been. L. Finch, 1993, *The Classing Gaze: Sexuality, Class and Surveillance*, Allen and Unwin, St Leonards, NSW, p. 121.

62 Estimates were extrapolated from studies carried out at the RWH, as well as data provided to the government statistician and the Consultative Council on Maternal and Perinatal Mortality in relation to maternal deaths from abortion. The data and reports are discussed in chapter two.


65 *Age*, 30 November 1965, ‘Doctors propose abortion’.

66 *Herald*, 27 June 1966, ‘Govt. to talk on legal operations’.

medical profession also criticised the social clause, though out of concern that the bill threatened their independent clinical judgement.68

A woman’s ‘right to choose’ was deemed irrelevant in a bill focusing on ‘therapeutic’ measures. Provisions in the act requiring two medical practitioners to concur about the risk to the woman of continuing the pregnancy limited access to abortion in England as it allowed medical practitioners to ‘exercise their medical judgement in accordance with their sympathies’.69 A report of the British Medical Association found that it was extremely difficult to define absolute medical indications for abortion: ‘each case for termination was almost an individual problem’.70 This finding was a double-edged sword for women. On the one hand, the wider the interpretation of grounds for abortion the more likely a woman might gain access. However, handing control over decision-making to physicians not only denied women that control, but left each woman to the mercy of her own doctor. While the McNaughton Ruling had guided medical practice since 1938, Roman Catholic doctors were now being forbidden by their church from taking part in ‘social’ abortions and Catholic nurses from assisting.71 Similarly, the Council of the British Medical Association urged its seventy thousand members to ignore the act and adhere to the policy on abortion decided at an international conference in Geneva in 1947.72 That policy allowed abortion only on the grounds of the health of the mother or abnormality of the foetus.73

Nevertheless, as Claude Forell wrote, Britain’s moral climate was clearly changing, given the ‘new readiness of members of Parliament to venture boldly where governments have long feared to tread’.74 The influence of the UK act on Australian medical and legal practice was undeniable. The MJA published a series of articles and letters expressing views that ranged from advocacy of similar changes in Australia, to tightening of the nation’s abortion laws. Both opponents and proponents of abortion law reform exploited reports and information available following the implementation of the act.

68 Greenwood & Young, Abortion in Demand, p. 26. See also Herald, 30 December 1966, ‘Doctors fight abortion bill’.
69 Greenwood & Young, Abortion in Demand, p. 30. A professor at one London hospital stated that in his opinion infanticide was more logical and ethical for abnormal babies than ‘to permit legal murder of the normal unborn’. See Age, 23 February 1967, ‘Scrap abortion bill’, p. 2.
72 Australian, 4 May 1968, ‘Doctors urged to ignore new act’.
73 Australian, 4 May 1968, ‘Doctors urged to ignore new act’.
It was the social clause of the British act that came under particular fire, for in effect allowing women greater access to abortion on request. Anti-abortionist B.A. Smithurst referred to ‘grave disquiet’ expressed by ‘distinguished obstetricians, gynaecologists, psychiatrists, forensic pathologists and general practitioners’ as a result of the rapid rise in abortions performed since the act was passed. J. Woolnough, Honorary Secretary of the Abortion Law Reform Association of NSW disagreed, arguing that the increase in legal abortion was largely due to a reduction in the numbers of illegal abortions. Opponents countered that the legislation encouraged moral decay while having little effect on the number of illegal abortions performed. As one reporter noted, however, Britain had neither become the ‘abortion capital of the world’ nor had it ‘seen the last of the back-street abortionist’, the act being only as effective as the doctor who interpreted it was liberal.

While the UK act created a furore, in the USA legislation to permit legal abortion had come into force with little controversy. Californian law, for example, was signed by the Governor, Ronald Reagan, in 1967 and operated without public criticism. Singapore also moved closer to legalisation of abortion as the government battled to lower the birthrate. Following active promotion of a family planning program, in December 1968 the Singaporean government announced a scheme to introduce legal abortions for S$5. In general, western countries moved steadily towards liberalisation of abortion laws, except for Roman Catholic countries, such as Spain, Ireland and Italy, which clamped down further on abortion and contraception.

3.2 Early challenges to the law in Victoria

John Birrell claimed in a television interview in 1964 that, in addition to a great number of backyard abortionists who operated for profit, a number of well-known doctors, some in exclusive Collins Street practices, were making up to £1,000 a day from abortions. Faust looked to the systems that supported abortion to prove her thesis that abortion was a well-

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79 Birrell stated that the police were well aware of the names and location of qualified abortionists. See GTV 9, 14 November 1964; Australian, 16 November 1964, ‘Alarm over illegal operations’, p. 4. See also Australian, 23 November 1964, ‘Illegal surgery on 90,000 girls? Doctors wonder’.

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established institution. First, the fact that the major abortionists in every capital city were well known, yet fewer than half-a-dozen prosecutions occurred each year, indicated that the police tolerated their existence. Second, the taxation department profited from abortion, exercising a ‘confessional discretion’ about sources of income.\textsuperscript{82}

In June 1966 Faust repeated her 1964 claims that at least two hundred illegal operations were carried out in Melbourne each week.\textsuperscript{83} Birrell suggested that this was a very conservative estimate. Faust was, at this time, a member of the Victorian Council for Civil Liberties (VCCL), which in September that year had established a subcommittee to investigate ‘the problem of abortion’. This time Faust’s claims provoked the Victorian minister for health to discuss the figures with departmental medical advisers. However, the press believed it was ‘doubtful’ that they would reconsider the present legislation.\textsuperscript{84} Public reaction to the claims was mixed. Some letter writers to the newspapers equated the medical abortionists with backyard operators given the clandestine nature of their work and the exorbitant prices charged, referring to them as ‘the vultures and jackals of our society ... [who] prey on the weak’.\textsuperscript{85} Priest John Phillips maintained that anyone performing an abortion, qualified or unqualified, only did so for monetary gain.\textsuperscript{86} Others, however, defended the doctors for providing a necessary service in the face of their colleagues’ lack of courage or commitment to their own patients. The doctors themselves were keen to be regarded as both ethical and altruistic. Faust argued that they were motivated by both mercenary considerations and the conviction that they were fulfilling a social demand.\textsuperscript{87}

Rebecca Albury argues that opponents of abortion, recognising that many doctors did not share their conservative ethical positions, faced difficulties given the esteem in which the medical profession was held. The only way of criticising individual doctors was to raise concerns about some ‘abusing the system’.\textsuperscript{88} This led to claims that those who provided abortion services were ‘greedy unprincipled businessmen’ rather than ‘detached ethical

\textsuperscript{82} Faust, ‘A problem for the married’, p. 6.
\textsuperscript{84} \textit{Herald}, 27 June 1966, ‘Govt. to talk on legal operations’.
\textsuperscript{85} Griffith, ‘Should abortion be made legal?’, p. 9. See also \textit{Age}, 5 March 1968, letters to the editor, D.W. Quin, Parkdale.
\textsuperscript{86} \textit{Age}, 26 October 1968, letters to the editor, John A Phillips, Corpus Christi College, Glen Waverley.
\textsuperscript{87} Faust, ‘A problem for the married’, p. 6. Confirmed in interview, Beatrice Faust, 16 February 2004. For instance, Rodney Breherton was reported to have told one woman who sought an abortion that if she could not afford to have a child, she could not afford a medical abortion. He gave her a number for what appeared to be a backyard abortionist in Moonee Ponds, but might have been a ruse to avoid detection. See PROV, VA 724, VPRS 2400/P1, unit 23, item 17/2, Rodney Breherton.
professionals. Many proponents of law reform colluded with this claim, leaving doctors associated with abortion stigmatised.

In March 1969, Attorney General George Reid confirmed that Victorian law allowed an abortion if it was performed in good faith by a medical practitioner to preserve the life of the mother. He noted, however, that only fifty-four legal abortions had been carried out in hospitals in metropolitan Melbourne in the six months to March 1969. Given the police surgeon had estimated that between ten and thirty thousand terminations of pregnancy were performed in Victoria each year, this figure suggested an enormous trade in illegal abortion. ALP Member for the Legislative Assembly (MLA) John Mutton was alarmed by the discrepancy. He concluded that members of the medical profession were ‘openly defying the law’ by performing ‘illegal operations’ and begged the attorney general to investigate. Reid referred the matter to the chief secretary, who was responsible for the VPF, although he played down concerns, noting that much of the information regarding ‘illegal operations’ was ‘not altogether reliable’. Estimates suggest the rate of illegal abortion had remained fairly constant over the last century. What had changed was the level of public discussion and hence the visibility of the practice. While abortion had been tolerated as long as it remained a furtive practice, evidence of a lucrative abortion industry made it difficult to ignore, and career abortionists were vilified by their colleagues. On the other hand, with general practitioners unwilling to perform abortions on their own patients and demand for abortion high, it was unclear to whom family doctors were expected to refer their patients, if not to experienced physicians willing to provide the service for a price determined by its illegality.

3.3 Police activities in relation to medical abortion

In 1965 Brian Latch, a long-serving police informer, offered the state government information regarding police corruption in return for indemnity against prosecution. His claims precipitated a major inquiry into police corruption in Victoria, with a number of senior police

81 Victorian Parliamentary Debates (VPD), Legislative Assembly (LA), vol. 293, 11 March 1969, George Reid, p. 3088. In Britain, Justice Bourne had found that an abortion performed for social as well as medical reasons was legal, if the practitioner was acting in the best interests of the woman. Victorian medical teaching and practice reflected this precedent. (See chapter one for details).
82 Herald, 12 April 1969, ‘Abortion – Melbourne figures may top 400 a week’, Douglas Steele, p. 3. It is interesting to note Steele’s use of words to describe medical practice in relation to abortion. He commented that the ‘abortion mill’ froze in 1968 following police charges against eleven people.
84 VPD, LA, vol. 294, 16 April 1969, George Reid, p. 3778.
officers charged with offences. Chief Secretary Arthur Rylah claimed that 'over enthusiasm to get confessions not strictly in accordance with the law' was the real problem. Those police officers who were later investigated for corruption in relation to abortion practices in Victoria were responsible for investigating the complaints against the police.

A month after the inquiry, Rylah announced the 'surprise' appointment of Superintendent James Mihler to investigate all allegations of improper conduct against Victorian policemen. Detective Inspector Frank Holland had been made chief of the homicide squad two weeks earlier. Both appointments suggest Rylah was aiming to change the image of the VPF. Holland, a Roman Catholic, was said to be 'smooth', 'articulate' and 'cunning'. At the time, the police force was divided into Roman Catholic and Masonic factions, with influence and promotion tied to these allegiances. Holland's appointment ensured the dominance of the Roman Catholic faction, widely known to be less liberal in its attitude towards abortion. While Rylah was not a Roman Catholic, the government relied on Democratic Labor Party (DLP) preferences for election, and rumour had it that the Roman Catholic hierarchy was exerting pressure on the authorities to have abortion stopped altogether. Certainly, Holland immediately stepped up police raids on medical abortionists. If there was any area that was likely to come to public notice in relation to graft and corruption, it was the underground trade in abortion in Victoria. Holland was responsible for more prosecutions in twelve months than in the previous thirty years, with eleven doctors charged and many more harassed.

By 1968 police had 'closed down the eight best-known abortionists in the city', significantly curtailing access to qualified practitioners. Police were also checking the private records of abortionists for referring GPs, charging them with conspiracy in a bid to stop the trade completely. Given the demand on GPs for such referrals, police activities ensured

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95 Settle, Police Informers, pp. 191-92. Raymond Hoser points out, however, that none of the police officers was sacked and all were eventually promoted. R.T. Hoser, 1999, Victoria Police Corruption, Kotabi Publishing, Melbourne, p. 22.
96 Age, 16 October 1965, "Excess police zeal" led to complaints.
97 B. Latch with B. Hitchings, 1975, Mr X: Police Informer, Dingo, Melbourne, pp. 326-27.
98 Herald, 17 November 1965, "Supt. will be watchdog on police", p. 1.
99 People, 21 September 1966, "The Real Men of Homicide (continued)", p. 15; Sun, 16 April 1971, "A former police reporter gives his impressions of the three sentenced men ... Suddenly, the glamour has gone", Tom Prior.
101 Melbourne Times, 28 March 1968, "Abortion the inside story".
102 Siedlecky & Wyndham, Populate and Perish, p. 79.
103 Barker & Larkin, 'Abortion crisis', p. 4.
104 Farrago, 19 April 1968, 'Abortion trials', p. 2.
increasing profits for those abortionists still operating. One medical abortionist reported that the cost for termination included the payment of a commission to referring doctors. This suggests either that abortion had become a highly competitive business, as medical abortionists vied with each other for patients, or that GPs were so nervous about referring patients that they required a financial incentive to do so.

The police approached patients at their homes and workplaces, harassing them into giving evidence or signing statements. Some women were threatened with prosecution if they did not become material witnesses. Medical abortionists protected themselves by keeping duplicate sets of patient files and asking women to sign false medical statements about their treatment.

Holland ignored medical and legal consensus about lawful abortions. He stated, in relation to the McNaughton Ruling, that ‘to say that Bourne’s case has any influence in Victoria is nonsense. One judge can’t make a decision affecting the rest of the world’. This must have caused fear among medical abortionists, some of whom responded by accusing the police of bribery and blackmail. In one article, a doctor alleged that the police only staged the raids on those practitioners who could not afford to pay their way out. As a result, standard rates included regular payments of $2-3,000 per month for ‘non-interference’ and tip-offs of impending raids. When questioned about the allegations, Holland replied ‘if a policeman says he is not going to enforce a law, a reasonable assumption is that the policeman is being paid off. We have proved that the Homicide Squad is not being paid off by abortionists’.

Holland was widely criticised by the media, the general public, Protestant denominational leaders, and a number of humanitarian organisations, which labelled the police activities ‘destructive’, ‘overzealous’ and ‘out of keeping with the needs of the community’. Police activities unwittingly garnered support for ‘brave’ medical abortionists, despite ambivalence about their role in an increasingly organised abortion business. Gareth Evans, an executive member of the VCCL, took a quite different view. He wrote that Holland could not reasonably be criticised for ‘refusing to ignore the law’ when it was the ‘failure of the community and its elected representatives to face up to the question honestly’ that gave him

105 Sun, 27 March 1968, ‘Abortion in Australia’, Brian Johns, p. 34.
110 Age, 6 March 1968, letters to the editor, ‘Melbourne Psychiatrist’.
that discretion.\textsuperscript{111} Evans pointed out that, when prohibition of abortion is enforced against qualified medical practitioners, women face danger and great expense. When it is not being enforced, police become subject to allegations of bribery. He quoted US Civil War General Ulysses Grant, who said, ‘There is no method to secure the repeal of bad or obnoxious laws as effective as their stringent execution’.\textsuperscript{112}

While this was clearly not Holland’s aim, it certainly seemed to be the effect of police behaviour. The \textit{Age} published an editorial supporting moves to clarify the law in order to ‘legalise professionally conducted abortions needed to preserve a woman’s life or physical or mental health’.\textsuperscript{113} Clyde Holding asked the attorney general whether members of the medical profession should be entitled to act on the basis of the McNaughton Ruling.\textsuperscript{114} Reid said it would be improper for him to answer. Given Holland’s comments and Reid’s response, Graham Perkin, editor of the \textit{Age}, described any doctor who now relied on precedents for protection as ‘a fool or a very brave man’.\textsuperscript{115}

\section*{3.4 Political activity}

\subsection*{3.4.1 Federal activity}

The first attempt by an Australian politician to legalise abortion was in 1964, when, as noted in chapter one, Tasmanian health minister William McNeil sought legal abortion for girls under the age of sixteen who were refused permission to marry under the new \textit{Marriage Act}.\textsuperscript{116} One reporter described the McNeil motion as ‘a red hot shocker’ dropping into the laps of the Commonwealth and state health ministers’ meeting in Melbourne that week.\textsuperscript{117} As well as placing abortion on the political agenda, McNeil questioned the traditional way in which abortion had been conceptualised and presented to the public. First, he stated that medical advice professed termination of pregnancy by skilled surgeons to be comparatively simple. This contradicted the more usual depiction of abortion as a universally dangerous

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\textsuperscript{111} \textit{Age}, 8 March 1968, letters to the editor, Gareth Evans. Student John Worcester wrote similarly that Holland’s was the quickest method to gain liberalisation of abortion law as it exposed the inadequacies of the existing law. He suggested that criticism of Holland’s approach revolved around the fact that he was Roman Catholic. Worcester argued that if Holland had been Anglican or Methodist, he would have been widely supported for his approach. See \textit{Farrago}, 5 April 1968, letters to the editor, John L. Worcester, p. 10.
\textsuperscript{112} \textit{Age}, 8 March 1968, letters to the editor, Gareth Evans.
\textsuperscript{113} \textit{Age}, 1 March 1968, ‘Muddled law’, editorial, p. 5. Graham Perkin was editor of the \textit{Age} from 1966 to 1975.
\textsuperscript{114} \textit{YPD}, LA, vol. 294, 1 May 1969, Clyde Holding, p. 4419.
\textsuperscript{115} \textit{Age}, 1 March 1968, ‘Muddled law’, Graham Perkin, p. 5.
\textsuperscript{116} \textit{Truth}, 22 February 1964, ‘Minister’s move rocks health men’, Les Teese.
\textsuperscript{117} \textit{Truth}, 22 February 1964, ‘Minister’s move rocks health men’, Les Teese.
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procedure. Second, he identified abortion as a ‘women’s issue’ rather than simply a medical question.\textsuperscript{118} Both of these points were to be emphasised increasingly over the coming decade. At this time, however, McNeil succumbed to intense pressure to withdraw the motion.\textsuperscript{119}

Between 1959 and 1967 there was no mention of abortion in federal parliament. The social taboo surrounding abortion no doubt contributed to this, while the post-war baby boom may have masked abortion practices until details of the \textit{Report of the Committee of Economic Enquiry} (the Vernon Report), published in 1965, again put falling fertility rates on the political agenda.\textsuperscript{120}

\subsection*{3.4.2 Australia’s population and the birthrate}

The Vernon Report revived fears about Australia’s small population and limited capacity for defence, although neither the practice of abortion nor contraception was mentioned in Hansard, leaving readers to guess how women were able to manufacture a reduction in the birthrate. Concerns centred on this decline and the concomitant increase in immigration from 1961.\textsuperscript{121} One submission to the inquiry estimated that over half of the population increase in Australia between 1947 and 1961 was the result of migration, including 76 per cent of the increase in the number of females of child-bearing age.\textsuperscript{122} These figures reinforced existing fears that ‘white Australia’ was under threat.\textsuperscript{123}

Liberal member of the House of Representatives (MHR) James Killen, like a number of his colleagues, suggested incentives to encourage Australian-born women to stay at home and reproduce. ‘I am not one of those people who take the view that we should encourage the women in Australia to go outside the home. I do not regard this as social emancipation. I

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\textsuperscript{118} \textit{Truth}, 22 February 1964, ‘Women back move for operations. Hush hush by politicians’.  
\textsuperscript{121} See \textit{Commonwealth Parliamentary Debates (CPD)}, House of Representatives (HR), vol. 50, 10 March 1966, Kevin Cairns, pp. 162-63; vol. 51, 28 April 1966, James Killen, pp. 1277-78; vol. 51, 11 & 12 May 1966, James Killen and Hubert Opperman, pp. 1743-44. Cairns’ comment, for instance, was that the decrease in the birthrate was the most ‘chronic, persistent and dangerous economic and social problem that Australia will have to face’.  
\textsuperscript{122} Professor Wilfred (Mick) Borrie, from the Department of Demography at the Australian National University, contributed a private submission to the inquiry. See Vernon et al, \textit{Report of the Committee of Economic Enquiry}, p. 71. See also CPD, HR, vol. 54, 7 March 1967, Billy Snedden, pp. 394-95.  
\textsuperscript{123} James Killen, for example, suggested that we were ‘threatened from without by forces that want completely to overwhelm our way of life’, while our struggle for existence within the country was threatened by the falling birthrate. See \textit{CPD}, HR, vol. 51, 28 April 1966, James Killen, pp. 1277-78.
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regard it as being in a very real sense a national tragedy.\textsuperscript{124} Other politicians argued for an increase in child endowment to encourage Australian families to have more children, thus avoiding ‘swamping’ ‘our work force or our culture’.\textsuperscript{125} ALP MHR James Cope argued for instance that, while selfishness or the pill was being blamed for the decrease in the birthrate, married women were entering the workforce out of economic necessity.\textsuperscript{126} Liberal MHR Ian Wilson attributed the decrease in the birthrate to declining prejudice against women, resulting in an increase in the female workforce relative to males.\textsuperscript{127} Wilson disapproved of this trend, which, like the movement toward equal pay for women, was disadvantaging men supporting a wife and family.

The population debate reflected the different perspectives of the DLP, the union movement and Australian Labor Party (ALP), and the Liberal and Country Parties. The divisions also mirrored religious and ideological differences between a predominantly Catholic DLP and a predominantly Protestant Liberal party. The ALP, too, still had a strong tradition of Catholicism.

Roman Catholic supporters were, for reasons of religious belief, less likely to access contraception and abortion – at least publicly – and so more likely to have large families. They were also more likely to be working-class or poorer families.\textsuperscript{128} Protestant women, on the other hand, were more likely to limit the size of their family via contraception, resulting in greater private spending power to support those children they did have. Given the reluctance of the conservative parties to direct spending towards social security and welfare services, their preference was for middle-class families, who could afford to take responsibility for their offspring, to have more children.\textsuperscript{129} The coalition government feared that it was

\textsuperscript{124} CPD, HR, vol. 51, 28 April 1966, James Killen, p. 1278.
\textsuperscript{125} CPD, HR, vol. 52, 23 August 1966, Kevin Cairns, p. 330. See also CPD, HR, vol. 50, 10 March 1966, Kevin Cairns, pp. 162-63. Others claimed that a population explosion was more likely, with dramatic increases in our population having more worrying implications for the budget. Despite such predictions, and the later work of organisations such as Zero Population Growth (ZPG), parliamentary concern focused on a fall in the birthrate.
\textsuperscript{126} CPD, HR, vol. 52, 31 August 1966, James Cope, pp. 628-29.
\textsuperscript{127} Between 1947 and 1961 the female workforce increased at the rate of about 3 per cent per annum compared with about 2 per cent of men. This increase related particularly to married women between the ages of twenty and forty-four. See CPD, HR, vol. 54, 2 March 1967, Ian Wilson, pp. 354-55.
\textsuperscript{128} Judith Brett argues that she was unable to find any statistical evidence to support the stereotype of the predominantly poor, working-class Catholic, although neither was she able to cite clear evidence to dispute this. She argues, nonetheless, that this was a widely-held stereotype, perpetrated even by Roman Catholics themselves, in the search for class solidarity. See J. Brett, 2003, Australian Liberals and the Moral Middle Class: From Alfred Deakin to John Howard, Cambridge University Press, Melbourne, pp. 36-40.
\textsuperscript{129} While it was Liberal Prime Minister Robert Menzies who introduced tax deductions for children and endowment for the first as well as subsequent children, such policies rarely contradict a conservative
increasingly 'emancipated' middle-class white Australian women who were choosing to limit the size of their families. Interestingly, those women had greatest access to medical abortions. Liberal and Country Party members, influenced by decades of eugenic thinking as well as their own political ideologies, feared for the health and welfare of the nation in both social and economic terms, as well as for their own political survival.

Despite growing disquiet, it was not until 1968 that the effect of illegal abortion on the birthrate was discussed directly in federal parliament.\textsuperscript{130} ALP MHR Albert James claimed that the fall in the birthrate was due to the government's failure to meet the needs of the underprivileged, questioning whether it was 'any wonder that the abortion rate in this country is rising rapidly'.\textsuperscript{131} Given growing publicity and support for abortion for socio-economic reasons, some politicians on the left like James feared that by liberalising abortion laws they were allowing women to take responsibility for concealing the economic and social injustices and inequality that were the responsibility of government. The structural questions they raised cannot be ignored in the pursuit of true reproductive choice. That the argument was presented as dichotomous, however, suggests that they were co-opting concerns about abortion for political purposes.

3.4.3 Victoria

In Victoria, political interest in abortion law reform was first raised in April 1967, when the health committee of the Victorian ALP recommended support for legal abortion in response to legislative changes in the UK.\textsuperscript{132} The SA government was also considering law reform.\textsuperscript{133} But acting Victorian Attorney General Arthur Rylah said that he knew of no suggestions that Victoria's laws on abortion should be changed in response to UK laws.\textsuperscript{134}

In February 1968, in endorsing a motion put forward by the Young Liberal Movement, the Victorian Liberal Party's State Council also recommended amendments to the \textit{Crimes Act} 1958 to allow a doctor to perform an abortion aimed at saving a woman's life, or her mental agenda. Tax deductions only benefit those who are employed and universal allowances equally benefit wealthy populations, while masking the case for redistribution of income.

\textsuperscript{130} \textit{CPD}, HR, vol. 58, 4 April 1968, Andrew Peacock and Nigel Bowen, p. 793; vol. 58, 4 April 1968, Henry Turner and Nigel Bowen, pp. 796-97; vol. 59, 29 May 1968, Kevin Cairns and Nigel Bowen, p. 1708. The discussion is actually listed under 'health' in the Hansard index, without a cross-reference to abortion. Abortion was not referenced separately until August 1968.

\textsuperscript{131} \textit{CPD}, HR, vol. 60, 28 August 1968, Albert James, p. 625.

\textsuperscript{132} \textit{Australian}, 25 April 1967, 'ALP may support legal abortion', p. 5.

\textsuperscript{133} \textit{Herald}, 25 July 1967, 'ALP may support legal abortion', p. 5.

\textsuperscript{134} \textit{Herald}, 26 July 1967, 'Rylah: No law change yet', p. 11.
or physical health. Like all advocates for abortion law reform in the 1960s, the council argued that the agreement of two doctors and the consent of the woman should be the minimum requirements for a legal abortion. Attorney General Reid opposed the suggested amendments, claiming, initially, that these could limit rather than increase the number of abortions in Victoria. He later asserted that the motion would result in an increase in abortions without clarifying the law. Despite Reid’s objections, the state council carried the motion. In doing so, the Liberal Party insisted that this was an attempt to remove ‘some of the uncertainties from the current law’ not to ‘legalise abortion’. Charles Hider, chairman of the Law Reform Committee of the state Liberal Party executive, defended law reform. His public statements on the one hand, and those of Brian Dixon, MLA, on the other, suggested disagreement within the Liberal Party. Dixon cited the ‘right of the unborn’, the ‘sanctity of human life’ and a need to increase Australia’s birth rate for economic and political reasons as paramount. He did not criticise the council’s desire to clarify the law, but wanted to signal his opposition to any substantial changes in the law that might be proposed. This, clearly, was the point of agreement in the party, with both Hider and Dixon stressing the benefits of clarification, rather than change.

The Liberal government was in a dilemma over police activities, unable to order them to stop policing a crime on the one hand, divided over the electoral and religious implications of legalising abortion on the other. The move to clarify the law was widely supported, particularly if the proposal would bring the law into line with practice and result in a reduction in the number of backyard abortions. Concern centred on the idea that medical practitioners were in an invidious position between their duty to a patient, the law and their own conscience. Only David Corbett, from Prince Henry’s Hospital, argued the radical proposition that a woman should decide when an abortion was necessary.

Despite widespread support for the Liberal State Council’s resolution, Premier Henry Bolte declared that the state government was not likely to allow abortions aimed at saving women’s

140 *Sun*, 1 April 1968, ‘MLA attacks abortion vote’.
141 See *Age*, 15 February 1968, ‘Abortion move supported’; *Age*, 1 March 1968, “‘Abortion already allowed’”, p. 3.
142 *Age*, 6 March 1968, letters to the editor, A. Wilkinson, Burwood.
143 *Age*, 5 March 1968, letters to the editor, David Corbett, p. 5.
lives or their mental or physical health.\textsuperscript{144} He described the council move as a ‘recommendation, not a direction’.\textsuperscript{145} Bolte was known to be unwilling to stir up public debate on the issue, particularly given the response of the Roman Catholic Church to the policy.\textsuperscript{146} Two months later, following heated exchanges in the party room, the Liberals referred the matter to the Chief Justices Law Reform Committee for investigation.\textsuperscript{147} For many supporters of reform, investigation was a euphemism for stalling decision-making. In fact the committee declined to report on whether the laws should be amended, stating that this was a policy matter beyond its function and passing the mantle of responsibility back to cabinet.\textsuperscript{148}

It was no coincidence that DLP supporters raised the coming Legislative Council elections at this time, questioning whether they could ‘in conscience ... give their preference votes to a party whose policy is legal abortion’.\textsuperscript{149} The DLP urged social and economic reforms to deal with the question of unwanted pregnancies, with one supporter claiming that ‘hunting for migrants from practically all quarters of the globe’ while allowing ‘the destruction of our own unborn children’ was ‘ludicrous’.\textsuperscript{150}

It was the state council that took the lead in the Victorian ALP. As with the Liberals, the federal executive was not prepared to take a strong stance on abortion.\textsuperscript{151} In May 1968, the state executive of the Victorian branch of the ALP recommended that national policy incorporate law reform, allowing registered medical practitioners to terminate pregnancies in good faith under specified conditions.\textsuperscript{152} The recommendation was accepted in June at the state conference.\textsuperscript{153} This move took much of the political heat off the state Liberal government, with Frank McManus, deputy leader of the DLP, defining it as a policy ‘to kill

\textsuperscript{144} Herald, 1 March 1968, ‘Law change is “unlikely”’, Ian Hamilton, p. 7.
\textsuperscript{145} Herald, 3 April 1968, ‘No abortion reform yet, says Bolte’.
\textsuperscript{146} Sun, 1 March 1968, ‘New policy on abortion “serious”’, p. 11.
\textsuperscript{148} Age, 2 July 1968, ‘Abortion law reformers get setbacks’, p. 3.
\textsuperscript{149} Herald, 26 March 1968, letters to the editor, William Smith, West Heidelberg.
\textsuperscript{150} Age, 30 March 1968, letters to the editor, RP Rizzo, Hamilton.
\textsuperscript{151} Age, 5 April 1968, ‘Abortion law may be changed’. See also CPD, HR, vol. 59, 29 May 1968, Kevin Cairns and Nigel Bowen, p. 793; vol. 58, 4 April 1968, Henry Turner and Nigel Bowen, pp. 796-97.
\textsuperscript{153} Herald, 21 October 1968, ‘Labor has abortion bill ready’, Ian Hamilton; Herald, 20 November 1968, ‘Abortion bill in assembly’. Moss Cass was one of the initiators of the move.
the unborn, not to create conditions in which life is possible'.\textsuperscript{154} McManus argued that the Victorian ALP decision was best explained as an election ploy.\textsuperscript{155}

As a minority party the DLP seldom polled more than 12 per cent of the vote but, in return for allocating second preferences, exacted considerable concessions in Victoria, as also in the Commonwealth, Queensland and WA.\textsuperscript{156} Given its religious affiliations, the DLP was strongly anti-abortion and chose to exert its influence over Liberal Party policy in this area, among others. Bill Dye, president of ALRA, argued that to ‘succeed to that pressure against the considered expression of opinion by the majority of the people is to fail in political responsibility’.\textsuperscript{157} Both Premier Bolte and Attorney General Reid consistently quashed any prospect of abortion law reform in the short term, suggesting that they would indeed succumb to pressure from the DLP. Yet by October 1968, four state parliaments were considering changes to abortion laws – SA,\textsuperscript{158} WA,\textsuperscript{159} NSW\textsuperscript{160} and Victoria. Dr Harry Jenkins, Labor MLA for Reservoir, introduced the Crimes (Further Amendment) Bill as a private member on 20 November. The proposed changes were based on the ALP state conference decision in June.\textsuperscript{161} The Liberal government used its majority in the lower house to avoid discussion of the bill until parliament ended in mid-December.\textsuperscript{162} The attorney general said that state cabinet would discuss possible reform the following year.\textsuperscript{163} There was considerable hope among organisations such as ALRA that legislation would eventuate in 1969.

Under parliamentary rules, it is not possible for the contents of a bill to be discussed in parliament other than in relation to that bill. With the Jenkins Bill remaining on the notice paper for the autumn session, discussion of abortion within parliament was seriously curtailed. This was, no doubt, a comfortable position for the Liberal Party, keen to dampen the growing support for abortion law reform given uncertainty about the electoral impact of any stance on abortion. Though analysis of public discussion would suggest increasing support for liberalisation of abortion laws, it appears that there were other more insistent

\textsuperscript{155} \textit{Age}, 10 October 1968, letters to the editor, FP McManus, Senator for Victoria.
\textsuperscript{156} In NSW a core of right-wing Catholics in the ALP exerted similar pressure, while in SA, where legislation was enacted, there was an electorally insignificant Roman Catholic population. See K. Coleman, ‘The Politics of Abortion in Australia: Freedom, Church and State’, \textit{Feminist Review}, no. 29, May 1988, pp. 83-85.
\textsuperscript{157} \textit{Herald}, 18 November 1968, ‘Four churches “support abortion”’, William Dye, president, ALRA.
\textsuperscript{158} \textit{Adelaide Advertiser}, 19 October 1968, ‘SA to revise laws: New outlook on abortion’.
\textsuperscript{159} \textit{Western Australian}, 21 October 1968, ‘Amendments made to bill on abortion’.
\textsuperscript{160} \textit{Age}, 30 October 1968, ‘NSW against abortion reform’.
\textsuperscript{162} \textit{VPD}, LA, vol. 294, 30 April 1969, Clyde Holding, George Reid, Vernon Christie and Frank Wilkes, pp. 4300-01. See also \textit{Age}, 22 October 1968, ‘Abortion law change likely’.

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opposing pressures coming to bear on the Liberal Party. Abortion was more than a party issue; it spoke to the religious and philosophical beliefs of individual party members as it did to the electorate, and there was a small but vocal opposition to abortion law reform.

Victoria’s members of parliament reflected a strong and consistent public drive for liberalisation of abortion laws, with little opposition to reform other than that generated by the RTL groups and the Roman Catholic church.\textsuperscript{164} Other organisations including the AMA, the State Council of the Liberal Party, the ALP, Young Labor, ALRA and the VCCL had made representations for the liberalisation of laws, ranging from requests for common law statements to appear in statutory form to abortion on demand.\textsuperscript{165} Despite this, the state Liberal government refused to be drawn on the question of abortion law reform, claiming it wanted to avoid the British situation, where abortion was permitted for social as well as medical reasons, causing ‘abuse and “abortion epidemics”’.\textsuperscript{166}

In mid-February 1969 the attorney general announced that the Crown Law Department was preparing a report for cabinet that would be discussed by the State Council of the Liberal Party in late February.\textsuperscript{167} The premier rarely attended council meetings, however, making it clear that state council policy was not necessarily government policy.\textsuperscript{168} Bolte’s doctrine, according to Ian Hamilton of the Herald, was ‘when-in-doubt-do-nowt’.\textsuperscript{169} The attorney general defended the state government over its ‘slow and steady’ course, while describing ALP policy as ‘close to abortion on demand’.\textsuperscript{170} Reid’s comments were clearly political as opinion polls showed little support in the community for abortion on demand, with the focus remaining firmly on clarifying the position of medical practitioners. Reid was claiming political differences between the major parties that did not exist in relation to abortion. Given the Roman Catholic affiliation of many ALP members, this no doubt exploited discomfort within the party.

\textsuperscript{163} *Sun*, 14 December 1968, ‘Abortion move by cabinet’.
\textsuperscript{164} Although the RTL groups deny it, Karen Coleman points out that it is generally agreed that they are financed by the Catholic Church, either directly, or indirectly via the National Civic Council. See Coleman, ‘The Politics of Abortion in Australia’, p. 87. Beatrice Faust also made similar claims. See *Lot’s Wife*, 7 May 1973, ‘Beatrice Faust on Abortion’, Abortion Special Issue, p.16, box 3, Bon Hull papers, Accession Number (AN) 100/108, Victorian Women’s Liberation and Lesbian Feminist (VWLLF) archives, University of Melbourne. See also interview, Beatrice Faust, 16 February 2004.
\textsuperscript{165} *YPD*, LA, vol. 294, 1 May 1969, George Reid and Clyde Holding, pp. 4418-19.
\textsuperscript{166} *Herald*, 27 February 1969, ‘Reid warns on abortion’.
\textsuperscript{167} *Sun*, 14 February 1969, ‘Abortion report to cabinet soon’. See also *Sun*, 19 February 1969, ‘Young Libs urge abortion change’.
\textsuperscript{169} Hamilton, ‘Showdown on abortion policy’.
\textsuperscript{170} *Herald*, 27 February 1969, ‘Reid warns on abortion’. 

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The Victorian Country Party, popularly assumed to support law reform under strict conditions, waited until April 1969 before looking at setting up a select committee to examine the law on abortion and make recommendations to the party’s central council and parliamentary party.\(^{171}\) There is no evidence that this went ahead.\(^{172}\) In WA the Legislative Assembly rejected the Termination of Pregnancy Bill on ‘constitutional’ grounds, given the extra spending required from the state and the increased demands it would impose on public hospitals.\(^{173}\) Anti-abortionists in Victoria pounced on talk of taxes to claim that taxpayers would have to ‘pay for other people’s abortions’ if legislation was passed in this state.\(^{174}\) In NSW the state government also decided against legalising abortion, despite wide support.\(^{175}\) Only SA, where the Roman Catholic vote was insignificant, continued to explore law reform.\(^{176}\) While rejection of abortion law reform in WA and NSW may have signalled disaster for similar measures in Victoria, the force of public opinion, including the support of influential religious, medical and political organisations, suggested that some change was inevitable.

3.5 The impact of charges against abortionists

The actions of the state Liberal government and the VPF suggested that policing of abortion had taken a more political turn from 1966. However, some instances of this had occurred previously. On 30 June 1961, Dr Leslie Edmunds, ex-Mayor of Coburg and endorsed ALP candidate for the lower house seat of Essendon, was charged with conspiring to procure illegal operations. He referred to the charges as a ‘political stunt’ given that the raid occurred the week before the election, in which he was defeated.\(^{177}\) The questioning officer alleged that Edmunds had admitted to performing legal abortions for thirty-one years.\(^{178}\) Edmunds was clearly confident that his practice would be tolerated, stating that he had been questioned

\(^{171}\) The decision was made at the 53rd annual conference on 22 April. See Age, 23 April 1969, ‘Country Party talks abortion’, Stephen Hall.

\(^{172}\) I have searched Victorian and Australian newspapers, extensive electronic databases, APAIS and the Australian National Bibliography, as well as Country Party literature, for any indication that the Country Party went ahead with this decision, without success. I assume that with the Menhennitt Ruling coming a month later, the party decided that further examination was unnecessary.


\(^{175}\) Age, 30 October 1968, ‘NSW against abortion reform’.


\(^{177}\) Herald, 22 November 1961, ‘Doctor “admitted operations” – CIB’. The state elections were held on 15 July 1961.

by police hundreds of times and ‘in that time you are the first one ever to have made a
nuisance’ of yourself." He was acquitted due to insufficient evidence but faced further
charges in June 1963. During the ensuing decade members of the homicide squad were
increasingly to ‘make nuisances’ of themselves.

Charges continued to be laid against back yard abortionists throughout the 1960s though the
numbers overall were small. Approximately eleven ‘backyard’ incidents resulted in
charges, most following a specific complaint, or the death, injury or illness of a woman. That
there were so few incidents of back yard abortionists being charged suggests that they were
tolerated while the clampdown on medical abortionists occurred; that they, too, enjoyed
police protection; or that there were few unqualified operators still in existence following the
medical profession’s move into the field.

By mid-May 1969 sixteen doctors had been identified with abortion as a result of charges laid
between 1961 and 1969. Ten of those were involved in organised abortion practices. Some

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had most likely paid one-off bribes to the police officers on previous occasions, but encountered a more
strictly political agenda on this occasion. Interview, Beatrice Faust, 16 February 2004.
180 Herald, 9 November 1962, ‘Woman “not the mastermind”’. Interestingly, Edmunds faced two trials
after a jury member was approached with a bribe, although Edmunds died before the second trial. See
Sun, 5 June 1963, ‘Doctor, woman charged’. During the Kaye Inquiry in 1970 Charles Wyatt alleged
that Edmunds had paid a large sum of money to one of his lawyer’s employees to fix the jury. Roy
McMenemim, Edmunds’ solicitor, was implicated when Edmunds’ first trial was discharged after a
juryman was approached with a bribe. Wyatt claimed that Edmunds’ wife had demanded refund of the
bribe after her husband’s death. McMenemim said that while he denied organising a bribe to a
juryman, it was true that Mrs Edmunds had requested and was given a refund. See Age, 11 March
181 See Age, 16 February 1963, ‘Remand for woman on four charges’; Herald, 11 January 1965, ‘Girl
died: two men charged’, p. 11; February 1965, ‘Illegal use of instrument charge’; Age, 1 May 1965,
‘Faith healer gaol’d; Herald, 14 September 1965, ‘Man, 66, gets 6 years’ gaol’; Herald, 7 December
1965, ‘Woman, 74, gets gaol’; Age, 27 May 1966, ‘Murder charge for woman, 70’; Age, 20 September
1966, ‘Three sentenced for abortion attempts’; Herald, 14 October 1965, ‘Operation charge’; p. 3; Age,
13 February 1969, ‘Abortion attempts alleged’. I have been unable to find full citations for two of the
articles in 1965, but have attached a photocopy of each in appendix three. See also box 7, Wainer
papers, MS13436, SLV.
182 They were Peter Bayliss, William Crombie, Kenneth Davidson, Leslie Edmunds, William Fenton-
Bowen, Arnold Finks, William Flynn, Harold Grinblat, Patrick Hickey, Kurt Petzold, Lewis Phillips,
John Sears, Charles Sziland, Tom Sieber, James Troup and Bertram Van Remmen. See Sun, 5 June
1963, ‘Doctor, woman charged’; Sun, 29 October 1963, ‘Charged doctors not for trial’; Age, 19
February 1966, ‘Two for trial in girl case’; Herald, 14 October 1965, ‘Operation charge’, p. 3; Sun, 26
nurse in court’; Age, 8 June 1966, ‘Two doctors, nurse acquitted’; Sun, 10 March 1967, ‘Doctor found
for doctor’; Truth, 7 October 1967, ‘Doctor vanishes after raid by police: Abortion campaign’, pp. 1-2;
case “disgrace” – says lawyer’; Sun, 19 March 1968, ‘Remand for two doctors’; Age, 14 May 1968,
‘Asked to change evidence: Witness’, p. 9; Age, 17 May 1968, ‘Three on charge of abortion to face
other medical abortionists, though, avoided charges, most notably James Heath and Rodney Bretherton, despite evidence against them dating back over twenty years. Women ‘nurses’ and ‘receptionists’ were usually charged alongside medical practitioners. Detectives claimed to have ‘acted on an almost unprecedented rush of secret tip-offs to illegal operations about to take place’, bringing the ‘abortion business in Melbourne almost to a standstill’.

Three incidents stand out during the period. One involved the last reported death of a woman from an illegal abortion, in January 1968. Molly Jamieson’s story of how the police informed her of her daughter Carolyn’s death, and her estranged husband’s subsequent suicide, gives a near heart-breaking account of police tactics in investigating abortion. The second case, which marked the beginning of a long and scandalous exposé of police graft and corruption, followed a raid in East Melbourne on 1 February 1968. James Troup, Winifred Read, Margaret Berman, Maureen Young and William Crombie were remanded. In September 1968, Ray Dunn, defence lawyer for those charged, told the Court that ‘the most serious allegations possible’ were going to be made against the homicide squad. Dunn alleged that the police had known of the operations performed at the Hoddle Street surgery for at least three years and that certain police officers, led by Holland, had conspired to engineer the raid. While the allegations caused a stir in 1968, it was over a year before the full details came to light. There were now three possible reasons for Holland’s activities: pressure from Rylah to clean up the squad following allegations of corruption and graft in 1965; pressure from the Roman Catholic Church via the DLP to close down abortionists; or moves by Holland to secure his own interests in abortion graft.

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183 See PROV, VA 724, VPRS 2400/P1, unit 23, item 17/2, Rodney Bretherton, which shows a known history of him working as an abortionist dating back to 1952. For evidence that Heath had operated at least since 1944, see Sun, 17 March 1971, ‘Mrs B. Threatened To Bump Me, Says Adam’, p. 20; ‘Adam says: I’m man of honor’; Age, 17 March 1971, ‘I am not guilty, Adam tells jury’.

184 Where charges against the woman were reported, they appear to have been more likely than the doctor to be convicted. This is probably because they were charged with the lesser crime of conspiracy. For example, Edmunds’ accomplice, Myrtle Troja, was found guilty of conspiracy but released on two years probation because she was ‘not the mastermind behind the illegal operations’. See Herald, 9 November 1962, ‘Woman “not the mastermind”’; Sun, 5 June 1963, ‘Doctor, woman charged’; Age, 19 February 1966, ‘Two for trial in girl case’; Age, 29 April 1966, ‘Doctor for trial’; Sun, 10 October 1967, ‘Two doctors in court: Remanded’; Herald, 11 January 1968, ‘Woman’s death: Two charged’.

185 Truth, 23 March 1968, ‘Abortion raid sequel shocks the cops’.

186 Herald, 11 January 1968, ‘Woman’s death: Two charged’.

187 Molly Jamieson, undated, ‘Story of Carolyn’s death’, pp. 1-18, box 14, Wainer papers, MS13436, SLV.


The third case, involving Charles Kenneth (Ken) Davidson, the first of eight Melbourne doctors to appear on abortion-related charges in 1969, led to the Menhennitt Ruling. Davidson faced twelve charges and was initially committed for trial in June 1968. Bertram Van Rennen, a general practitioner, was charged with having conspired with Davidson in referring women for illegal abortions. The Medical Defence Association (MDA) refused to accept his legal defence. Fellow general practitioner Bertram Wainer was angered by the refusal, arguing that Van Rennen was simply doing his job. In a move that marked the beginning of his identification with abortion, Wainer requested support from Victorian physicians to establish an alternative defence fund. He received substantial support and quite a bit of money, suggesting other doctors concurred with his views.

Moss Cass, then director of the Trade Union Clinic in Footscray, noted the MDA’s refusal on Labor Hour on radio 3KZ in July. He added that the ‘severe restriction of qualified and skilled medical practitioners now prepared to perform abortions’ had led to prices rising steeply and availability declining sharply. In October the MDA agreed to provide assistance if the abortion was performed for ‘sound medical reasons’, in a hospital, with the written consent of two doctors, the medical superintendent or matron, and the woman’s husband if she was married. The decision was clearly overly cautious, designed to protect the fund by supporting only those doctors who had the strongest case for defence.

190 Age, 17 September 1968, ‘Insp.: No cover-up in abortion charge’.
192 Australian, 24 April 1968, ‘Doctor is charged’; Age, 27 April 1968, ‘“Nurse told me not to tell police” – girl’, p. 4.
194 The MDA was a voluntary organisation to which most doctors contributed in case of litigation. Faust claims that the MDA had consistently maintained a refusal to fund criminal cases. Interview, Beatrice Faust, 16 February 2004.
195 9 August 1985, ‘Dr Bertrand (sic) Wainer’, Interview with Gloria Frydman for book on protesters, transcript of interview, pp. 1-23, box 12, Wainer papers, MS13436, SLV. See also interview, Jo Wainer, 22 May 2002.
196 B. Wainer, ‘Bert’s Role’, July 1983, pp. 1-10, box 12, Wainer papers, MS13436, SLV.
197 Age, 8 July 1968, ‘Doctor raps police’.
198 Age, 8 July 1968, ‘Doctor raps police’.
4. Key Areas of Influence

4.1 The influence of the Australian Medical Association

Journalists Geoffrey Barker and John Larkin claimed that about one-quarter of the medical profession in Melbourne was involved in procuring or arranging abortions. The sheer numbers of doctors potentially liable to criminal charges meant that much pressure was brought to bear on the AMA to advocate abortion law reform. Yet the AMA did not take a lead role. A spokesman claimed that legal termination should only occur under strict controls, describing estimates of thousands of abortions each year as ‘alarming’. The AMA’s position was supported by the World Medical Association, which, at the end of its twentieth general assembly in November 1966, reaffirmed the longterm stance against abortion.

The Age accused the AMA of failing to provide leadership to those of its members concerned by the police campaign. The editor of the MJA responded that a strong body of opinion in Australia ‘both in the general community and among doctors, finds intolerable the deliberate termination of pregnancy, irrespective of whether the action is covered by legal sanction or not’. On the other hand, some members of the community wanted abortion on demand. The editor suggested that ‘it would be a brave – probably very rash – person who would try to reconcile the opposing opinions and answer all the questions involved’. Nevertheless, in March 1968 he suggested that there was no ethical reason that a doctor should not perform an abortion if s/he did so sincerely and honourably, in line with legal precedents in the UK. Calling for professional solidarity, the editor concluded that few doctors would approach abortion lightly and that their ‘differing personal attitudes should not interfere with mutual respect for colleagues’ sincerely held convictions and consequent responsible actions’. Legal confusion, however, meant that while colleagues might concur that a woman should be aborted, they urged ‘for heaven’s sake, don’t touch her yourself with a 40 ft. pole.’

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201 Herald, 27 June 1966, ‘Govt. to talk on legal operations’.
202 Herald, 11 November 1966, ‘No abortion, say doctors’.
The *MJA* generated a substantial body of argument over the next six months both for and against abortion. The journal could have used its influence to guide discussion, providing a forum to consider the legal, emotional, ideological and professional dilemmas faced by doctors in relation to abortion. Given the absence of a broader framework of human rights or public health policy, and their own moral ambivalence, it is not surprising that many doctors resorted to blaming the individual woman for getting them both into this ‘mess’. However, the petty rationales, emotive language, and substitution of opinion for fact evident in letters to the *MJA* signalled the way the ‘abortion debate’ was to continue.

The ‘debate’ took place largely among men, with little reference to women except as the unfortunate bearers of the unwanted pregnancies, the victims of seduction, or self-centred harlots. One writer claimed that abortion was ‘a negation of woman’s natural function and man’s protective instinct’. Another asserted that abortion would ‘lead to increasing violence in public life’, while abortionists were ‘only concerned with making sexual pleasure freely available to themselves’. Fear over the moral and societal decay that would ensue were abortion to be legalised drove much of the opposition to abortion. The largely conservative response from the AMA reflected the values of the social class from which the majority of medical practitioners were drawn. Further, those doctors with time to write to the *MJA* on a regular basis were more likely to be retired or semi-retired older practitioners and this added to the dominance of conservative opinion. Other practitioners expressed more liberal views. For instance, following an AMA meeting, Dr Warwick Newman, a gynaecologist and obstetrician at the Queen Victoria Hospital, said he was in favour of law reform. He commented further that most doctors were conservative and needed to 'grow up' and stop treating abortionists as social outcasts. The chief clinical officer of the Victorian

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210 J. MacDonald, ‘Therapeutic Abortion’, *MJA*, vol. 1, no. 22, 1 June 1968, letters to the editor, p. 972.  
212 Social ethicist David Boonin rejects outright the claim that abortion results in moral decline. He argues that there is evidence to show that infanticide rates are lower now than they were when abortion was illegal and that a decrease in crime rates can be linked to decriminalisation of abortion in the USA. While he does not suggest that decreasing crime rates is a good argument for abortion, he does note that it undermines the assumption of a relationship to moral decline. Boonin quotes Everett Lee, a demographer who analysed ‘decades worth of such statistics’, cited in B. Kantrowitz, 1997, ‘Despite recent spate of baby killings, cases still rare’, *New Orleans Times – Picayune*, 13 July 1997, p. A-24; and J. Donohue, Stanford University Law School and S. Levitt, University of Chicago, unpublished paper. D. Boonin, 2003, *A Defense of Abortion*, Cambridge University Press, Cambridge, pp. 298-99.  
213 Dr Warwick Newman, cited in *Herald*, 19 June 1968, ‘Every baby should be wanted’, Claudia Wright. One gynaecologist claimed at the time that abortion was four times safer than childbirth. See *Age*, 6 May 1969, ‘Abortions “safe”’.  

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Mental Health Authority, Dr A. Stoller, also argued that members of Australian society would need to adapt their values to encompass social change.\textsuperscript{214} Dr Victor H. Wallace, president of the Eugenics Society in the 1930s, described Australian laws in 1964 as ‘archaic’ and quite out of touch with the realities of life or the best interests of society.\textsuperscript{215} His only caveat was that the surgeon should be thoroughly competent and the conditions for operating ideal regardless of the reasons for the abortion. This was not a position he held when writing to the \textit{MJA} in the new circumstances of 1968-69.\textsuperscript{216}

A report of the Victorian branch of the Australian and New Zealand College of Psychiatrists released in December 1968 indicated that its members wanted a change in the law to include the financial situation of a family as grounds for legally performing an abortion.\textsuperscript{217} A number of other doctors came out publicly in favour of abortion, including the president of the Royal College of General Practitioners.\textsuperscript{218} However, the Royal College of Obstetricians and Gynaecologists would only support legislation that made abortion available on strictly medical grounds.\textsuperscript{219}

The Victorian branch of the AMA held a special meeting to discuss the problem of abortion on 12 June 1968, following a petition from forty-six members organised by Rodney Bretherton.\textsuperscript{220} Ten per cent of the Victorian membership, or 450 doctors, attended a heated meeting, resolving to call for a state government inquiry into ‘the needs and desires of the population and the medical profession’ for the reform of abortion laws, and expressing ‘deep

\textsuperscript{214} \textit{Australian}, 12 November 1968, ‘New sex concepts “must be accepted”’.  
\textsuperscript{215} Griffith, ‘Should abortion be made legal?’, p. 9.  
\textsuperscript{216} In 1969 Wallace suggested ways of reducing the abortion rate, writing that ‘the need for abortion should never arise [as] it is evidence of failure … and … may possibly have disastrous consequences’. V.H. Wallace, ‘Reduction of the Abortion Rate’, \textit{MJA}, vol. 2, no. 5, letters to the editor, p. 259. In 1971 he wrote that, except where there are ‘very strong medical indications for therapeutic abortion’, exigencies of population required that women be encouraged to populate the country with white Australians. He added that ‘Careful psychological handling and helpful advice will often give a woman the correct perspective’. V.H. Wallace, ‘Abortion and Immigration’, \textit{MJA}, vol. 1, no. 7, 13 February 1971, letters to the editor, pp. 404-05.  
\textsuperscript{217} \textit{Age}, 13 December 1968, ‘Psychiatrists in favor of abortion reform’.  
\textsuperscript{218} \textit{Sun}, 9 May 1969, ‘All “should follow U.K. on abortion”’.  
\textsuperscript{219} \textit{Age}, 29 July 1968, ‘Abortion policy’.  
\textsuperscript{220} See R. Bretherton, 1997, \textit{Abortion: RU486: Anecdote of Anguish and Hope}, Rodney Bretherton publisher, Daylesford, Victoria, p. 19. Bretherton writes here that Bert Van Rennen, who was charged alongside Ken Davidson, had obtained a legal opinion advising that he organise an AMA meeting to request a legislative inquiry into abortion laws. Van Rennen asked Bretherton to organise this, as he was no longer a member. The AMA must hold a special meeting if forty or more members request one.
State cabinet rejected the request for a parliamentary inquiry.²²² Bolte did not see much point in setting up a parliamentary committee if the AMA was not in a position to present the considered opinions of the medical profession on what type of change in the law, if any, they wanted. The AMA responded by setting up a special subcommittee on abortion law reform on 26 June 1968.²²⁴ In late October it presented the subcommittee’s conclusions as a submission to the attorney general. The AMA now requested a change to Victoria’s abortion laws.²²⁵ This firm stance followed a survey of nearly four thousand doctors in Victoria, the majority favouring abortion in some circumstances.²²⁶ But the recommendations carried a proviso that the association was ‘opposed to legalising abortions when the only reason for carrying out the procedure is that it is requested by the pregnant women’.²²⁷ Despite the proviso, 26 per cent of doctors surveyed supported abortion on the request of the pregnant woman, with 80 per cent supporting abortion for reasons of foetal abnormality and 88 per cent when there was substantial risk to the woman’s health.²²⁸ Given consensus that around ten thousand illegal and only about one hundred legal abortions occurred in Victoria each year,²²⁹ most performed by doctors, it was clearly in physicians’ interests to have the law clarified. However, Attorney General Reid, commenting on the AMA submission, stated that


²²² AMA Victorian branch special general meeting minutes, 12 June 1968, cited in ALRA, ‘Parliament and Abortion’, p. 13. The AMA proposed that at least two independent doctors must agree in writing that an abortion was necessary in order to save the life or physical or mental health of the mother, or that there was a substantial risk of congenital abnormality to the foetus. This would simply bring the law into line with common practice. See *Age*, 15 February 1968, ‘ Abortions move supported’; *Age*, 1 March 1968, ‘Abortions already allowed’, p. 3.


²²⁴ *Age*, 3 July 1968, ‘AMA checking abortion law’, DLP papers, MS10389, SLV. The VCCL also referred to an extensive questionnaire organised in 1968 with the assistance of the College of General Practitioners. It is not clear whether this is the same survey.


²²⁶ The survey findings were also published as ‘Poll on Therapeutic Abortion: Survey Report’, *Modern Medicine of Australia*, vol. 11, no. 24, 2 December 1968, pp. 10-16. A questionnaire was first mailed to all registered medical practitioners, enclosed in the 1 July 1968 issue of the journal. The journal was published in Sydney as a journal of general practice. At the time of publication of the findings, five thousand questionnaires had been returned, giving a 63 per cent return rate, and replies were still being received.

²²⁷ *Age*, 28 October 1968, ‘Stepping stone?’, editorial, p. 5. Support for ‘social’ abortions was likely to alienate the AMA’s conservative membership. The Medical Guild of St Luke, for example, an organisation of the Roman Catholic Church with about five hundred doctor members, opposed any change to the current law.


changes in Victorian abortion laws were unlikely that year.\textsuperscript{230} Although he agreed to meet with the AMA to discuss the proposals, it appeared that even its muscle had failed to convince the government.\textsuperscript{231}

In the following year, influential medical associations continued to debate the position on abortion. The National Health and Medical Research Council (NH&MRC), responding to pressure on state governments for law reform,\textsuperscript{232} declared that ‘medical practitioners, in consultation, should alone have the responsibility for the decision of terminating pregnancy’ without legal sanction for refusal.\textsuperscript{233} The recommendations were included in a report from the director general of health tabled in federal parliament in September 1969.\textsuperscript{234} The NH&MRC recommendations were an explicit and powerful call for medical control over abortion. Liberal MHR Andrew Peacock noted that there was no mention of the role or consent of the woman in the report.\textsuperscript{235}

In May 1969 a group of fifty Victorian psychiatrists and general practitioners requested that the Victorian branch of the AMA hold a special general meeting on law reform, urging the view that abortion should be solely the decision of a woman and her doctors.\textsuperscript{236} A proposal to request the removal of medically performed abortion from the \textit{Crimes Act} was defeated at the special meeting on 14 July 1969.\textsuperscript{237} The AMA seemed to have retreated from its position of a year earlier.

4.2 The role of the media in agitating for abortion law reform

In October 1968, \textit{Age} editor Graham Perkin argued that, by supporting reform, the AMA had provided the ‘hesitant State Government with yet another firm stepping stone in the path towards reform of the present laws’.\textsuperscript{238} ‘Sooner, rather than later, the Government must summon up some political courage and face the issue’, he wrote, after all, ‘abortion is not

\begin{itemize}
\item \textsuperscript{230} \textit{Sun}, 26 October 1968, ‘No rush changes on abortion’, Neville Willmott.
\item \textsuperscript{231} \textit{Age}, 29 October 1968, ‘Abortion move for discussion’.
\item \textsuperscript{232} \textit{Age}, 10 September 1969, ‘Let doctors decide on abortions’, Michael Richardson, p. 1.
\item \textsuperscript{234} According to Andrew Peacock, the NH&MRC report was tabled on 9 September 1969. See \textit{CPD}, HR, vol. 65, 10 September 1969, Andrew Peacock, p. 1071.
\item \textsuperscript{235} \textit{CPD}, HR, vol. 65, 11 September 1969, Andrew Peacock, p. 1145.
\item \textsuperscript{236} \textit{Truth}, 15 March 1969, ‘The real hold-up on abortion reforms’; \textit{Age}, 15 May 1969, ‘Petition calls for special AMA meeting — doctors want abortions to be legal’, Winston McNamara.
\item \textsuperscript{237} ALRA, ‘Parliament and Abortion’, p. 13. See also Siedlecky & Wyndham, \textit{Populate and Perish}, p. 79.
\end{itemize}
being made compulsory.\textsuperscript{239} The mainstream media was overwhelmingly in favour of abortion law reform, with articles reflecting more serious reporting of the 'problem of abortion' from the mid-1960s. Geoffrey Griffith, writing in the \textit{Australian}, argued that abortion 'should be publicly acknowledged and discussed' as a fact of life.\textsuperscript{240} The \textit{Australian} generally articulated the need for public acknowledgment and discussion of the social problem of abortion and other newspapers concurred.\textsuperscript{241} The \textit{Melbourne Times} argued that the government of any civilised country should permit legal abortions in the interests of women's health.\textsuperscript{242} The editor of the \textit{Sun} suggested that law reformers now had a favourable climate of opinion in which to push for change.\textsuperscript{243} \textit{Age} journalist Stuart Sayers argued that, between international changes and the local controversy caused by the police campaign, there was mounting evidence that it was time to take the law out of the hands of the police and put 'it in the hands of doctors'.\textsuperscript{244} He accused the Victorian government of 'using the police to close a service and attack doctors' on the one hand, while 'refusing to do anything for the time being about amending the law' on the other.\textsuperscript{245} Even the \textit{MJA} suggested that there need only be a cursory examination of British law to see how it could be applied in Australia.\textsuperscript{246}

The Liberal government came under fire from the major daily newspapers for not acting on the will of the public. Perkin described Victorian law as 'ambiguous', 'tenuous' and 'dangerously out of touch with community standards'.\textsuperscript{247} Further, he claimed that the VPF had 'virtually destroyed' any chance of a safe and skilful medical abortion, while allowing backyard abortionists to flourish.\textsuperscript{248} Perkin argued for reform on both humanitarian and moral grounds, claiming that the 'pregnant woman should have some authority in deciding whether she would give birth to her child'.\textsuperscript{249} Like many Australians, he argued that 'disputed religious beliefs are a precarious foundation for the law'.\textsuperscript{250}

On 14 January 1969 the \textit{Age} led with an unequivocal editorial declaring it time for governments to face 'the guns of an entrenched opposition', formally led by the Roman

\begin{footnotes}
\footnote{Perkin, 'Stepping stone?', p. 5.}
\footnote{Perkin, 'Stepping stone?', p. 5.}
\footnote{Griffith, 'Abortion in Australia', p. 9.}
\footnote{\textit{Australian}, 23 November 1964, 'Illegal surgery on 90,000 girls? Doctors wonder'.}
\footnote{\textit{Melbourne Times}, 28 March 1968, 'Abortion'.}
\footnote{\textit{Sun}, 29 March 1968, 'Two out of three want a change', p. 26.}
\footnote{\textit{Age}, 24 April 1968, 'Reforming the law on abortion', Stuart Sayers, p. 4.}
\footnote{\textit{Age}, 24 April 1968, 'Reforming the law on abortion', Stuart Sayers, p. 4.}
\footnote{Editor, 'Therapeutic Abortion', \textit{MJA}, vol. 1, no. 7, 17 February 1968, pp. 273-74, cited in Sayers, 'Reforming the law on abortion', p. 4.}
\footnote{\textit{Age}, 23 October 1968, 'Abortion reforms', editorial.}
\footnote{Perkin, 'Abortion reforms'.}
\footnote{Perkin, 'Abortion reforms'.}
\footnote{Perkin, 'Abortion reforms'.}
\end{footnotes}
Catholic Church, and ‘bring down legislation in the coming parliamentary session’. Perkin noted that he was in company with ‘a great and growing body of legal, religious and medical opinion’ as well as the weight of public opinion in supporting reform. Given the estimated numbers of illegal abortions that were being performed in Victoria alone, he described as ‘wishful thinking’ any notion that improving sex education and ‘exhorting the married to practise moderation in bed’ would prevent the need for abortion. The Herald simultaneously published an editorial supporting reform in a wide range of medically approved circumstances, claiming that ‘the Government’s prolonged “consideration” begins to look like timidity’.

There is no longer any doubt that the weight of public opinion, including highly responsible medical opinion, finds the present law inhumane, unfair and at times downright harmful. The Government should not hesitate to plan the reforms which the majority wants.

Given the weight of the editorials and the extent to which they mirrored public opinion, it seemed certain that legislative change would follow.

4.3 Community views

The Victorian community was generally reported to be in favour of at least some degree of abortion law reform, although there remained a small but committed sector opposed to abortion under any circumstances. John Morgan from the Sun noted that the letters to the editor were much more likely to be anti-liberalisation but that vastly more people would go to the trouble of writing an ‘anti’ than a ‘pro’ letter no matter what the subject was. He suspected that many more people were in favour of liberalisation of abortion laws than against, and polls confirmed his views.

A Morgan Gallup poll undertaken in October 1967 found that 64 per cent of Australians interviewed favoured liberalisation of abortion laws. Paul Wilson, co-commissioned to undertake the study, was ‘amazed’ at the findings, in particular that 49 per cent of Roman

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252 Perkin, ‘Laws and morals’.
253 Herald, 14 January 1969, ‘Timid on abortion?’, editorial. According to Vicki Richie, librarian with the Herald and Weekly Times Ltd., finding information about editors proved difficult as the organisation does not have an archivist and does not keep historical records of editorial staff members. A researcher with the organisation, Mr Younger, provided information that Stuart Brown was editor of the Herald from 1967 to 1971 and Cec Wallace from 1971 to 1974.
254 Brown, ‘Timid on abortion?’.
255 Sun, 5 April 1968, Man Friday, John Morgan.
Catholics interviewed wanted some change in the law.  

David Biles, a lecturer in criminology at the University of Melbourne, remarked in response to the findings that parliamentary opinion was clearly ‘an imperfect image of public opinion’. Along with Duncan Chappell, Wilson published the survey findings in more detail in June 1968, casting doubt on the view that members of parliament would alienate a solid voting section of the electorate and thus commit political suicide if they were to legalise abortion.

Market research in Melbourne and Sydney by MFI Surveys Pty Ltd in May 1968 found that 60 per cent of married women thought abortion should be legal if carried out by a qualified medical practitioner. Twenty-five per cent of respondents were against legalising abortion and fifteen per cent undecided. The group used an ‘attitude scaler’ to grade the strength of opinion, finding that 38 per cent were definitely in favour and 21 per cent definitely against abortion. Younger respondents and those of higher socio-economic status were more likely to favour legalisation.

A Gallup poll in August 1968, found that Australians were divided equally on whether abortions should be legal in cases of exceptional hardship. Given the links drawn between hardship and ‘abortion on request’, the poll showed a remarkable swing towards abortion law reform. Another Gallup poll, reported in April 1969, suggested that two out of three Australians would make abortion legal under particular circumstances. Only 17 per cent of respondents answered that abortions should never be legal, while 31 per cent supported abortion for economic reasons. The greatest support for abortion (73 per cent) was in the case of threat to the mental and physical health of a woman.

While it was difficult to compare the surveys directly, given the differences in methodological approach, they clearly indicated steadily increasing support for abortion law reform. Further, they indicated that those who opposed legal abortion under any circumstances comprised a minority of the population. The majority of Australians favoured legalisation of abortion to preserve the life or physical or mental health of the mother, where there was a high risk of foetal abnormality, and where the pregnancy was the result of incest or rape. In each case, a preference was indicated for two doctors to confirm independently the necessity for abortion, for the abortion to be performed in a hospital setting and for the written consent of the woman

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256 *Herald*, 5 March 1968, ‘Most back abortion ruling change’; p. 11.  
257 *Herald*, 5 March 1968, ‘Most back abortion ruling change’; p. 11.  
258 *Australian*, 22 June 1968, ‘Most favor abortions, prostitutes, according to survey’.  
259 *Age*, 7 May 1968, ‘Most favor abortion’.  

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undergoing the abortion to be mandatory. Legalisation of abortion under those circumstances would confirm in law medical practice as it had operated for some decades. However, polls showed that public opinion was also slowly moving towards acceptance of abortion for socioeconomic reasons. Those groups that came into contact with women living in situations of poverty or domestic hardship were most likely to support liberalisation of abortion law. For example, in late May 1969 the Victorian branch of the Australian Association of Social Workers (AASW), which had set up an abortion study group earlier in the year, suggested that the law contributed to suffering and was ‘inconsistent with the attitudes and practices of many members of the community’.262 The AASW also expressed concern at the inadequacy of services available for coping with unwanted pregnancies. Like most supporters of reform, the association saw these services as complementary.

Regardless of their reasons for supporting abortion law reform, most people assumed without question that physicians were the group that should exercise control.263 In fact the purpose of reform was to clarify the law and protect physicians from putting ‘their careers in jeopardy by referring patients to medical abortionists’ for ‘valid and sincere reasons’.264 Even on the rare occasion that there was support for a woman to decide whether or not she wanted an abortion, it was always added that this must be in consultation with her doctor.

One of the most useful findings of the opinion polls was that there was a continuum of views regarding abortion law reform. This continuum was somewhat disguised by the nature of letters to the editors of newspapers and journals, which tended to argue a case for or against the liberalisation of abortion laws, producing what appeared to be an increasingly polarised debate. A number of Victorians contributed frequent letters to the daily papers. Philomene Joshua, a general practitioner from Box Hill, claimed that women do not act rationally in the first trimester of pregnancy.265 She portrayed abortions as universally dangerous to women, whether performed by a physician or a backyard operator, a point that led to much criticism of her views.266 Medical discourse generally portrayed only backyard abortions as dangerous, ignoring that the standard of care varied given the ambiguous legal status of abortion and the consequent lack of regulation.267 Joshua wrote to other publications with similar claims.268

262 Herald, 30 May 1969, “Change abortion laws”.
265 Herald, 19 August 1966, letters to the editor, Philomene Joshua, Box Hill; Herald, 10 September 1966, ‘Doctor replies’, letters to the editor, Philomene Joshua, Box Hill.
266 For example Herald, 24 August 1966, ‘Need a mother feel guilty?’, letters to the editor, Beatrice Fennessy, Parkville; ‘The right to choose’, letters to the editor, W.H. Mooney, Mornington.
Father John Phillips from Corpus Christi College in Glen Waverley was incensed by the 'long series of propagandistic editorials published by the Age on abortion law "reform"'. He argued that women's function in life was to procreate, thus 'the natural judgment of mankind is revolted at the idea of a woman so untrue to her maternal instincts as to be willing to destroy her own child'. Opponents of abortion used increasingly emotive terms to implore governments to 'protect the innocent' rather than 'allow a mother to conveniently destroy the baby she has conceived'. The religious basis of their views led one woman to summarise her understanding of the church position as 'women are wanton, ignorant and virtually sub-human and if given half a chance they would willfully destroy any life within them'.

In summary, letters to the editors in the late 1960s tended to be either dogmatically opposed to abortion or calmly in favour of reform, suggesting that those seeking change were confident it would be achieved. By October 1968 support for abortion law reform had taken on a new momentum, with the extra-parliamentary organisations of the major political parties, the AMA and a number of Protestant churches supporting moves for liberalisation in Victoria and other states. As the community became accustomed to arguments for abortion law reform and calls to change the law, those opposing change fought an increasingly desperate battle.

Interestingly, in 1968, experimentation with 'test tube embryos' was also taking place. Opponents of abortion were in two minds about this – they deplored the experiments for moral reasons, but used evidence gained to 'conclusively demonstrate' that the human foetus was capable of existence independent from the mother from the moment of inception. It is also worth noting that reproductive technologies, as with abortion, fostered a politics of reproduction that promoted medical hegemony at the expense of women's control over their own bodies.

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270 Age, 27 December 1966, letters to the editor, John Phillips, Glen Waverley.
271 Herald, 29 August 1966, letters to the editor, John Hassell, Bacchus Marsh.
272 Age, 27 January 1968, letters to the editor, Jean Talbot, Wantirna.
273 Age, 2 March 1968, letters to the editor, Anthony Endrey, Owen Dixon Chambers, p. 6.
274 A number of writers have explored the increased use of technology in obstetric care in reducing women's control, while allowing the physician more time to 'manage' the pregnancy. This technology has been used by anti-choice activists to project an image of the foetus as a 'public presence in a visually oriented culture'. Rosalind Petchesky argues that it was a conscious strategy by anti-abortion activists to shift from the religious-mystical discourse to a medical/technological one using the mass
4.4 The shifting discourse about women and morality

While abortion had long been understood as a response to poverty or the stigma of illegitimacy, it became increasingly clear that middle-class, married white women also sought abortion to limit or avoid child-bearing. At this point, opposition shifted to appeal to the conscience of the middle classes, centring on abortion as an immoral act, akin to murder. In an article regarding abortion in the 1950s, for example, one woman stated that ‘most of us had three or four’ back then and it ‘never crossed our minds that we might be taking a human life’ — it was only recently that that had been raised.

Moral opposition to abortion was nearly always expressed in emotive terms, and came largely from staunch Roman Catholic opposition to the ‘destruction of innocent and defenceless human life’ and the ‘assault, legal or otherwise, on the lives of helpless children’. One writer suggested that the ‘strangulation of an aborted baby’ was no different, legally or morally, from the ‘shooting of a fully developed mother-in-law’, both being unwelcome relatives. News Weekly argued that conceding that some circumstances might justify abortion would open the floodgates for ‘unwanted children being drowned like kittens, the deformed and the crippled being quietly exterminated, and the aged, sick and useless being put out of their misery like animals’. ALRA was accused of advocating ‘the same sort of legal principles invoked by the Nazis to sanction the extermination of six million Jews’. The growing concentration on moral and emotional questions related to the status of the foetus reflected an increasingly organised opposition. It is also likely that, once the veil of secrecy over abortion was lifted, there existed a freedom to discuss moral questions, where previously the only questions possible were how to access an abortion and at what price.

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275 Age, 13 March 1968, letters to the editor, W.T. Hotham, Gardenvale; Age, 15 March 1968, letters to the editor, F.J. Hayden, Melbourne.
277 Age, 11 March 1968, letters to the editor, John A. Phillips, Glen Waverley.
278 Age, 25 March 1968, letters to the editor, Robert B. Billings, Kew.
281 Farrago, 19 April 1968, ‘The great abortion debate’.
As opponents of abortion turned to increasingly irrational and emotive arguments, proponents of reform more frequently employed legal and medical discourse in the hope that reason would prevail. Peter Singer argued that terms such as ‘unborn citizen’, ‘innocent human life’ or ‘helpless children’ did not help people come to a ‘dispassionate conclusion as to the status of a foetus’. Farrago also pointed to contradictions in much of the moral debate, noting that if abortion was sometimes morally permissible then it was not always morally wrong. Other writers argued by comparative logic, pointing out, for instance, that a student enrolled in a degree program was not automatically granted the status of a graduate.

For liberal supporters of abortion law reform, moral arguments highlighted the double standards applied to men and women’s sexual behaviour. Further, they saw the preoccupation with the life of an unborn child as hypocritical alongside permissible killing in wars, which were conducted with the ‘blessing of State and Church’ as ‘men’s affairs’. One writer suggested, ironically, that it would not be long before the Age received a deluge of letters ‘from the numerous correspondents who believe in the sanctity of human life ... strongly urging the cessation of the war in Vietnam’. Journalist John Morgan argued that wars and legalised killing attested to the fact that human life might be sacred in theory, but this was not always so in practice. Germaine Greer also noted that those who were anti-abortion were ‘happy to risk the life of [their] teenage son in a war they supported’, having more concern with protecting a child before than after birth.

Discussion of abortion as a moral issue was now taking place throughout the western world. In London, Aleck Bourne, the gynaecologist responsible for successfully challenging UK law in 1938, opposed widespread liberalisation of abortion and was keen to ensure that doctors, not women, controlled decision-making. Bourne stated that women were more courageous and intelligent than men, but did not have the same moral sense or regard for the truth.

‘Woman is only moral so long as it suits her purpose and thus she knows not the agony of

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282 For example, Age, 14 March 1968, letters to the editor, Hugh A. Stevens, Beaumaris; Age, 27 January 1968, letters to the editor, Joan Boyd, Mary Butler, Thelma Rieper, Marion Worthy, Traralgon; Herald, 1 September 1966, letters to the editor, ‘Lawyer’, p. 17.
283 Age, 15 March 1968, letters to the editor, Peter Singer, Parkville.
286 Age, 19 April 1968, letters to the editor, Kathleen Philcox, Templestowe.
287 Age, 30 October 1968, letters to the editor, Mrs M.C.V. McCutcheon, Beaumaris.
289 Germaine Greer’s address to the National Press Club, Canberra, cited in National Times, 7-12 February 1972, ‘Abortion: An evil, or a qualified good?’, Lyndsay Connors, p. 19. Copies are held in the DLP papers, MS10389, SLV and box 2/1 Zelda D’Aprano papers, MS12573, SLV.
290 Sunday Telegraph, 14 October 1962, ‘Doctor risked all for tragic teenager’.

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self-guilt suffered by a man when he breaks a moral law. Writers in the Judeo-Christian tradition had long claimed morality as the province of men. At the same time, the church taught that it was women who were responsible for the moral health of their family and, therefore, the nation. This reflects the same separation between control over decision-making and responsibility for the consequences of decisions as occurred in relation to abortion generally. Women neither controlled the terms of the discussion regarding abortion, nor the decision-making process, yet they were assigned responsibility for the pregnancy — both its conception and its outcome.

Feminist writers have increasingly grappled with abortion as a moral issue, proposing an alternative morality of women’s decision-making. This takes account of the historical, cultural, social and economic circumstances within which women make decisions, as well as their moral values. Their work situates abortion as a political issue, as well as a moral one. Leslie Cannold argues, for instance, that anxiety about abortion reflects anxiety over women’s changing roles — ‘their choices to be other than mothers’. She and other writers argue that it was fear of women’s emancipation that led a male-dominated church and legislature to deny women control over abortion. This fear was certainly reflected in claims that husbands would not be ‘consulted concerning the murder’ of their child. The fact that a woman’s choice to end a pregnancy was claimed to be evidence of moral weakness legitimised the regulation of reproduction via the medical profession.

Some opponents of abortion under any circumstances alleged that if women were granted abortion on request they would ‘produce’ the circumstances to justify any abortion in collusion with their doctor. More than one letter alleged that women would falsely cry rape in order to gain an abortion. The message, repeatedly, was that women could not be trusted. In line with the increasingly moral tone of opposition to abortion, attitudes to women seeking abortion also shifted from the earlier pity for women in unfortunate circumstances to increasingly harsh and judgemental claims that they were ‘selfish and godless’.

Margaret Tighe, who went on to front the Right to Life Association in Victoria from 1979, began her

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291 Sunday Telegraph, 14 October 1962, ‘Doctor risked all for tragic teenager’.
294 Age, 15 March 1968, letters to the editor, F.J. Hayden, Melbourne.
296 For example, Age, 5 March 1968, letters to the editor, D.W. Quin, Parkdale; Herald, 16 March 1968, letters to the editor, P. Tenni, Box Hill
campaign against abortion with a series of letters to the editors about women who sought abortion for ‘purely selfish reasons’ such as being ‘unable to cope’.298

These were not, however, major issues in the growing support for reform, which centred on support for legal clarity, not emancipation of women. That abortion was inevitable and should therefore be performed cleanly and competently by medical practitioners formed the basis for that support.299 Even ALRA portrayed abortion as the last resort for desperate women in awful circumstances, rather than support for women seeking reproductive choice.300 Journalist Isabel Carter argued that everyone except women seemed to have had a say regarding abortion.301 Indeed, John Morgan, who favoured legalised abortion, criticised the women of Victoria for failing ‘to play as active a part in the political life of this State as they should’, leaving it up to male members of parliament to decide the issue.302 Morgan argued that while women acted for themselves and those around them, they did not extend their influence into the legislature or churches where abortion was presented as a moral problem.

It was certainly true that women had not featured prominently in the current campaign for abortion reform, although there were many and ongoing feminist movements for both birth control and women’s political representation throughout the twentieth century. 1968 heralded the re-emergence of an organised feminist voice, with the Status of Women Association announcing support for legal abortion in March, on the grounds that ‘the decision justly rests with the women, who then must be entitled to the skill and care of our doctors’.303 A feminist presence was also evident in the growing number of letters from women writers.304 These writers highlighted the socio-economic position of women, pointing out, for instance, the link between poverty, women’s low wage rates and their reluctance to continue unplanned pregnancies.305 They also pointed to sexual double standards that ‘allows the male to copulate where he will, and punishes the woman when the results become apparent’.306 The suggestion that men, too, should be responsible for the pregnancies resulting from their relationships with women had long been ignored in discussion of abortion. One writer noted that most anti-

298 Herald, 17 September 1968, letters to the editor, Margaret Tighe, Essendon.
299 For example, Age, 13 March 1968, letters to the editor, Claire Bunnett, Gardenvale.
300 Australian, 31 October 1968, letters to the editor, David Horwood, Parkside SA.
301 Herald, 23 March 1968, ‘Why take it out on the child?’, Isabel Carter.
303 Herald, 19 March 1968, letters to the editor, N. Morgan, Nunawading, Honorary Secretary, Status of Women Association.
304 For example, Australian, 12 November 1968, letters to the editor, Mrs P. Wallis, Vaucluse NSW; Sydney Morning Herald, 1 November 1968, ‘Abortion and women’s rights’, letters to the editor, Mrs Joan Mason, Secretary ALRA (NSW).
305 Age, 27 March 1968, letters to the editor, Leonie Plunkett, Avenel.
306 Age, 27 March 1968, letters to the editor, Leonie Plunkett, Avenel.
abortionists were males, who described reproduction as sacred yet allowed the women to 'quietly struggle to maintain and rear' those children created.\textsuperscript{307}

The role of the women's movement in abortion law reform is examined more fully in a subsequent chapter. Suffice it to say for now, that women were not at the centre of discussion prior to the Menhennitt Ruling.

\subsection*{4.5 Church views}

The churches in Australia contributed significantly to the shift from opposition to abortion on the grounds of population to so-called 'moral' grounds. This resulted in a split between 'foetal rights' and 'women's rights', as though they were in competition with each other. Those supporting 'foetal rights' were assumed to be representing a moral position. Although the churches had long advocated a moral perspective on abortion, it was not until women's choice featured in the growing momentum for law reform that the churches openly entered the fray.

As the medical profession assumed the right to control the criteria for decision-making in relation to the body, the Catholic Church claimed the right to expertise in relation to morality and theological matters. The \textit{Advocate} claimed, for instance, that the Roman Catholic Church, in condemning abortion, was interpreting divine law, not making an ecclesiastical regulation that could be modified or altered.\textsuperscript{308} Although there was no official position taken by the churches up until the late 1960s or early 1970s, the Protestant denominations largely sought relevance by responding to the social and economic conditions facing modern families. Felix Arnott, the Anglican Coadjutor Bishop of Melbourne, for example, said that 'in the changed conditions of the twentieth century we can no longer afford to ignore' abortion as it is not 'morally wrong in all circumstances'.\textsuperscript{309} He argued that consideration of the interests of the woman and her existing family members must be included.\textsuperscript{310}

The Roman Catholic Church was in a somewhat awkward position in relation to abortion. On the one hand, the teachings of the church forbade abortion and contraception; on the other, those teachings led to large families and resultant poverty. Prior to the release of the encyclical \textit{Humanae Vitae} in July 1968, which made explicit a church ban on the

\begin{footnotesize}
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\item[307] \textit{Age}, 31 October 1968, "Anti-abortionists mostly males", letters to the editor, Mrs M.A. Biddell, Keysborough, p. 5.
\item[308] \textit{Herald}, 9 December 1966, 'Church's stand on abortion'.
\item[309] Felix Arnott, cited in \textit{Age}, 18 November 1966, 'A life destroyed?', staff writer, part 2.
\item[310] Felix Arnott, cited in \textit{Age}, 18 November 1966, 'A life destroyed?', staff writer, part 2.
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contraceptive pill, many priests had advocated use of the pill as it acted prior to conception. Humanae Vitae triggered a wave of resignations from the priesthood, particularly among more radical priests.\textsuperscript{311} By ‘not adequately listen[ing] to the voice of the Church’, the hierarchy faced increasing disobedience.\textsuperscript{312} The RWH study also found that Roman Catholic women who tried to conform to the rules of their church around contraception and abortion found this ‘painfully difficult’ and were ‘constantly tempted to violate this religious law … [as] it was hard to accept’.\textsuperscript{313} As early as 1956, more than half of the hospital’s Roman Catholic patients were unwilling to abandon family planning in obedience to the church, and a similar figure was evident in polls in the 1960s.

Apart from their views on the legitimacy of abortion, church leaders were not poles apart in their thinking on the conditions that gave rise to its practice. An Advocate editorial in 1966, for instance, noted that the bulk of those seeking abortion were ‘neither outraged virgins nor women haunted by the fear of diseased offspring’.\textsuperscript{314} Given that economic reasons dominated decision-making, the editorial called for long overdue legislation to provide properly for the needs of large families and the grossly excessive costs of maternity.\textsuperscript{315} The other churches agreed that the government should tackle the social and economic reasons for abortion, reflecting a common concern that the support for law reform was ‘an attempt to relieve the community of what otherwise is its great responsibility’.\textsuperscript{316} Nevertheless, the more liberal churches recognised that it was unrealistic to assume that such social measures were an alternative to abortion.

The media tended to present polarised viewpoints, rather than the continuum of views that actually existed within and between the churches. This clearly worried the Roman Catholic Church, which feared portrayal as the only source of opposition to abortion. The DLP averred that its grounds for opposition to abortion law reform were based on considerations of national policy and the ‘impact on Australia’s critical population position’, not on the private moral viewpoint of a large number of DLP members.\textsuperscript{317} By distancing itself from the Roman Catholic view, the DLP hoped to gain wider electoral appeal. The Protestant churches generally came out in favour of at least some reforms to abortion laws, and the Roman

\textsuperscript{312} Australian, 6 August 1968, ‘The priest and the pill’, Nicholas Crotty, p. 9.
\textsuperscript{313} Gruber, ‘Social Study of Patients Admitted for Abortions’, p. 21.
\textsuperscript{314} Advocate editorial, cited in Age, 10 December 1966, ‘Church attacks abortion’.
\textsuperscript{315} Advocate, 29 May 1969, ‘What’s wrong about abortion?’
\textsuperscript{316} News Weekly, 30 October 1968, ‘Establishing the unspeakable’.
\textsuperscript{317} DLP, ‘Policy on Abortion’, submitted to Agenda Committee of Victorian State Conference, undated, box C/1/1, MS10329, SLV. See also Age, 29 July 1968, ‘Abortion policy’.

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Catholic hierarchy may have been concerned that isolating anti-abortion sentiments as purely Roman Catholic would reignite the sectarian prejudice that had faced Roman Catholics in Australia throughout the twentieth century. There was certainly evidence of Roman Catholic prejudice in the writings of some abortion law reformers. Frank McManus, deputy leader of the DLP, alluded to anti-Catholic prejudices in arguing in 1968 that reformers claimed that Catholics tried to ‘deprive’ others of ‘their inalienable right to abortion’ and that only Catholics opposed abortion. New Zealand gynaecologist and anti-abortion advocate Dr H.P. Dunn also emphasised at a symposium in Melbourne that pro-abortionists in the USA tried to give the impression that opposition to abortion was a Catholic issue. It is likely that these comments also reflected the beginnings of an organised anti-abortion movement keen to garner support from a range of individuals and groups.

To this end, Roman Catholics argued that their opposition to abortion was not specifically religious. The Advocate reported that an ecumenical meeting between the Australian Catholic and Anglican bishops in November had issued a joint statement unanimously condemning abortion, ‘not on “sectarian” grounds, but in the name of humanity because it violates the primary right to life’. The bishops cited the United Nations General Assembly’s Declaration of the Rights of the Child, made on 20 November 1959, to support this position. ALRA noted that the church regularly failed to mention that the declaration was signed by a number of nations that had previously or since introduced liberal abortion laws. Social ethicist David Boonin points out that critics of abortion should be ‘willing to concede that their claim that abortion is morally impermissible is conditional on the truth of a particular set of religious assumptions … But few if any critics of abortion are willing to make this concession’. Instead, they try to pretend that abortion is a human rights issue or a social justice issue.

Geoffrey Griffith argued that control of women appeared to be at the heart of Roman Catholic teachings in relation to both contraception and abortion. Where religious leaders opposed abortion, it was because they considered ‘that the threat of having to bear a child has a

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318 For example, both Beatrice Faust and Bertram Wainer reflected anti-Catholic sentiments in some of their writing.
319 McManus, ‘Abortion campaign shrewdly based’.
320 Advocate, 22 May 1969, ‘Dr Dunn’s diagnosis is that our Catholic Family Bureau leads the world’, J.J. McLean, p. 2.
321 Advocate, 15 May 1969, ‘One word more on abortion reform’.
322 Age, 1 November 1968, letters to the editor, William Dye, President ALRA.
323 Boonin, A Defense of Abortion, p. 29.
324 Boonin, A Defense of Abortion, p. 30.
deterrent effect on girls who would otherwise engage in random sexual relations.\textsuperscript{325} Bill Dye
argued that, both historically and essentially, the Roman Catholic Church had not seen
abortion as murder but as a form of birth control.\textsuperscript{326} It was an intensified church campaign
against birth control generally that had led to the recent hard line on terminations.

Victoria’s Roman Catholic bishops vehemently opposed the Liberal Party Council’s
recommendation to relax abortion laws,\textsuperscript{327} and Archbishop Knox, like Mannix before him,
used the pulpit to campaign against abortion, issuing a pastoral letter to be read in Roman
Catholic churches throughout Victoria in March 1968.\textsuperscript{328} The bishops issued a statement
clarifying the teaching of the Catholic Church on abortion, ‘namely that the direct aborting of
a child in the womb for any reason whatsoever, even to preserve the life of the mother, is
murder and therefore forbidden by the law of God’.\textsuperscript{329} According to the clergy, it was the
duty of Catholics to oppose legalisation.\textsuperscript{330} The Catholic Weekly responded by devoting its
entire front page to an editorial condemning moves to reform abortion laws.\textsuperscript{331} Age journalist
Nan Hutton asked in response how some Christians could ‘swallow the camel and choke on
the gnat’, when the fact remained that women would go to great lengths to seek criminal
abortions if they could not be treated legally, despite the moral issues involved.\textsuperscript{332}

Other Catholics claimed a continuum of views within the churches as well as between them.
One Roman Catholic priest wrote that he was not in favour of the hard line taken in the recent
papal encyclical regarding contraception and found Knox uncompromising.\textsuperscript{333} Two other
Melbourne priests, the Reverend Nicholas Crotty and the Reverend Peter Phelan, were
suspended for expressing such views publicly.\textsuperscript{334} Similarly, Roman Catholic women wrote to

\textsuperscript{325} Griffith, ‘Should abortion be made legal?’, p. 9.
\textsuperscript{326} See chapter two for historical discussion of religious views regarding abortion.
\textsuperscript{327} Age, 16 February 1968, ‘Church view on abortions’.
\textsuperscript{328} Sun, 25 March 1968, ‘Divorce and abortion hit’, p. 22; Age, 28 March 1968, ‘In the churches:
Abortion “lowers dignity, respect for life”’.
\textsuperscript{329} See Herald, 6 March 1968, ‘“Abortion ... It’s straight-out murder” ... Church men have a say’,
DavidBornstein; Sun, 16 February 1968, ‘Views on abortion’, p. 13; Age, 16 February 1968, ‘Church
view on abortions’, p. 3. The articles list James Robert Knox, Archbishop of Melbourne, James Patrick
O’Collins, Bishop of Ballarat, Bernard Denis Stewart, Bishop of Sandhurst and Arthur Francis Fox,
Bishop of Sale, as signatories to the statement.
\textsuperscript{330} Sun, 29 March 1968, ‘The Catholic view’.
\textsuperscript{331} Catholic Weekly editorial, cited in Australian, 4 April 1968, ‘Catholic attack “campaign” for
abortion reform’.
\textsuperscript{332} Age, 25 March 1968, ‘Something nasty in the wood shed’, Nan Hutton, p. 11.
\textsuperscript{333} Age, 1 October 1968, ‘“Hard line” of the Catholic hierarchy’, letters to the editor, Melbourne priest,
p. 5.
\textsuperscript{334} Father Crotty wrote that ‘as a Christian, as a priest, and as a moral theologian I am unable to accept
the teachings of Pope Paul’s encyclical’, Australian, 6 August 1968, ‘The priest and the pill’, Nicholas
Crotty, p. 9. He stated that the church claimed to have always provided ‘a coherent teaching concerning
both the nature of marriage and the correct use of conjugal rights and the duties of husband and wife.
To say this is to betray an ignorance of history’. For instance, it was not until the nineteenth century
the papers claiming that the church was keeping them from God, given its male-dominated
discussions of abortion law reform and papal encyclicals. One mother of eight suggested that
even the ‘deepest and most intimate ties of nature cannot overcome the terror, the horror, of
bearing another child when one is physically, mentally and financially incapable’, while
abstinence does not foster mutual love. 335

Protestant church leaders agreed that, at the very least, abortion could be justified in order to
save another life. The Moderator of the Presbyterian Church of Victoria said that abortions
were justified in cases of real danger or exceptional hardship, with proper legal and medical
safeguards. The Right Reverend Rhys Miller went much further, describing advances in
medical science to prevent conception or birth as a ‘revelation of some of the power which
God the creator has placed within our reach’. 336 He said that rather than ‘deplore this new
knowledge and skill … we should make careful and responsible use of such methods’. 337

In July 1968 the Social Questions Committee of the Anglican Diocese of Melbourne indicated
that it supported liberalised state abortion laws under a wide range of social and medical
circumstances and would sponsor a motion seeking clarification of the law at a meeting of the
Diocesan Synod in October. 338 The move, ‘believed to be the first time an official body of a
church in Victoria has recommended changes to the present law’, was expected to cause
controversy within the Anglican Church. 339 Synod supported the motion, while an
amendment aimed at reducing the circumstances to those where death or grave physical or
mental injury would result for the woman was lost on a close vote. 340 The Australian’s
Graham Williams wrote a few days later that the Anglican synod had passed the resolution for
abortion law reform with ‘unseemly haste’. 341

At its General Assembly in Melbourne in October, the Presbyterian Church of Victoria urged
the state government to revise the law to allow abortions in registered hospitals, when a

that the church shifted from its earlier view that intercourse in marriage was always sinful, to allowing
it for the purpose of procreation only. Australian, 7 August 1968, ‘The priest and the pill’, Nicholas
Crotty, p. 9. Archbishop Knox called for Crotty’s resignation as professor of moral theology at Holy
Cross Seminary. Father Peter Phelan also stated on television on 11 August 1968 that he could not in
conscience preach the Pope’s encyclical. Australian, 12 August 1968, ‘Archbishop asks priest to
335 Age, 8 October 1968, “Church keeping me from God””, letters to the editor, ‘Anti cant’, Melbourne,
p. 5.
336 Sun, 10 May 1968, ‘Some abortions are justified — says minister’, p. 11.
337 Sun, 10 May 1968, ‘Some abortions are justified — says minister’, p. 11.
338 Age, 2 July 1968, ‘Church support move’, p. 3.
339 Age, 2 July 1968, ‘Church support move’, p. 3.
340 Age, 23 October 1968, ‘Church will ask for law to allow abortion’, Geoffrey Kenihan.
woman’s health was in grave danger, the foetus deformed, or in ‘certain’ rape or incest cases, as determined by consultation between at least two independent medical practitioners. In November the Council of the Congregational Union of Victoria voted to press the state government to allow abortion under the same circumstances. The Council of Liberal Jewish Ministers of Victoria stated that ‘practical-minded rabbis of the past’ understood the social problem of abortion and did not link abortion with murder. According to Leslie Reagan, Mishnah, the code of ancient Jewish law, which guided later rabbinic thought, required abortion when childbirth threatened the woman’s life, for ‘her life takes precedence over its life’.

These church leaders did not shy away from moral questions or suggest that abortion was not, at the very least, destruction of potential life. Yet they were clear that the issue was not just about the potential life of the foetus but about a range of complex and interconnected socio-economic questions. They continued calls for reforms to encourage women to continue with an unplanned pregnancy but then left it up to each woman to make a decision based on her own conscience, in consultation – it was always added – with her doctor.

The Roman Catholic Church, however, stepped up its opposition to abortion in 1969, appealing to the public to oppose moves to ‘legalise murder’. Its unyielding stance angered those who argued that in a pluralist society one group should not inflict its views forcibly on another. The effect of opposing abortion law reform for moral reasons was to refuse all women the option of safe and legal abortion, suggesting the Roman Catholic Church preferred the risk of illegal abortion in order to maintain control over women.

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342 *Age*, 18 October 1968, ‘Change in law on abortion urged’.
343 *Age*, 12 November 1968, ‘Church calls for move on abortion’.
344 *Age*, 21 May 1973, letters to the editor, Council of Liberal Jewish Ministers of Victoria. The council wrote in response to a letter from Rabbi Rapaport who claimed abortion was murder under Jewish law, arguing that Rapaport’s letter was a misrepresentation of Rabbinic Judaism. See also *Australian*, 19 December 1968, ‘Aborted soul “goes to heaven”’.
345 Reagan, *When Abortion was a Crime*, p. 7.
347 For example, *Age*, 7 January 1966, letters to the editor, John Burke, Essendon.
348 Gynaecologist H.P. Dunn wrote in a booklet published by the Australian Catholic Truth Society, ‘What’s Wrong With Abortion?’, that deaths from criminal abortion ‘usually did not exceed twelve per year’, while legalised abortion would result in the destruction of human lives, breakdown of marriages, chaos, suffering and violence in society and that voluntary and then compulsory euthanasia would be next. See *Age*, 29 January 1969, ‘Surgeon hits at abortion’, p. 11.
5. The Menhennitt Ruling

As early as 1966 the Age reported that every authority it consulted favoured at least some reform of the law in addition to increases in family planning facilities. By 1969, support for reform from the two major political parties, from the Methodist, Congregational, Presbyterian and Anglican churches, as well as considerable community support, should have encouraged the attorney general to be ‘a little braver in this (now considerably less) controversial area’. Nevertheless, the government remained ‘undecided’ about whether it would amend abortion laws.

Truth commented that while almost everybody appeared to want a change in the abortion laws, this was unlikely to occur in Victoria for at least twelve months. Abortion was ‘too hot a political potato for anyone to tackle’, with no one ‘game to buck one small, but powerful pressure group operating outside the ranks of authority’. This was not, it seemed, entirely true. In January 1969, it was reported that a Melbourne doctor was seeking a suitable woman on whom to perform an abortion as a test case of Victoria’s anti-abortion laws. Public action had been relatively timid in relation to abortion throughout the 1960s but it seemed that this was about to change.

From a political point of view, however, Truth was quite right. The Liberal government, increasingly squeezed between its need for DLP preferences on the one hand and a community overwhelmingly in favour of liberalisation of abortion laws on the other, was no doubt keen to find a politically expedient and electorally safe way around the dilemma. It is likely that the Crown Law Department, in its February report, advised a judicial solution to political pressure, with Ken Davidson providing the opportunity to implement it. A warrant had been issued for Davidson’s arrest in September 1967, after he disappeared following a police raid of his surgery in August. He returned to Melbourne in March 1968 just after the allegations of bribery and corruption became public. While the extent of police involvement in abortion was not to emerge for another two years, the general community no longer questioned whether abortion should exist, but how it should be performed and controlled. Davidson, who was acknowledged as reasonable and competent, was likely to receive a fair hearing.

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350 Age, 28 October 1968, letters to the editor, Mrs Jeanette Love, St Kilda.
351 Herald, 13 January 1969, 'State won't rule yet on abortion law'.
352 Truth, 15 March 1969, 'The real hold-up on abortion reforms'.
353 Truth, 15 March 1969, 'The real hold-up on abortion reforms'.
Davidson's trial began on 14 May 1969. The behaviour and tactics of police officers was called into question when two witnesses reported that the police had guaranteed them immunity from prosecution if they agreed to give evidence at the trial. In all, fourteen witnesses were indemnified from prosecution. Bertram Wainer, now a member of ALRA, alleged that police had been behaving in a generally bullying manner to gather evidence against abortionists. The police had shifted tactics, from gathering 'dying declarations' up to the mid-twentieth century, to gathering healthy women patients as witnesses via raids. Wainer stated that he was furious at these 'storm-trooper tactics' and so placed an advertisement in the Sun headed 'Abortion, Abortion, Abortion', on 20 May. The advertisement, urging women not to be intimidated and clarifying their legal position, caused an outcry. Wainer gave his telephone number in case women required further information. The Chief Commissioner of Police, Noel Wilby, promised a full investigation into Wainer's allegations. The AMA censured Wainer for unprofessional conduct on the basis of unethical advertising.

Davidson pleaded not guilty to the charges, stating in an unsworn statement that the women concerned had not been pregnant and had been given curettes on sound professional grounds and in good faith. Davidson said that he chose to give an unsworn statement to protect the confidentiality of his patients. Dr Ian McDonald, who gave evidence in Davidson's trial, stated that it was sometimes necessary for medical reasons to perform an abortion. This included cases where the mental or physical health of the mother would be seriously jeopardised by continuing the pregnancy, or where there was a good chance the baby might be born deformed. The Supreme Court jury acquitted Davidson of all charges after five hours

355 Age, 14 May 1969, 'Two say police promised to avoid charges', p. 13.
356 Herald, 14 May 1969, 'Indemnities in abortion hearing'.
357 Sun, 20 May 1969, "Police bully girl patients" - doctor", p. 16. For example, Wainer claimed that the police seized confidential medical files, harassed women, including questioning them in their workplaces, and, in some cases, sent anaesthetised women in ambulances to public hospitals and forcibly photographed their genitals to gather evidence to prosecute the doctor, then sent the bills for the photographs to the women. See B. Wainer, 'Bert's Role', July 1983, pp. 1-10, box 12, Wainer papers, MS13436, SLV. Bretherton also experienced such police tactics and it is likely that Wainer's information came from him. See Bretherton, Abortion: RU486, p. 24. Faust agrees that much of Wainer's information about abortion came from Bretherton, as Wainer knew very little about abortion at this time. Interview, Beatrice Faust, 16 February 2004.
358 B. Wainer, 'Bert's Role', July 1983, pp. 1-10, box 12, Wainer papers, MS13436, SLV. Bretherton claims that he contacted Wainer and asked him to arrange the advertisement after being raided by police during the Davidson trial. See Bretherton, Abortion: RU486, p. 20.
360 Herald, 30 May 1969, 'Doctor: I cannot take oath', p. 6; Sun, 31 May 1969, 'Doctor denies police charges'.
361 Age, 23 May 1969, 'Reason for operation not clear, says doctor', p. 10.
of deliberation and a sixteen-day trial.\footnote{362} The acquittal led to the landmark Menhennitt Ruling in May 1969 after Justice Inch Menhennitt instructed the jury that an abortion was lawful under particular circumstances.

'For the use of an instrument with intent to procure a miscarriage to be lawful the accused must have honestly believed on reasonable grounds that the act done by him was (a) necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail; and (b) in the circumstances not out of proportion to the danger to be averted.

Accordingly, to establish that the use of an instrument with intent to procure a miscarriage was unlawful, the Crown must establish either (a) that the accused did not honestly believe on reasonable grounds that the act done by him or her was necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail; or (b) that the accused did not honestly believe on reasonable grounds that the act done by him or her was in the circumstances proportionate to the need to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail.'\footnote{363}

The very carefully worded ruling provided a common law defence for medical practitioners acting in good faith and, in the process, gave the government an excuse to avoid abortion law reform. Peter Brett and Louis Waller state that the Menhennitt Ruling would be likely to withstand the challenge of an appellate court, given the carefully crafted opinion and its continuity with the principles of criminal law.\footnote{364} They argue that the ruling afforded protection to properly qualified doctors who honestly considered the risks to the mother involved. Those who operated as 'backyarders', on the other hand, were likely to be convicted, given the difficulty they would have convincing the court of the proportion of danger to the woman. Doctors who charged exorbitant fees or worked under surreptitious circumstances would also find it difficult to establish their bona fides. This seemed to solve the problems associated with abortion as a business rather than as a practice. Interestingly,
the ruling did not necessitate a second opinion – although Brett and Waller suggest that this would be wise if a doctor was required to prove honesty.\footnote{365}

However, Brett and Waller also note that the ruling was very general and did not attempt to formulate specific criteria for deciding on abortion. On the one hand, this ensured a fair degree of latitude to doctors over what constituted a lawful abortion, opening the possibility for abortion on request if the doctor sought was liberal enough in attitude. On the other hand, the lack of criteria meant that medical practitioners remained somewhat hesitant about whether and in what circumstances they might face prosecution. Either way, control over decision-making was confirmed as the professional province of the physician.

After a decade of growing support for abortion law reform, and a year of increasing certainty that legislative change was inevitable, this ruling brought all speculation to a halt. The Menhennitt Ruling was something of an anti-climax, with the Liberal government arguing that now that the law had been clarified there was no need for legislative change.\footnote{366} The combined actions of the police, the DLP and the Roman Catholic Church, and the inaction of the Liberal government, resulted in the judiciary having to take responsibility for legal decision-making. Natasha Cica argues that allowing the law to develop by default meant that Australian law-makers abdicated ‘their duty to define the rights and responsibilities of Australian citizens in accordance with the needs and values of those citizens’.\footnote{367}

Whether the practice of abortion would change following the landmark ruling was the concern of activists such as Bertram Wainer. The following chapter examines the period of activity in the two years following the Menhennitt Ruling, focusing on the Kaye Inquiry, the trial of police officers charged as a result of the inquiry and the activities of Bertram Wainer in relation to abortion law reform.

\footnote{365} Brett & Waller, Criminal Law Text and Cases, p. 104.

\footnote{366} After this time, all written replies from the state Liberal government to questions about abortion law reform stressed that, in light of the Menhennitt Ruling, the ‘Government considers there is no necessity to change the existing law which is based on common law principles and the provisions of the Crimes Act 1958’. A copy of the ruling was enclosed with the correspondence. See PROV, Department of the Premier and Cabinet, VPRS 7614/P1 Correspondence, unit 1, item 69/1963 Abortion 1969-1973. It was noted in the correspondence files that identical responses were sent from other relevant government departments.

CHAPTER FOUR

BERTRAM WAINER AND THE KAYE INQUIRY
1969-1971: allegations of corruption in association with abortion become public

It is a reflection on the comparative standing of police, women and doctors in this community that police were punished, women's welfare was ignored, and negligent doctors were not even subjected to inquiry by the Medical Board. Police corruption is inextricably linked with medical corruption, and of the two, the latter is much more important to women. Both types of corruption are products of the law.¹

1. Introduction

The Menhennitt Ruling stopped abortion law reformers in their tracks – at least temporarily. Despite growing public cynicism, Victorians retained an overall respect for the law. In attempting to change rather than ignore it, advocates attested to a belief in the possibility of just laws that reflected the will of the people, rather than simply benefiting the 'overclass'.²

This belief goes some way towards explaining why there was widespread surprise that the government did not bring about legislative change to abortion laws, instead of handing responsibility to the courts.

Despite assurances by the state government that the ruling had clarified abortion law, medical practitioners remained fearful of having charges laid against them, police officers continued to charge medical abortionists, and abortion was no more accessible for women in the period that immediately followed the ruling than it had been beforehand. As a result, Bertram Wainer commenced a series of actions designed to clarify the law once and for all. He built on campaigns initiated by Beatrice Faust and an increasingly active civil liberties movement.³

The publicity generated by Wainer's actions produced information about a closely connected network of graft and corruption operating in Victoria, whereby the practices of abortionists were being protected by past and present members of the Victoria Police Force (VPF)⁴ in return for payment of bribes. Wainer's information led in 1970 to the establishment of the Kaye Inquiry into allegations of police corruption in relation to abortion and the subsequent police trial in 1971.

¹ Beatrice Faust, undated, Synopsis of Submission to 1977 Human Relations Commission, box 21 Wainer papers, MS13436, State Library of Victoria (SLV).
The outcome of the inquiry suggested that the police corruption identified was the result of a few 'bad apples' in the VPF. However, analysis of both the evidence given to the inquiry, and literature examining police corruption generally, suggests that the culture of the police force and its role in enforcing a widely unpopular law were (and remain) instrumental in the development and maintenance of systemic corruption.

This chapter considers the impact of the Kaye Inquiry and associated activities on women's access to abortion in Victoria. It thus provides a key to identifying the primary issues and concerns associated with reform of the law. The following questions provide the parameters for discussion. Why was it that the Menhennitt Ruling did not provide an immediate solution to the problem of abortion? What were the reasons for the establishment of the Kaye Inquiry and what part did Bertram Wainer play in its establishment? What was the extent of police, medical, political and lay involvement in abortion policy and practice revealed in the Kaye Inquiry, and what were the immediate outcomes and effects of the inquiry?

2. Why the Menhennitt Ruling Did Not Provide an Immediate Solution

While it appeared inevitable that the government would legislate to change abortion laws given the broad support for such a move within the Victorian community, the Menhennitt Ruling was a judicial stopgap. It was both an anti-climax and a less than convincing safeguard against prosecution.

2.1 Medical uncertainty following the Menhennitt Ruling

Justice Menhennitt did not formulate specific criteria for determining when an abortion was lawful. While in theory this gave medical practitioners wide discretionary powers, which they could have used to provide abortion on request if they so wished, the Australian Medical Association (AMA) responded conservatively. The association circulated criteria to the profession for determining when an abortion was lawful that were more restrictive than those required by the Menhennitt Ruling. This left doctors uncertain about the conditions under which prosecution might occur and therefore hesitant to carry out abortions. There was also fear that a subsequent ruling could overturn the original. If the AMA had given its imprimatur to abortion, the situation might have been different. Its members were clearly

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4 The title 'Victoria Police Force' is used in this chapter, as this was the correct title during the period under consideration. The word 'force' was dropped from the title prior to publication of the December 1971 annual report.
involved in referrals for, if not provision of, abortion themselves. However, the combination of legal uncertainty and desire for respectability meant that doctors were loath to associate themselves openly with the practice. A spokesman for the AMA claimed, ‘We are opposed to abortion on demand, or request and have made no decision about abortion on socio-economic grounds’. The association remained unconvinced that the ruling ‘afforded protection to properly qualified doctors who honestly considered the risks to the mother involved’.

The AMA’s response can also be read as resistance to government attempts to shift responsibility for abortion to the profession. The editor of the Medical Journal of Australia (MJA) argued that it was not the ‘prerogative of the medical profession … to determine the moral standards of the community or to frame the laws governing those standards’, nor could the community ‘fairly impose upon a doctor as a professional duty a course of action that is repugnant to his personal conscience or seriously at variance with his professional judgement’. I.K. Furler, writing to the MJA, also noted that the government had, ‘in effect, handed over to the medical profession a social problem with which it cannot or will not cope’. He urged compassion for doctors who were being asked to perform operations that they had been trained to see as both illegal and immoral, suggesting that for this reason a number of doctors would remain, in the short term, rigid and uncompromising. Many physicians responded angrily to what they saw as a personal and professional dilemma, describing those who demanded the right to abortion as ‘shrill and insistent’ women, who viewed abortion as akin to the hiring of a taxi or mending of a gas pipe. This reduced medical practitioners to mere service providers.

Paul Wilson argued further that ‘the medical profession’s ambivalence towards, if not outright opposition to, abortion reform’ was in fact ‘related in part to its reluctance to undertake major responsibilities for the management of any proposed legislative changes’. If estimates of ten

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thousand illegal abortions performed in Victoria each year were accurate, demands for abortion in public hospitals would create a resource crisis.\(^{13}\)

For all this, the Menhennitt Ruling had in fact confirmed medical control over decisions about abortion. But, while medical practitioners remained hesitant to perform abortions, their control ensured that abortion was no more accessible than it had been prior to the ruling.

### 2.2 Police uncertainty following the Menhennitt Ruling

On 2 June 1969, immediately following the Menhennitt Ruling, Frank Holland was promoted to chief inspector and replaced as head of homicide by Detective Inspector Jack Ford.\(^{14}\) Ford had served in the VPF for twenty-nine years, most of this in the Criminal Investigation Branch (CIB).\(^{15}\) Holland's replacement may have been seen at the time as reassurance that medical practitioners no longer need fear prosecution for carrying out lawful abortions. Holland, as we have seen, had a black-and-white response to enforcing abortion laws. However, it was some months before homicide squad practices changed.\(^{16}\)

In the weeks following Ford's appointment, medical practitioners Rodney Bretherton and John Heath faced the court.\(^{17}\) Each had avoided charges under the Holland regime despite operating lucrative abortion practices for many years.\(^{18}\) Similarly, a series of raids from June

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\(^{13}\) H.M. Carey wrote of those concerns in 1969 in 'The Impact of Abortion Law Reform on the Hospital', *Hospital and Health Care*, vol. 1, no. 1, July/August, pp. 8-10. Carey cites legislative changes in the UK that led to a tenfold increase in the number of therapeutic terminations performed in public hospitals. He was concerned that terminations might displace routine surgical and gynaecological patients in Australia given restrictions of finances and facilities in public hospitals, if legislation permitted termination of pregnancy for social, rather than purely 'medical' reasons. Janet McCalman also noted that the board of management of the Royal Women's Hospital (RWH) was 'horrified' about the prospect of law reform as it would force the hospital 'to undertake the major burden of the work'. Board of Management minutes, RWH, 11 September 1969, cited in J. McCalman, 1998, *Sex and Suffering: Women's Health and a Women's Hospital*, Melbourne University Press, Melbourne, p. 327.

\(^{14}\) *Sun*, 3 June 1969, 'It's good-bye to murder probes', Ian Livingstone, p. 7.


\(^{17}\) See *Age*, 10 June 1969, 'Doctor faces abortion charges', p. 3, for Bretherton, and *Herald*, 9 August 1969, 'Doctor on two abortion charges', p. 11, for Heath.

to September 1969 resulted in charges against a group of unqualified abortionists, including Stanley Charles Wyatt, who had operated in Melbourne under the pretence of being a medical practitioner. Ford also announced a drive against unqualified people advertising their services as 'practical doctors' in foreign-language newspapers. Targeting the poorest and most marginalised group of practitioners resulted in more migrants being charged with abortion-related offences in 1969 than throughout the previous decade. The drive against migrant operators, who were developing community networks similar to those operating among women prior to the dominance of the medical profession in Australia, ensured that doctors maintained a monopoly on abortion practice.

Table 7 below indicates the number of prosecutions launched against abortionists from 1959 to 1974, clearly reflecting the differences between different homicide squad chiefs. The extraordinary increase in the number of abortions reported in 1969 compared with previous or following years was partly the result of the activities of abortion law reform campaigners, who stepped up their own reporting of unqualified operators in response to police activities against medical abortionists. There was also evidence that some medical practitioners facing charges tipped off the police about those still operating.

Despite the fact that the police continued to prosecute medical practitioners as well as unqualified operators, the courts, like the media, took the view that medical abortion was far preferable to backyard abortion. By portraying backyard abortionists as a threat, the media

in the death of a woman as a result of an abortion, see Sun, 17 March 1971, 'Mrs B. threatened to bomb me, says Adam', p. 20; 'Adam says: I'm man of honor'; Age, 17 March 1971, 'I am not guilty, Adam tells jury'.

19 Age, 27 June 1969, 'Two face abortion charges', p.3.
20 Newsday, 21 October 1969, 'Migrants warned'.
21 Rod Bretherton argues that the migrant community in Victoria was quite isolated and so unaware of the changing attitudes of medical practitioners to abortion. For this reason he believes they were vulnerable to an ongoing backyard abortion trade. See Bretherton, Abortion: RU486, p. 28.
22 See appendix 4 for a list of the officers in charge of the homicide squad between 1959 and 1974. Of the 1969 prosecutions, 10 are attributable to Ford (3 medical abortionists and 7 unqualified operators) and 8 to Holland. Some of the information in the table was also the subject of a question in parliament regarding 'sex offences' - abortion, prostitution and homosexuality. See Victorian Parliamentary Debates (VPD), Legislative Assembly (LA), vol. 301, 8 December 1970, David Bornstein to Arthur Rylah, p. 3060.
23 See, for instance, Age, 24 December 1969, 'Police too slow - Wainer', p. 3; Sun, 26 December 1969, 'No abortions, just laundry, say police', p. 4; Age, 26 December, 'Wainer 'tip off' checked: Police', p. 3; Age, 27 December 1969, 'Wainer rejects Wilby's claim', p. 2.
Table 7: Breakdown of Numbers of Abortions Reported and Prosecuted in Victoria from 1959 to 1974

[Copyrighted material omitted. Please consult the original thesis.]

and the courts reflected a desire to protect women from the dangers of unscrupulous operators. They did not acknowledge the fact that both qualified and unqualified operators varied in the quality of their practices. For example, one unqualified man was sentenced to four years jail despite having performed abortions safely and without financial gain, while Dr William Fenton Bowen was released on a bond despite evidence of high fees and less than sterile operating rooms. Ascribing the dangers associated with abortion to ‘backyard’ operators, as opposed to medical abortionists – or to the fact that abortion was illegal – also went some way towards dealing with both conservative and liberal concerns about law reform. Further, it reinforced support

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26 Victoria Police Force, *Statistical Review of Crime*, 1959 to 1965, 1968 to 1974, Government Printer, Melbourne. Unfortunately the VPF did not collate crime statistics in either 1966 or 1967 so figures are unavailable for those years. No reason was given for this decision. While I approached the Office of Public Prosecutions (OPP) in the hope of accessing those statistics directly, the OPP has introduced a pricing policy that makes the cost of undertaking such research prohibitive. According to Dr Melanie Heenan, former Victorian Law Reform Commission researcher, the office of the DPP data system is ‘wholly inadequate’. In discussing rape investigations, she notes that the DPP have ‘adopted a system that cannot allow information about the outcomes of ... investigations to be routinely extracted’. See *Sunday Age*, Agenda, 30 May 2004, ‘He said, she said’, Liz Porter, p. 7.


28 Police surgeon John Birrell described Fenton Bowen’s operating room as ‘dusty and shabby’ when giving evidence at the trial. See ‘He objects to doctor’s bed’ – see appendix three for copy of article. See also *Sun*, 15 May 1968, ‘$100 for abortion court told’, p. 22; *Age*, 27 September 1969, ‘Abortion doctor will give up his medical practice’, p. 3.
for medical regulation of all aspects of health care. This was in the professional interests of the AMA as well as the regulatory interests of the welfare state in dealing with an expanding post-war population.

Given that the public, the courts, and the government no longer viewed abortions performed by medical practitioners in good faith as illegal, police targeting of doctors after the Menhennitt Ruling suggested either political or personal interference in policing decisions, or the possibility of corrupt practices within the homicide squad. It was to the latter possibility that Wainer directed his efforts.

2.3 Government action and inaction

According to Lionel Dunk, state political reporter for the Age, the first clear official definition of the government’s attitude to abortion came in a letter to Clyde Holding, Leader of the Opposition, released on 22 July 1969.\textsuperscript{29} The Acting Premier, Arthur Rylah, wrote, ‘In all the circumstances, the Government considers that the present state of the law is satisfactory and that no good purpose would be served by introducing legislation to amend it’.\textsuperscript{30} By refusing to act, the state government left the police and the judiciary to carry responsibility for de facto law reform. The government even ignored the Liberal Party State Council, which urged immediate legislation to amend the Crimes Act 1958, not on socio-economic grounds, but simply to enshrine the Menhennitt Ruling in law to protect doctors acting in good faith.\textsuperscript{31}

Peter Brett, professor of jurisprudence at the University of Melbourne, publicly criticised the government for ‘eschewing principles’, ‘espousing expediency’ and resorting to whatever measures were likely to get them into office.\textsuperscript{32} Having ‘avoided this controversial issue’ for some time, the government was unlikely to act in the lead-up to an election, due in April 1970.\textsuperscript{33}

George Moss, leader of the Country Party, was responding to pressure from the law reform lobby, the opposition and his own party in urging a royal commission into the desirability of

\textsuperscript{29} *Age*, 23 July 1969, ‘No social, economic abortion says Rylah’, Lionel Dunk, p.1.


\textsuperscript{31} See *Age*, 8 July 1969, ‘Liberal critics will be on the attack’, p. 3; *Age*, 1 August 1969, ‘Rank and file rebel on abortion’, p. 11.


\textsuperscript{33} *Sun*, 19 June 1969, ‘Vic. may alter laws on abortion’, Neville Willmott, p. 2.
liberalising abortion laws in Victoria. The *Age, Herald* and *Sun* all came out in support of a royal commission in order to deal with 'the confusion that exists in the community and among doctors, despite the Menenitt Ruling'. Following a July 1969 cabinet meeting, the government announced that neither law reform nor an inquiry would go ahead. Holding claimed that cabinet had 'been guilty of a craven evasion of its responsibilities' and announced that he would introduce a bill for an inquiry in September 1969. He did not. The first private member's bill proposing an abortion inquiry did not eventuate until October 1973.

Wainer, who had urged Holding to pursue a royal commission, was disgusted by the inaction of both government and opposition.

3. Events Leading to the Kaye Inquiry

Wainer had been actively supporting medical colleagues charged for referring women for abortions and was both vehemently opposed to unqualified operators and increasingly suspicious of the fact that police activity was largely directed at curtailing medical practitioners.

3.1 Bertram Wainer and the abortion test cases

As noted in the previous chapter, Wainer paid for an advertisement in the *Sun* in May 1969 urging women not to be intimidated by police activities against medical abortionists. The AMA accused him of advertising his services and called him to appear before its ethics committee. Wainer, who thought the warning to women patients should have come from the AMA, ignored the ethics committee censure, and instead announced that he would perform an

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37 *Age*, 22 July 1969, 'Parliament faces major clash on abortion', Lionel Dunk, p. 7. See also *Age*, 15 September 1969, 'Abortion: Holding has "new emphasis"', p. 8; *Age*, 12 August 1969, 'Holding trip to study law on abortion', p. 3.
38 *VPD*, Legislative Council (LC), vol. 314, 24 October 1973, Ivan Trayling, pp. 1355-64. See chapter six for details.
39 *Sun*, 6 June 1969, 'Doctor will face the AMA over ad', p. 5; *Age*, 7 June 1969, 'Abortion supporter expects to be outed', p. 3; *Sun*, 7 June 1969, 'Doctor queried on abortion ad', p. 7.
abortion to test the law and prove that the procedure was safe for a doctor acting in good faith. He had obviously considered this approach for some months, *Truth* reporting in January 1969 that a Melbourne doctor was seeking a ‘suitable woman’ on whom to perform an abortion as a test case of Victoria’s anti-abortion laws. Between mid-June and early August 1969, Wainer performed three ‘test cases’ of decreasing legal legitimacy. He claimed they completed a ‘pattern’ for other Victorian doctors – abortion for medical reasons, for socioeconomic reasons and ‘on request’. Wainer informed key ministers, medical associations and police officers of his actions and simultaneously notified the press. He added that he had proof that some policemen had accepted bribes to ‘hush up’ illegal abortions.

The Attorney General George Reid stated in a television interview after the first abortion that Wainer had not committed a crime and that the only reason the police had investigated was because Wainer’s letter had come in the form of a confession. He added that doctors now accepted that an abortion performed to save life or preserve health would not be regarded as unlawful. Wainer was neither charged nor questioned regarding any of the abortions and, in the end, commented that ‘it seemed that I could have done an abortion in Flinders St station, called the police … and all they would have done was exercise crowd control’. He then made a plea to other doctors who had performed abortions covertly to come out now and ‘challenge the law’. His actions, however, did little to change the attitudes of medical practitioners in Victoria in the short term; none joined him in publicly declaring that they, too, had performed abortions for a variety of reasons. In fact, Wainer had never performed an abortion and did not perform the test cases either, as he did not think that he had the skills to perform them safely. Rod Bretherton states that he arranged for his assistant, George Dixon, to perform the abortions in Bretherton’s operating theatre, but ‘excess enthusiasm and

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43 *Age*, 7 July 1969, ‘Now it’s abortion to help a career’, p. 9.
47 Frydman, *Protestors*, p. 32.
49 Interview, Jo Wainer, 6 April 2001.
imagination' led Wainer to say he had performed them himself.\textsuperscript{50} Jo Wainer claimed that Bert only ever performed one or two abortions in his life, although his willingness to carry the label of abortionist was evidence of his determination.

The AMA was unimpressed with the public manner in which Wainer sought abortion law reform and in September charged him with conduct detrimental to the honour and interests of the medical profession, claiming that his actions were calculated to bring the profession into disrepute.\textsuperscript{51} Members of the Abortion Law Reform Association (ALRA) had also been horrified by Wainer's actions. When they first heard of his plans to undertake a test case of abortion laws, some members tried to force Wainer to resign.\textsuperscript{52} ALRA focussed on maintaining respectability in order to convince influential members of the community and the government to reform the law. Members believed that Wainer was delaying the process of law reform by focussing attention on the broader issue of police corruption.\textsuperscript{53}

In essence, Wainer was a conservative man, not the radical that the media depicted.\textsuperscript{54} He became politicised by his involvement in the abortion campaign rather than being motivated by political convictions.\textsuperscript{55} Wainer argued poor women had difficulty accessing reasonable medical care because they were oppressed by laws designed to advantage the rich.\textsuperscript{56} As a result, he fought for legalisation of medical abortion, not for 'women's right to choose'.

Beatrice Faust noted that Wainer's behaviour was completely consistent with his previous history, in which he showed a 'simple sense of natural justice and a simple disregard for established authority which was often the source of grossest injustice'.\textsuperscript{57} Like other advocates of law reform Wainer proclaimed his dislike for abortion, stating, for example, that he 'would never make abortion [his] way of life any more than ... spraying napalm over Vietnamese children ... but the right of the mother ... is probably greater than the right of the foetus'.\textsuperscript{58} Wainer likened his involvement in the abortion campaign to 'wading into the sea for a kid's toy. It goes farther and farther out and before you know where you are you are swimming for

\textsuperscript{50} See Bretherton, \textit{Abortion: RU486}, p. 22. It seems more likely that there was an agreement that the abortions be performed secretly and that Wainer take full responsibility medically, legally and publicly. Neither Bretherton nor Dixon admitted to involvement in the operations at the time.
\textsuperscript{51} Age, 12 September 1969, 'Doctors may smab AMA', p. 10.
\textsuperscript{52} B. Wainer, undated autobiography, pp. 1-11, box 12, Wainer papers, MS13436, SLV.
\textsuperscript{53} See chapter five for details of the ALRA campaign.
\textsuperscript{54} \textit{Asp}, 8 July 1985, 'Bertram Wainer interview', pp. 1-17, box 12, Wainer papers, MS13436, SLV.
\textsuperscript{55} Interviews, Jo Wainer, 6 April 2001 & 22 May 2002.
\textsuperscript{56} \textit{Asp}, 8 July 1985, 'Bertram Wainer interview', pp. 1-17, box 12, Wainer papers, MS13436, SLV.
\textsuperscript{57} \textit{Review}, 27 May - 2 June 1972, 'Doctor Wainer and his cause', Beatrice Faust, p. 901.
\textsuperscript{58} \textit{Sun}, 3 July 1969, 'Dr Wainer plans abortion number three', p. 19.
your life'. His determination to convince politicians, medical practitioners and the public of the necessity of abortion law reform was also evidence of the strength of his belief in the possibility of achieving justice by these methods. He certainly had 'no intention of opposing governments or police forces' when he joined ALRA in 1968. While he became increasingly disillusioned by the reaction to his campaign, his initial confrontational efforts to secure change exhibited naivety rather than belligerence.

### 3.2 Bertram Wainer and the Australian Medical Association

Wainer defended himself against the AMA charges of professional misconduct and told the press that he would continue to campaign for law reform. 'It is a political and a social issue', he said, and 'my duty to the community is far greater than my duty to this association'.

In mid-July 1969, a majority of members of the Victorian branch of the AMA had voted against a resolution from Wainer to support legalisation of abortion on request where the doctor agreed with the request. Wainer claimed that there was no body of support for him within the medical profession, although this was not entirely true. Following the AMA's charge against him, a group of Melbourne doctors circulated a petition to more than two thousand suburban practitioners demanding that Wainer 'be given the freedom to behave as his conscience dictates'. Letters to the editor of the *MJA* also expressed support for Wainer's actions in 'trying to demonstrate the inequity of our present laws'. To these writers, it was the furtive behaviour of many members of the medical profession that reinforced the stigma of 'guilt and shame' associated with abortion. The AMA conceded that about a quarter of its members agreed with Wainer's views on abortion law reform but claimed they did not concur with his methods of expressing them. For all this, the opposition was very strong and no doubt contributed to Wainer's sense of isolation. One

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59 *Canberra Times*, 22 July 1972, 'A plunge into dark waters', James Grieve.
61 *Age*, 25 September 1969, 'Dr Wainer will know his “fate” tomorrow', p. 3. See also *Age*, 24 September 1969, 'Dr Wainer to face AMA tonight', p. 3.
63 *Age*, 12 September 1969, 'Doctors may snub AMA', p. 10.
64 K.J. Harvey & J. Harvey, 'Abortion', *MJA*, vol. 2, no. 15, 11 October 1969, letters to the editor, pp. 775-76. See also J. McLachlan, 'Abortion law', *MJA*, vol. 2, no. 13, 23 September 1972, letters to the editor, p. 744.
65 General Practitioner, 'Abortion and the General Practitioner', *MJA*, vol. 2, no. 9, 26 August 1972, letters to the editor, pp. 513-14.
frequent writer to the MJA branded abortionists ‘despicable cowards … a disgrace to the profession’ and equated them with the Nazi regime.67

Although the AMA charges against Wainer were proven to its satisfaction, the organisation decided to take no immediate action in view of ‘assurances’ as to Wainer’s future conduct.68 Wainer, who said that he gave no such assurances, took the letter as a threat and promptly resigned.

3.3 Allegations of police corruption – the Wilby investigation

Wainer’s public actions and comments resulted in a number of people ringing him with complaints that confirmed his suspicions about police investigations into illegal abortion.69 He carried out his own enquiries, assisted by a team of eight or so researchers ‘with acute social consciences’ called, rather dramatically, ‘the untouchables’, after the television program of the same name.70 These private enquiries included following information about the operations of backyard abortionists. In at least two cases Wainer contacted the police after he had clear evidence, although on each occasion the police blamed a ‘mix-up’ for their failure to follow up the complaints fully. While the police claimed that Wainer was wrong about the incidents and simply used them to gain ‘notoriety as a man opposed to corruption’, later evidence vindicated him in both cases.71 Wainer was convinced that the police were protecting the backyard abortion practices. However, in his enthusiasm to bring about an inquiry, Wainer exaggerated and made false claims about his actions in relation to the police, doing much to damage his credibility in the process.

Though Wainer’s relentless activity undoubtedly contributed to establishing an inquiry into police corruption, his ability to convince witnesses to give evidence would have been severely limited were it not for the raid on Dr James Troup’s medical practice in 1968 and Troup’s reaction to charges arising out of this event. There were a number of suspicious circumstances surrounding the raid by Frank Holland and then Detective Sergeant Kevin

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69 See B. Wainer, undated speech notes (during Kaye Inquiry), box 12, Wainer papers, MS13436, SLV. See also Australian, 31 May 1969, ‘Bringing the abortion issue to public notice’, Lionel Pugh.
Carton, including its size, the fact that the breaking squad rather than the homicide squad was used, and suspicions about the validity of the warrant on which it was based. Further, Maureen Twisse, the de facto partner of Senior Detective Martin Jacobson of the homicide squad, had left the Troup practice, where she had been employed since 1966, following a telephone call a few days beforehand.

As a result of the raid, Troup, along with nurse/receptionists Margaret Berman, Maureen Young and Winifred Read, was arrested and charged on abortion-related offences. Twisse did not face charges until eight months after her colleagues. At the initial hearing in September 1968, Ray Dunn, defence lawyer for Troup, Berman and Young, made serious allegations of a ‘police plot’. Wainer contacted Berman in November 1968 to follow these up. He was able to persuade her, along with Troup and Young, to sign affidavits, no doubt in return for assurances that charges against them were likely to be dropped. They were joined later by Charlie Wyatt, on his release from prison in October 1969, and finally by Dr William Fenton Bowen. Wyatt and Fenton Bowen were both facing further charges.

By July 1969 Wainer had enough evidence to approach the Chief Secretary, Arthur Rylah, to discuss allegations that police were receiving pay-offs from abortionists. However Rylah, who was acting premier at the time, refused to see Wainer on the grounds that he was the subject of a police investigation. He suggested that Wainer substantiate his allegations in writing. Wainer refused to hand over evidence without an assurance that witnesses would not be prosecuted. On 12 September he submitted an unequivocal if melodramatic letter to the editor of the Age regarding the effect of the abortion laws on police, doctors and politicians, and it was published the following day.

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72 Carton served with the homicide squad from 1961-68 and, following a promotion to detective inspector, was appointed chief of the homicide squad the day after his colleagues were sentenced to jail for corruption in April 1971. See Herald, 16 April 1971, ‘New boss of homicide’, Seaton Ashton; Age, 17 April 1971, ‘He’ll head homicide squad’.
73 Herald, 6 February 1970, ‘I was conned, says Troup’, pp. 1, 3; Age, 7 February 1970, ‘Dr Troup says he paid the wrong people – questions about alleged attack on Mrs. Berman’, Dick Shepherd and Sue Preston.
74 Although Maureen Twisse had changed her name to Jacobson by deed poll, I refer to her as Twisse in order to differentiate between her and Martin Jacobson, referred to as Jacobson.
76 Herald, 10 September 1968, ‘“Police plot” lawyer claims: Abortion hearing’.
77 See Sun, 21 February 1970, ‘Probe told a tape about Matthews was stolen’.
78 Fenton Bowen withdrew some of his allegations during the Kaye Inquiry, arguing that he had been pressured into signing an affidavit by Wainer et al.
There is a point where a man must see his Society and its laws as institutions with which his destiny is irretrievably linked and within these institutions there are issues of such magnitude that he must be prepared to stake his whole life, career, financial security, status comfort and personal happiness and, if necessary ... even his freedom. Reluctantly I have been forced to accept the inevitable fact that I have reached such a point.\textsuperscript{81}

The government clearly thought Wainer was bluffing and ignored his calls for an inquiry.\textsuperscript{82}

In December Wainer submitted to the solicitor general and opposition leader affidavits from witnesses claiming that six policemen had taken ‘hundreds of thousands of dollars’ in protection money from about ten or twelve doctors.\textsuperscript{83} There was clearly enough substance in the affidavits for the chief secretary to order an immediate investigation. However, Rylah appointed Chief Police Commissioner, Noel Wilby, to investigate the charges, suggesting that he hoped a swift and quiet in-house investigation would suffice to silence the critics.\textsuperscript{84}

The press commended Rylah for acting swiftly, but did not agree with Wilby’s appointment as investigator.\textsuperscript{85} Michael Stewart of the \textit{Sunday Observer} asked, for instance, whether we were ‘degenerating into a society where privileged sections of the community are given the sole responsibility of enquiring into their own misdeeds’.\textsuperscript{86} Wainer claimed further that, without the indemnity from prosecution offered by a royal commission, witnesses would remain silent.\textsuperscript{87} Although Wainer met with Wilby to discuss the allegations, ‘virtually nothing’ was achieved by his visit for this reason.\textsuperscript{88} On 26 December Rylah announced that Wilby had been ‘unable to investigate the matter fully’ because those who made the affidavits

\textsuperscript{81} B. Wainer, 12 September 1969, box 17, Wainer papers, MS13436, SLV. Published as lead letter, \textit{Age}, 13 September 1969, letters to the editor, p. 12,
\textsuperscript{88} \textit{Age}, 13 December 1969, ‘Wainer is gloomy on Wilby meeting’. See also \textit{Sun}, 13 December 1969, ‘Wilby “not the right inquirer” says Wainer after talk’; \textit{Newsday}, 11 December 1969, ‘Wainer to see police chief’, Max Beattie; \textit{Sun}, 12 December 1969, ‘Wainer will meet Wilby today – “affidavit only”’. 189
did indeed refuse to answer questions or give further information. Generally public opinion favoured an open judicial inquiry. An Age editorial commented,

    By now even Sir Arthur must surely be ready to acknowledge that charges of such gravity should be investigated by an independent judicial inquiry ... People who are prepared to put their signatures to serious charges of corruption against policemen are hardly likely to bare their souls to another policeman ... nor should they be expected to.90

In January 1970 Wainer made further allegations against senior members of the VPF.91 His plan was to ensure that sufficient evidence was available to warrant further inquiries.92 ‘I won’t be stopped, I won’t be intimidated — and I won’t keep quiet’, Wainer said.93 By this time, he had become convinced that the Liberal government’s refusal to reform abortion law, together with police corruption in relation to abortion practices, had combined to limit women’s access to safe abortion. Sydney Sun journalist Ben Davie wrote that Wainer also had evidence of corruption implicating politicians and that pressure was ‘building up to place in a broader perspective the alleged activities of the accused police officers’.94 Wainer described the police as simply the ‘instruments of political power’, claiming that the Crown Law Department and ‘certain politicians’ who controlled the department were under investigation.95 Davie argued that ‘even discounting Dr Wainer’s flair for the dramatic’ it was clear that ‘the system’ of corruption extended far beyond the alleged abortion racket.96

4. The Role and Culture of the Police Force

Wainer’s investigations had extended the debate over legalising abortion to concerns about police corruption in enforcing the law. The following section examines the basis of and reasons for police corruption in Victoria in relation to abortion, in order to set Wainer’s actions in context. It also assists in explaining the outcome of the Kaye Inquiry as well as some of the specific factors that worked to limit women’s access to abortion.

92 Wainer made this clear in his submission to the minister, 3 January 1970, in the covering letter of copies of affidavits sworn by Troup, Fenton Bowen, Young and Wyatt, including ‘transcriptions of certain conversations’, box 12, Wainer papers, MS13436, SLV.
95 Davie, ‘A city in the grip’.
Those who have studied police corruption in western democracies agree that corruption is the inevitable result of three factors. These are the ambiguous role of the police force in enforcing laws aimed at imposing a specific moral code, the culture of the police force that develops as a result of the nature of policing work, and police powers of discretion in prosecuting crime in the context of scarce resources and high crime rates. Each of these factors is considered below, in relation to the VPF.

**Role of police in enforcing morally prescriptive laws**

David Johnson, who has studied the impact of crime on the development of the police force in the United States of America (USA), notes that ‘drawing upon a socio-religious heritage which stressed the individual’s responsibility for his actions, many people believed that society’s primary duty was to suppress those conditions which could undermine a man or woman’s self-control’.97 Police forces in western democracies therefore developed not just to prevent and detect crime and suppress civil disorder, but to be used as ‘an instrument to improve the morals of the people by acting against ... popular pastimes which offended the upper and middle classes’.98 Such activities have included drinking, gambling and prostitution, pastimes that attracted widespread popular participation, despite the rhetoric of public disapproval.

From its inception in 1853 the VPF was given the impossible job of having to enforce laws that much of the community, including the police themselves, did not want enforced. US historian James Richardson notes that overt attempts to enforce morally prescriptive laws have tended to lead to violence, making it impossible for the police to ‘enforce the law’ and ‘maintain order’ at the same time – ‘the more unpopular the law, the more pressure on the police to ignore it, and the greater the temptation to bribery and corruption’.99 While there has been little analysis of systemic police corruption in Australia, accounts of the development of organised crime in the US as a result of restrictive laws in relation to alcohol, prostitution and gambling provides insight into the relationships that evolved between medical abortionists and policemen in Victoria.

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90 Davie, ‘A city in the grip’.
In the USA, the combination of restrictive moral laws, a growing population not matched by a corresponding increase in police resources, political agendas, and police self-interest led to 'partisan involvement of the police, limited enforcement of vice laws and a permissive attitude toward certain crimes and criminals'. In Chicago the process of selectively prosecuting prostitutes and gamblers was useful both in pleasing moralists, to whom it appeared the problem was being redressed, and in helping the police establish close relationships with criminals, in order to extort graft. In order to satisfy both groups, police arrested and prosecuted individual gangsters, but did not eliminate the 'rackets'.

A number of writers have noted that police corruption is endemic in areas where the law is used to govern standards of morality. According to civil libertarian Samuel Walker, such laws actually promote corruption through the creation of large groups of consumers and suppliers with an interest in subverting law enforcement; police corruption simply becomes a routine business expense. Widespread public resistance to law enforcement, coupled with the absence of a 'victim' in the traditional sense of the term, leads to such laws being impossible to police. Further, in the case of abortion, the law defines the woman seeking an abortion as an accomplice, making it even less likely that she would file a complaint.

Of course what constitutes moral and immoral behaviour shifts over time according to who controls the discourse of deviance and acceptability. US political scientist Michael Brown points out that the task for police officers becomes how to apply vague legal standards while adapting to changing social mores and values. Judith Allen notes, for instance, that the small number of convictions against abortionists can be read as recognition that both men and women were widely dependent on access to safe abortion in order to reduce family size.

As early as May 1963, Stanley Johnston, a senior lecturer in criminology at the University of Melbourne, had commented that the community might be better off if there was no prohibition on abortion. Johnston argued that the incidence of abortion was unaffected by prohibition and that 'a law which is enforced half-heartedly ... lends itself to abuse for

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100 Richardson, Urban Police, p. 34.
blackmail and narrow political purposes. There is substantial evidence that this was already the case in Victoria and it grew markedly over the next few years.

Donald Cressey, a US expert on police corruption, notes that a low prosecution rate for a crime is a good index of corruption. While over 10,000 illegal abortions were carried out each year in Victoria in the 1960s, only a handful was prosecuted, peaking at eighteen in 1969. Despite the small numbers, prosecutions in the 1960s showed a six-fold increase on previous decades, with Frank Holland himself arguing that this was to ‘prove’ ‘that the Homicide Squad [was] not being paid off by abortionists’.

Allegations of police corruption in relation to abortion were not the first evidence of police collusion in crime in Victoria. In fact, knowledge of both police corruption and organised crime emerged in Victoria as early as 1905, following the establishment of a royal commission into police collusion in the gambling activities of John Wren. The commission ‘exposed the force and its operations to searching public scrutiny and change’. As a result, in 1906 reforms were introduced in Victoria to control illegal gambling. However, VPF historian Robert Haldane points out that inadequate legislation, coupled with the ‘skills of lawyers, politicians, petty gangsters and corrupt officials’, allowed Wren to make illegal gambling a profitable business despite the efforts of the police, and Detective Sergeant David O’Donnell in particular. Australian writer Niall Brennan points out, however, that despite O’Donnell’s reputation as a ‘dour and incorruptible’ police officer, he regularly declared the gambling laws foolish, unjust and unworkable and clearly believed the police force was used by the government to further another agenda.

Investigating bodies, usually created in response to campaigns for ‘reform’, have found extensive corruption in a police force every time they have looked for it. This suggests

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106 Age, 11 May 1963, ‘Illegal operation queried at UN seminar’. Johnston was representing the Society of Comparative Legislation at the seminar in Canberra in May 1963.
107 Cressey, The Crime Establishment, p. 139.
108 VPF, Statistical Review. From 1959 to 1968, 49 people were prosecuted for abortion-related offences, not counting the 1966-67 statistics, which were not published. From 1969 to 1973 a further 34 people were prosecuted, with no prosecutions since. While this figure is low, it is six times the average number of prosecutions per year in Victoria from 1880 to 1939. See table 5, chapter 2, and table 7, above.
111 Haldane, The People’s Force, p. 129.
113 Cressey, The Crime Establishment, p. 133.
systemic corruption that is unlikely to be the result of a few ‘bad apples’ and more likely is intrinsic to the role and culture of the police force.

Culture of the police force

‘Cop culture’ is not ‘monolithic, universal nor unchanging’, as multiple cultures exist within and among police forces, depending upon the political and social context of policing. Nevertheless, those who have studied policing conclude that there are some fundamental cultural similarities throughout the world given the common features of the policing role—danger, authority and the mandate to use coercive force. This role sets police officers apart from the rest of the community, often leaving them ‘feeling like a small isolated group in the midst of a hostile public’. The culture that develops as a result of close identification with each other in turn strongly shapes the morality of individual officers. If part of that morality institutionalises and legitimates the acceptance of illegal exchanges, corruption is likely to be widespread.

The average police officer is exposed to a steady diet of wrongdoing and so the development of cynical attitudes is not surprising. Mark Baker concluded from his study of one hundred police officers in the US that they developed a distinctive hierarchy of ‘dead wrong, wrong but not bad, wrong but everybody else does it’, which explained the possibility of accepting or demanding bribes.

In Victoria policing has never been a particularly popular job, either for members of the force or among the population they policed. From the time of its inception the VPF suffered ‘political neglect, public apathy, maladministration, demoralizingly low pay and sub-standard work benefits’. This led to an acute manpower shortage that continued throughout the nineteenth and twentieth centuries, compounded by a steadily increasing crime rate. Further, police officers continued to receive lower pay than the majority of the community,

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116 Richardson, Urban Police, p. 156.
119 Haldane, The People’s Force, p. 274.
120 Haldane, The People’s Force, p. 246.
leaving them open to the temptation of accepting bribes. By the 1960s the force was regarded by its members as being overworked, undermanned, underpaid and under siege. 121

Faced with a relatively dangerous work environment and hostile public attitudes, the police have invariably responded by closing ranks. 122 Mr Justice Beach, investigating police corruption in Victoria in 1975, noted that police officers would defend each other, even when this involved perverting the course of justice. 123 He called the phenomenon the ‘brotherhood syndrome’. This has made it difficult for police commissioners to do anything more than try to keep scandal to a minimum, thus ensuring that corruption becomes endemic. 124

While the ‘brotherhood syndrome’ might lead to an outward show of solidarity, it is not always reflected in internal dealings. In his 1985 study of corruption within a criminal investigation branch of the Amsterdam police, Maurice Punch found that there was little of the high degree of coordination expected among detectives. Rather,

their world was more like a series of semi-autonomous fiefs, run … by feudal potentates, who often used nepotism to promote their favourites, where people might conceal information rather than share it, and where policemen were more likely to compete rather than co-operate with one another. 125

Given staffing numbers in the face of rising crime rates, secrecy and the use of informants are vital to solving crime and therefore establishing personal and organisational legitimacy. 126

But the need to protect information leads to suspicion, feuds and competition as ‘police departments accommodate a colloquially complicated network of secret sharing, combined with systematic information denial … the overriding rule [is] that no one tells anybody else more than he absolutely has to’. 127 As a result, detectives are often ready to inform on fellow officers, placing their individual interests ahead of police solidarity. 128

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124 Richardson, Urban Police, p. 145.
126 Settle, Police Informers, p. 181.
Police powers of discretion

The organisation of the police force is such that police officers work either alone or in pairs, unobserved by supervisors or the public, often dealing with a large number of small, isolated, unconnected problems. Combined with limited resources that ensure that the police could not possibly charge every instance of law-breaking, this allows an enormous amount of discretion in policing behaviour. US legal educators Jerome Skolnick and James Fyfe argue that ‘it is hard to think of any hierarchical organization in which the lowest-level employees routinely exercise such great discretion with such little opportunity for objective review’. Discretionary powers are based, jurisprudentially, on the notion that an officer is an individual accountable to the law, not to the government in power. Of course, police officers are, from time to time, directed to act in ways that maintain the viability of the department as a whole. Up until 1978 the VPF was responsible to the chief secretary, who, on behalf of the government, determined wages, duties, and conditions of service. If the chief commissioner ignored the political agenda of the chief secretary in relation to police affairs, he would risk losing the support necessary to ensure organisational resources. Attention to the organisational survival of the VPF has left the department open to political influence, despite claims of autonomy.

Where visibility is lowest and discretion highest, such as in the homicide or vice squads, the potential for police corruption is greatest. Further, where police action is centralised in a particular squad to which other police must refer crime, the possibility for corruption – and political influence – is immense. In Victoria, all police activity in relation to abortion was directed to the homicide squad, allowing the chief of homicide to dictate arrest policies. Such discretion left the chief vulnerable to political direction. Of course, discretion to prosecute implies discretion not to prosecute and is not limited to ‘cases of a trivial nature’. In an area such as abortion, which is in the ‘twilight zone of respectability and legality’, the police have even greater discretion about whether or not to launch prosecutions.

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130 Skolnick & Fyfe, *Above the Law*, p. 120.
Given wide discretionary powers and a culture of bluff and intimidation, individual police officers could use their knowledge of medical abortionists’ desire for respectability and profit to their advantage. The ability both to demand graft and to ensure silence is most successful when the police are dealing with individuals who understand the importance of respecting, rather than challenging, police authority.\textsuperscript{137} Peggy Berman claimed, for instance, that she paid the policemen out of fear of the consequences of defying them, noting that former Sergeant Frederick ‘Bluey’ Adam had threatened to have her certified if she reported bribery details to anyone. This was not an unrealistic fear. Paul Chevigny, in his two-year study of complaints against the police in New York City, identifies as ‘the one truly iron and inflexible rule’ that ‘any person who defies the police risks the imposition of legal sanctions, commencing with a summons, on up to the use of firearms’.\textsuperscript{138} Reifying the categories of ‘policeman’ and ‘criminal’ ignores the interdependence that exists between the groups or the ‘extent to which authorities may induce or help others to break the law, be involved in law breaking themselves, or create false records about others’ supposed law breaking’.\textsuperscript{139}

While the medical practitioners could expose corrupt activities if the ‘rules’ of protection were broken, this was unlikely as long as the relationship was useful to both parties. Further, the fear that they would not be believed, or that the police officers would be powerful enough to discredit the evidence that had been gathered, would have loomed large.

Through his investigations into police corruption, which led to the Beach Inquiry in 1975, Wainer developed a clear understanding of the pervasiveness of that corruption.\textsuperscript{140} He also investigated Sydney protection rackets that made the VPF look ‘tame’ by comparison.\textsuperscript{141} Wainer alleged that the police offered some criminals immunity against prosecution in return for carrying out jobs for them, including murder, with barristers, magistrates and police officers all implicated.\textsuperscript{142} Once his allegations became public, Wainer was the subject of a number of suspicious incidents, including arson attacks on his sister’s house, assaults,

\textsuperscript{137} Skolnick & Fyfe, \textit{Above the Law}, p. 101.
numerous death threats’ and ‘at least one attempt to kill him’. Convinced that the police were conducting ‘a reign of terror against him’, he stopped driving his car for fear it could be blown up and employed armed bodyguards for protection. The death of one of the ‘untouchables’ during the Kaye Inquiry, Melbourne journalist Lionel Pugh, fuelled his anxiety.

Rod Settle points out that prior to 1976 there were no specific bureaucratic mechanisms by which a citizen could initiate investigation into alleged abuses of power by police. The only means of complaint possible was to take civil action against an officer, or to complain to senior police officers, who might or might not investigate. In the late 1960s, Jack Matthews was the officer responsible for dealing with complaints against the police. Brian Latch, a long-term police informer whose allegations of police corruption in 1965 led to an inquiry, also points out that two of the police officers who headed the investigation into his allegations – James Rosengren and William Mooney – were later criticised by Kaye for their own roles in relation to corruption. According to Latch, the police force was part of a ‘vast ring of protection for criminals in Melbourne’. This meant that Wainer’s actions potentially

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142 P. Tennison, ‘Wainer’, *Australian Penthouse*, vol. 1, no. 12, September 1980, pp. 70-72, 74-76, box 12, Wainer papers, MS13436, SLV.
146 Settle, *Police Power*, p. 82.
149 Latch, *Mr X*, pp. 326-27.
150 Latch, *Mr X*, pp. 326-27.
imperilled his life. Equally, the fear generated by mixing with criminals and the clandestine manner in which the ‘untouchables’ were operating would have amplified existing anxiety. Wainer claimed, though, that his links with the underworld protected him from the police.\textsuperscript{151}

Despite the threats Wainer was determined to expose police corruption and thereby bring about abortion law reform. His tactics in publicising the evidence gathered left the government with little choice but to set up an inquiry. \textit{Truth} claimed that the appointment of the board six months after the first accusations was ‘due to the extraordinary stamina revealed by Dr Wainer in the face of official indifference’.\textsuperscript{152}

5. The Kaye Inquiry

5.1 Announcement of the Kaye Inquiry

On 5 January 1970, a state cabinet meeting organised to discuss the Wilby report lasted only eight minutes before announcing the appointment of ‘one of Victoria’s outstanding trial lawyers’, Mr William Kaye QC, to investigate allegations that some senior police officers took bribes from abortionists.\textsuperscript{153} Kaye was to report to the government whether criminal charges should be laid.

William Kaye was a popular choice for the inquiry. The \textit{Herald} wrote that he was noted for his vigour and hard work, being a ‘persistent and penetrating cross-examiner’ and a ‘widely read and versatile lawyer’.\textsuperscript{154} Kaye was set up as a one-man board of inquiry, with powers similar to a court of law, including the right to decide whether or not the inquiry would be open.\textsuperscript{155} John Winneke, a former Hawthorn footballer and the son of Sir Henry Winneke, Chief Justice of Victoria, assisted Kaye. Howard Race, assistant research officer in the chief secretary’s department, was secretary to the board. The first sitting was scheduled for 12

\textsuperscript{151} P. Tennison, ‘Wainer’, \textit{Australian Penthouse}, vol. 1, no. 12, September 1980, pp. 70-72, 74-76, box 12, Wainer papers, MS13436, SLV.
\textsuperscript{152} \textit{Truth}, 10 January 1970, ‘Graft probe: How it all began. The voices that demanded to be heard’, pp. 11, 13.
\textsuperscript{155} See Public Record Office Victoria (PROV), Department of the Premier and Cabinet, VPRS 7614/P1 Correspondence, unit 1, item 69/1963 Abortion 1969-1973, Cabinet decision, 5 January 1970.
January 1970 in the new County Court building, with advertisements calling for witnesses to the inquiry appearing in Victorian newspapers from 7 January.  

The inquiry afforded much greater protection to witnesses than the Wilby investigation, although it did not alleviate all their fears. Most of the witnesses were already subject to charges of their own and were unwilling to risk giving evidence that could be used against them. Given that failure to comply with the inquiry only attracted a $40 fine, a number of important medical witnesses decided not to give evidence. There were three main ways that the doctors and their associates avoided doing so. They either failed to appear before the inquiry when called, appeared but refused to testify and/or gave misleading evidence when they did testify. One doctor told the detective who served his summons that he would not expose himself ‘to the scandalous and libellous statements that are apparently being made at the inquiry’. Rodney Bretherton lodged a Supreme Court writ in March 1970 in an attempt to hinder the inquiry, claiming Kaye and Winneke had libelled him. The writ was dismissed.

The state government amended the Evidence Act 1958 on 23 February 1970 in response to witnesses’ failure to appear, increasing the fine from $40 to $250 per day or three months jail. Even these penalties, in some cases, were not harsh enough to ensure cooperation,

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161 Newsday, 23 February 1970, ‘Stiff fines over probe: Witnesses must attend’, p. 2; Age, 24 February 1970, ‘Penalties for each day of non-attendance. $250 fine or gaol for reluctant witnesses’.
suggesting widespread fear of the police, extraordinary self-interest, or lack of faith in the justice system.

The press came out strongly in favour of the inquiry but did not want support to suggest condemnation of the police force.164 The editor of the Age, Graham Perkin, claimed that restoring public faith in the law and its enforcers was paramount.165 A study published by the Australian showed that many Australians believed police officers took bribes to supplement their ‘grossly inadequate incomes’.166

Clyde Holding argued that, while the allegations should be investigated, ‘the more important issue is whether Parliament is asking policemen to enforce laws which do not meet the needs of the community’.167 The opposition pushed for Rylah to enlarge the terms of reference of the inquiry, noting that it was so limited that it ‘evaded the real issue ... [of] the practice of abortion in this State’ and instead only inquired into the possible corruption of three or four policemen.168 The opposition proposed a motion to focus on the government’s role in the scandal and ‘the failure of the chief secretary to properly administer the Police Force’.169 There was clearly some interest in the proposal, although the motion was defeated. There were few subsequent links made between members of the government and police corruption, apart from comments by Wainer and a handful of journalists and law reform campaigners.

The effect of the Kaye Inquiry was to shift direction away from immediate calls for law reform, to the headline-grabbing scandal of police corruption. There was some evidence of ongoing interest in the broader fact of women’s access to abortion, although it appeared that women were largely absent from a campaign led by ‘our gallant champion’ Bert Wainer.170

5.2 Terms of reference

The board was given the task of:

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168 VPD, LA, vol. 299, 15 September 1970, Clyde Holding, p. 120. See also vol. 298, 11 March 1970, Campbell Turnbull to Arthur Rylah, p. 3188.
Inquiring and reporting whether there [was] credible evidence raising a strong or probable presumption that any and, if so, which members of the Victoria Police Force (either past or present) [were] guilty of criminal offences by demanding or accepting sums of money directly or indirectly from persons engaged in or connected with illegal abortion practices in Victoria or by protecting or wilfully failing to prosecute such persons in respect of such practices.\footnote{171}

Police officers against whom allegations were made were not, however, called upon to prove their innocence as the onus of proof was on those making the allegations.\footnote{172}

Kaye had been given the task of finding ‘credible evidence’ and he took this task seriously, choosing to conduct the inquiry along lines as close ‘as circumstances permitted to those governing criminal proceedings in courts of law’.\footnote{173} \footnote{This meant that witnesses were examined and cross-examined under oath and, ultimately, Kaye reached his conclusions only after rejecting evidence that he determined would not be admissible in criminal proceedings.\footnote{174} The fact that most of the witnesses who swore affidavits were accomplices with charges pending against them meant that many of the police officers named avoided charges.\footnote{175} This also meant, according to Beatrice Faust, president of ALRA, that the final report of the board showed the legal process, not justice, in action.\footnote{176}}

The Kaye report was initially expected to be available when parliament resumed on 17 February 1970.\footnote{177} Lionel Dunk noted that ‘the tight timetable … strengthens a growing belief in State political circles that the Government is anxious to dispense with the question as soon as possible’.\footnote{178} He argued that it would be a serious embarrassment to the state government if the scandal were not cleared up before the May elections. Fellow \textit{Age} journalist Kevin Childs was less convinced, noting that witnesses were likely to seek delays in order for their barristers to be briefed.\footnote{179} In fact the inquiry ended up sitting for 70 days after hearing evidence from 140 people.\footnote{180}
Kaye had adjourned the inquiry to 22 January 1970 on request.\textsuperscript{181} Upon resumption, he announced that the hearing would be open except where the board deemed evidence should not be heard in public.\textsuperscript{182} This resulted in medical practitioners mostly giving evidence in-camera.

Seven senior policemen from the homicide squad were named in the inquiry: Detective Inspector Jack Ford, Superintendent John ‘Jack’ Matthews, former Senior Detective Gordon Timmins, former Sergeant Frederick ‘Bluey’ Adam, Senior Detective Noel Murphy, former Senior Detective Martin Jacobson and retired Deputy Police Commissioner Charles Petty.\textsuperscript{183} The decision to name senior rather than junior members of the homicide squad appeared quite deliberate.\textsuperscript{184} Subsequently, Senior Constable Ronald Jackson and Senior Detective John Barry O’Brien were accused of taking bribes.\textsuperscript{185} Chief Inspector Francis ‘Frank’ Holland and retired Chief Inspector William Mooney were each accused of showing favour to two medical practitioners. There was also evidence that Detective Sergeant Eric Suttie, Chief Inspector Colin Sharp and retired Deputy Chief of the CIB William ‘Harry’ McMennemin were involved in corrupt practices, although this evidence came out in the course of the inquiry, not as a result of specific allegations. Many of the later allegations did not relate to abortion practices and so will not be dealt with in this thesis. Suffice it to say, while they are not relevant to abortion per se, they do provide evidence of a pattern of systemic corruption within the police force.\textsuperscript{186}

Margaret ‘Peggy’ Berman, James Troup, Maureen Young, William Fenton Bowen, Stanley Charles Wyatt, and Bertram Wainer had sworn affidavits against the policemen. All bar Wainer were accomplices in the crimes they were alleging and facing charges of their own as a result of police raids. Troup and Fenton Bowen both worked as medical abortionists,

\textsuperscript{181} Age, 13 January 1970, ‘Bribes inquirer to study open court plea’.
\textsuperscript{184} One of the secretly recorded tapes played at the Kaye Inquiry of a conversation between Charlie Wyatt and Ronald Jackson alluded to a specific decision to name senior rather than junior officers of the squad. See Herald, 19 February 1970, ‘PC: My voice on tape’, p. 3; Newsday, 19 February 1970, “Detective took over $150,000 bribe”, court hears tape”, p. 2. See also Wyatt/Jackson tape, box 27, Wainer papers, MS13436, SLV.
\textsuperscript{185} Kaye, Report of the Board of Inquiry, p. 9.
\textsuperscript{186} Diagrams in appendix five detail some of these connections, to be read in conjunction with the biographical notes in appendix four.
Berman and Young as nurse/receptionists for Troup, and Wyatt was a backyard abortionist and convicted criminal who had also been a member of the VPF.\textsuperscript{187}

6. The Kaye Inquiry’s Revelations

Because the Kaye Inquiry was set up to inquire into allegations against individual police officers in relation to illegal abortion practices in Victoria, individual instances of police corruption were revealed. Evidence of medical corruption, corruption within the Crown Law Department or political involvement in policing abortion laws was ignored. Analysis of the findings, however, reveals a closely connected network of police officers, medical practitioners, lawyers and backyard abortionists, working sometimes cooperatively and sometimes in competition with each other.\textsuperscript{188} Career abortionists referred patients to backyard operators for a fee, some doctors both worked with and either taught or were taught by backyard abortionists, and there were dozens of family and business relationships between police officers, doctors, nurses and backyard abortionists. Further, the religious factions operating within the VPF referred to earlier supported and encouraged competition between medical abortionists.

The main focus of this thesis is the ongoing struggle for abortion law change rather than police corruption per se. Thus it is the impact of corruption on women’s access to abortion that is of primary interest. For this reason, findings against individual police officers are only summarised briefly, despite the reams of data gathered detailing allegations, evidence and findings.

6.1 Individual findings

The Board of Inquiry found that medical and backyard abortionists had paid regular retainers to members of the homicide squad in return for warnings of impending police raids and patient complaints,\textsuperscript{189} general advice following complaints or arrest, and for cover in the event

\textsuperscript{187} Appendix four gives brief biographical notes and outlines the relationships between the main characters in the Kaye Inquiry and their involvement in the practices alleged. This can be read in conjunction with appendix five, which presents these relationships in diagrammatic form.

\textsuperscript{188} See appendices four and five for details.

of a fatality and subsequent coronial inquiry. In the Troup practice, payments to individual policemen began in 1954 and continued up until the 1968 raid. Payments equivalent to $600 per month to identified members of the homicide squad totalled around $150,000 over fourteen years. Lump sum payments were also made in order to suppress specific patient complaints. On each occasion, the policemen used an intermediary to secretly collect and demand payments, making it difficult to find information that corroborated the allegations. However, for all the problems, Kaye uncovered evidence of police officers’ complicity in a range of activities including offering bribes, procuring abortions, protecting practices and showing favour to particular abortionists.

The capacity to gather evidence against the policemen arose partly from the fact that Peggy Berman had engaged in a sexual affair with Inspector Jack Ford from 1961, when he was a sergeant, until three or four years before the inquiry. Berman secretly taped a number of conversations with Ford that were played to the inquiry. Ford had indicated in one of the taped conversations that, if Berman had not made the allegations of corruption, thereby bringing herself to the notice of the authorities, he could have arranged a nole prossequi.

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193 Kaye, Report of the Board of Inquiry, pp. 21, 97.
196 Noles prosequei means, literally, ‘to be unwilling to pursue’ and refers to the entry made upon the record of a court when the prosecutor abandons a prosecution against a defendant, usually for lack of evidence.
Yet Kaye noted that many of the allegations could not be substantiated, as witnesses were either unavailable or refused to give evidence against police officers. He referred to most of the medical practitioners as ‘totally unsatisfactory witnesses’, who either made up their evidence or lied to the board. Timmins, Jackson, Mooney and Holland all avoided charges for this reason, despite substantial suspicions against them. As Kaye observed in the course of the hearing, it became ‘patently clear’ that ‘most medical practitioners, who have been and are presently engaged in illegal abortion practices, falsely denied having made payments of money to police officers’. He thought they did so for a number of reasons, including the belief based on years of experiences that the continuation of their form of criminal activity requires the co-operation of police officers in one form or another. Kaye was thus clear that ‘criminal abortions in the numbers performed in this City during past years were only possible with either police co-operation or police condonation’.

The inquiry revealed that both medical practitioners and backyard abortionists were paying large sums of money to members of the homicide squad in order to protect their practices from prosecution. They did so because the combination of an uncertain law and pressure to satisfy demand meant that abortion was a profitable business, vulnerable to police demands for payment. While this was obviously a widespread practice, the inquiry only focussed on allegations against individual police officers against whom incontrovertible evidence was available. Even within these constraints, the information elicited made it clear that for women the cost of an abortion included the cost of police graft. Further, women’s safety could not be ensured while a paid-up practice could avoid responsibility for negligence. While abortion remained illegal there was no regulation over the standards of practice, nor sanctions for sub-standard services. The dichotomy assumed between medical and non-

197 Kaye, Report of the Board of Inquiry, pp. 68, 70.
199 Kaye, Report of the Board of Inquiry, p. 85. See also Sun, 1 September 1971, ‘Abortion were aided by police, Kaye finds’.
medical abortion under these circumstances was largely false. Medical practitioners were wary of giving evidence against the very police officers who were in charge of cases against them. It seemed, though, that it was not just fear of prosecution that motivated the doctors.

6.2 Competition for profits

Troup told the inquiry that, while they were being arrested, other doctors were 'still working very busily ... obviously being protected'. Troup was speaking, in particular, of Dr John Heath, who, along with Charlie Wyatt and Rod Bretherton, escaped charges under the Holland regime. Heath ran a large and lucrative practice from his Collins Street rooms where doctors such as Arnold Finks, originally Troup’s partner, also operated, under Heath’s protection.

As we have seen, by the late 1960s, the combination of availability of the contraceptive pill and more liberal attitudes towards both abortion and single parenthood had resulted in declining demand and greater competition between abortionists for clients. More women were able to access abortions from their own gynaecologists and from public hospitals, rather than from career abortionists. Competition between abortionists had reportedly been on the increase for some decades, although the effects were mostly felt by backyard abortionists, who were closed down in favour of medical practitioners. Competition and declining earnings led medical abortionists to try to enforce a monopoly on work available. As a consequence, a number of doctors gave evidence to the inquiry that, following their own arrests by Holland, Heath had approached them offering to carry on their practices. Winneke, for example, noted the 'extraordinary spectacle of Heath busily accumulating the practices of doctors put out of business while Holland was in charge of the homicide squad, and yet nothing was done about the complaints concerning Heath’s practice'. Berman, on behalf of Troup, expressed disapproval and concern about Heath’s actions. During the raid she had

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201 Kaye, Report of the Board of Inquiry, p. 70.
202 Rodney Bretherton, for instance, was charged during the Kaye Inquiry and Senior Detective Noel Murphy, who was 'subject to certain allegations', was in charge of the case against Bretherton. See Newsday, 10 February 1970, ‘Abortion charges adjourned’, p. 2. See also appendix four for Bretherton’s evidence at the Kaye Inquiry just after the charges were laid.
203 Herald, 6 February 1970, ‘I was conned, says Troup’. See also Age, 7 February 1970, ‘Dr Troup says he paid the wrong people’, Dick Shepherd and Sue Preston.
206 Berman maintained her vocal disapproval of Heath’s practice in her account of the Kaye Inquiry. See M. Berman with K. Childs, 1972, Why Isn’t She Dead?, Goldstar, Melbourne. She describes the Heath practice as a money-making factory without regard for the safety of women, while presenting the Troup practice as one akin to a social service.
said, in an aside to Carton, that ‘raids would not happen to the little fella’, Heath.\textsuperscript{207} It certainly appeared that Holland and Carton were acting on pressure from Heath to have Troup closed down. Matthews had allegedly told Wyatt that there were plans to do so once they got Berman out of the country and Berman agreed that the police had put enormous pressure on her to go abroad.\textsuperscript{208}

On the other hand, when the homicide squad visited Heath, he said they were acting on anonymous calls from ‘the woman in Hoddle Street’.\textsuperscript{209} A number of conversations between Ford and Berman suggested that Berman was putting pressure on Ford to have Heath arrested.\textsuperscript{210} In one conversation, recorded on 4 December 1969, Ford reassured Berman that he was doing all he could ‘to shut him up, short of going down there and saying: “You’re not going to work because they want to work”’.\textsuperscript{211} Berman answered ‘There’s only one thing that’s permanent in this world … Heath’s money. He just goes on and on and on’.\textsuperscript{212}

When Berman was arrested she had a letter in her possession that referred to a feud between the Troup and Heath practices.\textsuperscript{213} There had also been a falling out between Finks and Berman, including allegations that Finks had threatened Berman’s life.\textsuperscript{214} Finks had sold his share of the practice to Troup in 1963, ostensibly upon retirement, although he was clearly working for Heath as late as December 1968, suggesting a long-running feud between the two practices.\textsuperscript{215}

Heath and Troup were also competing for Finks’ practice while he was in London.\textsuperscript{216} A woman had died in Heath’s rooms in December 1968 after Finks had performed an abortion.

\textsuperscript{207} Age, 19 February 1970, ‘Superintendent says he knew of Ford-Berman association: “Ford could have been security risk”. Woman on the homicide squad’s silent number’, Sue Preston and Dick Shepherd, p. 12.
\textsuperscript{208} Sun, 31 January 1970, ‘They wanted me out of the way – Mrs Berman says’, p. 17.
\textsuperscript{209} Sun, 19 February 1970, ‘Could not trust’, p. 17.
\textsuperscript{210} Age, 1 May 1970, ‘Ford: “I sent Dr Finks a cable”’.
\textsuperscript{212} Sun, 11 February 1970, ‘I don’t stab in back – recording’, p. 15.
\textsuperscript{213} Australian, 19 February 1970, ‘Policemen named as security risks’.
\textsuperscript{215} Age, 19 February 1970, ‘Superintendent says he knew of Ford-Berman association: “Ford could have been security risk”. Woman on the homicide squad’s silent number’, Sue Preston and Dick Shepherd, p. 12.
\textsuperscript{216} Sun, 5 May 1970, ‘“Gentleman’s agreement”’; Age, 5 May 1970, ‘Mrs Berman gives evidence on telegram. Holiday for doctor’.

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on her.\textsuperscript{217} Finks, the primary witness, left Australia seemingly with forewarning of the date of the inquest, without leaving a forwarding address. As a result, the coronial inquiry was permanently delayed.\textsuperscript{218} Ford, however, had sent a cable to Finks in London on behalf of Berman, warning him that it would be dangerous to allow Dr Heath and his associate, John Levin, to take over his rooms in Collins Street. The fact that Ford had Finks' address, which he failed to pass on to the VPF or the Kaye Inquiry, and his willingness to intervene on Berman's behalf, added to evidence against him.\textsuperscript{219}

Both John Heath and his wife, Corrie, refused to give evidence to the board about Heath’s involvement with the homicide squad. Given that Heath was facing his own charges, the promise of police intervention may have bought his silence. Further, with Troup out of the way and competition reduced, Heath stood to benefit.

6.3 Factions

According to allegations made at the inquiry, the competition between medical practices was encouraged and supported by factional feuds operating within the homicide squad. Evidence both within and outside the inquiry suggested, as I have indicated previously, that the VPF was split into two factions, the Roman Catholics and the Masons. Promotion and protection of particular medical practitioners depended on which of the factions was running the squad at the time.\textsuperscript{220} Berman claimed that Matthews had told her about the ‘Irish Mafia’ in the Victorian homicide squad, saying that ‘they always tried to get their own into the squad for any position and keep the reins of power’.\textsuperscript{221} Similarly, Wyatt claimed that Ford planned to remove Roman Catholic members of the squad when he became head of homicide.\textsuperscript{222}

\textsuperscript{218} Kaye, \textit{Report of the Board of Inquiry}, p. 9.
\textsuperscript{219} Kaye, \textit{Report of the Board of Inquiry}, p. 49. Finks did not give evidence to the inquiry because his whereabouts were ostensibly unknown.
\textsuperscript{222} \textit{Australian}, 4 March 1970, “Plan for new racket system” abortion inquiry told protection “to be limited”, p. 2.
The presence of religious factions within police forces in western societies appears to have been a common phenomenon. In New York, for instance, appointment and promotion opportunities were restricted by traditions of first Irish and then Italian Roman Catholic solidarity. In Cleveland, polarisation between Catholics and Masons, leading to members of one group seeking to retard the advance of members of the other, was exploited by some crooks ‘to prevent unwanted competition’. Similarly, according to allegations in the Kaye Inquiry, Heath used Mooney and Holland to arrest other doctors so he could take over their practices.

There was much evidence to suggest that Mooney and Holland were protecting Heath’s practice. Both had failed to carry out satisfactory investigations of complaints against Heath, and had protected him and his colleagues from prosecution, including in the Finks case above. Ford had also unwittingly implicated both Holland and Mooney in one of Berman’s secretly taped conversations. In remonstrating with Berman over her public allegations, Ford stated, ‘I don’t hear Heath singing out about Mooney and Holland … I don’t hear anybody’. Kaye chose to ignore the evidence. Further, following his retirement, Mooney accepted employment by Heath as ‘supervisor of his four farming properties’, a job for which Mooney had no experience. Kaye suggested that ‘having regard to all these known circumstances, it might reasonably be concluded that Mooney’s employment by Heath was a sinecure’. Kaye noted that the long and close affinity between Mooney and Heath enabled Mooney ‘to be exploited and manipulated to the advantage of Heath’. Winneke was even more damning about Holland, referring to him as ‘a man who is posing as a police

223 Richardson, Urban Police, p. 199.
224 Richardson, Urban Police, p. 97.
228 Kaye, Report of the Board of Inquiry, p. 47.
230 Kaye, Report of the Board of Inquiry, p. 94.
231 Kaye, Report of the Board of Inquiry, p. 94.
The board concluded that there was a body of evidence justifying the suggestion that Holland and Mooney had given favoured treatment to Heath. However, Kaye found that both Holland and Mooney's conduct constituted a breach of regulations, not a criminal offence. The fact that the Heath's refused to give evidence to the board directly contributed to Holland and Mooney avoiding investigation, although Kaye did not use all the power he had available to him to force the Heath's to appear.

That Holland and Mooney avoided charges suggests that influence came from a much higher factional authority. One newspaper, the Melbourne Express, claimed that the DLP controlled the police force for the purpose of stamping out abortion and imposing more rigorous censorship. This was the result of a deal done in 1958 with Henry Bolte and Arthur Rylah. The deal, which enabled the two to retain office, was that a DLP-controlled officer of the Crown Law Department was to take up a position in the Chief Secretary's Department. His influence purportedly led to Holland's appointment in 1965 and so to control of the homicide squad. Subsequently, orders from Spring Street resulted in raids on the premises of medically qualified abortionists.

There had certainly been rumours at the time of Holland's appointment that the Roman Catholic hierarchy, via the DLP, was exerting pressure on the Victorian Liberal government to have abortion stopped altogether. According to Beatrice Faust, the Roman Catholic Knights of the Southern Cross imposed 'a structure on the public service that permits many unsuspected pressures to act'. Faust argued that the hidden influence of this organisation required public scrutiny. That the Roman Catholic members of the homicide squad, including Carton, Holland, Rosengren, Mooney, Murphy and O'Brien, all avoided charges, while Masonic members Ford, Adam and Matthews did not, supports this theory. Although Jacobson was Roman Catholic, he did not associate with this faction, perhaps because of his

232 *Age*, 28 May 1970, 'Winneke raps police conduct'.
235 *Melbourne Express*, 29 May 1970, 'Police scandal is DLP fault', p. 2, Wainer papers, MS13436, SLV.
236 Beatrice Faust guesses that this was the Under Secretary, J.V. Dillon, who was instrumental in pursuing a DLP agenda and who was close to both Holland and Heath. She adds, though, that the public service was rife with religiously-based political appointments. Interview, Beatrice Faust, 16 February 2004.
238 *Melbourne Times*, 28 March 1968, 'Abortion the inside story'.
239 *Review*, 27 May – 2 June 1972, 'Doctor Wainer and his cause', Beatrice Faust, p. 901. It is worth noting that written comments from both Faust and Wainer from time to time reflected the sectarian divisions that existed in Australian society at the time, especially anti-Catholic sentiments.
marital situation.\textsuperscript{240} But the fact that his partner left the Troup practice prior to the raid suggests he may have received forewarning after all.

Faust further argued that the most disquieting implications of the inquiry had hardly been remarked on in the press at all, including those implicating the Crown Law Department.\textsuperscript{241} Robert Blakey, a US expert on legal aspects of prosecution of organised crime, notes that as 'useful as corrupt police may be, no dollar of corruption buys as much real protection as the dollar which directly or indirectly influences the public prosecutor or one of his twisted assistants'.\textsuperscript{242} This is because the Director of Public Prosecutions (DPP) makes the final decision about who will be prosecuted, independently of the police or the government. If key information is missing from the prosecutor's case, prosecution simply cannot go ahead.

Rod Settle points out that the DPP actually relies on evidence supplied by the police in order to make that decision, in particular the record of the first interview.\textsuperscript{243} Evidence was given at the inquiry that those police officers who provided ongoing protection to abortionists also gave them detailed instructions on how to respond to police inquiries regarding a complaint, or during a 'raid' or police visit. This practice was no doubt designed to ensure that there was not enough evidence to proceed on charges. If charges did proceed, however, collusion between police officers and officers of the crown prosecutor to ensure information 'disappeared' would invariably lead to a nolle prosequi.\textsuperscript{244}

A substantial amount of evidence against the police officers disappeared between the Kaye Inquiry and the subsequent police trial, as had also occurred during the trial that led to the Menhennitt Ruling.\textsuperscript{245} There was also evidence that Ford and Matthews had approached officers of the Crown Law Department in an attempt to delay Troup and Wyatt's trials

\textsuperscript{240} Jacobson was separated from his wife, who had responsibility for their six children, while he lived with Maureen Twisse, his de facto partner. At the beginning of the Kaye Inquiry, neither his wife nor his mother was aware of his eight-year relationship with Twisse.

\textsuperscript{241} \textit{Review}, 27 May – 2 June 1972, 'Doctor Wainer and his cause', Beatrice Faust, p. 901.


\textsuperscript{243} Settle, \textit{Police Informers}, p. 70.

\textsuperscript{244} Settle, \textit{Police Informers}, p. 75.

\textsuperscript{245} Tape recordings played at the inquiry went missing from the chief secretary's department. The under-secretary denied responsibility and said it was entirely a matter for the board. See for instance \textit{Sunday Observer}, 12 July 1970, 'Abortion tapes lost', Kevin Childs, p. 1. Further, an officer of the Office of the Crown Solicitor verified that exhibits were missing, unable to be found during Davidson's trial. See transcript of Charles Kenneth Davidson's trial, pp. 304-47, 19 May 1969, box 8, Wainer papers, MS13436, SLV. Wyatt's entire criminal file for 1962-68 had also 'disappeared' from the main police record room in 1967. Wyatt claimed to have paid £300 to Eric Sutice, a police officer, for this 'service'. See \textit{Sun}, 16 April 1970, 'Wyatt file "vanished"'; \textit{Age}, 16 April 1970, 'Police files on Wyatt are missing'.

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respectively, suggesting that this was a common ploy among police officers.\footnote{\textit{Truth}, 9 May 1970, ‘Truth man is accused by Ford’, p. 39.} Again, a degree of collusion protected medical abortionists from prosecution. One reading of this may suggest that, for women, protected practices ensured stable and therefore relatively safer and skilled practitioners, albeit at a price. But this was not necessarily the case in the absence of regulation, as the cover-up of women’s deaths attested. While witnesses to the inquiry attempted, with varying degrees of credibility, to point to the extent of corruption existing within the public service in Victoria, their ability to do so was limited by the terms of reference of the inquiry and concomitant attempts to discredit their evidence.

### 6.4 The role of the witnesses to the inquiry

Analysis of the process and outcome of the inquiry suggests that discrediting witnesses was important for two reasons. First, because witnesses were largely accomplices to the crimes alleged, discrediting them would leave Kaye without evidence on which to establish individual guilt. Second, evidence from the inquiry presented a compelling case for abortion law reform. The way in which Berman as ‘victim/seductress’, Wyatt as ‘informer’ and Wainer as ‘crusader’ were discredited points to the importance of gender and class to the outcome of the inquiry and the impact of these factors on individuals’ power to put the government under the spotlight.

Berman’s treatment in the media – as victim and seductress – reflected the double standards operating generally in relation to women’s sexuality. Berman’s male colleagues did not attract nearly as much attention, despite their considerably greater wealth and involvement in procuring abortions.\footnote{\textit{A taxation report, for example, showed that Berman had understated her income by $8,630, compared with Troup by $105,534 and Heath by $260,000 for the years 1952-53 and 1964-65. See \textit{CPD}, House of Representatives (HR), vol. 84, 16 May 1973, Albert James, pp. 2243-45. See also \textit{Sun}, 23 October 1970, ‘Tax defaulter report names abortion case pair’, p. 3; \textit{Age}, 23 October 1970, ‘718 people named in report. Berman and Troup dodged tax’.} It is clear that allegations about Berman’s behaviour as a woman were used in an attempt to discredit her evidence. In particular it was suggested she had ‘shown her contempt for normal morality’ through having three abortions on her own admission and ‘a large enough number of lovers to suggest promiscuity’.\footnote{\textit{Herald}, 5 April 1971, ‘Matthews – it’s been hell on earth’’, p. 3. See also \textit{Herald}, 22 February 1971, ‘I didn’t “use” lovers – Mrs Berman’.} The fact that Berman also organised other women’s access to abortion meant she was intrinsically linked with illicit sexual activity.
That abortion could assist men and women to avoid the consequences of their infidelity and/or promiscuity was a fear that motivated many critics of abortion, who argued that without sanctions moral decline was inevitable. Ford recognised a conceptual link between sexuality and corruption and was at pains to dissociate himself from one, in order to establish his innocence in relation to the other, swearing that his relationship with Berman was platonic.\(^{249}\) At Ford’s subsequent trial, Crown Prosecutor Norman O’Bryan asked whether Ford thought that ‘in admitting being intimate with Mrs Berman, it would be tantamount to admitting you took money from her’.\(^{250}\) While Ford denied this, it was a logical conclusion.

While attacks on Berman’s personal life assisted the defence, they also served to focus the community on scandal and titillation, rather than on the legal circumstances that led to the inquiry – the existence of an unenforceable law. Wainer railed at one point: ‘I thought the inquiry was into police corruption, but it appears they were investigating me’.\(^{251}\) Berman could have made a similar claim.\(^{252}\)

Wainer was not an accomplice to the crimes alleged and his position as a doctor gave him respect and authority. Because of this, it appears he was attacked all the more strongly. Kaye was often critical of witnesses, but even where their testimony was contradictory he surmised reasons for this that reflected evenhandedly on the personality of the witness.\(^{253}\) Female witnesses, such as Berman and Young, were given greatest leeway in this respect. Faust, for example, noted that Kaye showed a ‘less than worldly generosity’ in dealing with Wainer, but an ‘old world chivalry’ in questioning Berman.\(^{254}\) Perhaps, from Kaye’s point of view, he thought he was dealing with a character who should have known better, by implication, than women or criminals. Wainer did not conform to his image of a member of the medical profession – a man in his position should not question the actions of the police or the authority of the law. Kaye was particularly scathing about Wainer’s use of the media, alleging he ‘was prepared to use misleading statements to achieve his ends of “damaging ... the political image” of Ministers of the Crown and of advancing the cause of abortion law


\(^{250}\) *Herald*, 23 March 1971, ‘Mrs Berman “an evil woman”. “We were close” – Ford’. See also *Age*, 23 March 1971, ‘Ford gave rings to “dying” woman’.


\(^{252}\) See, for instance, *Herald*, 3 February 1970, ‘“Bought cars, furs, flats”’, p. 3.

\(^{253}\) For example, Kaye noted that variations in Wyatt’s affidavit and subsequent testimony may have been ‘due in part to the enthusiasm of those ... whose object was to induce the Government of Victoria to inquire into allegations of corruption made by them against police officers in connection with their abortion practices’. See Kaye, *Report of the Board of Inquiry*, p. 121.

reform, as well as discrediting the Victoria Police. As Beatrice Faust noted, however, much of Wainer’s ‘dubious behaviour’ was in fact justified by the situation – ‘how do you get justice when the law enforcement agencies are thoroughly corrupt except through the press?’

Wainer had an extraordinary ability to use the media to embarrass the government into acting. He was completely fearless both about his own safety and about the consequences of his actions for his livelihood. Wainer also had a close relationship with journalists Michael Stewart-Crewdson of the Sunday Observer, Evan Whitton of the Truth and Lionel Pugh of the Australian. He did not, by his own admission, take care to see that what they were printing was true. Whitton wrote that Wainer ‘was first ignored, and then discredited’, but ‘in fairness, it should be said that Bert was sometimes inclined to assist the process of destroying his credibility’. Wainer saw his relationship with the media as part of a strategic campaign to force Chief Secretary Rylah into acting, rather than a means to establish his own reliability.

Mr Justice Beach noted in his report on police corruption in Victoria in 1976 that it was dangerous to complain about police to police.

Regrettably, this is apparently due in no small measure to an attitude of the Police mind, which is affronted by the impertinence of the civilian in making a complaint at all, and which then in a defensive reflex classifies him as a troublemaker, or as being anti-Police, or motivated by malice or ill will.

The likelihood that Wainer’s allegations would be investigated if made privately was minimal. Wainer was not so much anti-police as an advocate of just laws. As US civil rights leader Martin Luther King Junior had put it: ‘an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty … to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.’

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257 Age, 21 February 1970, ‘Ford wanted 10 per cent, says Dr Wainer. Abortion cartel deal claim’.
259 Interestingly, the rank and file police union was outraged at the findings of the Beach Inquiry and threatened industrial action. The government, reliant on the police to keep order, caved in, resulting in only thirty-two of the fifty-five charged, and none either convicted or even formally disciplined. The Beach recommendations were rejected as impractical. For details see Settle, Police Power, pp. 82-83.
After he became involved in the abortion campaign Wainer was the subject of a ‘smear’ campaign to discredit him. *Age* reporter John Hamilton wrote that Wainer was branded ‘an alcoholic, a drug addict, an abortionist, a sexual deviate and a graftor’. Kaye for example suggested that Wainer was either drunk or under the influence of drugs on one occasion when giving evidence, describing him as appearing ‘to be struggling with sleepiness and heavy with malaise’. While this may or may not have been true, it should not, in itself, discredit Wainer’s evidence. It is as likely that it speaks to the degree of stress associated with the campaign. *Canberra Times* reporter James Grieve claimed that he had picked up from the press that Wainer was a self-seeking, unreliable, vaguely unsavoury trouble-maker, but that meeting him was to understand something unpleasant about the power of the press. He was ‘patently, palpably genuine, a man of obvious but unassuming courage’, whose ‘simple charm … Voltairean wit’, ‘modesty’ and ‘sterling sincerity’ made him ‘irresistible’. Grieve was right that any analysis of Wainer based on press reports during the period 1969-71 would reflect the anger directed towards him from a range of sources. The government, the judiciary and the police force largely had the media on side in representing Wainer as mad or ‘almost messianic in his attitudes’. Evan Whitton argued that ‘Bert was … a phenomenon that the Melbourne establishment didn’t quite know how to handle. He was clearly, to right-thinking people, a dangerous malcontent and troublemaker, a man who would rock the boat’. The process of discrediting Wainer was aimed at protecting a broad system of corruption and was largely successfully, despite the fact that Wainer had researched his claims exhaustively.

While some members of the press agreed that corruption extended beyond the abortion racket, the resources required to follow up Wainer’s claims were beyond their reach. It appears that, despite some discomfort, there was a consensus to leave things well enough alone following the jailing of three senior policemen. It had been Wainer’s hope that this broader system of corruption would be exposed through the Kaye Inquiry. He saw the inquiry as a failure because it did not lead to legalisation of abortion beyond dispute. The politicians ‘under whose rule the graft grew to the proportions of a minor industry’ continued to rule and, for

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265 *Age*, 16 April 1971, ‘Wainer: No end in sight’, Max Beattie, p. 5.
267 The Wainer papers indicate that Wainer thoroughly researched each of the topics he raised, checking policies, laws and practices, instigating searches for newspaper articles back to the nineteenth century, researching and interviewing widely, etc.
Wainer, corruption in a police force was impossible without corruption among the politicians to whom that force was responsible.\textsuperscript{268}

Initially, Wainer thought that by refusing to hear allegations against the police Rylah and Bolte must have been responsible for the corrupt practices uncovered.\textsuperscript{269} However, this overlooked the silence of the opposition and Holding’s half-hearted ‘face-saving gestures’.\textsuperscript{270} Wainer concluded that ‘no Party would jeopardise its vote-winning capacity by supporting an unpopular cause … and abortion was an unpopular cause’.\textsuperscript{271} This was not entirely true, as there was general community support for reform of abortion laws. However, the ALP, like the Liberal Party, remained nervous of a small but vocal opposition to law reform and was also subject to Roman Catholic influences within the party. Wainer accused the ALP of having a ‘gentleman’s agreement’ with the government not to be too nasty about abortion law reform.\textsuperscript{272} He cited a series of royal commissions into the VPF as far back as 1855 that suggested Victoria’s policing history was one of corruption in the force, ministerial irresponsibility and collusion by the opposition.\textsuperscript{273}

The Kaye Inquiry ended on 28 May 1970, three days before the state election.\textsuperscript{274} Winneke announced that there were strong or probable presumptions of guilt implicating four men in criminal offences.\textsuperscript{275} He added that evidence did not go far enough to involve Holland, Mooney, O’Brien and Jackson, although there were suspicions against all but O’Brien.\textsuperscript{276} Kaye said there was no evidence connecting Petty with corruption and that it was ‘a matter of regret’ that the allegations had been made against him.\textsuperscript{277}

7. Immediate Outcomes of the Kaye Inquiry

7.1 Delay in tabling the report

Following receipt of the Kaye report on 18 August 1970, the government announced that the Crown Law Department was planning to launch prosecutions against Ford, Adam, Matthews

\textsuperscript{269} D. McGill & S. McGill, undated, ‘You can’t blame Bolte & Rylah’, Hawthorn, box 24, Wainer papers, MS13436, SLV.
\textsuperscript{270} McGill & McGill, ‘You can’t blame Bolte’.
\textsuperscript{271} McGill & McGill, ‘You can’t blame Bolte’.
\textsuperscript{272} Sun, 7 May 1970, ‘Coffee – with political spice. Wainer is a hit with the ladies’, John Fraser, p. 11.
\textsuperscript{273} McGill & McGill, ‘You can’t blame Bolte’.
\textsuperscript{274} Age, 28 May 1970, ‘Winneke raps police conduct’.
\textsuperscript{275} Sun, 28 May 1970, ‘The inquiry is close to end’, p. 23.
and Jacobson.\textsuperscript{278} Wilby was also considering the possible breach of the \textit{Police Regulation Act} by other unidentified policemen.\textsuperscript{279} As a result, the government stalled tabling the Kaye report in parliament until 31 August 1971 after the police trial and all appeals had been heard.\textsuperscript{280} While the government claimed that the solicitor general had advised this in order to protect those against whom prosecutions were planned and to avoid lengthy postponements of trial,\textsuperscript{281} the action prevented any questions or debate in the legislature regarding abortion and police corruption during this time.\textsuperscript{282}

Given the Kaye Inquiry had been widely reported in the press, delays suggested the government was less concerned about protecting the rights of individuals than avoiding responsibility regarding its own administration. As Labor MLA Denis Lovegrove pointed out, it had been proved around the world that, ‘in the absence of liberal legislation, no Police Force is capable of administering such bad laws as those now current in Victoria’.\textsuperscript{283} The press response reflected the dilemma of how to cast suspicion on Bolte’s claim that the trial would be prejudiced by publication of the report without it sounding like an argument against the policemen’s right to fair treatment before the law.\textsuperscript{284} Both the opposition and the Country Party accused Rylah of hiding ‘behind the skirts of legal opinion’ in order to bury the Kaye report.\textsuperscript{285} Nevertheless, the Country Party supported the ministerial statement, because it was ‘one of the staunchest planks of British justice that nothing is done to jeopardize a man’s right … to receive a fair trial’.\textsuperscript{286} By linking its inaction with justice, the government avoided responsibility for law reform.


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7.2 The police trial

The trial against Adam, Matthews, Ford and Jacobson began, after an initial delay, on 3 February 1971 before Mr Justice John Starke in the Supreme Court. After the publicity surrounding the Kaye Inquiry the trial was almost an anti-climax. There was little new information added to that already widely known.

The crown prosecutor, Norman O’Bryan, described the accused policemen as ‘avaricious parasites’ with four prime weaknesses — greed, brutish conduct, sex and colossal male ego. Just because policemen were ‘overworked and underpaid’ did not justify them ‘feathering their own nests’, nor did the presence of restrictive laws justify doctors who might be said to be carrying out a social service in the community. O’Bryan added that public confidence demanded that justice be done without favour to the policemen. Little was added in relation to medical practitioners.

The trial took forty-seven days. It ended at 11.30 pm on 8 April 1971, within half-an-hour of Good Friday, allowing all manner of crucifixion metaphors. The jury found that Matthews, Ford and Jacobson were guilty, while Adam was found not guilty. Matthews and Ford were each sentenced to five years jail and Jacobson to three years, with remission for good behaviour. Matthews stated that he would always protest his innocence, having devoted thirty-seven years to the service of the public. In a conversation between Wyatt and Matthews surreptitiously taped by Wyatt prior to the trial, Matthews spoke without remorse about taking bribes, seeing it as just payment for his hard work with the VPF. Ford also told the press that his life had been dedicated to the police force, while Jacobson appeared to accept the finding. Ford and Matthews both appealed but their appeals were dismissed on

288 Australian, 19 August 1972, ‘Baring the unbearable’, Tim Dare.
289 As a result, attendance in the court was also sparse. See Sunday Review, 14 February 1971, ‘Abortion money: A doctor talks’.
290 See Age, 2 April 1971, ‘Greedy parasites, says Crown “four steps” to trial on conspiracy’, Terry Williams; Sun, 2 April 1971, ‘Four trapped by own greed: Lawyer’.
291 Herald, 1 April 1971, ‘Police must not “feather nests”: Crown’.
292 Australian, 2 April 1971, ‘Public demands justice, police trial told’.
294 Age, 10 April 1971, ‘Police shunned me in my purgatory, says Adam’, Gary Dean; Sun, 10 April 1971, ‘Free ... it feels wonderful! My lucky day, says acquitted “Bluey”’, Bill Hitchings, p. 2.
295 Age, 16 April 1971, ‘The law is enforced on three men who enforced the law’, p. 5.
297 Matthews and Wyatt, audio cassette tape, box 29, Wainer papers, MS13436, SLV.
298 Sun, 16 April 1971, ‘Martin will face it — wife’, p. 2.

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29 June 1971. They later petitioned the attorney general for clemency over their sentences claiming that they did not receive a fair trial. On 8 August 1972 their petitions were dismissed by a unanimous decision of the full court.

Kaye’s recommendation that some other members of the force be investigated for breaches of the Police Regulation Act 1958 was acted upon. In each case, the acting chief commissioner of police decided that no grounds existed for the institution of charges against the member concerned, and the solicitor general concurred with this decision. The opposition, too, made little comment.

Jacobson served his term at Ararat jail, a minimum-security prison, in a single cell. He was released around April 1972. Ford and Matthews served their sentences in D-division at Pentridge prison, with additional security. They were released on parole in April 1973, less than two years after their sentencing.

7.3 Ignoring medical corruption

Generally, the press reflected public sentiment that, in some respects at least, it was unfair that three police officers were punished, while medical practitioners and other policemen got off scot-free and the law that led to the crimes remained unchanged. The Melbourne Observer claimed that only fools ‘could believe that the pattern of decay and scandal was miraculously limited to three men’, leaving little doubt that Ford, Matthews and Jacobson were the ‘fall guys’. The Age argued that the government, faced with influential opposition to reform, ‘lacked the political courage’ to bring the law into line with social reality. The editors of both the Herald and Truth agreed that abortion laws led to corruption and outrageous prices for abortions.

300 Age, 2 June 1972, ‘Gaoled police officer seeks Wainer’.
302 Australian, 20 April 1971, ‘“Open” gaol for Jacobson’; Sun, 20 April 1971, ‘Jacobson to jail in country’.
305 Truth, 17 April 1971, ‘Mrs Berman is sorry police sent to gaol’.
Beatrice Faust pointedly remarked that while police corruption received a great deal of attention, the fact that medical practitioners were also corrupt appeared to have been overlooked. Part of the reason the doctors avoided charges was the emphasis on backyard, rather than medical, abortion as problematic. Although Kaye claimed at the inquiry that, 'like the medical abortionists', backyard abortionists exploited women's suffering for their own enrichment, generally this did not reflect the media portrayal of the two groups as quite separate from each other. As Settle argues, identifying the 'dangerous class', in this case 'backyard' abortionists, is an important component underpinning social control. Powerful and propertied groups who engage in criminal activity can avoid the stigma of criminality, if 'crime' is, almost by definition, an activity peculiar to social classes other than their own.

The press continued to reflect public and political sentiment sympathetic to medical practitioners while being scathing about backyard abortionists, even though evidence presented to the inquiry showed that this was a questionable distinction. There were referrals between the two groups and in many cases the doctors worked with and were taught by backyard abortionists. Complications arose not as a result of lack of qualifications, but because, as with any black market enterprise, the law contributed 'to a degeneration of medical standards in the pursuit of extraordinary profits'. All but the most zealous anti-abortionists defended medical abortion as a service to the community and, despite decades of illegality, exorbitant fees and questionable medical standards, the doctors involved avoided any sanction arising out of the Kaye Inquiry.

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309 Beatrice Faust, undated synopsis of submission to 1977 Human Relations Commission, box 21, Wainer papers, MS13436, SLV.
312 Beatrice Faust, undated synopsis of submission to 1977 Human Relations Commission, box 21, Wainer papers, MS13436, SLV.
8. Effects of the Kaye Inquiry

8.1 Police corruption

Following the Kaye Inquiry the Victorian government appointed Colonel Sir Eric St Johnston, Chief Inspector of the England and Wales Constabulary, to undertake a review of the efficiency and organisation of the VPF. Bolte claimed that it had nothing to do with the abortion inquiry but few people believed it to be unrelated. Despite public concerns about police procedures for dealing with allegations of corruption, St Johnston claimed that they were more than appropriate. He added that some 'articulate and voluble' people wished to denigrate the police and were 'never prepared to believe that the Police are honest and objective'.

The St Johnston report was tabled in Parliament on 2 March 1971. In May the new chief of homicide, Kevin Carton, said the police department's policy on handling abortion inquiries had changed, with some of the abortion investigations now allocated to other branches of the CIB. There was little talk of police corruption in relation to abortion after this time. Ray Whitrod, however, reflecting on the later Fitzgerald Inquiry in Queensland, claims that we

314 St Johnston, 59, was one of the first university graduates to join the police force in England. He held the position of Chief Inspector of the England and Wales Constabulary from 1967 and indicated his interest in taking over from Chief Commissioner Wilby, following his retirement in May 1971 due to illness. See Age, 28 May 1971, 'Police chief Wilby quits'; Herald, 28 May 1971, 'Police chief's job poses problems', Ian Hamilton.
316 Colonel Sir Eric St. Johnston, 1970-71, A Report on the Victoria Police Force, C.H. Rixon Government Printer, Melbourne. See also Victorian Parliamentary Papers, session 1970-71, vol. 3, pp. 1-221. St Johnston's political and organisational biases were clear in his report. For example, he claimed that the police force was best placed to investigate complaints against the police force; allowing any outside organisation to investigate would lower morale. Further, he argued that it would be inequitable to accept the word of a member of the public rather than that of the policeman. St Johnston noted that it was never possible to appease the unappeasable, and he did not believe 'that one should try to do so by altering a well established and well tried system which satisfies the majority'. Ibid. p. 171. Given that a recent survey had shown that many Australians thought that the police force was corrupt (see Australian, 5 January 1970, 'The public and the policeman', editorial) and editorials in the daily press had discredited the practice of police investigating their own complaints in the wake of the Wilby inquiry, it seems that St Johnston's argument was an ideological rather than a logical one.
318 Age, 3 March 1971, 'Sir Eric's report on state police. As a "professional copper" he has shown the colonials how', pp. 12-14. See also FPD, LA/LC, vol. 301, 2 March 1971, pp. 3803, 3828.
would be naïve to under-estimate the extent of resistance to efforts to eradicate corruption. Just because corruption is exposed does not mean it is automatically eliminated.

Haldane suggests, in relation to the Kaye Inquiry, that sensational publicity regarding police corruption in the homicide squad distorted the real picture of the force as a beleaguered minority group within the Victorian community, up against demoralising innuendo. Donald Cressey adds that the police are rarely given the money and manpower necessary to carry out their role effectively, which results in them appearing more inefficient and corrupt than they really are. However, as Settle points out, promulgating the idea that only three or four police officers in the Victorian homicide squad were corrupt sustains the myth of police impartiality and ignores the fact that, whether police like it or not, their job is deeply intertwined with the coercive side of social control by the state.

8.2 Charges against abortionists

There were some interesting patterns to the proceedings against medical practitioners and backyard abortionists following the Kaye Inquiry. Medical practitioners were largely acquitted after lengthy trials, or given a nolle prosequi after substantial delays. A number of witnesses who gave evidence against the police force faced further charges, some of which appeared to be malicious, while nothing came of charges pending against those who withdrew their evidence. Troup, Berman and Young each pleaded guilty to an abortion charge in October 1970 and received a good behaviour bond. Heath faced four trials, commencing in October 1970. He pleaded not guilty, arguing for the first time in Victoria at the third trial that the pregnancies were terminated on lawful grounds. In October 1972 the

322 Haldane, The People’s Force, p. 274.
324 Settle, Police Power, p. 67.
325 See appendix four for details of charges.
326 See Age, 1 December 1971, ‘Police in rackets — Wyatt. “Most of them are serving members”’, Neil Mooney.
last set of charges against Heath, now 70, were dropped at the instigation of the attorney
general. The government was signalling an unwillingness to prosecute medical
practitioners and was no doubt keen to avoid the agitation for law reform that accompanied
the trials. Similarly, the attitude of the police in relation to abortion was changing and
doctors no longer faced charges. Ford claimed in 1970, for instance, that following a meeting
with Under Secretary J.V. Dillon, the police had decided to follow up doctors only as a result
of a complaint.

Backyard abortionists continued to face charges and jail sentences in 1970 and 1971,
particularly those from non-English speaking backgrounds. One woman, who had
completed three years of a five-year midwifery course, said, like many medical abortionists
had before her, that she wanted to help the women. The judge replied ‘it was not the sort of
help that we, brought up in an educated country, would regard as help’. By 1974 abortion
prosecutions had ceased, suggesting that the non-medical trade in abortions may have ended,
or, at the very least, that police department policy was to ignore abortion. In part, this would
have reflected the fact that Medibank rebates made therapeutic abortions financially
accessible for all women. It is also likely that, following the publicity arising out of the
Kaye Inquiry, women and their partners had more information about safe and accessible
abortion, effectively closing the market for unqualified operators. It may reflect too the
weakening position of the DLP. From 1974-75 its preferences were no longer necessary to
the Liberal Party.

8.3 Government response

While the Liberal Party federal council again came out in support of abortion law reform in
all states in June 1970, Prime Minister John Gorton and the federal government, which at that
point still relied heavily on the DLP for election, remained firmly against liberalisation as did

and two women on trial’, p. 27; Sun, 19 February 1972, ‘Jury disagrees – doctor faces trial no. four’, p.
3,

329 Australian, 26 October 1972, ‘Charges against doctor dropped’.
329 Heath’s lawyers approached ALRA to provide information and expertise during his trial in
November 1971, and ALRA advocated law reform using Heath as a case example. See ALRA
Newsletter, August 1972, Betty Marginson papers, AN79/110, University of Melbourne archives, and
box 2, WAAC papers, AN100/222, VW/LLF archives, University of Melbourne.
331 Age, 6 May 1970, ‘Ford “retracts” after interjection’, p. 12. See also Sun, 6 May 1970, ‘Ford:
“Police laying off abortions”’, p. 4. This, of course, mirrored the earlier attitude of the VPF.
332 See Age, 28 May 1971, ‘$10,000 bribery abortion claim. Coroner probes a wife’s death’, p. 3; Age,
4 September 1971, ‘Girl tells of operation in bedroom’, p. 4; Sun, 26 November 1970, ‘Woman guilty
of kitchen abortion’; Age, 1 December 1970, ‘Gaol for kitchen abortion’.
333 Age, 3 March 1971, ‘Mother of five gaolled on abortions’.
334 Medibank was established on 1 July 1975.
the Victorian state government. Assistant secretary of the Victorian DLP, Jim Brosnan, admitted that the DLP sought an indication of policy to determine preferences and that this included a requirement that there be ‘no abortion reform in Victoria’.

In May 1971 the Liberal Party national policy committee overwhelmingly rejected any changes to abortion laws throughout Australia. The views of the Roman Catholic Church were instrumental in the party reaching this decision. As noted in chapter three, Paul Wilson did not think that any party in Australia risked committing itself to ‘the political wilderness’ for supporting reform. Despite his findings, and the fact that a vocal section of the Liberal Party was in favour of liberalisation, the risk of alienating Roman Catholic voters would seem to have been too great for the government.

8.4 Access to abortion

Media reports suggested that there was still a flourishing business in illegal abortions immediately following the Kaye Inquiry, while the system of medical referral remained ‘roundabout and devious’. One group of Melbourne psychiatrists, for example, suggested that, instead of paying police officers, some abortionists paid younger psychiatrists $20 to provide rubber-stamp reports. Discussion also focussed on whether Wainer’s actions had actually decreased availability of abortions for women in both Melbourne and Sydney, where he concentrated his activities. The major maternity hospitals had experienced increases of up to 40 per cent in the number of unmarried pregnant women in the three months to October 1970, with many women saying they had difficulty accessing an abortion because of the police raids on abortionists. Wainer himself wrote that he regretted the pain he caused to all those women who had difficulty accessing abortion as a result of his activities. It is a constant dilemma for those who deliver services to the poor or marginalised whether to expose the procedures that unfairly limit access to services, risking further restrictions, at least

334 Age, 4 September 1970, ‘Strike one in DLP’s battle for the Senate’, Jack Darby.
340 B. Wainer, undated notes, box 12, Wainer papers, MS13436, SLV.
in the short term, or to circumvent problematic procedures, avoiding long-term change but ensuring ongoing access to limited services. By choosing the former method Wainer attracted the wrath of both the establishment and potential allies working for women’s access to abortion.

Tony McMichael, secretary of ALRA, claimed that the Kaye Inquiry might better be labelled ‘The Great Distraction’. He noted that,

State Cabinet, initially faced with allegations of a corruptly administered bad law, has slowly but surely turned embarrassing defeat into a tactical victory. Public debate has been effectively seduced away from the immediacies of a socially archaic and repressive law, into the interminable melodrama of the Kaye Inquiry.

While some allegations were substantiated and some police officers received jail sentences, the inquiry served as ‘a red herring across the trail of abortion law reform’. McMichael argued that abortion was no more accessible than it had been prior to the inquiry.

While McMichael was right in the short term, this was not true in the longer term. In arguing that law reform would solve the problems of women’s access to abortion, he assumed, first, that the government would bring about law reform if it were not for Wainer and, second, that abortion law reform would be sufficient to ensure women’s reproductive freedom and equality. Wainer was increasingly clear that this was not the case. He had come to understand that class oppression was linked to gender oppression and a system of morally prescriptive laws enforced for the benefit of the ‘overclass’, which allowed corruption and exploitation to flourish.

Wainer was an easy target for blame because of his tactics and his demonisation in the media. However, the difficulty in accessing a medical abortion was also due to widespread ignorance about the application of the Menhennitt Ruling, conservative moral attitudes among doctors, fear of prosecution and hesitancy at administering the outcome of legislative changes. Inadequate facilities and bureaucratic procedures also prevented many women from gaining legal abortions in public hospitals.


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Wainer shifted to the view that the best way to ensure women's access to abortion was to perform them openly. In October 1972 he announced that he planned to open a clinic in East Melbourne offering 'abortions on demand, subject to a psychiatric examination of the patient'. Premier Rupert Hamer claimed that the state government would not allow this to happen. However, Wainer judged that, with a state election due in seven months, Hamer was unlikely to oppose the clinic and stir up abortion as a campaign issue. He was right. In November 1972 Bertram Wainer and Peter Bayliss established the Fertility Control Clinic in Wellington Parade as the only openly functioning private abortion service in Australia. In 1974 John Levin joined Wainer and Bayliss in practice. However, the existence of the clinic did not resolve all concerns about abortion as the following chapter demonstrates.

9. Conclusion

The combination of the introduction of the contraceptive pill, competition between abortion practices fuelled by religious factions within the public service and police force, worldwide social change, and an increasingly active civil liberties movement pressing for law reform suggests that exposure of corruption in the abortion trade was inevitable. While Wainer is accurately credited with bringing about the Kaye Inquiry, he himself viewed the cause of abortion as one in which he was both pivotal and superfluous: pivotal so far as access to abortion went in the 1970s; superfluous in so far as he was a product of the time.

There were four main outcomes to Wainer's activities in relation to the Kaye Inquiry. First, he exposed long-term corruption in the police force in an area that, like prostitution, gaming, alcohol and drug activities, was lucrative as long as it remained either illegal or illicit. While three policemen were jailed and abortion graft was no longer possible, systemic...

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347 Daily Telegraph, 31 October 1972, 'Sydney abortion clinic planned', Geoff Quayle, p. 3. See also Age, 31 October 1972, 'Wainer plans abortion clinic here', Michael Smith, p. 2; Sun, 31 October 1972, 'Wainer to open abortion clinic'; Australian, 31 October 1972, 'Wainer to open abortion clinic'; Age, 15 November 1972, 'Stirrer extraordinary comes back to town. Wainer is back in business here', Kevin Childs; Sun, 1 November 1972, 'Wainer clinic "like others"'.
348 Australian, 1 November 1972, 'Victoria to stop Wainer abortion clinic'.
349 Sydney Morning Herald Good Weekend, 10 May 1986, 'Business is down 50 per cent and Bert Wainer is thriving', Keith Dunstan, pp. 22-24.
350 Proposed agreement between B.B. Wainer, and Peter Bayliss and John Levin, box 10, Wainer papers, MS13436, SLV.
351 Frydman, 'Transcript of Interview with Wainer', box 12, Wainer papers, MS13436, SLV.
352 In light of current debates it is worth revisiting the question raised in relation to the Kaye Inquiry. That is, whether a royal commission is a useful device for detecting and making public existing corruption, or a stalling mechanism to avoid implementing the kinds of changes that are blatantly necessary.
corruption in the police force, the judiciary and among politicians was unaffected.\textsuperscript{353} While the Kaye report was thorough within the terms of reference of the inquiry, the fact that the Liberal government set such narrow terms and then delayed the release of the report until public interest had waned, reduced its power. Second, the state government was able to use the inquiry as a ruse, appearing to respond to public concerns about abortion, without threatening vital DLP preferences by actually bringing about any change in abortion laws. The Bolte government was thus returned to power and abortion law remained unchanged.\textsuperscript{354} The opposition, similarly, did little to threaten its own electoral prospects. Third, in the longer term, the inquiry and test cases increased women’s access to abortion. Medical practitioners were more likely to refer women for abortions or carry out abortions themselves as fear of prosecution was lifted for doctors acting in good faith. Further, the cost of an abortion initially decreased as a result of regulation and the absence of payment of graft, as well as the introduction of Medibank rebates. Regulation of medical standards also meant that abortions became safer for women.\textsuperscript{355} Fourth, medical practitioners, not women, gained control over abortion. Wainer’s rationale for exposing police corruption was to legalise medical regulation of abortion. Thus he focussed on ‘corrupt cops’ and the dangers of ‘backyard’ practice, not on women’s control over reproductive decision-making.

But the years between 1970 and 1974 also saw the emergence of other forces and factors that contributed to women’s access to abortion. The following chapter details those factors.

\textsuperscript{353} In a 2004 report on the Ccja investigations into the now disbanded Victorian drug squad, Ombudsman George Brouwer stated that ‘current corruption is a legacy of past failures to deal with certain members in the 1970s and 1980s’. A lack of political will to bring about the changes required to tackle the type of corruption found in the Kaye and Beach Inquiries allowed that corruption to become intrinsic to the culture of the police force. Age, 4 June 2004, ‘More corruption shocks to come: Institutionalised police failings’, pp. 1, 6. See also Age, 29 May 2004, ‘Fixing the force’, Gary Hughes, Gay Alcorn & Malcolm Schmidtke, Insight, pp. 1, 6.

\textsuperscript{354} The Catholic Archbishop of Melbourne told Bolte that DLP support would continue as long as there were no abortion reforms. See Nation, 24 June 1972, ‘Reformer’s dilemma’, Richard L’Estrange, p. 23.

\textsuperscript{355} In 1936 abortion-related deaths comprised 33 per cent of maternal mortality in Victoria. By 1980 this was nil. See tables 3 & 4 and diagrams 2 & 3 in chapter 2.
CHAPTER FIVE

THE DRIVING FORCES BEHIND ABORTION LAW REFORM
1959-1974: women’s groups and humanist organisations

When we talk about women’s rights, we can get all the rights in the world...and none of them means a doggone thing if we don’t own the flesh we stand in, if we can’t control what happens to us, if the whole course of our lives can be changed by somebody else that can get us pregnant by accident, or by deceit, or by force.¹

1. Introduction

While the press gave every indication that Bertram Wainer was a one-man show, the campaign for abortion law reform was in fact operating simultaneously on a number of fronts. The Victorian Council for Civil Liberties (VCCL) was the first organisation in Victoria formally to examine the case for law reform, and the Abortion Law Reform Association (ALRA) followed shortly afterwards, both pre-dating Wainer’s involvement. The Women’s Electoral Lobby (WEL) also focussed on abortion in the lead-up to the 1972 federal election, while the Women’s Abortion Action Coalition (WAAC) took up the cudgels for repeal of abortion laws. It is clear from an examination of the differences and similarities between the campaigns run by these groups that each was the product of the personal politics of its members, as well as of the broader social context.

The 1960s saw significant numbers of the post-war generation embrace political radicalism, initially coalescing around the anti-war movement stimulated by the Vietnam War. Increasingly, women engaging with the politics of liberation experienced disillusion with the dominance of men within the anti-war movement. Their reaction contributed significantly to the so-called second-wave feminist movement of the late 1960s and early 1970s.² Campaigns around women’s rights led to the establishment of groups such as WEL and the WAAC, while an increasingly active civil liberties movement was also evident in the emergence of groups such as ALRA and the VCCL subcommittee on abortion.

Judith Allen thus notes three distinct political positions emerging in relation to abortion at this time. These were a civil liberties and libertarian-humanitarian stance, which saw

² Ann Curthoys argues that, while the women’s movement was ‘not as entirely new as it might have thought itself, [it] certainly erupted around 1970 in a new and aggressive form!’ A. Curthoys, 1996, ‘Visions, Nightmares, Dreams: Women’s History, 1975’, Australian Historical Studies, no. 106, April,
abortion as a question of private conscience rather than state regulation; a stance that sought
the suppression of abortion as unjustifiable slaughter of the unborn; and a feminist stance
asserting women’s right to self-determination, seeking repeal of abortion laws as well as
public provision of abortion services.3

These positions became explicit in the campaign to liberalise abortion laws leading up to and
following the Menhennitt Ruling in 1969. For the groups under consideration, however, it
was not simply a question of one or the other stance. There were differences within groups,
and some members moved from one position to another, most notably from the first to the
third position. Conflict and debate were vigorous, both within the broader women’s
movement and within each of the groups. Over time, a shift to the more radical stance
became evident.

In this chapter I consider the different positions in light of material drawn from records of
these organisations and other contemporary sources. Opposition to reform, while
acknowledged, is outside the bounds of this study, and will not be considered in any detail. It
is interesting to note, however, that little use was made of moral arguments or appeals to
‘foetal rights’ before the 1970s.4 As noted in chapters two and three, the pro-natal focus to
this point was on pragmatic questions of national interest as defined by men. These included
arguments relating to the labour force, defence strategy, the survival of the race, immigration
and foreign relations, and invariably assigned responsibility for the declining population to
women’s selfishness.

The medical profession’s domination over most discourse concerning the body and sexual
practice exercised a powerful influence on the motivation and tactics of the early abortion
law reform groups. This is central to understanding the activities of abortion law reform
campaigners. That the medical profession’s power to decide who should have an abortion,
who should perform that abortion and when and where it should occur has gone largely
without challenge says a great deal about the position of medical practitioners in Australian
society. The essentially political nature of much of the decision-making process regarding
abortion is masked by this largely unquestioning faith in the expertise of men of medicine. It
is perhaps not surprising, then, to note that this assumption was similarly not questioned by

3 J. A. Allen, 1990, Sex & Secrets: Crimes Involving Australian Women since 1880, Oxford University
Press, Melbourne, p. 208.
4 The material consulted for this chapter confirms this point made by Allen, Sex & Secrets, p. 106.
the early abortion law reform groups. They mostly agreed that power should continue to rest with the medical profession.

In this context, both ALRA and the VCCL concentrated on trying to convince doctors and lawyers of the validity of change, rather than opting to by-pass the professions and take control over abortion themselves. Similarly, the notion that women should accept responsibility for the control of reproduction went largely unquestioned, leaving the early abortion law reform campaigners open to cooption by groups advocating population control and moral responsibility for contraception.

2. Law Reform Organisations

2.1 Victorian Council for Civil Liberties

The earliest record of an organised group systematically examining abortion in Victoria comes from the Victorian Council for Civil Liberties (VCCL), which in September 1966 agreed to establish a subcommittee to investigate the ‘problem of abortion’. Beatrice Faust, one of the founding members of the subcommittee, claims that it was set up amidst some hostility from council members whose preferred focus was censorship. A panel of nine ‘experts’, drawn from among doctors, psychologists, social workers, clergy and lawyers, aimed to produce a ‘purely academic examination of abortion’. The VCCL planned to send its findings to the chief secretary, with the aim of clarifying laws, increasing public knowledge, raising the problem of unethical abortionists and improving women’s access to

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6 VCCL meeting minutes, 27 September 1966, Betty Marginson papers, Accession Number (AN) 79/110, University of Melbourne archives.

7 M. Bowman & M. Grattan, 1989, Reformers: Shaping Australian Society from the 60s to the 80s, Collins Dove, Melbourne, pp. 55-56. In August 1967 the VCCL assisted the editor and distributor of Farrago, who were charged with obscenity for publishing articles on contraception and abortion, thus combining both interests. The defendants were acquitted, establishing for the first time in Victoria the right to publish full and frank articles on these topics for distribution to the general public including university students. See VCCL Newsletter no. 6, August 1967, Betty Marginson papers, AN79/110, University of Melbourne archives.

8 VCCL meeting minutes, 27 September 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
contraception and abortion.\(^9\)

The multiple aims of the subcommittee highlight the difficulties faced by women seeking an abortion in the mid-1960s. As explained in chapter three, the law regarding abortion was unclear, leaving medical practitioners reluctant to involve themselves in either abortion provision or referral, and women had little knowledge of their rights. A number of medical and lay abortionists were profiting from this confusion, charging high prices for terminations regardless of their skill and knowledge or the quality of care provided. Nevertheless, demand for abortion continued and, given their vulnerability to prosecution, abortionists were a prime target for corrupt police officers. For the VCCL, the police blitz on abortions performed by medical practitioners from 1965, coupled with reform of the law in England, provided the motivation to advocate change.\(^10\)

Despite the confusion that surrounded abortion law, the assumption that a ‘purely academic’ argument was possible, and that it would result in desired changes if both objective and well researched, underpinned much of the thinking and therefore the actions of early abortion law reformers. The strength of this assumption was highlighted by the subcommittee’s initial agreement to at least one member opposed to abortion.\(^11\)

The subcommittee’s attitude to abortion mirrored liberal values. First, members were keen to differentiate between ‘ethical and unethical abortionists’, no doubt to separate, in the public — and the medical — mind, abortion from unethical practices per se. Second, given its civil liberties focus, the VCCL championed the rights of single women both to contraception and to acceptance as single mothers. Third, the subcommittee was particularly concerned that sick and underprivileged women were often refused abortions while wealthy women had little trouble gaining access.\(^12\)

The subcommittee reported its initial findings in November 1966. Even at that comparatively early date, members found that the risk of a medical abortion was minimal and that doctors’

\(^9\) VCCL meeting minutes, 27 September 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
\(^10\) VCCL meeting minutes, 27 September 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
\(^11\) At a subsequent meeting, it was agreed that this would inhibit constructive progress and the subcommittee would, instead, solicit Catholic opinion for information and consideration. See VCCL meeting minutes, 10 October 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
\(^12\) VCCL meeting minutes, 10 October 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
objections were largely emotional. The subcommittee expected opposition from the medical profession. The Australian Medical Association (AMA) had instigated a ‘go slow’ policy in relation to abortion as a result of the mixed views of its membership, postponing any inquiries of its own until at least 1968. The subcommittee made a decision to further review medical opinion regarding abortion for its final report, seeking the assistance of the College of General Practitioners with an extensive questionnaire.

It seemed from the VCCL’s study that professionals viewed abortion as a moral rather than a medical problem, although the pall that hung over backyard operators ensured that the public image of abortion was that it was dangerous and corrupt. There was little, if any, recognition of the fact that many ‘backyard’ abortions were in fact performed by sympathetic doctors and nurses, although in less than ideal circumstances because of the illegality of the operation. One study found for example, that medical practitioners, ‘even before the post-war wave of reforming propaganda’, performed four out of five abortions.

The subcommittee was set up initially for a period of six months, but it was still meeting a year later to consider whether information gathered from ‘experts’ supported a case for pursuing abortion law reform. Even after the subcommittee disbanded some members continued their interest in abortion, most notably Beatrice Faust, who became president of ALRA in 1972, and Betty Marginson, who was formally co-opted onto the Victorian ALRA committee in August 1969 and later elected secretary.

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13 VCCL Subcommittee for Investigation of Problem of Abortion, minutes of meeting 9 November 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
14 VCCL Subcommittee for Investigation of Problem of Abortion, minutes of meeting 24 October 1966, Betty Marginson papers, AN79/110, University of Melbourne archives.
15 The VCCL may have been referring to the 1968 ‘Poll on Therapeutic Abortion: Survey Report’, *Modern Medicine of Australia*, vol. 11, no. 24, 2 December 1968, pp. 10-16. A questionnaire was first mailed to all registered medical practitioners, enclosed in the 1 July 1968 issue of the journal, apparently at the request of the AMA.
16 As noted in chapter three, the police used the term ‘backyard’ abortion to refer only to those performed by unqualified operators as part of a business, while others used the term to refer to all illegal abortions.
18 *VCCL Newsletter*, no. 7, September 1967, Betty Marginson papers, AN79/110, University of Melbourne archives.
2.2 Women’s Electoral Lobby

In February 1972, prior to her involvement with ALRA, Beatrice Faust, along with ten other largely professional ‘young, dynamic and politically astute’ women had founded the Women’s Electoral Lobby (WEL).\(^\text{19}\) Ann Curthoys describes WEL as ‘more in the tradition of reformist labour and left-liberal politics’.\(^\text{20}\) Initially WEL was conceived of as a ‘highly efficient and professionally organised pressure group’, aiming at ‘skilful manipulation of the media’ and ‘relentless lobbying of politicians’ on issues of relevance to women.\(^\text{21}\) Although not specifically set up to tackle the question of abortion, WEL was an important part of the campaign to change abortion laws via parliamentary processes over the following year.

WEL organised its initial activities around assessing and making known the attitudes of candidates for the federal election. A pilot study in February 1972 followed by a major survey to identify differences between candidates preceded preparation of a ‘form guide’, rating candidates as pro-feminist, indifferent and anti-feminist. In Victoria, over 90 per cent of declared candidates were interviewed.\(^\text{22}\) The form guide was first published in Women’s Day in July 1972 and then in the Age as a ‘Voters’ Guide Special Feature’ on 20 November 1972.\(^\text{23}\)

Reaction to WEL was not initially positive. An Age article, published with the ‘Voter’s Guide’, quoted one Liberal backbencher as saying that WEL was regarded by politicians with a ‘mixture of scepticism, apprehension and a little amusement. Most of them think it is a

\(^\text{22}\) WEL Broadsheet, vol. 1, no. 10, Nov 1972, Jan Harper papers, AN78/120, University of Melbourne archives. Cheap, safe contraception and abortion were areas of interest to WEL and this was rated most highly in the scoring system. Candidates were rated on fertility choice (contraception, family planning and abortion), childcare, equality (workforce and education), general sensitivity to women’s issues and cooperation in being interviewed. WEL Broadsheet, vol. 1, no. 11, December 1972, p.10, Jan Harper papers, AN78/120, University of Melbourne archives. Marilyn Lake reports that Gough Whitlam scored the highest and Billy Snedden the lowest score possible. M. Lake, 1988, ‘A World of Difference’, Australian Left Review, no. 108, December 1988/January 1989, p. 11.
\(^\text{23}\) Women’s Day, 10 July 1972, ‘It’s a woman’s right’, Sandra Franks, pp 1-4, DLP papers, MS10389, State Library of Victoria (SLV).
bloody nuisance'. ALP parliamentarian, Richie Gunn, who had scored very highly in the survey, stated that the guide was ‘worth about six votes’.

Lyndall Ryan disagreed, arguing in retrospect that WEL was the ‘political bombshell’ of 1972, dramatically changing the nature of public debate by and about women. According to WEL members, Malcolm Fraser, Billy McMahon and Gough Whitlam turned their attention to improving conditions for women, going to some trouble to find out what they wanted. Verity Burgmann cites this as evidence of the political strength of WEL in drawing notice to the importance of women’s votes.

Within nine months of its establishment, WEL had become a significant lobby group, with 1300 members across Australia and branches established in each of the state capitals. It remained a largely city-based and middle-class organisation. WEL was structured into a series of subcommittees designed to monitor aspects of women’s rights, including fertility control. The contact for fertility control was Beatrice Faust. On 15 April 1973 the WEL General Meeting carried unanimously the recommendation from the coordinating committee on fertility control that:

> They approve abortion on request by a woman up to sixteen weeks from the date of conception and thereafter on the recommendation of two doctors who were of the opinion that a continued pregnancy would result in physical or mental injury to the pregnant woman or the child would be likely to be born handicapped.

This recommendation became part of WEL policy on family planning.

The liberal feminist approach of WEL led to its early success for two reasons. First, the notion of equal rights appealed to those women who did not otherwise see themselves as part of the women’s movement. Women voters were increasingly vocal about their desire for equal rights in employment and education, adding a strong support base to an organisation that promised increased opportunities without threatening their way of life. Second, the

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27 ‘WEL Victoria, State Report’, pp. 79-81, box 6, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne. See also Age, 20 November 1972, ‘Politicians are wary’, p. 4.
28 Burgmann, Power and Protest, p. 94.
29 Herald, 3 August 1972, ‘Promotion race favours men’, Tina Harris, p. 25, Jan Harper papers, AN78/120, University of Melbourne archives.
30 WEL Broadsheet, vol. 2, no.15, April 1973, Jan Harper papers, AN78/120, University of Melbourne archives.
media were inclined to give liberal feminist groups greater press in order to appeal to women readers, while stereotyping radical feminists as 'man-haters' to avoid ostracising their male readers and advertisers. While WEL thus enjoyed a high media profile, the Women's Liberation Movement (WLM)\(^{31}\) raised concerns that WEL was sometimes given credit for activities that other organisations had undertaken.\(^{32}\)

Other groups continued to criticise WEL, particularly the Democratic Labor Party (DLP).\(^{33}\) The DLP did not receive good press from WEL, given its strong anti-abortion stance. WEL member Alva Geike wrote that the 'DLP patently shares Hitler's policy on women: paternalistic but repressive, in theory limited to ... kitchen, church and children – in practice forcing women to do the monotonous, poorly paid work which men despise, housework, factory work, etc'.\(^{34}\)

However, most WEL leaders went to some trouble to defend themselves against accusations of bias. For example, WEL undertook a survey in Sydney in April 1973, finding that 80 per cent of interviewees agreed that 'a woman should have a right to an abortion if she wants one'.\(^{35}\) Other surveys of public opinion were more likely to ask whether 'there should be abortion on demand', ensuring a quite different response. WEL was, of course, accused of distortion and lies, given the difference in its figures from other similar surveys, and this led Eva Cox to suggest that if they were going to fake their figures they would have selected a lower and more credible percentage.\(^{36}\)

The WLM also had some difficulty with WEL, although it certainly endorsed the WEL form guide after checking its aims.\(^{37}\) Feminists Anne Summers in *mejane* and Helen Garner in *Digger* argued that WEL's reformism was on the wrong track. Summers accused WEL of

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\(^{31}\) It is important to differentiate between the organisation Women's Liberation Movement (WLM) or Women's Liberation (WL), used interchangeably, which comprised a federation of small groups first set up in the late 1960s, and the broader use of the term, referring to the women's liberation movement per se.

\(^{32}\) *Women's Liberation Newsletter*, December 1974, 'Minutes of General Meeting 7 December 1974', p. 6, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.

\(^{33}\) F. Dowling, DLP state secretary, press statement for *Age*, undated, DLP papers, MS10389, B/5/2, SLV.

\(^{34}\) Alva Geike, 26 April 1972, 'Policies of Interest to Women', prepared by Geike of the Equal Pay Committee for WEL, cited in DLP papers, box A/1/26, MS10389, SLV.


\(^{36}\) Cox, 'Public Opinion and Abortion', pp. 46-47.

'jumping on the Labor bandwagon' and pressing for 'piecemeal' reforms. Garner, frustrated with its apologist stance on women's rights, dismissed WEL's work as 'bandaid stuff'. In response, one WEL member wrote that WLM members who attended WEL meetings were critical observers rather than helpful participants and that their articles represented 'overtones of 19th century anthropologists watching the untutored natives at play' rather than sisterhood.

Even within WEL, however, there was concern that the multiplicity of aims and the diversity of interests of members could lead to the organisation fragmenting. WEL leaders believed their greatest fight was one against 'traditionalism and fear of radical change'. Members were uncomfortable about abortion, particularly its tendency to override other 'women's issues', and many country members opposed abortion on demand. On 11 August 1973 four WEL members met with Premier Hamer to follow up pre-election promises he had made at a televised forum in Melbourne in May 1973. The four emerged from the Premier's office to a barrage of press, television and radio reports. According to WEL, the Age, Australian and Channel 7 all stressed the abortion issue, ignoring the many other topics discussed and only Channel 7 gave a 'fair and serious report'. This led one WEL member to comment: 'If you want any other subject to be treated reasonably well by the media, do not mention abortion.'

2.3 Abortion Law Reform Association

The Abortion Law Reform Association (ALRA) was formed initially in New South Wales (NSW) in 1967, fostered by the Humanist Society. In Victoria ALRA was formally established on 24 April 1968 at a public meeting. Bertram Wainer claims that medical abortionists established ALRA as a public relations exercise designed to bring about

40 Graham, 'Borrowing From Each Other, p. 3.
41 'WEL Victoria, State Report', pp. 79-81.
42 'WEL Victoria, State Report', pp. 79-81.
43 'WEL Victoria, State Report', pp. 79-81.
44 WEL Broadsheet, vol. 2, no. 20, September 1973, pp. 2-3, Jan Harper papers, AN78/120, University of Melbourne archives.
46 Farrago, 3 May 1968, 'Organised abortion', p. 1. See also Sun, 6 May 1968, 'Bid to reform abortion law', p. 13. The minutes of ALRA (Vic) meetings are available only from 29 July 1969.
liberalisation of abortion laws.\textsuperscript{47} It is more likely that they encouraged existing interest, donating money or resources via a third party.\textsuperscript{48} ALRA was based on the British Abortion Law Reform Association, originally formed in 1936 by a group of people who were ‘appalled by the family tragedies in Britain resulting from the widespread practice of back-street and self-induced abortion’.\textsuperscript{49} The sole objective of the Victorian association was reform of abortion laws.\textsuperscript{50} While a majority of the foundation members, largely students from the University of Melbourne, favoured abortion on request, it was ‘agreed that any measure of reform would be acceptable’.\textsuperscript{51}

The original members of ALRA (Victoria) included Carl Wood, John Leeton, Peter Singer and Gareth Evans. Wood and Leeton went on to become pioneers of reproductive technology in Victoria, Singer remains controversial as a bio-ethicist and Evans also continued his career in public life, being elected to the Senate in 1978.\textsuperscript{52} Clearly their association with a public and controversial cause did no harm to their careers.

The very middle-class ALRA campaign was run in its early days by a small group of committed individuals. Jo Richardson, who later married Bertram Wainer, as inaugural secretary and, later, Beatrice Faust as president took on responsibility for much of the

\begin{footnotesize}
\begin{enumerate}
\item Wainer claimed that Dr Troup and Peggy Berman paid two ‘stooges’, referred to as ‘DB’ and ‘WD’, $100 per week for their services, as well as paying the rent on their business premises, used for ALRA meetings. See Bertram Wainer, undated, ‘Story of Lionel Pugh’, pp. 1-11, box 12, Wainer papers, MS13436, SLV. ‘WD’ may have been William Dye and ‘DB’, David Bickart. According to Beatrice Faust, Dye admitted to reporting back to Peggy Berman, whom Faust describes as a ‘control freak’. Faust also claims that Bickart had stolen money from the ALRA campaign. Interview, Beatrice Faust, 16 February 2004. Bickart resigned in July 1969 following ‘unnamed allegations’ against him and his resignation was accepted ‘without further comment’. See ALRA committee meeting minutes, 29 July 1969, Betty Marginson papers, AN79/110, University of Melbourne archives. Faust later noted that Wainer had a track record of ‘purging the committee of undesirable elements’. See letter from Faust to Wainer dated 17 May 1973, box 21, Wainer papers, MS13436, SLV.
\item For instance Peter Singer, president of the Melbourne University Rationalist Society, was reported to have called for a campaign in favour of the moderate reform proposal approved by the State Liberal Party Council. Plans were proceeding to set up an abortion law reform committee at the University of Melbourne along those lines in March 1968. See Farrago, 22 March 1968, ‘Cops close abortionists: Students to campaign’, p. 1. Similarly, the Social Aspects Group of the University of Melbourne Medical Student’s Society had shown an interest in birth control for some decades. Rod Bretherton as president had organised a meeting on the ‘social aspects of contraception’ in 1941, with Dr Victor Wallace presenting ‘the scientific case for contraception’. Wallace was president of the Eugenics Society at the time. See R. Bretherton, 1997, Abortion: RU486: Anecdotes of Anguish and Hope, Rodney Bretherton publisher, Daylesford Victoria, p. 6.
\item ‘What is alra?’, Westminster Press, London, undated pamphlet, box 1, Bon Hull papers, AN100/108, VWLF archives, University of Melbourne.
\item ALRA accepted the British abortion act as its central policy according to an article in the Australian, 6 May 1968, ‘Abortion law puts women in danger’.
\end{enumerate}
\end{footnotesize}
research and writing undertaken by the group.\textsuperscript{53} In addition to students, membership consisted of liberal-minded professionals with an interest in civil liberties. Students tended to move on once they were qualified, resulting in a high turnover and resultant problems of inexperience, and lack of continuity or follow-through with campaigns. Beatrice Faust later referred to the ‘indecisiveness and lack of communication between incoming and outgoing committees’ and ‘undertakings beginning well, but then lapping’.\textsuperscript{54}

2.3.1 Political ideology of ALRA

Ideologically, ALRA operated within a liberal feminist as well as a civil liberties framework. As such, it did not question contemporary capitalist economic and political structures – or medical dominance – seeing the barriers to women’s emancipation as ‘incidental features of the political system and not fundamental to it’.\textsuperscript{55} ALRA objected to women’s limited access to safe and affordable health care, not to the system of medical control over reproduction.

Journalist Lionel Pugh, who later joined the campaign, commented that ‘there is not a single activist amongst them, some are do-gooders, others small ‘I’ liberals and a lot of them are members of the ALP who would have convulsions if there was any chance of the introduction of a socialist Government’.\textsuperscript{56} Bertram Wainer, who joined ALRA in 1968, one month after it was established, similarly wondered what the group knew about starvation and the politics of survival.\textsuperscript{57} Nevertheless, Wainer initially shared the liberal views of his colleagues, believing that explaining the dilemma facing women by carefully outlining the ‘facts’ of abortion to politicians would be enough to stimulate change in practice and policy.\textsuperscript{58} Beatrice Faust also held a largely sympathetic view of politicians, noting that they were not specialists and so must be educated and provided with information in order to ‘make them make up their minds’.\textsuperscript{59}

\textsuperscript{53} Jo left ALRA in March 1970 for a job in Sydney as a journalist. Interview, Jo Wainer, 6 April 2001.
\textsuperscript{55} Burgmann, \textit{Power and Protest}, pp. 79-83.
\textsuperscript{56} Bertram Wainer, undated, ‘Story of Lionel Pugh’, pp. 1-11, box 12, Wainer papers, MS13436, SLV.
\textsuperscript{57} ALRA extraordinary committee meeting minutes, 23 May 1973, box 17, Wainer papers, MS13436, SLV.
\textsuperscript{58} Gloria Frydman, 9 August 1985, ‘Dr Bertrand (sic) Wainer’, Interview with Gloria Frydman for book on protesters, transcript of interview, pp. 1-23, box 12, Wainer papers, MS13436, SLV. This was later edited and published as a chapter in her book, \textit{Protestors}, 1987, Collins Dove, Melbourne.
As was the case with Wainer, Faust exerted such a strong influence on ALRA that any analysis of the organisation’s political ideology in the early 1970s is difficult to separate from her particular political understandings. Burgmann suggests that Faust was a moderate or reforming feminist. 60 Faust too saw herself as a reformer rather than a revolutionary, suggesting that women should ‘take what [they] have and modify it’. 61 However, she was also wary of moderate reforms that would make middle-class abortions legal while leaving the ‘ignorant and needy without help’. 62 Those who go out and demand to be arrested are at less risk, according to Faust, who called for ‘a little civil disobedience’. 63 Faust encouraged ALRA to seek repeal rather than reform of abortion laws, criticising Wainer for his ‘piecemeal’ rather than ‘wholesale’ reform approach. 64

Despite this, Faust, like Wainer, was not motivated by injustice to women alone. Rather, she saw women as one of a whole range of underprivileged groups, including migrants and Aborigines. 65 Faust chose to tackle abortion because she saw it as ‘so much less popular’ than other causes. 66 Her impatience with the Right to Life groups (RTL), who, she stated, thought that ‘a layette and a couple of cans of baby food will get any women through a pregnancy’, revolved around the group’s complete failure to ‘analyse the long-term economic consequences of unwanted pregnancies’ or even to listen to what women told them. 67

Faust was similarly impatient with what she saw as the ‘extremism’ of the radical women’s liberation movement. This led her to write about the ‘defeminising dangers of “misguided aggression” practised by butch hordes in battle fatigues advancing on poor defenceless males’. 68 Faust described women’s liberationists as ‘angry’ and ‘frigid’ ‘crowing hens’, who were ‘noisy about what they don’t do’. 69 Faust’s views ensured that ALRA stayed at odds

60 Burgmann, Power and Protest, pp. 79-83.
61 Herald, 3 August 1972, ‘Promotion race favours men’, Tina Harris, p. 25, Jan Harper papers, AN78/120, University of Melbourne archives.
62 Abra, no. 11, August 1972, p. 6, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.
63 Abra, no. 11, August 1972, p. 6, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.
64 B. Faust, ‘President’s Report’, ALRA, 18 March 1974, p. 3, Betty Marginson papers, AN79/110, University of Melbourne archives. See also Interview, Beatrice Faust, 16 February 2004. In fact Anne Summers had directed this criticism at Faust the previous year. See footnote 39 above.
68 J. D’Urso, 1970, ‘Confront the Caponisers! Defending Women’s Liberation One’, Australian Humanist, no. 15, Spring, pp. 5-6, box 3, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
with WLM to a large extent, although both publicly supported the campaign for liberalisation of abortion laws.\textsuperscript{70}

Despite claims that women were having abortions for primarily socio-economic reasons, attention to broad questions of social and economic justice did not feature in the ALRA campaign. The claims were designed to elicit both sympathy and an appreciation of women's sense of responsibility in choosing to have an abortion, but resulted in a simplistic understanding of the more complex reasons for such a choice. For reformers, social justice was limited to equal access to health care, not economic redistribution or women's control over reproductive decision-making. The fact that some anti-abortion parliamentarians argued for social justice as an alternative to abortion contributed to what appeared to be an either/or, rather than an and/both, argument.\textsuperscript{71}

\textbf{2.3.2 The aims and activities of ALRA}

Aims and tactics were a continuing source of discussion within ALRA. Group members wavered between ensuring widespread support for their actions via a moderate and 'reasonable' approach, and fear that a too-conservative approach would not bring about desired changes. In 1969, for example, ALRA members chose not to publish a petition proposed by Rodney Bretherton for fear they might be sued for libel if names were listed incorrectly.\textsuperscript{72}

That members of the public might sue ALRA for incorrectly linking their name with abortion suggests that association with abortion had the potential to sully, if not destroy, the reputation of that individual. Feelings ran high in relation to the petition, with some group members expressing frustration with ALRA's conservatism. The committee noted on 30 September

\textsuperscript{70} See for example, J. Keen, 1970, 'When "Miss" Means You've Missed Out: Defending Women's Liberation Two', \textit{Australian Humanist}, no. 15, Spring, pp. 7-8, box 3, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne; Kathie Gleason, copy of letter submitted to \textit{Age} in response to Faust's articles on rape and abortion, \textit{Vashti's Voice}, no. 17, Summer 1976/77, pp. 29-30, box 3, Frances Ryan papers, AN100/211, VWLLF archives, University of Melbourne.

\textsuperscript{71} For instance in March 1970, Labor MHR Rex Connor argued the case for marriage loans, adequate child endowment payments, and a just wage and security for every worker in order to obviate the need for abortion. \textit{Commonwealth Parliamentary Debates (CPD)}, House of Representatives (HR), vol. 66, 11 March 1970, Rex Connor, p. 331.

\textsuperscript{72} ALRA committee meeting minutes, 26 August 1969, Betty Marginson papers, AN79/110, University of Melbourne archives. Instead, the 2,300 signature petition, calling for exemption of legally qualified medical practitioners from section 65 of the \textit{Crimes Act}, was tabled in parliament. See \textit{Victorian Parliamentary Debates (VPD)}, Legislative Assembly (LA), vol. 299, 21 October 1970, pp. 1106-07. Bretherton notes that there was no mention of this in the press. See Bretherton, \textit{Abortion: RU486}, p. 27.
1969 that, whatever personal feelings members might have, ‘publicising the issue and making political approaches was sufficient, at least for the present’.  

Those initially involved in urging reform were likely to have come from establishment homes and to have joined the Young Liberals at university, although it seemed to prove quite liberating to be treated as ‘mad radicals’. As a result of their backgrounds and values, campaigners had ambitiously targeted the political, legal and medical arenas as accessible sites of change, although initially they concentrated on sending information to politicians. For example, in 1969 ALRA organised a nineteen-page submission to members of the Victorian state cabinet intended to ‘assist cabinet ministers in coming to a well-informed and considered decision on the issue of abortion law reform’. Similarly, an ALRA publication was distributed to all members of the Victorian Legislative Council in the lead-up to the 1972 federal election and to Victorian federal members of parliament prior to the reading of the Medical Practices Clarification (or Abortion) Bill in May 1973.

For all its earlier optimism, by September 1970 ALRA noted that abortions were becoming almost impossible to obtain from Australian doctors as a result of police ‘harassing patients’ and ‘hounding and charging doctors’. Prompted by these difficulties the ALRA committee discussed breaking out of the traditional ‘court politics’ mould and getting the abortion law reform message across at the ‘grass-roots’ level. Those attending the October meeting agreed that ALRA policy warranted reconsideration, although it was some time before this occurred.

73 ALRA committee meeting minutes, 30 September 1969, Betty Marginson papers, AN79/110, University of Melbourne archives.
74 Interview, David McKenzie, 16 June 2004.
76 It is not clear why it was delivered to state rather than federal members, although this might reflect an error in the article about the distribution of the booklet.
78 Abra, no. 3, 1 September 1970, p. 1, SLV, and Jan Harper papers, AN78/120, University of Melbourne archives.
79 ALRA committee meeting minutes, 7 October 1970, Betty Marginson papers, AN79/110, University of Melbourne archives.
80 ALRA committee meeting minutes, 7 October 1970, Betty Marginson papers, AN79/110, University of Melbourne archives.
In the meantime, the fundraising activities of ALRA centred on a series of barbecues, dutch auctions, cocktail parties, wine-tasting dinners, and afternoon teas, where participants paid a small entry fee and recruited new members, in a style not unlike the Tupperware parties of the same era.\footnote{ALRA Newsletter, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives.} Their search for well-to-do patrons and stately homes in which to hold functions confirmed the bourgeois stance of ALRA members, who in 1971 were told to keep their ‘eyes open for rich socialites (preferably with big suitable houses for our gathering) who will willingly assist’.\footnote{ALRA committee meeting minutes, 16 November 1971, Betty Marginson papers, AN79/110, University of Melbourne archives.} A year later they were looking for patrons – ‘Bishops, Professors of Criminology, Dames, especially women’.\footnote{ALRA Newsletter, Winter 1972, box 2, Women’s Abortion Action Campaign/Coalition (WAAC) papers, AN100/222, VWLLF archives, University of Melbourne.} The organisation’s tactic was to impress on the public its respectability in order to convince politicians and the public alike of the importance of a topic that was largely taboo, bound up as it was with conservative social mores about sexuality and the roles of women in Australian society.

ALRA was also active in providing members of the public with information about their rights. The hearing that led to the Levine ruling in NSW had revealed that some members of the police force believed that every abortion was illegal.\footnote{Abra, no. 8, 15 November 1971, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives. The Levine ruling followed R v Wald in the District Court of NSW in 1972. Justice Levine adopted the Menhennitt Ruling from Victoria, but extended the grounds of a lawful abortion to include ‘economic, social or medical’ grounds constituting a serious danger to a woman’s physical or mental health. Further, he redefined serious danger to include ‘some time during’ the pregnancy, not just at the time of the consultation. See N. Cica, 1991, ‘The Inadequacies of Australian Abortion Law’, Australian Journal of Family Law, vol. 5, no. 1, p. 39.} The fact that both politicians and police officers appeared ignorant of abortion laws led ALRA members to assume that the general public was similarly unaware. To this end, ALRA encouraged the National Library to purchase films and books on abortion and members prepared three thousand copies of a statement on abortion laws in Victoria for distribution to community organisations that were likely to come into contact with women facing an unplanned pregnancy.\footnote{ALRA committee meeting minutes, 15 June 1971, Betty Marginson papers, AN79/110, University of Melbourne archives.}

ALRA was increasingly seen as a source of expertise on abortion law reform. In 1969 the Country Party had approached the association for two members to join a subcommittee to advise the party on abortion law reform.\footnote{ALRA meeting minutes, 29 July 1969, Betty Marginson papers, AN79/110, University of Melbourne archives.} The lawyers defending doctors charged with
abortion-related offences also approached ALRA to provide information and expertise. In 1973 the organisation was instrumental in assisting Channel O in the making of a documentary, *The Question of Abortion*. Given its liberal politics, ALRA was attractive to organisations concerned about starvation and the growing world population. Thus by March 1973, it was affiliated not only to the VCCL, but also to the Family Planning Association of Victoria (FPA), Zero Population Growth (ZPG) and the National Council of Women. The influence of these groups resulted in ALRA focussing increasingly on 'family planning' and sex education.

ALRA provided speakers to APEX, the Young Liberals and church groups, as well as to women's liberation groups, university students and others. In August 1972, the association had begun a series of speakers' workshops for members, reflecting their desire to present a professional appearance. Members were encouraged to speak out publicly about their own views and experiences of abortion in a bid to normalise requests for terminations as a health care right for all women. While ALRA's campaign at suburban railway stations in South Yarra and Box Hill had been quite successful in December 1972, so far as demand for information had gone, it had not brought about an increased membership. During 1973 the association's public speakers worked to persuade people to commit themselves to publicly supporting abortion and contraception by writing to the government and the press. This was in response to a similar letter-writing campaign undertaken by RTL in 1973, which had been very successful. ALRA members now also gathered three hundred signatures of prominent women for a letter supporting abortion law reform that was released to the press on 8 May.

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87 *ALRA Newsletter*, August 1972, Betty Marginson papers, AN79/110, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
88 *ALRA Newsletter*, May/June 1973, Jan Harper papers, AN78/120, University of Melbourne archives.
89 Flier: ‘Notice of Meeting’, box 6, Victorian Medical Women's Society papers, MS11710, SLV.
90 ALRA annual general meeting (AGM) minutes, 18 March 1970, Betty Marginson papers, AN79/110, University of Melbourne archives.
91 ALRA committee meeting minutes, 20 July 1971, Betty Marginson papers, AN79/110, University of Melbourne archives.
92 *ALRA Newsletter*, August 1972, Betty Marginson papers, AN79/110, University of Melbourne archives.
93 *ALRA Newsletter*, January/February 1973, Betty Marginson papers, AN79/110, University of Melbourne archives.
94 See chapter six for further details.
1973. It was then published as a half-page advertisement in the Australian and the Age on 10 May, and appeared in other state newspapers, financed by interstate ALRAs.

At this point, ALRA also set up a series of contacts in federal electorates to pass on information regarding activities, recruit people for projects, sell stickers and literature, and stimulate letter-writing campaigns during political crises, using a telephone tree to mobilise members to action. A proposal to establish a national council to press for uniform liberalised legislation throughout Australia suggested an increasing political focus, with strong contacts developing between the states. Inevitably the biggest campaigns for liberalisation of abortion laws were in NSW and Victoria – or, more particularly, in Sydney and Melbourne.

The ALRA’s activities now included more public demonstrations, as well as disruption of anti-abortion meetings and church services. Beatrice Faust, however, was keen for ALRA to consolidate its energies in a clear, long-term political plan to ‘reform and inform medical practice and continue pressing for legislative change’. They should not waste time and energy on minor demonstrations and petitions, which she believed were of ‘doubtful value’ in influencing parliament. Faust determined ALRA’s focus on the federal, rather than the state sphere, and its objective to systematically educate members of parliament and encourage politicians to introduce one repeal bill each year into federal and state

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95 The letter was based on the Manifeste des 343, published in France in 1971, followed by similar publications in Germany and the USA. The Manifeste was a list of 343 well-known women, including Simone de Beauvoir, who stated publicly that they had undergone an abortion.

96 ALRA Newsletter, May/June 1973, Jan Harper papers, AN78/120, University of Melbourne archives.

97 The advertisement was also published in Nation Review, ‘I have had an abortion’, 14 October 1972, women’s issue, cited in ALRA Newsletter, January/February 1973, p. 2, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne, and Betty Marginson papers, AN79/110, University of Melbourne archives.

98 ALRA Newsletter, January/February 1973, Betty Marginson papers, AN79/110, University of Melbourne archives.

99 Abra, no. 11, August 1972, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.

100 Age, 27 April 1973, ‘“Arrest us” plea leads to scuffle’. See also ALRA Newsletter, May/June 1973, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne, and Jan Harper papers, AN78/120, University of Melbourne archives. Liberal MHR George Erwin also noted in federal parliament the ‘despicable action of members of the so-called Abortion Reform Society who paraded with banners outside St Christopher’s Roman Catholic Cathedral’ in Canberra in September 1972. Erwin claimed, apparently without irony, that he was incensed that the ‘rights of people to worship in this country as they so wish, without this sort of impediment’ was disrupted. CPD, HR, vol. 80, 12 September 1972, George Erwin and Ralph Hunt, p. 1128. See also Herald, 10 May 1973, ‘Bomb scare clears church’, p. 1; Australian, 11 May 1973, ‘Bomb scare ends cathedral service to pray for MPs’, p. 6.

parliaments. She noted some opposition to her position, most particularly from the WLM. While some groups appreciated why legislative change was still desirable, she said, they ‘prefer protest activities to direct political confrontation’.\footnote{2}

2.3.3 Medical discourse and ALRA

The liberal stance of the early abortion law reform campaigners was evident in ALRA’s unquestioning support for medical practitioners. ALRA members called for clarification of the laws relating to abortion and assumed abortion was only safe and legal when performed by a qualified doctor. It actively discouraged women’s groups taking control of abortion services. For example Faust warned against a ‘do-it-yourself’ abortion group in the United States of America (USA), suggesting that this could be the ‘awful fate’ of women in Australia if the law remained unchanged.\footnote{4} Although on 9 August 1972 the organisation amended its policy to seek repeal rather than reform of abortion laws, it contradicted that stance by maintaining that a law should continue to apply to ‘non-medical abortionists working outside supervision of trained medical personnel’.\footnote{5}

The middle-class and well-educated membership of ALRA in its early days ensured the strong medical influence that coloured the nature of the group’s advocacy. Given the dominant belief that health care equals medical care in Australia, and the reinforcement of this discourse in the process of medical training, members of the medical profession almost certainly believed that the only safe abortion was one performed by a medical practitioner. It is also likely that this view was held widely by the Australian public. Given that wealthy women had access to hospital abortions well before the Menhennitt Ruling while poor women did not, an abortion performed by a medical practitioner in a hospital setting probably was the safest form of abortion available, at least during the period under study.\footnote{6} However, 

\footnote{2} While this was the approach that the early pre-Suffragette first-wave feminists used to get the vote, Faust states that there was no deliberate attempt to mirror that approach. Rather, the tactic reflected the nature of the Australian political system. Interview, Beatrice Faust, 16 February 2004.

\footnote{3} ALRA Newsletter, 18 March 1974, Betty Marginson papers, AN79/110, University of Melbourne archives.

\footnote{4} Abra, no. 11, August 1972, p. 6, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.

\footnote{5} ALRA AGM minutes, 9 August 1972, Jan Harper papers, AN78/120, University of Melbourne archives.

\footnote{6} While there are no Australian figures, a US study found that black women were four times more likely to die from an illegal abortion than white women, while the majority of legal abortions were performed in hospitals on white private patients. See footnote 29 in chapter 3. Similarly, in Russia between 1920 and 1936, prior to the discovery of antibiotics, the death rate in relation to legal, hospital-performed abortions was only one in ten thousand cases. See NSW Humanist Society, Report on Termination of Pregnancy, p. 4.
as seen in the previous chapter, a medical abortion performed outside a hospital setting was not necessarily safe.

ALRA targeted general practitioners in an attempt to change their abortion provision and referral practices. Wainer’s actions in 1969 had also been designed to influence the attitudes of medical practitioners to performing abortions.107 Change was slow in coming but progress was clear during 1971 and 1972. In 1971, the expert committee of ALRA wrote a letter to the Medical Journal of Australia (MJA) criticising the AMA for pursuing policy that was harsher than the law required.108 The letter claimed that the procedure recommended by the AMA was a ‘strained interpretation that unduly and unwarrantably interferes with the doctor’s proper freedom of clinical judgement’.109 According to ALRA, the AMA recommendations fostered fear of prosecution among medical practitioners. The AMA responded that it was its function to define ‘ethical, as distinct from the purely legal, obligations of medical practitioners’ and to ‘advise its members on the generally accepted principles of professional conduct’.110 Nevertheless, the AMA published minor alterations to its recommendations in April 1971 conceding that a second opinion need not be a ‘consultant’ (specialist) and that the doctor could proceed if a husband unreasonably withheld his consent.111

The ALRA also held a symposium on suction abortion at the Monash Medical School in Prahran on 30 September 1972. This was aimed at giving general practitioners a clear understanding of the law, reducing their over-reliance on psychiatrists for a second opinion, and providing an opportunity to discuss new developments in abortion techniques.112 ALRA was disappointed that so few general practitioners attended the symposium. However, in an interview in April 2001, Jo Wainer referred to the symposium as an extremely important experience for those doctors who did attend. For the first time, they were able openly to discuss abortion techniques with their colleagues, as well as their own experiences of

110 W.M.G. Leembruggen, ‘A Statement on Abortion in Victoria’, MJA, vol. 2, no. 19, 6 November 1971, p. 983. Leembruggen was acting medical secretary of the AMA (Victorian branch) and was given a copy of the statement by Brett et al prior to publication, giving him a chance to reply in the same edition.
111 Abra, no. 6, 25 May 1971, p. 3, SLV.
112 ALRA Newsletter, October 1972, Betty Marginson papers, AN79/110, University of Melbourne
providing abortion services in a climate of suspicion and legal confusion. This gave their practice legitimacy and created the possibility of sharing expertise in order to improve the quality of services available to women.

2.3.4 From law reform to law repeal and from demand to request

The ALRA had hoped that the pressure placed on police officers and parliamentarians that had led to the Kaye Inquiry would result in major changes for women in terms of access to safe abortions. As early as April 1970, however, following the deferral to September of the release of the Kaye report, ALRA members became increasingly cynical about the likelihood of law reform. They also observed that eighteen months of the Menhenitt Ruling had done little to change the actual practice of abortion in Victoria.\footnote{Abra, no. 5, 25 March 1971, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.} The committee thus decided to renew contact with the International Union to Legalise Abortion and recommended the publication of a two-monthly magazine with a layout similar to the radical Oz magazine.\footnote{ALRA committee meeting minutes, 13 April 1970, Betty Marginson papers, AN79/110, University of Melbourne archives.} The first issue of Abra was published on 23 April 1970.\footnote{By the third issue Abra was the bi-monthly magazine of the Abortion Law Reform Associations of the ACT, NSW, SA and Victoria, of the Abortion Law Repeal Association of WA, and of the Children by Choice Association of Queensland.} In July the committee reported having established contact with US and UK abortion groups, as well as having set up the prospectus for a national association.\footnote{ALRA committee meeting minutes, 28 July 1970, Betty Marginson papers, AN79/110, University of Melbourne archives.}

A growing conviction about the link between various forms of oppression led ALRA toward a realisation that parliamentary processes favoured a more conservative, middle-class approach to social policy, one that was not keen to question women’s role within the domestic or public spheres. That women’s voices were excluded from parliamentary debates and medical and health policy decision-making, while poor women continued to have great difficulty accessing safe and affordable abortions, stimulated many early ALRA members to shift to a ‘woman’s right to choose’ position. As Rebecca Albury suggests, abortion law reform was framed in a way that reinforced understandings of the problems of women at an individual level, rather than locating them within a framework of women’s collective archives.
concerns. According to Cisler, the regulation of abortion by the medical profession was actually oppressive for women and amounted to the sort of 'fake repeals' that 'bought off' middle-class women and made them believe things had really changed. At the April 1971 general meeting, ALRA members proposed that repeal of all abortion legislation be the association's long-term objective. They also proposed joint action with the Women's Action Committee (WAC) to advise women of their legal rights under the Menhennitt Ruling. Zelda D'Aprano first set this up with colleagues in March 1970 to fight discrimination against employed women, although it also targeted abortion law. On 8 May 1972 ALRA changed its name to the Abortion Law Repeal Association and the constitution was amended to reflect this at the annual general meeting (AGM) in August.

Despite their growing cynicism, ALRA members were still keen to garner support for their position within conservative political circles and with those elements of the medical profession who were reluctant to change. In August 1971, for example, ALRA replaced the term 'abortion on demand' with 'abortion on request'. Later Beatrice Faust proposed using

118 *Abra*, no. 5, 25 March 1971, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.
120 ALRA AGM minutes, 14 April 1971, Betty Marginson papers, AN79/110, University of Melbourne archives.
121 The use of the terms WAC and WAAC can be confusing. The New South Wales (NSW) Women's Abortion Action Campaign was set up in August 1972 and referred to as WAAC. The Women's National Abortion Campaign, set up two days later, was also referred to as the National Women's Abortion Action Coalition in ALRA literature. The Victorian Women's Abortion Action Coalition, set up in Victoria in April 1973 out of the Women's Movement Abortion Coalition, was also called WAAC. The use of the term WAAC for different groups continues to cause confusion to researchers, as does the sheer number of groups with similar titles. Where I use the acronym WAAC, it is to refer to the Victorian group set up in 1973. See below for further details.
122 ALRA AGM minutes, 9 August 1972, Jan Harper papers, AN78/120, University of Melbourne archives. The term 'repeal' was evident in documentation as early as March 1971 although the name change was not ratified until the AGM in August 1972. For instance, an article noted that the ALRA submission to the AMA (Vic branch) included 'repeal' of abortion legislation, rather than 'reform'. See *Abra*, no. 5, March 25 1971, p. 2, SLV.
123 The WAAC also chose to refer to abortion on 'request' rather than on 'demand'. See *mejane*, no.2, May 1971, "'Madam, the Speaker Invites You to Leave...'", Jan Harper papers, AN78/120, University
the term ‘elective abortion’. At a meeting organised by anti-choice groups in Launceston on 3 May 1973, a Tasmanian doctor was claimed to have said that abortion on demand was ridiculous; ‘I wouldn’t even give a perforated ulcer patient a glass of water on demand’. Because an abortion involves the surgical intervention of a registered medical practitioner, abortion on demand was ‘unnecessarily authoritarian’, according to ALRA member Dr Graeme Oliver, who suggested that most doctors ‘resent the idea of being told by a patient what treatment is appropriate – especially operations’. ‘Demanding’ that medical practitioners perform an abortion did not gain the support of the general public either, and ALRA wanted to ensure that access to abortion was seen as a necessity for all women, not the demand of a radical few.

2.3.5 A growing sense of apathy

The publicity that surrounded the Menhennitt Ruling, the Kaye Inquiry and the abortion bill led to an increased public awareness about abortion and a concomitant increase in doctors’ willingness to perform the procedure. As abortion became more generally available, women began to move away from the cause, seeing it as won. Faust’s own frustration with the political apathy of ALRA members led her to comment on many occasions that the abortion campaign was losing momentum. On one occasion she referred to the membership as ‘largely paying conscience money’ to ALRA without commitment to the campaign.

Given this apathy, Faust despaired about meeting the ‘highly organised opposition of a well-funded minority’. RTL members were attending ALRA meetings and attempting to infiltrate the organisation. A membership by-law was passed at the 1974 AGM giving the treasurer and executive officers discretionary powers to reject membership applications from anyone involved with a group, ‘which in their honest opinion exploits pregnant women for financial gain or supports objectives or means’ in conflict with the aims of ALRA.

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124 Letter from Beatrice Faust to Michael Gould, 14 April 1973, box 11, Wainer papers, MS13436, SLV.
126 Abra, no. 7, 17 August 1971, p. 7, SLV.
129 ALRA AGM minutes, 18 March 1974, box 2, WAAC papers, AN100/222, VWLLF archives.
In her final address as president, Faust noted that ‘if members are not disposed to participate, 
we should withdraw from political activity’.\textsuperscript{130} It was a recriminatory address. Despite the 
need for a national newsletter, Abra had ‘perished of editorial apathy and lack of enthusiastic 
support by members’.\textsuperscript{131} Faust claimed that the immediate cause for this decline in interest 
was WEL, which had drained off support from ALRA in the Australian Capital Territory, 
including the former editor of Abra. In an attempt to refocus ALRA Faust invited members 
who were doctors to form a subcommittee aimed at educating their colleagues. By mid-1974 the 
doctor’s subcommittee was holding talks with leading hospital administrators aimed at 
improving the treatment of women seeking a public hospital abortion.\textsuperscript{132} ALRA members 
appeared to remain committed to supporting certain activities. These included assistance 
with background information to the Royal Commission on Human Relationships published in 
1977 and a proposed submission to the Committee of Inquiry into Hospitals and Health 
Services in Victoria in 1973. But their final newsletter appeared in July/August 1974.\textsuperscript{133}

2.4 Women’s Liberation and the Women’s Abortion Action Coalition

Australian feminists had fought for birth control from the late nineteenth century, initially 
framing this in terms of women’s rights.\textsuperscript{134} From the 1920s, however, there was a shift away 
from radicalism to the liberal reforms of ‘planned parenthood’.\textsuperscript{135} The resurgence of 
feminism from the late 1960s was ‘underpinned by the increased demand for female labour, 
the expansion of tertiary education, the limits of male radicalism, and [availability of] the

\textsuperscript{130} B. Faust, ‘President’s Report’, ALRA, 18 March 1974, Betty Marginson papers, AN79/110, 
University of Melbourne archives. The by-law was also used to reject the membership of counsellors from Wainer’s Fertility Control 
Clinic (FCC) as a result of concerns that the FCC exploited pregnant women for financial gain. Faust 
was particularly concerned about the FCC practice of referring women to one doctor, Peter Bayliss, 
whose practice and attitudes towards women ALRA members had long viewed with suspicion, based on 
his record of charges in Queensland and feedback from some of his patients. Interview, Beatrice Faust, 

\textsuperscript{131} Faust, cited in ALRA AGM minutes, 18 March 1974, box 2, WAAC papers, AN100/222, VWLLF 
archives, University of Melbourne, and Betty Marginson papers, AN79/110, University of Melbourne 
archives.

\textsuperscript{132} \textit{ALRA Newsletter}, May/June 1974, box 2, WAAC papers, AN100/222, VWLLF archives, University 
of Melbourne, and Betty Marginson papers, AN79/110, University of Melbourne archives.

\textsuperscript{133} \textit{ALRA Newsletter}, July/August 1974, box 2, WAAC papers, AN100/222, VWLLF archives, 
University of Melbourne.

\textsuperscript{134} See chapter two for details.

America}, University of Illinois Press, Urbana and Chicago, p. 4. See also R. Albury, 1985, ‘Book 
Contraceptive Pill. The changing economic role of women, stimulated by the postwar boom and subsequent expansion of employment in manufacturing and service industries in the 1950s and 1960s, was crucial to challenging the belief that a woman’s place was in the home. Underpinned by new methods of birth control, married women’s employment climbed rapidly and the birthrate declined. Equality in employment, education and the home was a different story, however, and criticisms of political structures that contributed to women’s sense of frustration grew louder. Kristen Luker argues that, as women, like men, came to expect to work much of their adult lives, an unplanned pregnancy was perceived as a tragedy. But for the state, the medical profession or men generally to have control over whether that pregnancy continued, while women suffered the consequences of that decision on their careers, education, or social status, ‘came to seem eminently wrong and cruelly oppressive’.

In 1969, Zelda D’Aprano, a former member of the Communist Party of Australia (CPA), chained herself to the front doors of the Commonwealth Offices in Treasury Place, Melbourne, protesting against the repeated failure of the Commonwealth Arbitration Commission to award equal pay to women workers. Alva Geike and Thelma Solomon joined her in a similar protest outside the Arbitration Court. The three women were of the view that an organisation was needed to fight discrimination. They went on to form the Women’s Action Committee (WAC) to improve ‘the conditions of employed women’. John Sorrell, a reporter for the Herald, described WAC members as ‘tiresome female suffragette bodies’ and predicted that the organisation would peter out due to ‘the apathy of women themselves’. The formation of the WAC probably marks the beginning of WLM as an organisation in Victoria; it did not begin as one organisation, but arose from a collective of small, autonomous interest groups.

137 John Murphy points out that the growth in married women’s work in the 1950s was mostly among migrant women, while for Australian born women it was a 1960s phenomenon. J. Murphy, 2000, Imagining the Fifties: Private Sentiment and Political Culture in Menzies’ Australia, Pluto Press/UNSW Press, Sydney, p. 89.
138 Luker, Abortion and the Politics of Motherhood, p. 118.
139 Burgmann, Power and Protest, p. 77.
140 D’Aprano describes the action taken on 31 October 1969, in Z. D’Aprano, June 1973, ‘Woman is Moving: A Herstory of the Women’s Liberation Movement in Melbourne’, pp. 1-6, box 1, Eileen Capocchi papers, AN100/219, VWLLF archives, University of Melbourne and box 3415/2, Zelda D’Aprano papers, MS 12573, SLV.
141 Letter from Zelda D’Aprano to Bon Hull, undated, box 2, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
142 Herald, 16 March 1970, ‘Cheers girls, freedom is near: You can cut the strings and keep the apron’, John Sorell, p. 2, box 1, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.
On 2 March 1970, at the inaugural meeting of WAC, 149 women agreed to tackle questions of ‘equal pay, job promotion, childcare, abortion law reform, maternity leave, sexist advertising and women’s equality as adults in the community’. Abortion policy received primary attention, however, because, in D’Aprano’s words, despite ‘all the scandal and exposure of the abortion (graft and corruption) trials, women were silent’. WAC members quickly involved themselves in abortion campaigns, sending a petition in support of abortion law reform and donations to cover costs to ALRA. When the petition was withdrawn, the WAC used the refunded donations to print ‘Pregnant Bolte’ posters, which caused quite a sensation in Melbourne at the time. The posters were published on Bolte’s sixty-third birthday on 20 April 1971.

In March 1971 the Victorian branch of the Union of Australian Women, concerned about the lack of women’s voices in the abortion debate, had called for a plebiscite of all women on legalising abortion. With governments refusing to reform abortion laws, campaigners and women’s liberationists proclaimed:

We stand outside Parliament. We have then to act outside the framework of hypocritical, sectarian, anti-feminist laws. We have to create our own alternatives, and make the law made by men irrelevant. There might be a difference between Liberal and Labor in the affairs of men but for women – they’re all the same.

Public protest began with a Mother’s Day demonstration in Melbourne on 8 May 1971 – ‘Contraceptives, not Chrysanthemums!’ – demanding free contraception, family planning clinics, and free abortion on request. The first meeting of WL to discuss the formation of a broad women’s liberation group followed soon after. It was not until March 1973, however, that WL published its manifesto, outlining six goals. The first was women’s control over their own bodies, the second repeal of abortion laws and the third freely available contraception.

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143 WAC flier, 1970, box 2, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
144 D’Aprano, ‘Woman is Moving’, p. 4.
145 ALRA committee meeting minutes, 15 June 1971, Betty Marginson papers, AN79/110, University of Melbourne archives. See appendix six for a copy of the poster.
146 The idea, copied from England, was that if men got pregnant they would change their ideas on abortion and contraception. See Herald, 21 April 1971, ‘In black and white’, Andrew McKay, p. 3.
147 Sun, 29 March 1971, ‘Women seek vote on abortions’.
148 Mejane, no. 2, May 1971, “Madam, the Speaker Invites You to Leave …”, Jan Harper papers, AN78/120, University of Melbourne archives.
149 See copy of demonstration flier in appendix six.
150 Women’s Liberation Newsletter, March 1973, box 2, Bon Hull papers, AN100/108, VWLLF
Commitment to abortion law repeal grew stronger, as did solidarity with interstate and international women’s groups. On 20 November 1971 the women’s liberation movement of the US called for the repeal of all US abortion laws and simultaneous rallies were held in solidarity with US groups at the Melbourne City Square and the Sydney Town Hall. The Melbourne rally, organised by the WL Coordinating Committee and attended by five hundred women, was reported in full as ‘Dozens of barefoot women took part in an abortion law reform march in the City today’. On 7 August 1972 the NSW Women’s Abortion Action Campaign was established in Sydney with the joint aims of repeal and freely available, safe contraceptives. On 9 August a meeting in Melbourne at the WL Women’s Centre agreed to coordinate the campaign nationally, under the title of the Women’s National Abortion Action Campaign, adding free sex education to the NSW group’s demands. In November 1972 the WLM met to determine in which direction they should move to make the case for repeal effectively. Various activists called for the organisations to work cooperatively, rather than in parallel. Caroline Graham, for instance, argued that WEL needed to ‘borrow from WL groups a feminist vision of a possible future society’. Liberating women to compete for roles in male-dominated structures was a limited aim. WL, on the other hand, could learn tolerance from WEL’s groups, which in Graham’s view were free of ‘the kind of moral authoritarianism which emanates from those who are convinced they have a monopoly of truth’. However, it was only on 10 April 1973, one month prior to the reading of the abortion bill in federal parliament, that ALRA and WEL joined forces with WL to form the Women’s Movement Abortion Coalition, although WL largely continued to direct the group.

Campaigning under the slogan ‘a woman’s right to choose’, the group aimed for repeal of existing abortion laws, freely available safe contraception, universal sex education and

archives, University of Melbourne.
151 Rally flier, box 2, Sally Mendes/Alva Geike papers, AN100/215, VWLLF archives, University of Melbourne; Zelda D’Aprano papers, MS 12573, SLV.
153 *Right to Choose Newsletter*, July 1978, ‘What is WAAC?’, p. 3, Jan Harper papers, AN78/120, University of Melbourne archives and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne. See also the ‘WAAC Perspectives Paper’, National Conference on Abortion and Contraception, 14-15 June 1975, box 28, Wainer papers, MS13436, SLV.
154 Letter from Women’s Abortion Action Campaign committee, undated, Jan Harper papers, AN78/120, University of Melbourne archives.
155 WLM meeting notes, 22 November 1972, ‘Where do we go from here’, box 2, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
156 Graham, ‘Borrowing From Each Other’, p. 4.
women’s reproductive control – neither being forced to carry and bear children nor forced to have abortions. Similarly, the group argued that doctors and nurses should not be forced into performing abortions against their conscience. Renamed the Women’s Abortion Action Coalition (WAAC), the group later went on, with the support of WL, to form the ‘Right to Choose Coalition’, arguing that the denial of women’s right to reproductive control was central to the oppression of women, as it denied them equal access to education and the workforce. WAAC was based at the WL Centre in Little La Trobe St, and members met weekly. Collective action took the form of demonstrations, pickets, public meetings and education activities aimed at raising consciousness and soliciting support.

The fact that the abortion movement took so long to form a united coalition is attributable in part to an underestimation of the power and resources of the RTL. Groups previously at loggerheads about tactics for reform found themselves scrambling to present a united front to counteract the RTL’s campaign. Faust noted that RTL hysteria had helped draw middle-class and working-class women together in pursuit of the repeal of a discretionary, unenforceable law. She added, though, that views about how to achieve that goal varied, with more extreme groups wanting abortion on demand for the full nine months of a pregnancy.

While WAAC had become a largely WL-directed group, crossover of membership between the groups ensured collaboration. Bon Hull, for instance, was a committed member of ALRA and the WLM. The organisations ran advertisements for each other’s services in their respective newsletters and organised combined abortion law repeal demonstrations on 4 May, 10 May and 30 June 1973. The June demonstration was intended as a statement of civil disobedience to draw attention to the fact that many women broke the law against abortion regularly. Women marched on the Russell Street police headquarters to deliver statutory declarations claiming they had broken Section 65 of the Crimes Act 1958 by having had abortions themselves or conspiring to help others do so. The women were met on the steps by a group of police officers, led by Chief Inspector Holland. The police refused to accept the statutory declarations unless the women agreed to being photographed for identification.

157 Graham, ‘Borrowing From Each Other, p. 4.
158 Women’s Movement Abortion Coalition press release, 1973, box 2, Sally Mendes/Alva Geike papers, AN100/215, VWLLF archives, University of Melbourne.
159 WAAC flier, box 1, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
163 ALRA Newsletter, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives, and box 1, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
purposes. Jean McLean, of ‘Save Our Sons’, refused to be photographed after nine other women had delivered statutory declarations and the rest of the women were sent away.\footnote{ALRA \textit{Newsletter}, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives, and box 1, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.} The demonstration attracted wide media coverage in Melbourne and Sydney, where it was referred to as the ‘Russell St furore’.\footnote{Letter to Ms J. Ferguson, WAAC, from NSW WAAC, July 1973, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.}

Like ALRA, the WAAC was convinced of the need to take the abortion campaign to ‘the suburbs’ in order to educate and harness support from ordinary women, encouraging members to hold public meetings or local parties. The decision to engage women in the suburbs in the abortion campaign reflected the difficulty of garnering support, as well as the desire to counter charges of elitism. While public opinion increasingly favoured abortion law reform, abortion itself remained largely a private and secret activity for women, many of whom were therefore loath to become involved in campaigning. The WAAC, for instance, lamented the fact that only three hundred people turned up for the May 10 demonstration that coincided with the reading of the abortion bill.\footnote{\textit{WEL} \textit{Broadsheet}, vol. 2, no. 17, June 1973, ‘An Abortive Issue?’, Alva Geike, p. 3, Jan Harper papers, AN78/120, University of Melbourne archives.} Like Faust, WL admitted to impatience about the ‘lack of commitment of women in the movement’.\footnote{\textit{Women’s Liberation Newsletter}, April 1973, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.} WAAC writer Deb Shnookal suggested that many women in the movement no longer saw abortion as an issue because terminations were now being performed regularly.\footnote{D. Schnookal, undated, ‘Abortion Campaign 1974’, p. 3, Jan Harper papers, AN78/120, University of Melbourne archives.} Nickie Charles notes that the disappearance of a movement, often taken to mean failure, may indicate the normalisation of the movement’s issues and their incorporation into the polity.\footnote{N. Charles, 2000, \textit{Feminism, the State and Social Policy}, Macmillan, London, pp. 50-51.} But the Menhennitt Ruling had not resulted in women gaining control over decision-making in relation to abortion and the stigma attached to the practice of abortion remained.

\subsection*{2.4.1 Abortion – single issue or part of program for liberation of women?}

Verity Burgmann explicitly locates women’s liberation within the context of 1960s radicalism. In January 1970, for example, the Sydney Women’s Liberation Group acknowledged that ‘the ideas and reasoning behind women’s liberation reflect traditional
themes of the radical socialist left. The Vietnam War in particular led to a growing radicalisation of protest in western society, although it continued to be male dominated. It was at the national anti-war conference in Sydney in 1971 that Joyce Stephens first argued that the struggle against the Vietnam War was not an end in itself; for the advancement of the movement as a whole they must consider women.

Women had been encouraged to join with men in a socialist revolution, rather than fighting for women’s rights apart from questions of capitalist economic oppression. The CPA, in theory at least, welcomed the influence of the women’s liberation movement, given the growing consensus that oppression was not just ‘economic exploitation of working people’, but ‘exists in all human relationships and institutions in capitalist society’. In the late 1960s, however, a growing number of women who joined the WLM remained sceptical of the male-dominated and sexist structures of left-wing political movements such as the CPA and the anti-war movement, and called for women to band together to fight for their own freedom and equality. Simone de Beauvoir was quoted in support of concerns that class struggles would not necessarily emancipate women.

There is always a subordination of women to men ... Even in the heart of these movements which, in theory, are made to liberate everybody, women included, women remain inferior ... Man has interiorized the idea of his superiority. He needs to see women as inferior and socialism will not cause him to give it up.

Groups and individuals within the women’s liberation movement hotly debated the causes of oppression. The more radical the political change desired by the group, the greater the ideological conflict about what constituted equality for women and how best to go about achieving that goal. Articles and discussion papers generated by the WAAC suggest that the Socialist Worker’s Party (SWP), the Spartacist League (SL) and the CPA all remained influential in the WLM. And arguably the most influential of the groups within the

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170 Sydney Women’s Liberation Group, cited in Burgmann, Power and Protest, p. 81.
171 Burgmann, Power and Protest, p. 81.
175 See the various collections of the VWLLF archives, including the Women’s Liberation Newsletter, October 1973, ‘Thoughts on the Movement’, Marie, pp. 7-8, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.
Victorian WAAC was the SWP. The different ways in which the abortion campaign was conceptualised by each group contributed to the conflict within the WLM, as it did in other groups tackling abortion law reform.

Conflict centred on whether access to abortion should be the single issue on which all women could coalesce, or whether it should just be one among many of the demands of the women’s liberation movement. SWP members were clear that the WAAC should focus on the right of women to control their bodies. As Fran Jelley wrote, slaves fighting for their freedom did not call for ‘long service leave, superannuation and free train travel on holidays’, and if they had, they were unlikely to have won their freedom. The SWP argued that making a ‘movement a multi-issue movement is to, of necessity, limit its capacity to be effective in achieving specific aims’. By concentrating on a single issue, Jelley claimed that the WAAC had been able to draw in women who were prepared to work for repeal of abortion laws but not for the liberation of women generally – at least not yet.

It is true that many women who campaigned for abortion rights went on to other campaigns. However, Glenda Ballantyne argued that the ‘single-issue focus’ isolated the campaign within the women’s movement and hindered ‘the development of analyses of abortion in relation to other women’s movement issues’. Juliet Mitchell’s writings were hugely influential within the WLM, and were utilised by Victorian WAAC members to construct a comprehensive campaign for women’s liberation. Mitchell argued that, while the fight for abortion on demand was important, its achievement was not equivalent to liberation. WL aimed for three levels of activity – analysis of oppression, personal liberation, and action on specific issues in cooperation with other oppressed groups. Ballantyne, however, was still concerned about SWP members’ ulterior motives.

Part of the agenda of the SWP was to mobilise women via street demonstrations in preparation for revolution. SWP members saw potential in the WAAC for counterpoising

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176 F. Jelley, ‘Abortion: A Political Issue’, pp. 1-7, undated draft, box 1, WAAC papers, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
180 J. Stone, 1972, ‘Who Are We Women and Where Are We Going’, Vashti’s Voice, no. 1, pp. 6-7, box 3, Eileen Capocchi, AN100/218, VWLLF archives, University of Melbourne.
181 Ballantyne, ‘Who Decides?’, p. 27.
a ‘visible, mass action approach to the strategy of those who would wish to proceed “quietly” and “work behind the scenes”’. 183 A focus on parliamentary struggles, they believed, would only open the movement to co-option by bourgeois politicians. 184

The ALRA, as we have seen, also concentrated its work on the single issue of women’s reproductive choice, with abortion on request at the forefront of their demands, and contraception and access to family planning linked closely to women’s reproductive freedom. It did not, however, formulate those goals in terms of revolution, but rather as reform of existing structures. This resulted in a gender-inclusive membership and a hierarchical organisational structure. ALRA members claimed that noisy demonstrations had little influence on the parliamentarians whose support was required to bring about change. The WLM, however, wanted to reflect the long-term goals of women’s liberation in the means chosen to achieve the end, not just the end itself. This resulted in attempts to explore organisational structures that reflected an egalitarian rather than a hierarchical form, encouraging equality in decision-making. In Faust’s opinion, this gave rise to a ‘badly organised meeting … [rather] than a well organised effort run by women already confident and competent’. 185 Disorganisation and a lack of structure made it difficult to run a successful campaign, in the view of ALRA members.

The SL, a communist group that clashed with SWP members, accused WL of ‘mindless activism’. 186 SL members argued that single-issue reforms that encouraged class collaboration actually side-tracked the women’s movement into ‘dead-end’ issues. 187 The SL accused the women’s liberation movement of being ‘prisoners of bourgeois ideology’, lacking class analysis and finding its ‘inevitable end in irrelevant utopianism and crass reformism – idealistic communes and “new” ways of raising children on the one hand, and

papers, AN78/120, University of Melbourne archives.
185 ALRA Newsletter, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives.
186 Australasian Spartacist, no. 6, March 1974, ‘Melbourne Feminists Ban Communists’, p. 8, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
187 Adaire Hannah, 1973, ‘The Nature of Bourgeois Feminism as a Means of Side-Tracking the Women’s Movement into the Dead-End of Single-Issue Reformism and Class Collaboration’, paper for SL forum, ‘Women and Communism’, 15 April, Melbourne, box 2, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne. The forum was to be held at the Women’s Centre of the WLM, but the co-ordinating committee decided against this as there would be ‘no exclusion on the basis of sex’. It is not clear whether it went ahead elsewhere or whether the papers intended for the forum were published separately. See Spartacist League, 15 April 1973, ‘The Spartacist League Versus Bourgeois Feminism: Notes on a Struggle’, p. 2, in Spartacist leaflets, February to July 1973, Spartacist League of Australia and New Zealand, Sydney & Melbourne, National Library of Australia.
lobbying bourgeois politicians for parliamentary reforms on the other. Their critics accused SL of ‘weakening and destroying women’ by ‘dividing them for political gain’, and SL members were eventually excluded from meetings and use of the WL centre.

These ideological differences made it difficult to maintain a coherent and strong women’s movement. As Burgmann writes:

At the public level, the movement maintained a coherence through the raising of demands upon which all currents within the movement could agree … equal pay; equal opportunity in employment; access to affordable, quality child care; access to safe and legal abortion; equal opportunity in education; and an end to sexism and sex-role stereotyping generally. Internally, however, the women’s movement was deeply divided.

Internal conflict and ambivalence about the legitimacy of parliament made it difficult for WAAC to focus activities around legislative reforms. The RTL, on the other hand, was not only comfortable with the structure and process of parliament, leaving members free to debate tactics alone, but had the resources available to carry through campaign decisions.

3. Problems Facing the Campaign

3.1 Questions of diversity – class, culture, ethnicity

Despite the different ideological direction taken by each group, there was little discussion of the diverse reasons women were seeking abortion services. Where diversity was explored, it was more likely to centre on class issues, particularly given the ongoing influence of the variants of socialism on the WLM. As noted in chapter three, wealthy women had little trouble accessing abortion services from private gynaecologists under the guise of diagnostic

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188 Australasian Spartacist, ‘Melbourne Feminists Ban Communists’, no. 6, March 1974, p. 8, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne. The SL quoted the Communist International Declaration on Feminism that states, there is ‘no specific woman question and no specific women’s movement … every sort of alliance of working women with bourgeois feminisms, as well as any support by the women workers of the treacherous tactics of the social-compromisers and opportunists leads to the undermining of the proletariat, delaying revolution and women’s ultimate liberation’. Spartacist League, undated circa July 1973, ‘Beyond Single Issuism’, Jan Harper papers, AN 78/110, University of Melbourne archives.


190 Comments are included in a handwritten agenda for a meeting regarding problems with women of the SL, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
tools for ‘women’s troubles’. This left Melbourne ‘a city where there’s abortions for the fortunate and unwanted pregnancies or backyard deaths for the poor, the meek, and the foreign born’.\textsuperscript{192} ALRA and the WAAC also highlighted discrimination against working-class women in campaigns and speeches.\textsuperscript{193}

Nevertheless, the WLM came under some fire in relation to class issues. The WLM used consciousness-raising groups to educate members about women’s oppression, with the process of consciousness-raising viewed as an end in itself for the individual – ‘the personal is political’ – as well as the means to social change.\textsuperscript{194} Zelda D’Aprano argued that what middle-class women referred to as ‘consciousness raising’, working-class women saw as a patronising assumption that they needed to be led and taught by enlightened women. She claimed that any woman who could think was assumed to be middle-class, as middle-class women considered working-class women ignorant, stupid, and inarticulate.\textsuperscript{195} Faust was also critical of the process of consciousness-raising within WL, which she dismissed as sitting around and talking, rather than getting ‘stuck into it’.\textsuperscript{196} WL members neglected ‘the fact that women already know some of the problems’, ‘have worked their way through them’ and do not ‘need their consciousness raised’.\textsuperscript{197} But Faust then went on to commend WEL for openly admitting to working in an elitist fashion, allowing women with confidence and ability to spearhead change. She argued that pretending that working-class women had the same concerns as middle-class women simply neglected working-class women’s concerns.\textsuperscript{198}

While it is true that non-Anglo, working-class and migrant women’s concerns were largely

\textsuperscript{191} Burgmann, \textit{Power and Protest}, p. 82.
\textsuperscript{192} \textit{Forum}, vol. 1, no. 5, 1973, ‘How to get an abortion in Sydney and Melbourne’, pp. 6-11, box 6, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne. See diagram 7, chapter 3, for abortion-related deaths from 1959 to 1974.
\textsuperscript{193} For instance at a speech to the Student Representative Council at Monash University on 13 May 1970, Bretherton spoke of the ‘tragedy’ of abortion, outlining the ridiculous nature of the law as ‘one for the rich and another for the poor’. Dr Rodney Bretherton, 19 October 1970, ‘Press Release Relating to the Parliamentary Petition for Abortion Law Reform’, pp. 1-9, Betty Marginson papers, AN79/110, University of Melbourne archives.
\textsuperscript{194} See two articles, both undated, ‘Consciousness Raising’ by Di Heath, and ‘How to get into the Movement’, box 1, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.
\textsuperscript{195} Zelda D’Aprano, \textit{Women’s Liberation Newsletter}, November 1973, pp. 5-6, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.
\textsuperscript{196} Latreille, ‘An Interview with Bea Faust’, p. 8.
\textsuperscript{197} Latreille, ‘An Interview with Bea Faust’, p. 8. Kristen Luker argues that it is easy to overlook the profound social and political implications of consciousness-raising. She argues that through this process, people can come to experience as problematic events or situations that they had previously accepted without complaint. It is not just the objective conditions of life, but the subjective experience of those conditions that can lead to social change. See Luker, \textit{Abortion and the Politics of Motherhood}, p. 100. Others, though, criticise the inherent middle-class assumptions of the ‘vanguard’ educating ‘the masses’. See for example, P.L. Berger, 1974, ‘Consciousness Raising: To Whom – By Whom?’, \textit{Social Policy}, September/October, pp. 38-42.
\textsuperscript{198} Latreille, ‘An Interview with Bea Faust’, p. 8.
ignored by the women’s movement of the 1960s and early 1970s, it is not clear how encouraging elitism would redress that.

Burgmann notes that while most of the activities of the women’s movement were expressly anti-racist, for instance in the view that injustice and degradation were ‘doubly imposed on the black women in our society’, their actual contact with Indigenous women was very limited. Yet in March 1972, the WAAC included ‘no forced sterilisation’ as one of its aims, well before 1976 when archival information about forced sterilisation of indigenous women began to emerge. Black activists have uncovered ‘countless stories of Aboriginal women sterilised without their consent or knowledge’, particularly in the Northern Territory and Queensland. As Heather Goodall and Jackie Huggins point out, ‘where white women’s demands to control their fertility were related to contraception and abortion, Aboriginal women were subject to unwanted sterilisation and continued to struggle against the loss of their children to interventionist welfare agencies’. Sterilisation, the experiences of the stolen generations, and the third-world state of Aboriginal health led a large number of Aboriginal women to oppose some demands of the white women’s movement, including abortion. Burgmann points out that this was encouraged by the media’s misleading representation of the women’s movement as ‘pro-abortion’ rather than, more accurately, ‘pro-choice’.

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199 By 1974 feminists such as Janet Bacon were calling for the women’s movement to encourage the voices of all women and for the movement to listen. See for instance J. Bacon, 1974, ‘Aboriginal Women’, Right to Choose, no. 5, p. 3, box 1, Karina Veal papers, AN93/68, University of Melbourne archives.

200 International Women’s Day flier for demonstration, 11 March 1972, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne. In May 1973, fliers advertising the demonstrations planned for 4 and 10 May were also published in Italian, Greek and Yugoslavian (sic) as well as English, see copies of fliers and translations, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.

201 Burgmann, Power and Protest, p. 120.

202 See footnote 66 in chapter 1. It was not until 1958, following a campaign by the Union of Australian Women (UAW), that some payments for child endowment were extended to Aboriginal mothers recognising their right to parent at all. UAW 17th Annual Report, 14 October 1967, and UAW Handbook for Members, box 6, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.


204 Burgmann, Power and Protest, p. 121.
3.2 Pro-choice but not pro-abortion

The demand for abortion law reform was a classically liberal demand. The argument was the individualist one that ‘the state had no right to decide for women that they had to continue an unwanted pregnancy, especially in circumstances where contraceptives were expensive and difficult to obtain’.

The contraceptive pill had first appeared in Australia in the late 1950s for clinical testing. It was made available to the Australian public in 1961, although in 1962 the Commonwealth government imposed a 25 per cent luxury tax on imported contraception, putting the pill out of reach of poor women. Initially, medical practitioners feared the release of the contraceptive pill and its impact on the behaviour of men and women. Advertising was banned in all states and territories except South Australia. One writer to the *MJA* in 1963 referred to the use of the contraceptive pill as ‘drug addiction’, calling on colleagues to ensure its restriction on the basis that the pill would lead to an increase in venereal disease and the divorce rate because it was ‘trouble-free … easy [to] use and 100% effective’. As a result, the pill was both expensive and difficult to obtain, particularly for young or single women.

The contraceptive pill heralded sexual freedom as it promised to free women from the dilemma posed by an unplanned pregnancy and the ‘choice’ of undergoing an abortion with all the attendant risks. It was partly as a result of its civil libertarian focus on women’s right to safe and effective contraception and partly in an attempt to gain respectability for the abortion cause that ALRA shifted from a campaign for law reform to one that included demands for safe contraception and sex education. The link between abortion and contraception was both tactical – the pro-choice groups supported this move to ensure that abortion was associated with the growing respectability of contraceptive use – and practical. That is, it was argued that effective contraception was essential in order to contain the number of requests for abortion that might follow law reform. This established a form of mutual dependence between abortion and contraception, with the various reform groups working together, each to meet its own aims. The FPA, strong proponents of regulated access to contraception, became increasingly respectable, particularly given its medical status.

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In October 1971 ALRA wrote to Gough Whitlam encouraging him to package abortion and population control together, claiming that so long as 'abortion law reform is related to the need for comprehensive family planning facilities, it will gain increasing acceptance'. On 18 January 1972, the ALRA committee agreed unanimously to expand its policy to include family planning. This was ratified on 9 August 'as the only positive measure to reduce the incidence of abortions'.

Faust claimed that ALRA was 'in the unfortunate position of having to fulfil several functions because other groups [were] too timid or too ineffectual to fulfil their own aims'. In 1972 she described family planning in Australia as backward and sex education as non-existent. In 1973 and 1974 ALRA advocated the establishment of family planning facilities in suburban areas. It also held public sex education lectures in mid-1974. Faust saw one advantage to this work, and that was that ALRA could 'truthfully say we are lobbying for other preventive measures, and not just abortion, which is the last resort' (her emphasis).

By the mid-1960s, following early panic about the impact of contraception on 'family values', contraceptive advice and availability were represented as a means to reduce requests for abortion. A number of writers to the *MJA* argued that abortion would be unnecessary if contraception were both available and effectively utilised. J.M. Miller, for instance, suggested that in the future it might be possible for the doctor to refuse to perform an abortion if there was 'no good evidence corroborating attempted contraception'.

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208 *Abra*, no. 8, 15 November 1971, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.
209 ALRA committee meeting minutes, 18 January 1972, Betty Marginson papers, AN79/110, University of Melbourne archives.
210 ALRA AGM minutes, 9 August 1972, Jan Harper papers, AN78/120, University of Melbourne archives.
211 *ALRA Newsletter*, August 1972, Betty Marginson papers, AN79/110, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
212 *ALRA Newsletter*, May/June 1973, Jan Harper papers, AN78/120, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
213 *ALRA Newsletter*, May/June 1974, Betty Marginson papers, AN79/110, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
214 *ALRA Newsletter*, August 1972, Betty Marginson papers, AN79/110, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
215 For instance, one writer to the *MJA* claimed that 'abortion on demand' was a 'particularly grave menace to Australia's future', as it would become the method of choice in family planning. See V.H. Wallace, 'Abortion and Immigration', *MJA*, vol. 1, no. 7, 13 February 1971, letters to editor, pp. 404-05.
Understanding of the complex reasons for use or lack of use of contraception, particularly among young women, was limited. The likelihood of increased access to abortion following the Menhennitt Ruling caused conservatives to modify their views and in this sense abortion can be seen as a catalyst to the acceptance of easy access to safe and effective contraception.

The ALRA initially encouraged the view that abortion was a ‘backstop’ until contraceptives and family planning were freely available.217 Feminists and civil libertarians alike often flagged the idea that abortion could be rendered obsolete if pharmaceutical developments were advanced enough. Both the ‘morning after pill’218 and research into prostaglandins were hailed by advocates of abortion law reform as preferable alternatives to abortion.219 It was not until January 1973, at the first national conference of WEL in Canberra, that it began to be accepted that women could become pregnant even when using the most efficient contraception.220

Beatrice Faust suggested that part of the impetus for preferring contraception to abortion came from Carl Wood, one of the founding members of ALRA. She states that Wood was fearful for his research funding in the late 1960s and so shifted his support from ALRA to the FPA.221 As a result, he ‘persuaded a lot of women that they should support family planning instead ... So that was abortion’.222 Wood’s own articles support Faust’s claim.223 He argued, for instance, that liberal sterilisation, adequate birth control and proper medical facilities for counselling patients would contain the number of women requesting abortions.224 Faust herself later claimed that male partners should be required to attend

217 Abra, no. 5, 25 March 1971, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.
218 Age, 9 April 1968, ‘Sweden makes “abortion pill”’.
219 Following the development of prostaglandins and the manufacture of an ‘abortion pill’, RU486, in 1982, some radical feminists campaigned strongly against making them available in Australia and Roussel Uclaf, the manufacturer, decided against marketing RU486 in Australia. Concern centred on the fact that knowledge of side-effects was still minimal. While at least one woman had died from the drug, the only studies had been carried out by the manufacturer. There was also concern that there would be little continued medical interest or training in performing safe and effective surgical abortions, limiting women’s choice further. See R. Klein, J.G. Raymond & L.J. Dumble, 1991, RU486: Misconceptions, Myths and Morals, Spinifex Press, Melbourne.
224 Abra, no. 2, 23 June 1970, p. 5, SLV, and Betty Marginson papers, AN79/110, University of Melbourne archives.
abortion as a 'chastening experience' to ensure they used contraception in the future.\footnote{225}

Conservative medical views certainly still abounded. A.W. Hartwig, for instance, wrote in 1972 that medical practitioners should not be responsible for cleaning up the 'mess' that 'harlots' and 'seducers' got themselves into.\footnote{226} The association of abortion with immorality and irresponsibility meant even those in favour of abortion law reform referred to abortion itself as undesirable. ALRA members continuously qualified their pro-choice stance with assertions that they were not pro-abortion, including commencing public speaking engagements by establishing 'that ALRA regards termination of pregnancy as an unfortunate, risky, and expensive form of "retrospective contraception"'.\footnote{227}

In 1973 Faust stated that ALRA’s principles of abortion advocacy could be summarised as 'Abortion in its proper place – sex education – abortion – contraception – sterilisation'.\footnote{228} ALRA campaigned for law reform using the slogan, 'Abortion – a right; Contraception – a responsibility'.\footnote{229} Similarly, WAAC claimed abortion as a right for women when circumstances gave them no other options, while WEL stated that abortion counselling 'involves making sure that the first abortion is also the last, and that the woman takes adequate contraceptive measures in the future' (my emphasis).\footnote{230}

Increasing acceptance of contraception in Australia, coupled with ongoing discomfort about abortion, had led to contraception being equated with success and abortion with failure in family planning. Contraception required users to be organised and in control. The fact that sex was often reactive, impetuous and spontaneous, without the forethought required for contraception, was linked to working-class irresponsibility, rather than to a more liberated notion of sexuality.\footnote{231} Further, it ignored growing evidence of a structural pattern of social,

\footnote{225}{ALRA AGM, 18 March 1974, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.}
\footnote{226}{A.W. Hartwig, 'Abortion and the General Practitioner', \textit{MJA}, vol. 2, no. 13, 23 September 1972, letters to the editor, pp. 743-44.}
\footnote{227}{'Working Draft for Talk of Abortion Law Reform', point two, undated article circa 1971, Betty Marginson papers, AN79/110, University of Melbourne archives.}
\footnote{228}{B. Faust, 'President’s Report', ALRA, 15 March 1973, Betty Marginson papers, AN79/110, University of Melbourne archives.}
\footnote{229}{ALRA flyer, Jan Harper papers, AN78/120, University of Melbourne archives. Faust argues that, while this may appear conservative today, at the time she faced 'enormous flak' from doctors who argued that abortion was not a right. She adds that it was less a decision to pursue contraception as part of ALRA policy, than a result of pressure. Interview, Beatrice Faust, 16 February 2004.}
\footnote{230}{\textit{WEL Broadsheet}, vol. 2, no. 22, November 1973, Jan Harper papers, AN78/120, University of Melbourne archives.}
\footnote{231}{This notion is discussed in \textit{Wife’s Lot}, ‘Working Class Sexuality’, vol. 12, no. 17, 4 September 1972, pp. 20-21, box 1, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.}
economic, cultural and political oppression that means women do not always have control over when and whether to use contraception or to engage in sexual intercourse.

These attitudes were a culmination of attempts to regulate the population through scientific planning over the previous decades and were in turn evident in the debate on the Sales Tax (Exemptions and Classifications) Bill in March 1973. The bill was, in part, the result of a campaign by the women’s movement to remove the sales tax from imported contraceptives. Labor MHR Tony Lamb, who supported abortion law reform, took the opportunity to link the contraception and abortion campaigns together, claiming that availability of modern contraception would ensure fewer abortions. Labor MHR Race Mathews compared rates of effective contraceptive use among women from different classes to conclude that access to knowledge of contraception resulted in unwanted pregnancies occurring mostly in ‘those sections of the community which can afford them least’. In this context the ‘repellent practice’ of abortion would continue if access to affordable contraception was not made available. Lack of general subsidies for family planning interfered with ‘the basic human right to exercise over reproduction a voluntary, rational and responsible control’.

It is of interest to note Mathews’ words – ‘rational’, ‘responsible’, ‘control’ – in relation to contraception. Despite his support for law reform, these words clearly expressed the ideas that underpinned much political thinking in relation to contraception. Responsibility was that of women and the state – women were to take responsibility for contraception and the prevention of unwanted pregnancies while the state was to fulfill its responsibility by providing the means for women to do so via access to services and resources. Women were to behave rationally by pre-planning their sexual encounters as well as approaching contraception scientifically to ensure that the method they chose was effective. The state was to approach the development of services rationally, ensuring a scientific response to population control. This would result in women controlling unwanted pregnancies thereby allowing the state to estimate and plan for services based on wanted children born into families with the financial means to take responsibility for them.

The idea that some populations were ‘unable’ to control their own reproduction continued to be a feature of political thinking. In such cases, it was thought important for the state to step in, albeit in the guise of a professional service. Billy Snedden, leader of the opposition,

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expressed this rationale most clearly when he suggested that some families were unable to understand ‘the proper opportunity and equality that should be made available to their children’, thereby perpetuating social disadvantage. That responsibility for ‘equality’ was the province of families highlighted the Liberal Party’s individualistic ideology and Snedden’s limited understanding of equality. Snedden argued that some people lacked the judgment to make decisions in their own interest, but that ‘under professional supervision’ could be guided in family planning. That ‘family planning services’ were provided for Aboriginal populations, in tandem with easier access to both abortion and sterilisation long before white women had access to them, spoke to attempts to control specific populations.

The pro-choice but not pro-abortion stance of the abortion law reform campaigners suggests discomfort with abortion despite the fact that pro-choice groups saw its availability as a necessity for women’s freedom and equality. Some writers have suggested that opponents of abortion exploited this ambivalence in order to equate abortion with ‘murder’ and pit the rights of the foetus against the rights of the woman.

Faust commented later that linking abortion and contraception helped form an ‘uneasy truce’ between those who felt abortion was too controversial and likely to discredit attempts to extend family planning facilities and those who saw abortion and sterilisation as a logical and necessary part of fertility control programs. The concept of women’s choice and control over their own reproduction did not feature in a discussion that centred on individual responsibility for and medical control over reproduction. However, opinions regarding contraception changed within the women’s liberation movement as WL members came increasingly to the view that birth control equated with social control and regulation of women. Women had not gained control over reproductive decision-making either as a result of contraception or as a result of changes in abortion practice. Yet women remained almost solely responsible for contraception both in theory and in practice.

Similarly, WAAC members noted that medical practitioners rarely suggested forms of contraception other than the contraceptive pill or intra-uterine device (IUD) when barrier

238 ALRA AGM, 18 March 1974, Betty Marginson papers, AN79/110, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
methods of contraception were actually safer. Far from liberating women, WAAC members suspected that modern forms of contraception were increasingly used to oppress women. They cited the work of Dr Christopher Tietze, an early proponent of the contraceptive pill, which showed that women of all ages who used a diaphragm or condom backed up by early abortion had a lower risk of death than women using any other contraceptive measure. Benjamin Branch, medical director of Preterm in Washington, pointed out that, while the risks associated with early abortion were no greater than with some modern methods of contraception, the 'desire to minimize the need for repeated abortion because of the excessive cost to individuals or health services' was likely to be a significant factor in support for particular methods of birth control. Adelaide doctor John Miller also noted in 1973 that doctors were 'becoming more liberal and even frankly encouraging in their attitude to sterilization ... regarding tubal ligation as an eminently preferable alternative' to abortion.

Those with a vested interest in providing abortion and contraception services appeared to have taken advantage of a woman's demand to control her own fertility, according to WL members. While this demand had been ignored, the availability of abortion and contraception seemed to have confirmed the assumption that it was a woman's responsibility to use effective methods of birth control. As Sheila Rowbotham points out, 'the technical possibility of controlling procreation was not synonymous with the liberation of women', but could be used both to reduce and to increase political freedom for women. Victoria Greenwood and Jock Young argue that 'the right to choose must not be the right to help the ruling class out in terms of their population problems' (their emphasis). They note that it is important to find ways of utilising birth control methods without them being coopted into the population control programs of the ruling class.

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240 Right to Choose, 'Just Take a Pill Every Day', no. 14, Autumn 1977, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
241 Sunday Times, 15 February 1976, 'The choice of risks', p. 14, in box 2 WAAC papers, AN100/222, VWLLF archives, University of Melbourne. See also C. Tietze, 1976, 'Implications for Consumers and Clinicians', Family Planning Perspectives, vol. 8, no. 1, box 1, Karina Veal papers, AN93/68, University of Melbourne archives.
242 B.N. Branch, circa 1972, 'Outpatient Methods of Abortion', ALRA (Vic) Medical Symposium, box 11, Wainier papers, MS13436, SLV.
243 Miller, 'Therapeutic Termination', p. 833.
244 Klein et al described this as the 'right to consume' rather than the 'right to choose', arguing that women had become the consumers for new and more dangerous technologies, with reproductive 'choices' equating only with the medical-technical-corporate options made available. See Klein, Raymond & Dumble, RU486, p. 5.
The abortion campaign was a gain for contraception and sex education, with lobbying around the abortion issue forcing a number of federal and state parliamentarians to make statements supporting better family planning and sex education in schools. Luker argues, conversely, that the introduction of the pill may also have led to an increase in support for abortion law reform, as the promise of effective contraception led to people making important life commitments that depended on very high levels of fertility control.

3.3 The shift from law reform to access to services

By August 1971, ALRA had shifted its focus away from attempts to influence politicians alone to seeking qualified medical practitioners to perform abortions ‘under any reasonable circumstances’. WEL also claimed that ‘the abortion problem is less one of legal change, than of helping women to get access to services which are already available’. The WAAC argued that advocating legal change and setting up clinics to perform abortions were not mutually exclusive activities, citing advocates from Sydney who aimed to develop feminist abortion services.

This shift away from the legislative arena can be attributed to disillusionment following unsuccessful attempts to influence the AMA and parliamentarians, as well as an increasingly sophisticated understanding of political processes and the poor chances of legislative change. It was clear to Wainer, and increasingly clear to members of ALRA and WL, that women, particularly poor women, were no better off under the Menhennitt Ruling as doctors remained loath to perform abortions openly, despite the apparent clarification provided by the ruling.

As well as providing information about legal rights, ALRA was keen to set up a referral service for women seeking abortion, and approached WL for use of space in the Women’s Centre for abortion counselling. WL refused the approach, according to ALRA, ‘in case the

247 ALRA Newsletter, May/June 1973, Jan Harper papers, AN78/120, University of Melbourne archives, and box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
248 Luker, Abortion and the Politics of Motherhood, p. 112.
249 Abra, no. 7, 17 August 1971, SLV.
251 Lyndall Ryan had circulated an open letter in Sydney rejecting the idea that Australian parliament would repeal abortion laws in the near future and proposing that energy be spent on setting up feminist family planning clinics instead, to handle abortions. Digger, 23 June-14 July 1973, ‘Abortion’, Hall Greenland, box 3, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
police come' and 'probably [from] the unformulated fear of working with a group with male members, an elected committee and a simple constitution'. The WL Coordinating Committee, however, reported that it declined the offer as members 'felt the office was not organised to cope with the flood of calls and subsequent problems arising in relation to abortion enquiries'. Instead, ALRA set up the Problem Pregnancy Centre in Fitzroy Street St Kilda, using volunteer counsellors. Volunteers also accommodated and provided for women from the country requiring abortion after-care. The service operated from 7.30-9.00pm Monday to Friday. Bertram Wainer's Fertility Control Clinic (FCC) opened shortly afterwards in November 1972.

It appeared that both ALRA and Wainer had, separately, reached the conclusion that the only way women would gain access to safe and affordable abortions was for activists to provide that access themselves. The FCC and ALRA services were independent and initially sympathetic to each other's aims. The FCC ran from 9am-5pm, with any evening inquiries directed to ALRA. Similarly, ALRA advertised Wainer's telephone number with its own. Wainer charged $10 for a consultation and referral, which was partly refunded through

252 ALRA Newsletter, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives.
253 Women's Liberation Newsletter, April/May 1972, p. 2, Jan Harper papers, AN78/120, University of Melbourne archives.
254 It is unclear exactly when the ALRA's referral service commenced, although the July 1972 edition of the Women's Liberation Newsletter included information suggesting the service had either just commenced or soon would. See also Vaskit's Voice, no. 2, November 1972, p. 12, box 2, Sally Mendes/Alva Geike papers, AN100/215, VWLLF archives, University of Melbourne, and box 12, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne. In late 1973, ALRA moved its pregnancy crisis counselling and information centre to 73 Little George St Fitzroy, premises owned by the Uniting Church. See ALRA Newsletter, November/December 1973, Jan Harper papers, AN78/120, University of Melbourne archives.
255 ALRA Newsletter, January/February 1973, 'ALRA and Bert Wainer', Betty Marginson papers, AN79/110, University of Melbourne archives. The article states that the ALRA service began 'shortly before' Wainer returned to Melbourne to set up his own service, which he opened in November 1972.
256 Daily Telegraph, 31 October 1972, 'Sydney abortion clinic planned', Geoff Quayle, p. 3; Age, 31 October 1972, 'Wainer plans abortion clinic here', Michael Smith, p. 2; Sun, 31 October 1972, 'Wainer to open abortion clinic'; Australian, 31 October 1972, 'Wainer to open abortion clinic'; Age, 15 November 1972, 'Stirrer extraordinary comes back to town. Wainer is back in business here', Kevin Childs; Australian, 1 November 1972, 'Victoria to stop Wainer abortion clinic'; Sun, 1 November 1972, 'Wainer clinic “like others”'.
257 Rod Bretherton also registered the Planned Parenthood Clinic in Prahran as a business name on 11 March 1971. See Bretherton, Abortion: RU486, p. 31. While Bretherton argues that this was, therefore, the first abortion clinic to be set up in Australia – and that it simply confirmed in name what had always occurred there – he did not advertise as such at the time. Bretherton records his decision to perform termination of pregnancies and claims that he informed colleague Dr Kelvin Churches. He does not, however, date this action, although his article to the MJA in October 1969 clearly notes that he was performing abortions. See R.C. Bretherton, 'The Case for Abortion Law Reform', MJA, vol. 2, no. 17, October 1969, pp. 860-62.
258 Women's Liberation Newsletter, April 1973, box 2, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
medical benefits schemes, and ALRA's service was free. Consistent with ALRA policy, the abortion information service included contraceptive advice as an integral part of the service. Delys Sargent, from the University of Melbourne's Social Biology Department, provided training for ALRA volunteers in contraceptive education, as well as organising guidance from social workers on interviewing techniques.259

The cost of securing an abortion even through the FCC remained out of reach for many women who attended the services for an appointment. Wainer donated $500 to WAAC to set up an interest-free loan fund, although members were reluctant to take responsibility for this because of the amount of time the fund would take to administer.260 A small group of WAAC members independently established the Abortion Trust Fund in January 1973.261 Initially the FCC retained responsibility as trustees for bookkeeping, but after a few months the women's group took over administration so the fund could be used to refer women to doctors other than Wainer. The majority of applicants had been referred by the FCC and had an appointment the following day, leaving little time to explore alternatives.262 The group decided to close the fund eighteen months later because of discomfort with the impression that they were merely acting as guarantors of payment for doctors.263

The ALRA and Wainer eventually discovered strong differences of opinion regarding access to abortion. Wainer referred patients to the one specialist practice, operated by Peter Bayliss, hoping to lower prices and raise standards this way. The ALRA was highly critical of Bayliss and did not think it desirable to depend on one person. It emphasised the role of the general practitioner in abortion counselling in order to reduce the emphasis on psychiatric referral.264 In early 1973 ALRA published a newspaper advertisement formally dissociating its organisation from Wainer and the FCC.265 The ALRA had previously expressed

259 ALRA Newsletter, January/February 1973, notes that training was provided on 22 November 1972, Betty Marginson papers, AN79/110, University of Melbourne archives.
260 Women's Liberation Newsletter, December 1974, 'Abortion Trust Fund', p. 4, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.
261 Women's Liberation Newsletter, December 1974, 'Abortion Trust Fund', p. 4, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne. See also undated flier, pre 2 April 1973, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne; and WEL Broadsheet, vol. 2, no. 22, November 1973, Jan Harper papers, AN78/120, University of Melbourne archives.
262 Women's Liberation Newsletter, December 1974, 'Abortion Trust Fund', p. 4, box 4, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.
263 'Abortion Trust Fund', p. 4. On 7 October 1974, when the fund was wound up, it had aided sixty-eight women, although a large percentage had been unable to repay their loan. Ibid.
264 ALRA Newsletter, January/February 1973, Betty Marginson papers, AN79/110, University of Melbourne archives.
265 ALRA Newsletter, March/April 1973, box 2, WAAC papers, AN100/222, VWLLF archives,
reservations about the FCC and, following the publication of an anonymous letter in Digger accusing Wainer of withholding information, deliberately misleading people about the availability of alternatives and ‘trying to corner the market’, decided to act.266 The final decision to break with Wainer came when ‘it was discovered that he had told a Melbourne gynaecologist/obstetrician that ALRA was providing him with voluntary helpers for his clinic’.267 According to the article Wainer had made a similar statement about his clinic’s relationship with WEL.

Wainer wrote to Faust requesting attendance at a meeting to ‘clarify his position regarding lies freely spread about him by a member of ALRA (Vic)’.268 On 23 May 1973, ALRA members met with Wainer to discuss concerns raised. The meeting clarified that the objections had not been directed toward Wainer personally, but toward his associates. There were strong suggestions that some doctors were still taking advantage of the legal confusion following the Menhennitt Ruling to ‘overcharge, withhold receipts and give less than perfect service’.269 Faust summarised the concerns as a ‘conflict of a short-term, piecemeal reform approach, versus wholesale reform’.270 She noted that a similar conflict had arisen between June 1969 and May 1970 when ALRA members had tried to force Wainer to resign over his plans to undertake a test case of abortion laws.271 Although ALRA was full of praise for Wainer once it was clear that his actions had been successful, Faust remained critical.

Wainer was equally critical of ALRA’s referral service, noting that three women had suffered perforation of the uterus following an ALRA referral. Further, he described ALRA’s aim to

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267 ALRA Newsletter, March/April 1973, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne, and Betty Marginson papers, AN79/110, University of Melbourne archives.
268 Letter from Wainer to Faust dated 11 May 1973, box 17, Wainer papers, MS13436, SLV. ALRA had received a letter from ‘a Melbourne psychiatrist’, later identified as elderly psychiatrist Charlotte Wells, who accused the FCC and the surgeon Wainer referred his patients to of being ‘a double racket’ because of costs. Wainer threatened to take legal action over the letter. The letter from Wells dated 2 March 1972 is somewhat rambling and includes indirect accusations against Wainer, for example that he ‘probably drowns his worries in alcohol’. Further correspondence between Faust and Wells dated 18 March 1973, 25 March 1973, 29 March 1973 shows Faust encouraging Wells to assist with complaints and Wells choosing not to do so. Wells died shortly afterwards. See ALRA Newsletter, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives. See also ALRA extraordinary committee meeting minutes, 23 May 1973, box 17, Wainer papers, MS13436, SLV.
269 ALRA Newsletter, July/August 1973, ‘ALRA and Dr Wainer’, Jan Harper papers, AN78/120, University of Melbourne archives.
271 B. Wainer, undated autobiography, pp. 1-11, box 12, Wainer papers, MS13436, SLV.
educate general practitioners as ‘using women as shock troops’ given that some of these doctors were no longer practising, and some were unsympathetic or ‘affiliates of the old abortion scene’. The ALRA did not deny these difficulties.

While ALRA members were distancing themselves from Wainer the more radical WLM was increasing its support for him. Wainer encouraged ALRA to form a national association with WL, but Faust dismissed the idea on the basis that WL was ‘incompetent’. The ALRA noted that WL had ‘overcome its initial squeamishness about referral services and [was] giving Dr Wainer their whole hearted support’. Wainer spoke at a WL meeting about his visit to abortion clinics in the US and requested that WL consider taking over the FCC. A committee of eight women explored the idea, but WL rejected the proposal. As a result, while the WLM contested control over decision-making, it did little to contest the idea that performing an abortion was the role of a medical practitioner. Faust had earlier requested a written proposition from Wainer regarding ALRA taking over the FCC, but Wainer did not follow up her request.

In the wake of its decision on the FCC, WL agreed to support ALRA’s Problem Pregnancy Service with abortion requests to the Women’s Centre referred to ALRA. WEL also supported the service, publishing an article encouraging members to train as volunteers for the service and keeping them up to date with changes. Feminist magazines such as Vashti’s Voice and mejane also ran articles and advertisements regarding access to abortion services.
Despite their involvement in the provision of abortion services, many women’s groups continued to express some ambivalence, even discomfort, about the notion of male abortionists profiting from women’s misfortune. This hardened once it became clear that it was doctors, not unqualified operators, who performed most abortions. Those doctors were neither altruistic, nor always fastidious in their approach to patient care. ALRA invited women to report complaints against general practitioners and abortionists from 1971. Evidence gathered was passed on to the Medical Registration Board.

The general suspicion that was directed toward competent career abortionists, even by those who supported abortion law reform, would have added to the hesitancy of other doctors to become involved. The editor of the MJA noted in 1973 that younger doctors, who could be expected to have more liberal attitudes to abortion, behaved very conservatively, hypothesising that they wished to avoid tarnishing their reputations. Given the media portrayal of medical abortionists as money-hungry butchers, and with ALRA and WL adding to criticisms raised by the RTL, it is not surprising that doctors trying to build a career reacted in this way.

While career abortionists continued to be treated with suspicion, by April 1973 the volume of requests for abortion led the editor of the MJA to suggest that abortion clinics be separated from routine gynaecology clinics. The debate between doctors about the relative safety of abortion in private clinics as opposed to those performed by trained specialists in public hospitals reflected broader discourses about the role and standing of the medical profession versus pragmatic questions about dealing with the growing demand for services. It also highlighted ongoing questions about the legality of abortion under particular circumstances. The introduction of the private member’s bills in parliament in 1973 were designed, in varying degrees, to clarify medical practice in relation to abortion. The bills, on which the women’s movement centred its activities in 1973 in a last-ditch effort for abortion law reform, are the subject of the final chapter.

mejane, no. 1, March 1971, pp. 2, 12; mejane, no. 6, February 1972, pp. 2, 16; mejane, no. 7, April 1972, p. 4; mejane, no. 8, August 1972, pp. 4-5, 6-7, mejane, no. 10, March 1973.

282 ALRA committee meeting minutes, 19 October 1971, Betty Marginson papers, AN79/110, University of Melbourne archives.

283 ALRA committee meeting minutes, 23 May 1973, Jan Harper papers, AN78/120, University of Melbourne archives.

4. Conclusion

Members of each of the groups involved in campaigning for the liberalisation of abortion laws referred to the importance of keeping abortion on the agenda despite the gains made as a result of the Menhennitt Ruling.286 While the ruling had approved medical discretion, abortion was still isolated from general practice, with doctors tending to refer to full-time abortionists. Prices fluctuated according to the ‘patient’s ability to pay and inability to stand up for her rights to a reasonable fee and to receipts for treatment’.287 The Menhennitt Ruling had ensured that abortions were largely available to Victorian women, but only on the recommendation of a medical practitioner. As Judith Allen notes, the move away from secrecy towards disclosure in abortion practice was not so much about ‘liberalisation’, or permissiveness, as about regulation and surveillance.288 The fact that women now had greater access to abortion meant that much of the heat went out of the abortion debate. On the other hand, women were no closer to gaining real control over reproductive decision-making. As such, these reforms resulted in the ‘transfer of women from the control of individual men in families to the control of state sanctioned groups of specialist men’.289

Albury likens the reformer’s position to that of the anti-abortionist, arguing that neither group is willing to acknowledge women as autonomous political and moral agents, even if the ways in which they enforce their views differ.290 The reformer deals with legal niceties rather than access to real social power and does not challenge the social relations between women and men. This means that the material and social conditions pertinent to women’s decision-making processes remain unaffected, resulting in the ‘right to choose’ being a choice between limited options for most women. As Faust claims, however, while the efforts of reformers may seem ‘all very timid and middle class’ in retrospect, at the time it was a courageous and radical step to even try to make abortion a public issue.291 And Marilyn Lake comments that, rather than asking whether certain actions were ‘reformist’ or ‘revolutionary’, we should be asking whether they empowered women, and which women in particular.292

288 Allen, Sex & Secrets, p. 215.
289 Albury, ““Law Reform””, p. 183.
The women’s movement fought for freedom and equality, including freedom from the oppression of unwanted pregnancy. Ideas about what constituted freedom and equality and how to achieve that differed between groups, which were influenced by a range of different ideologies. This resulted in considerable conflict both within the women’s liberation movement and between groups agitating for change. It is unlikely that this conflict limited the effectiveness of the campaign for abortion law reform. The idea that the women’s movement needed to be unified in order to be effective is an idea that emerges from the view that all women share the same forms of oppression. As Germaine Greer commented in 1971, it would have been surprising if the women’s movement in Australia had not been divided on political grounds, given the alienation of women of one class from another and therefore their denial of common interests. A women’s movement that is diverse, sometimes conflictual and sometimes coordinated, ultimately stimulating different visions for the future, may be the best way to ensure change for all women in the long and the short term. Moreover, an assumption that the different ideologies of the women’s movement led to failure to secure abortion law reform invests in the women’s movement far more control over social, political and economic decision-making than existed.

The experiences of involvement with the abortion campaigns led many women towards increasingly sophisticated understandings of oppression that have continued to inform academic writings as well as the development of women’s services over the ensuing decades. Women involved with the abortion campaigns made up an increasingly articulate, vocal, diverse and active women’s movement. They were thus able to contribute to, and take advantage of, changing social mores, world-wide legislative changes, and social, economic and political changes, in order to meet at least some of women’s demands for freedom and equality. Zillah Eisenstein predicted that liberal feminism might have a ‘radical future’ and Rosemarie Putnam Tong certainly notes that liberal feminists have moved away from an individualist to a collectivist belief in redistribution of resources and vast changes in consciousness in order to achieve sexual equality.

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As a result of the women’s movement’s abortion campaigns of the late 1960s and early 1970s there were changes to the application of abortion laws in practice, and women’s access to safe and affordable abortion improved. The campaigns also led to the establishment of a range of other abortion services, increased access to contraception and family planning information, and sex education programs in schools. Importantly, the framing of abortion as a ‘woman’s right to choose’ also helped to shift views towards women’s social roles, sexuality and motherhood. The fact that women’s demands for reproductive control were partly co-opted within a post-industrial state in order to regulate and control populations does not nullify the gains made for women. It does, however, suggest that women’s demands for freedom and equality are not yet won, and what has been achieved is not free from threat.

The abortion campaigns were instrumental in ensuring that both women and medical practitioners were increasingly aware of their rights and responsibilities in relation to abortion. As well as public education campaigns, the targeting of specific groups, such as parliamentarians, facilitated a more informed and increasingly scrutinised parliamentary process. Moss Cass is clear, for instance, that the work of the women’s movement around such campaigns assisted in the education and accountability of politicians such that this generation assumes women’s rights as common sense.295 It is to the two major parliamentary campaigns by the women’s movement for abortion law reform that the final chapter turns.

295 Interview, Moss Cass, 6 May 2002.
CHAPTER SIX

PARLIAMENTARY DEBATES
1973: private members bills in state and federal parliament

Legislation can have an ideological component which is often more important than its effect.¹

1. Introduction

Although there were broad calls for abortion law reform across Australia in the 1960s and 1970s, little of this was reflected in either the Commonwealth or the Victorian parliamentary debates. From 1959 to 1967 there were no references to abortion at all in either legislature. In Victorian parliament, there were only two debates of relevance during the period under study. These related to the Kaye Inquiry into Allegations of Corruption against the Police Force in 1970, dealt with extensively in chapter four, and the 1973 Trayling motion, a private member’s bill proposing an inquiry into abortion. In federal parliament, there were four topics under which the question of abortion was raised, each covered in varying detail in previous chapters. These were population and defence of the nation, questions of social justice relating to levels of family allowances, sales tax on contraceptives, and abortion law reform, which included discussion of a draft criminal code for the Commonwealth territories. The Medical Practices Clarification Bill in 1973, a private member’s bill that arose out of consideration of the draft code, together with the various motions for an inquiry into abortion that followed the bill, led to vigorous debate in federal parliament.

This chapter focuses on the private members’ bills in each of the legislatures. The Medical Practices Clarification Bill, or abortion bill, was the only formal debate to occur in federal parliament about whether or not abortion laws should be reformed. It preceded the Proposed Abortion Inquiry, or Trayling motion, which was the first attempt in Victorian parliament to focus debate specifically on abortion, a focus that had become lost in the Commonwealth inquiry that followed the abortion bill. Victoria remained a site of strong protest and unrest. The chapter is constructed around three primary areas of interest. They are first, the role of the abortion law reform movement in encouraging and informing the private members’ bills; second, the arguments parliamentarians² used in the debate as indicators of their attitudes towards abortion law reform and, therefore, towards women; and third, the impact of the debates on women’s access to safe and affordable abortion. The role of the Right to Life

² See appendix seven for details of the party affiliations of members of parliament referred to in this chapter.
groups (RTL), which featured prominently in opposition to abortion law reform, is considered briefly.\textsuperscript{3}

While the lead-up to the abortion bill in federal parliament had been widely publicised, there was no similar public airing of issues prior to the Trayling motion. However, the Trayling motion drew on much of the evidence and arguments presented in the federal debates, largely because members of parliament (MPs) sourced their material from the same groups and organisations that had provided information to their federal colleagues – the RTL and the Abortion Law Repeal Association (ALRA).\textsuperscript{4}

2. Preliminaries and Pressure Groups

In 1969 a draft criminal code was proposed in federal parliament to clarify criminal law in the Australian Capital and Northern Territories, as well as for ‘those cases where the Commonwealth needs a general criminal law’.\textsuperscript{5} The law relating to abortion in the Australian Capital Territory (ACT) was derived by ordinance from the New South Wales (NSW) \textit{Crimes Act} 1900. Work had begun on the draft code in 1964. Gough Whitlam, who by 1969 was keen to see a federal committee for law reform set up, quoted former Chief Justice Sir Owen Dixon, who had commented in 1957 that there was ‘no geographical reason why law should be different in any part of Australia’.\textsuperscript{6} There was a fair degree of interest generated in the code by pro- and anti-abortion law reformers, given its potential to shape legislation Australia-wide. The Law Council of Australia, which had drafted the code, was loath to encroach on the controversial area of abortion, claiming that the council should not attempt to resolve problems that were largely moral and social, not legal. Nevertheless, the council proposed extending the law to allow lawful abortion to include medical procedures other than surgical ones.

The ‘young turks’ of the Australian Labor Party (ALP), including ‘humanist doctors’ Moss Cass, Dick Klugman and Doug Everingham, claimed that the draft code needlessly rendered

\textsuperscript{3} The first Right to Life (RTL) group was formed in Australia in 1970. At the time of the debates, the various groups were collectively referred to as the Right to Life Association.
\textsuperscript{4} David McKenzie also states that there was much information available as a result of Roe V Wade, the Supreme Court judgement that resulted in legal abortion in the USA. Interview, David McKenzie, 16 June 2004.
\textsuperscript{5} \textit{Commonwealth Parliamentary Debates (CPD)}, House of Representatives (HR), vol. 63, 14 May 1969, Nigel Bowen, pp. 1776-77. The ACT and Northern Territory came under the control of the Commonwealth government.
criminal any woman seeking an abortion or any person assisting her in good faith. Everingham argued the need for legislation that reflected both women’s right to choose whether or not to continue with an unwanted pregnancy and assurance that doctors would not be prosecuted for a procedure that they had carried out in good conscience for decades. Generally, only the latter assurance was sought by parliament.

The ALP, in opposition, was in favour of utilising the draft code to bring about abortion law reform. However, like their Victorian counterparts, the federal Liberal government studiously avoided abortion law reform, despite the Liberal Party Federal Council recommending nationwide liberalisation of abortion laws in June 1970 and the Victorian State Council urging reform since February 1968. In December 1971, William McMahon stated that he had ‘no intention of introducing legislation in parliament or while I’m Prime Minister, relating to abortion’. In August 1972 McMahon repeated his opposition to abortion, stating that ‘the Government had no intention of amending the law relating to abortion in the ACT or the Australian Territories. That law does not permit abortion on demand nor a permissive approach to the question of abortion’.

As argued in chapter three, the fear that abortion could adversely affect the career of any politician linked with reform appeared to drive much of the political manoeuvring in relation to abortion law. While leader of the opposition, Gough Whitlam’s position on the issue had been particularly controversial. He had made a statement at the federal Labor Women’s Conference in August 1970 indicating that he had reformist views in relation to both homosexuality and abortion; this was reported in the *Daily Telegraph*. Les Irwin, federal member for Mitchell, suggested that Whitlam’s ‘queer ideas on sex’, and statements on abortion and homosexuality, branded him as dishonourable and unfit for leadership.

Despite his own views, Whitlam believed that abortion law reform would only come about as a result of politicians being given a free vote on the matter. He recognised that many federal

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12 *Daily Telegraph*, 1 September 1970, ‘Whitlam in favor of sex law changes’, p. 3. What was no doubt particularly concerning was Whitlam’s support for abortion on ‘social’ grounds, frequently equated with ‘abortion on demand’. He had stated that he believed the mental suffering imposed on a woman who wished to terminate the pregnancy of an unwanted child warranted law reform and that abortion was a matter of private conscience.
and state ALP members strongly opposed any change to the current law. The ALP was determined to make it clear that it was not party policy to introduce legalised abortion.\textsuperscript{14} The June 1971 federal conference voted to give Labor parliamentarians a free – conscience – vote on abortion law reform, despite the women’s caucus demanding that party policy be amended to remove legal restrictions on medical abortion.\textsuperscript{15}

There was marked unrest within the Victorian branch of the ALP as well as conflict between the state and federal branches. A report on abortion law reform, due for discussion at the June 1972 state conference of the Victorian ALP, was adjourned because state opposition leader Clyde Holding was ‘anxious to avoid the emotional issue being aired in public during the period before the Federal election’.\textsuperscript{16} The state branch was divided over whether the federal recommendation for a conscience vote was binding, with some members wanting the state parliamentary party to be instructed to introduce and support a private member’s bill in the Victorian upper house to liberalise state laws.\textsuperscript{17} Holding sought, unsuccessfully, to restrict any Labor MP from introducing such a bill without the approval of the parliamentary party.\textsuperscript{18} But the ALP Federal Executive reaffirmed the policy of a conscience vote in July, refusing to give official support to a move aimed at reform of abortion laws in Victoria.\textsuperscript{19} On 6 August 1972 the Victorian ALP conference changed the party’s abortion law reform policy from support for abortion in specified circumstances, to abortion on request.\textsuperscript{20} Because of the Federal Executive ruling, the policy was not binding, however, and Holding referred to it as simply an expression of opinion. Nevertheless, the policy resulted in permission to introduce a private member’s bill into state parliament and it was reported that two ALP members were considering doing so.\textsuperscript{21} Some months later, Holding promised to hold a royal commission into all aspects of abortion if he was elected premier.\textsuperscript{22} An executive member of the RTL,

\textsuperscript{15} DLP papers, MS10389, State Library of Victoria (SLV).
\textsuperscript{17} See Age, 7 July 1972, ‘Party asked for a guide on abortion’, Allan Barnes; Australian, 7 July 1972, ‘Labor to reject abortion move’, Alan Ramsey.
\textsuperscript{18} Clyde Holding also rang David McKenzie in relation to the abortion bill in 1973, putting quite some pressure on him to withdraw the bill. Bob Hawke followed suit, both he and Holding being worried about an electoral backlash. Interview, David McKenzie, 16 June 2004.
\textsuperscript{19} See Australian, 8 July 1972, ‘ALP rejects abortion move’, Alan Ramsay; Age, 9 July 1972, ‘Labor firm on abortion votes’, Allan Barnes.
\textsuperscript{20} See Age, 7 August 1972, ‘Switch by ALP on abortion’, Rod Bryant, p. 1; Australian, 7 August 1972, ‘Labor branch calls for easier abortion’; Sun, 7 August 1972, ‘ALP eases abortion rule. MPs will get a free vote’, p. 11.
\textsuperscript{21} See Age, 7 August 1972, ‘Abortion bill is likely. Two Labor MPs may act’, Bruce Baskett, p. 9; Age, 8 August 1972, ‘Labor to move on abortion here’, p. 2.
\textsuperscript{22} Age, 30 April 1973, ‘We’ll inquire on abortion, says Holding’, p. 1; ‘Abortion inquiry promised by Labor’, Ron Holdsworth.
Michael Somerville, welcomed Holding’s plan for a royal commission while ALRA president, Beatrice Faust, called it a stalling action on Holding’s part.23

The Liberal Party took advantage of ALP unrest, inaccurately presenting the ALP, and Whitlam in particular, as advocates of abortion on demand.24 In October 1971, parliamentary discussion and a press report confirmed that Sir William Aston, the Speaker of the House of Representatives, had approached political correspondent Malcolm Mackerras to discuss factors that might influence voter attitudes.25 Aston claimed that the ALP would lose votes as a result of their stance on abortion and added that Mackerras should make Whitlam’s views on abortion public in order to facilitate this.26 Mackerras reported the conversation to Whitlam, who cited Aston’s comments on This Day Tonight.27 Aston had not made his comments in his role as Speaker and he referred only to information that was publicly available. Nevertheless, the remarks suggested that both parties expected abortion to be influential at the coming federal election, although there was obviously disagreement about whether a pro-abortion law reform stance would increase the risk of electoral defeat. Moss Cass stated in 1972, for instance, that he was ‘prepared to take the risk’ of Labor losing votes on abortion law reform, although he did not think they would.28

Prime Minister McMahon, NSW Premier Sir Robert Askin and the DLP federal secretary publicly attacked Whitlam in the lead-up to the federal election, claiming he wanted to introduce abortion on request by ‘stealth’.29 The Australian saw McMahon’s attempt to include moral issues in the election campaign as a ‘desperate effort to turn the tide against a Labor victory’.30 An Age editorial pointed out that the differences between the parties in relation to abortion were in fact minimal. Whitlam was a victim of dishonest propaganda which seeks to portray the Labor Party as the party of abortion-on-demand, and which lumps a complex and important issue with … other matters in a grab-bag of “permissiveness”’.31

24 Daily Mirror, 29 September 1971, ‘Labour favours 2-child family’. See also CPD, HR, vol. 74, 5 October 1971, Bill Hayden, p. 1847. As Moss Cass later argued, there were probably more Liberal supporters of abortion law reform than Labor ones, given the ALP’s history of Catholicism. See Sun, 17 November 1972, “No difference on abortion.” Row “irrelevant”: Cass’.
27 This Day Tonight (TDT), 14 October 1971, ABC television.
30 Australian, 27 November 1972, ‘McMahon says no to new abortion laws’.
Protestant clergy welcomed the possibility of a conscience vote in parliament on abortion and called on politicians and church leaders not to turn the abortion issue into a 'political football'. The Roman Catholic Archbishop of Melbourne, however, claimed that parliamentary candidates were 'sheltering behind' the conscience vote.

The Whitlam government won the 1972 federal election despite -- or perhaps as a result of -- its association with radical opinion on a range of social topics, including abortion, homosexuality, censorship and divorce. Ann Curthoys notes that the election of a Labor government made the possibility of state action real to feminists, who sought a range of programs and policy changes aimed at improving the status of women. As detailed in chapter five, in August 1972 a name change from the Abortion Law Reform to Repeal Association reflected the more radical aspirations of that group. But MPs and community groups generally continued to support law reform rather than repeal.

From the middle of 1971, ALRA had concentrated on finding a sympathetic politician, from either of the major parties, who was willing to put forward a private member's bill in Victorian parliament. In September 1971, Labor MLA David Bornstein discussed plans to introduce a private member's bill in that parliamentary session. He did not do so, so ALRA approached Charles Hider, a Liberal MP who was thought to be sympathetic to the idea of reform. A year later, federal Labor MP Bill Hayden suggested that a private member's bill might be more successful in federal parliament than a party bill. He stated in a letter to ALRA that you 'couldn't ask Catholics to be bound to party decisions against their conscience' so there would not be a majority in caucus, whereas a private member's bill might get support from both sides of parliament.

The Canberra Sunday Post claimed in December 1972 that legalisation of abortion in the ACT was a high priority for the new government, with Whitlam the first prime minister in history to favour abortion on demand. In particular, the election of two young Victorians, David McKenzie and Antony Lamb, raised hope among ALRA members. In a letter to the Women's Electoral Lobby (WEL) in January 1973, McKenzie confirmed his pre-election

32 *Age*, 28 November 1972, 'Abortion plea by Protestant clergy'.
33 *Australian*, 13 November 1972, 'Abortion warning to R.C. electors'.
35 ALRA committee meeting minutes, 19 October 1971, Betty Marginson papers, Accession Number (AN) 79/110, University of Melbourne archives.
36 *ALRA newsletter*, October 1972, reported the letter from Bill Hayden, Queensland, as offering a thoughtful suggestion. Betty Marginson papers, AN79/110, University of Melbourne archives.
commitment, writing, 'I hope to put into action policies which will mean an end to
discrimination against women in our society'. 38 The same month, Beatrice Faust wrote that
Lamb had advised ALRA to agitate for legislation regarding abortion laws. 39 At the WEL
National Conference in January 1973, lobbyist Peter Cullen suggested either an amendment to
the draft criminal code to have the provisions relating to abortion deleted, or the introduction
of a private member's bill abolishing penalties for abortion. 40 Arguing for abortion on the
grounds of a woman's right to control her body would be less successful than arguing that
abortion is undesirable but the alternatives are worse. Given the comments of those who
proposed the bill in parliament, it seems either that they shared Cullen's views, or that they
were encouraged to do so. As noted in chapter five, it had long been ALRA's approach to
support abortion within this framework.

On 8 March 1973, McKenzie and Lamb gave notice that they would bring up, under general
business,

a Bill for an Act for the clarification and removal of doubt amongst the medical
profession within the Australian Territories in the matter of the lawful termination of
pregnancy at the request of the woman or when deemed, in appropriate medical
judgement, to be necessary. 41

It was a 'happy coincidence' that notice was given on International Women's Day. 42 If
passed, the bill would allow abortion on request for a woman of any age for the first sixteen
weeks of her pregnancy, and on the recommendation of two doctors up to twenty-three weeks
gestation, provided that the abortion was performed with care by a qualified medical
practitioner. The bill did not require the abortion to be performed in a hospital and doctors
were under no obligation to participate in a termination of pregnancy. However, they were
required to refer women elsewhere, and a woman was able to sue if the abortion was not
performed in time because of the action, or inaction, of a medical practitioner. These
provisions were quite radical.

37 Canberra Sunday Post, 10 December 1972, 'Abortion reform! Labor to move quickly in ACT', pp. 1, 5, DLP papers, MS10389, SLV.
38 Letter to WEL from David McKenzie, 3 January 1973, sent in response to a congratulatory telegram WEL had sent him after he was elected. Jan Harper papers, AN78/110, University of Melbourne archives.
39 Letter from Beatrice Faust in reply to a letter from Perry Whalley, Department of Demography, ALRA, 20 January 1973, box 11, Wainer papers, MS13436, SLV.
41 Medical Practices Clarification Bill, from the Bills and Papers Office, Parliament of Australia, House of Representatives, copy in ALRA papers, AN75/59, University of Melbourne archives.
At the time that they gave notice of their intention to introduce the bill, McKenzie and Lamb had a combined sitting time of six days in parliament.\textsuperscript{43} This raised a number of parliamentary eyebrows, with Ian Sinclair, deputy leader of the Country Party, suggesting that the bill really emanated from the Labor Party, which had not been prepared to act as the sponsor.\textsuperscript{44} Alan Jarman referred to the bill as the ‘brainchild of several Ministers of this Government’, led by ‘two front men’ who ‘had to find to do the hack work’.\textsuperscript{45} Al Grassby disputed Jarman’s allegation, with the Speaker adding that as someone who kept his ‘ear pretty close to the ground’ he knew that Jarman’s accusations were incorrect.\textsuperscript{46} Impetus for the bill had largely arisen as the result of the actions of women advocates, who included WEL and ALRA members from Canberra and Sydney.\textsuperscript{47} Moss Cass later acknowledged that he and Kep Enderby, Minister for the Territories, had originally planned to propose the private member’s bill, but Whitlam had forbidden them from doing so.\textsuperscript{48} A proposal coming from cabinet ministers would have appeared contradictory in the face of party policy allowing a conscience vote.\textsuperscript{49} Cass approached McKenzie one night after parliament had risen, asking him to propose the bill.\textsuperscript{50} After deliberation McKenzie agreed, while acknowledging that ‘for someone with my limited parliamentary experience it is a big bite. But you have to stand up for what you believe in’.\textsuperscript{51} McKenzie had commented during his election campaign that abortion was primarily a matter for a woman and her doctor, and one of choice and conscience.

Karen Coleman points out that politicians can use the combination of a conscience vote, and, in the Westminster system, the device of a private member’s bill, to shield the party from

\textsuperscript{43} Interview, David McKenzie, 16 June 2004.
\textsuperscript{44} Notice was given on 8 March 1973 and their first day in parliament was 19 February 1973. Interview, David McKenzie, 16 June 2004.
\textsuperscript{48} The structure for the bill was actually drawn up by Jim Staples, modelled on the US Supreme Court decision, Roe V Wade. Staples worked with a number of women from Canberra, many of whom were frequently around parliament house lobbying politicians. They included WEL members Susan Ryan, Victoria Green and Elizabeth Reed, Leslie Vick from Sydney ALRA and Jane North from Sydney. Interview, David McKenzie, 16 June 2004.
\textsuperscript{49} Interview, Moss Cass, 6 May 2002.
\textsuperscript{50} Interview, Moss Cass, 6 May 2002. David McKenzie adds that while it is not impossible for a minister to propose a private member’s bill, it is not acceptable if alternatives are available. See David McKenzie interview, 16 June 2004.
\textsuperscript{51} McKenzie then approached Antony Lamb asking him to second the proposal. Interview, David McKenzie, 16 June 2004.

\textsuperscript{51} National Times, 30 April - 5 May 1973, ‘Premature fame’, p. 5. See also Interview, Moss Cass, 6 May 2002. David McKenzie argues that as someone elected to a marginal seat, he had to consider the work done by those who put him there, rather than behave as if he was a free agent. This also coloured a number of people’s attitudes towards the bill. Interview, David McKenzie, 16 June 2004.
overt identification with a measure such as abortion. While this may well have been Whitlam's intention, it is clear that both Whitlam and those ministers involved were genuinely motivated by a desire to reform abortion laws.

The public response to the bill was overwhelming. MPs received a deluge of letters, particularly from the RTL and its supporters, who mounted a huge and well-financed campaign to prevent law reform. ALRA noted that letters opposing the bill were reaching parliamentarians at five times the rate of letters supporting it and called for stronger action on the part of its own members. The Women's Abortion Action Campaign (WAAC) set up a 'women's embassy' outside Parliament House on 1 May as an information and advocacy centre. Despite parliamentary pressure, Enderby said he had no intention of taking action to remove the tent. The RTL set up a similar tent on 9 May, with Cardinal Knox conducting a church service in Canberra on 10 May to pray for the MPs. The service ended when the church had to be evacuated as a result of a bomb threat, although no bomb was found. During the reading of the bill, about two thousand RTL and WAAC demonstrators massed on the lawns, chanting, and listening to the debate on radios, with RTL supporters outnumbering WAAC almost ten to one.

Fred Brenchley from the National Times was surprised that the DLP was not more vocal in the anti-abortion campaign, although he ignores the fact that the DLP probably worked through the RTL. He surmised that DLP members were 'cynical, almost contemptuous, of the Church campaign', given that the Roman Catholic Church had not used its power to sway voters against an ALP victory in the first place. Don Aitken, also from the National Times, hoped parliamentarians would resist the easy way out and provide good laws rather than emotional speeches and an exchange of well-worn slogans. He suggested that abortion would not bring society one step closer to the downfall of western civilisation as MPs were

53 14 April 1973, ALRA campaign information, box 39/1-3, Women's Abortion Action Coalition/Campaign (WAAC) papers, AN100/222, VW1LF archives, University of Melbourne.
54 Australian, 2 May 1973, 'Women set up "embassy"'.
55 Age, 4 May 1973, "'Embassy' women can stay".
57 Age, 11 May 1973, 'Abortion bill crushed, 98 to 23, as crowds chant outside the House'. WAAC lamented the fact that only three hundred people turned up for the 10 May 1973 demonstration coinciding with the reading of the abortion bill. WEL Broadsheet, no. 17, vol. 2, June 1973, 'An Abortive Issue?', Alva Geike, p. 3, Jan Harper papers, AN78/120, University of Melbourne archives.
58 National Times, 30 April - 5 May 1973, 'Abortion reform: It's tit for tat as the DLP fails to back the churches', Fred Brenchley, p. 6.
only being asked to legalise abortion, not enforce it. Bill Solomon from the *Canberra Times* argued that the abortion bill had no prospect of success, despite the fact that most MPs favoured some liberalisation in the ACT. The Country Party, he added, was completely opposed to the bill. The Liberal Party, like the ALP, had proposed a free vote, resulting in some senior MPs arguing that the party should adopt harassing tactics aimed at opposing the bill to prevent individual members from having to declare their positions. By the time the abortion bill was debated in May, though, MPs had decided that having their views known was somewhat more important to their electoral survival than remaining silent. This was less a matter of conviction than realisation that their name would be attached to a particular position once a vote was taken on the bill, and that their reasons for this might be misinterpreted unless they spoke out.

3. The Bills

3.1 Federal Medical Practices Clarification Bill

3.1.1 Process and presentation

The abortion bill was debated in the House of Representatives on 10 May 1973, the same day as the Premiers' Conference, so Prime Minister Gough Whitlam was absent from the House during the debate. McKenzie argued that current abortion laws were no longer in accord with the community's views and attitudes, citing legal changes in England and the United States of America (USA) as evidence of a western trend to liberalise abortion laws. Lamb argued that clarification of medical practice would contribute to the elimination of backyard abortions and, via mandatory contraceptive advice, a reduction in the number of abortions performed. Following the Kaye Inquiry in Victoria in 1970, detailed in chapter four, there were widespread concerns about backyard abortionists.

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50 *National Times*, 30 April - 5 May 1973, 'What we're talking about are sensible, humane laws on sex', Don Aitkin, p. 12.
52 The debate was given one of the longest periods ever for a private member’s bill, although this was only three-and-a-half hours. In comparison, the UK abortion bill had been debated over a nine-month period before it became law. For discussion about time available for the debate, see *CPD*, HR, vol. 83, 1 May 1973, Leonard Keogh, pp. 1481-82; 3 May 1973, Henry Turner, pp. 1643-44; 9 May 1973, Fred Daly, pp. 1891-95; 10 May 1973, Billy Snedden, pp. 1950-51 and 10 May 1973, pp. 1957-63.
According to proponents of the bill, it was not the business of the law to deal with what were essentially moral or social questions.64 Bill Hayden went further, noting that the moral questions associated with abortion would not cease to exist because of legal clarification and questioning whether abortion should be a crime at all.65 Enderby added that differences in laws from one state to the next made policing the law unfeasible and that this, coupled with the social costs of abortion, rendered change long overdue.66

Opponents of the bill argued that the law did not require clarification, citing the ACT\textsuperscript{5} branch of the Australian Medical Association (AMA), which had disagreed publicly that doctors required clarification.67 Recent court judgements in Victoria had also attested to the adequacy of the law, according to MIR James Corbett, following the police surgeon’s admission that it would be difficult not to justify a therapeutic abortion if a patient was depressed, suicidal and determined not to continue a pregnancy.68 Dr J. Smibert, who referred to the Menhennitt Ruling as ‘good enough already’, claimed in a letter to the Medical Journal of Australia (MJA), that the ruling had removed any ‘doubts from the minds of obstetrician/gynaecologists who are occasionally faced with the unpleasant task of sacrificing a fetus to save a woman’s life’.69 He suggested that the ruling allowed any doctor to ‘bend the law, if they so desired, without fear of conviction’ so long as the doctor was prepared to swear on oath that ‘he honestly believed’ it was necessary.70

It is pertinent to note that while the ACT branch of the AMA and some other physicians did not agree that the law required clarification, women seeking abortion had a different experience, and a recent poll, conducted by WEL, had shown overwhelming support for the bill. Similarly, an AMA study in 1971 had shown that the majority of medical practitioners were in fact of the view that abortion law reform was required so that legally qualified medical practitioners were ‘free to exercise clinical judgment in this as in other matters’.71 Generally, public opinion supported changes to the law on those grounds.72 As Hayden had implied, opposition to legal clarification resulted from the fact that it did not matter how strict the legal guidelines were, where opposition to abortion was based on conservative religious

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beliefs, any abortion was wrong and extremists wanted the law to enforce their beliefs. For those opponents of the bill who held conservative views about the role of women, abortion on request, as the bill proposed, was an outrage.

McKenzie and Lamb had re-drafted the bill a number of times in the lead-up to the debate on 10 May. Changes included dropping references to the Northern Territory in the bill the night before the debate, so that it would apply only to the ACT. This reflected the fact that the ACT Advisory Council was of the opinion ‘that the present laws … are no longer in accord with the community’s views and attitudes on [abortion]’, while no similar clear statement had emanated from the Northern Territory. While the number of changes raised criticism, equally it suggested that McKenzie and Lamb were open to incorporating ideas and acknowledging concerns during the course of discussion and public debate. Three of the most controversial areas of the bill were the timing of abortion, concern that doctors might be forced to perform abortions against their will and fears that abortion would be used as retrospective contraception. McKenzie and Lamb altered the bill to incorporate each of those concerns, reducing the stage of pregnancy at which abortion was legal to twelve weeks, adding compulsory contraceptive advice and ensuring that doctors did not have to perform an abortion against their will. Efforts to protect the rights of medical practitioners took a front seat in the drafting of the bill, and changes made afforded ‘more protection than any similar clause in any other legislation’. On the other hand, members of the WAAC noted that women were deprived of their rights under common law, as the latest draft of the bill did not allow women to sue for negligence or neglect if they were refused an abortion.

Speakers for and against the bill, regardless of their party affiliations, framed their arguments to cover a limited number of specific points. The speech of the minister for education, Kim Beazley Senior, for instance, was quite similar in content to that of the deputy leader of the opposition, Phillip Lynch, suggesting not only a similarity in opinion, but also use of common material to prepare their speeches. Rebecca Albury notes that a number of analytic gaps were created and reinforced in parliamentary debates by the rhetorical strategies deployed by, and

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73 CPD, IHR, vol. 83, 10 May 1973, David McKenzie, p. 1965. David McKenzie stated that because support was clear in the ACT, but less so in the Northern Territory, opponents might have used this as a technical diversion, rather than debating the merits of the bill. Interview, David McKenzie, 16 June 2004.
76 Gordon Bryant (MHR Wills) letter regarding abortion bill, 21 May 1973, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
the selective use of information given to, speakers. The idea that abortion was a medical procedure, albeit one that created a series of moral and legal dilemmas, framed the debate for parliamentarians. None of them argued the complexity of sexual politics, including that, for women, control over decision-making defined reproductive freedom and was an important aspect of citizenship. Similarly, as Albury has pointed out in relation to the federal Lusher motion in 1979, ‘the heterosexual intercourse necessary to begin the pregnancy’ was generally ignored in parliament, as though ‘women get themselves pregnant’.78

The debate was couched in terms characteristic of liberal political philosophy, focussing on ‘risk’ – to women, families and ‘society’ – or ‘rights’. Where a MP supported the bill, he referred to abortion on request, women, choice, conscience, tolerance, acceptance, responsibility, unenforceable laws, corruption and the risks associated with restrictive abortion practices. MPs who opposed the bill referred to abortion on demand, convenience, moral decline, denial of men’s rights, ‘slaying the unborn’, turning ‘healers into killers’, ‘deliberate destruction’ of life for ‘convenience’ sake, protecting innocent life, unwanted parents and sanctity of life.79 Those opposing the bill were more likely to refer to ‘mothers’, while using the term ‘women’ negatively. For example, those who demanded their rights, ‘destroyed’ foetuses, sought multiple abortions or were naïve victims of promises of liberation were referred to as women. Those deserving care and protection were mothers.

3.1.2 Arguments and themes

Women’s rights and control over decision-making

Despite the bill seeking abortion on request, it was not framed in terms of women’s control over reproductive decision-making, but the right of the medical profession to exercise clinical judgement. The women’s movement had been vocal in its call for abortion on demand but had changed this to abortion on request once it became clear that ‘demanding’ a surgical procedure of any kind from a medical practitioner would not further the cause. A number of parliamentarians used the terms interchangeably, referring to the ‘hysterical and uninformed pressure of a minority clamouring for abortion on demand’, and arguing that a woman who

78 Albury, ‘Speech and Silence’, p. 48. Stephen Lusher introduced a motion into the federal House of Representatives in 1979 with the aim of removing abortion from the medical benefits schedule. The motion was defeated.
expected a doctor to accede to her request was still threatening the doctor’s expertise and control.\textsuperscript{80} Kep Enderby noted that the term ‘abortion on request’, a clear, simple and honest description of the bill, had somehow been made into ‘a dirty expression as though it were a crime’.\textsuperscript{81} But even those who had initiated the bill did not share his directness and ease with its intent. Abortion law reform groups had been warned against running a campaign on the basis of women’s reproductive control. So, although a woman’s right to choose had been supported by public opinion in recent surveys, women’s rights and the changing roles of women were not a particular feature of the debate, with Enderby’s the sole voice for each woman to be able to make the decision most appropriate to herself. While his was a civil liberties rather than a women’s rights argument, it nevertheless assumed a woman’s capacity to make her own decisions.

Lamb, Enderby and Henry Turner each acknowledged the contradictions of an all-male parliament making decisions for women. Lamb claimed that there was ‘a great danger that we will ignore the needs and rights of women in this matter. Laws are made by men, sanctioned by a male dominated church hierarchy and imposed largely by policemen, and yet we will never bear children’.\textsuperscript{82} Alan Jarman, however, asserted that there was no problem with men controlling decision-making, given that it was not women but children who were most affected by the bill. Many opponents of the bill regarded women as selfish in claiming a right to abortion. Turner, for instance, stated that some people argued that a woman had an absolute right to terminate her pregnancy ‘even for the most transitory reason of selfish personal convenience’.\textsuperscript{83} He thought this was as ridiculous as saying that ‘only criminals should say what facilities should be provided to prisoners in gaols’.\textsuperscript{84} For Jarman, given the numbers wanting to adopt, there was no such thing as an unwanted child – only ‘unwanting parents’, or, more accurately, selfish women.\textsuperscript{85} His comment raised the hackles of the president of the Sydney ALRA, Julia Freebury, who called from the gallery, ‘what are we, machines?’\textsuperscript{86}

MPs were keen to protect the rights of others potentially affected by an abortion, most particularly the medical profession.\textsuperscript{87} But Beazley, like Doug Anthony, Phillip Lynch and Don Chipp, was also concerned that there was no provision for parental consent, for a woman’s husband to be consulted, or provision for the father of the ‘unborn child’ to exercise his rights, prior to an abortion. This represented, according to Beazley, an ‘assault on marriages and families’.\textsuperscript{88} It seemed that many parliamentarians were motivated by a desire to assert a man’s position of power and control over his property. For others, such as Chipp, consultation with ‘the husband’ was a question of equity, not paramount rights.

Generally there was little acknowledgment of men’s responsibility regarding contraception or parenthood evident among parliamentarians, and Tony McMichael from ALRA had created a public furor in 1971 when he suggested that a man should have a vasectomy after completing a family.\textsuperscript{89} Nevertheless, there were some exceptions. Doug Anthony argued that it was actually a denial of a woman’s rights to suggest that she alone should be responsible for avoiding or terminating an unwanted pregnancy, since it sanctioned men’s avoidance of responsibility in these matters. Lionel Bowen, later debating a motion for a royal commission on abortion, suggested that the only weakness in the law was that the ‘accessory before the fact’ was never charged.\textsuperscript{90} He wanted to see an amendment that guaranteed that action would be taken against the male parent to deter him from ‘aiding and abetting illegal abortion’.\textsuperscript{91} The use of these arguments to deny women control over decision-making, however, suggests a limited understanding of what constituted women’s emancipation. Similarly, the juxtaposition of rights and responsibility hid attempts by parliamentarians to demand that women act responsibly, while denying them concomitant control over decision-making. Behaving ‘responsibly’ actually meant, for conservative MPs, behaving ‘morally’ within a conservative Judeo-Christian framework. For this reason, MPs could justify not allowing women the control over decision-making that was a necessary adjunct to responsibility. Their fear of the changing roles of women and the threat this posed to their own definition of morality, coupled with an inability to trust women with control over decision-making,

\textsuperscript{87} McKenzie and Lamb included in the bill a broad clause to protect the rights of ‘any person’, who could decline to participate in any termination of pregnancy for any reason. See clause 11 (1), \textit{CPD}, IIR, vol. 83, 10 May 1973, David McKenzie, p. 1964.
\textsuperscript{89} The AMA ruled vasectomy ‘immoral’ and the director of the Catholic Family Planning Centre in Melbourne claimed that ‘wilful mutilation of the human body’ could cause long-term psychological damage to ‘husbands’ who ‘wouldn’t like to think their freedom of choice had been taken away’. See \textit{Age}, 25 September 1971, ‘After the family is born, should men be sterilised?’, Tony McMichael, box 3, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.
\textsuperscript{90} \textit{CPD}, HR, vol. 85, 13 September 1973, Lionel Bowen, p. 959.
\textsuperscript{91} \textit{CPD}, HR, vol. 85, 13 September 1973, Lionel Bowen, p. 960.
suggested that they did not really expect women to behave responsibly either. Instead, legal guidelines and sanctions should remain in place.

Social justice

As noted in chapter three, church leaders and members of the DLP, in particular, were concerned that governments would support abortion for socio-economic reasons simply to avoid responsibility for the social and financial assistance necessary to enable a woman to continue a pregnancy. While concern over abortion for socio-economic reasons did not feature as strongly in the Australian as in the UK debates, a number of speakers referred to this dilemma. Lamb claimed, for instance, that ‘no government should command a social or economic system that does nothing to prevent the need for abortion’, aiming to ensure that choice included both abortion and support to continue with an unwanted pregnancy.\(^\text{92}\) Phillip Lynch, a staunch Roman Catholic, advocated support only, describing abortion as a ‘totally inadequate solution to a pregnant woman’s economic and social needs’.\(^\text{93}\) Beazley, whose opposition to abortion was also religious, recommended confirming the sanctity of life in practical ways, concentrating on Aboriginal child mortality, the needs of disabled children and children in poor families, as well as those of unmarried mothers. He described a bill that ‘eliminated’ children as a tragedy.\(^\text{94}\) While his ideas were worthy of close attention, they were not an alternative to abortion. As Victoria Greenwood and Jock Young argue, abortion out of economic necessity is the tragic result of the failure of governments to provide adequate support.\(^\text{95}\) On the other hand, abortion from choice, whatever the reason, is a fundamental pre-requisite for social equality. This went unrecognised in the parliamentary debates.

Foetal rights

Given the power of the rights discourse, a number of arguments for and against the bill concentrated on supporting or refuting moral points about the ‘right to life’ of the foetus and associated fears about sanctioning a disregard for human life. At a RTL meeting in Coburg in 1972, for instance, obstetrician Frank Hayden claimed that once you get abortion on demand,
'soon you'll get euthanasia – the destruction of old people and cripplers – and you'll be back to the gas chambers of Nazi Germany before you know it'.

Commentator Don Aitken noted that the 'other side' rarely took up the point that abortion resulted in destruction of foetal life, as it was hard to do so effectively. A number of writers have since claimed that, by ignoring questions of morality in relation to abortion, reformers allowed RTL to claim the moral high ground. Instead, they argue, proponents of reform would have done well to acknowledge the ending of a potential life, and admit philosophical and ideological differences of opinion on whether that could be justified. Moss Cass, however, did deal directly with anti-abortion claims in the press, recognising that 'some people say abortion is murder. I am inclined to think it is. I can see that it is destroying life'. This did not change Cass's views on abortion. He saw the question as one that was more complex than the idea that a foetus, potentially, could become a child. The main proponents of the bill also conceded the potential for life that began with a pregnancy. But they did not believe this rendered any subsequent arguments in favour of reform immoral, largely because they did not agree that potential for life conferred the same rights as accrued to those already born. McKenzie, for instance, argued that, to him and to many others, there was a great difference between a fertilised ovum and a foetus of six months gestation. Bill Hayden added that any attempts by RTL to pursue stronger laws would 'quickly reveal the strength of the commonsense attitude to the status of the foetus already incorporated in our laws'.

While, for some MPs, religious and philosophical beliefs about the inviolability of foetal life lay behind their opposition to the bill, there were circumstances under which they could tolerate an abortion. Billy Snedden, Doug Anthony and James Corbett, for instance, conceded some circumstances in which a medical judgement could be made to give first

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96 Age, 8 August 1972, 'Emotions high as 1300 sign a pledge', p. 2. See also Sun, 8 August 1972, 'Abortion: 1400 pledge fight', p. 13. Hayden was the vice president of the RTL and a gynaecologist at St Vincent’s, the largest Catholic teaching hospital in Melbourne. A month after the federal debate, the media reported him as being instrumental in a campaign to have schools for disabled children removed from Kew ‘to preserve the residential environment’ in which people from Kew lived. See Age, 21 June 1973, ‘Kew residents try to move three schools’, John Larkin.
97 National Times, 30 April – 5 May 1973, ‘What we’re talking about are sensible, humane laws on sex’, Don Aitkin, p. 12.
100 CPD, HR, vol. 83, 10 May 1973, David McKenzie, p. 1968. One letter to the editor of the Canberra Times had suggested that ‘if a fertilised egg is a person, then a single building brick is a house and an acorn is an oak tree’. Canberra Times, 3 May 1973, letters to the editor, D.W. Horwood, Yarralumla, p. 2.
consideration to the life or health of the mother, allowing 'revulsion to the taking of human life' to be 'overcome in some limited circumstances'. 102 Even Beazley, a passionate opponent of the bill, referred to circumstances that might justify some abortions. These arguments suggested that most politicians, unlike the RTL, which took an absolutist line, did agree that the rights of the woman were paramount, even if in extremely limited circumstances. Opponents were, however, united in their opposition to abortion on request, which ignored the rights of the foetus, not even pretending 'that there need be any ground of poverty, bad heredity, likely impairment because of such factors as rubella' and so on. 103 As Janet Hadley has noted, the fact that abortion is not an unacceptable moral choice in all circumstances strongly suggests that it is the motives and intentions of aborting women, not the destruction of foetal life, that is at the heart of abortion concerns. 104

Lamb argued, to this end, that those who confined their thinking to the single absolutist principle of the right to life of the foetus ignored the many other rights inherent in the situation. 105 He further questioned whether it was really a reverence for life that drove the RTL when they had not conducted a similar campaign against the 'atrocities committed in Vietnam, against capital punishment, against nuclear testing in the Pacific or against an infant mortality rate amongst Aborigines that is seventeen times higher than for the general community'. 106 While this is a pertinent point, for those MPs whose source of discomfort with abortion was moral, rational or legalistic arguments were unlikely to be convincing. Abortion on request was not an acceptable alternative to the exercise of self-control or taking responsibility for preventing a pregnancy since the law already allowed abortion in particular circumstances. Clarification of the law was unnecessary and simply a 'subterfuge' to introduce a 'major change in social legislation'. 107

Family planning

Speakers in favour of the bill, like the reform lobby, worked hard to associate abortion with the more respectable ideals of 'family planning' and 'responsible' use of 'effective' contraception. The bill made it obligatory for a doctor to provide contraceptive information to a woman seeking an abortion, arguing that an 'adequate and coherent family planning

104 Hadley, Abortion, pp. 83-84.
policy’ would ensure that abortion was ‘a last resort’.\textsuperscript{108} Statistics available in the two years following the legalisation of abortion in South Australia on 8 January 1970 indicated that few women had used contraception prior to seeking an abortion.\textsuperscript{109} Opponents of the bill quoted these figures to discredit the claim that abortion was a last resort for women.

While all speakers agreed that contraception was vital, they differed on whether abortion constituted a legitimate form of contraception. According to Anthony, those who ‘have the power to set the life process in train’ had responsibility to prevent an unwanted pregnancy,\textsuperscript{110} and Turner claimed that ‘every case of abortion amounted really to a failure to use contraceptive methods’.\textsuperscript{111} For those who took this position, it was simpler to assume that women were irresponsible than to grapple with the reality that many women do not have control over either the use of contraception or, indeed, when or with whom they engage in sexual relations. Similarly, moral double standards meant that many young women had internalised the idea that planning for sex by organising contraception branded them promiscuous.\textsuperscript{112}

\textit{Abortion and risk}

Opponents of the bill highlighted both the physical dangers associated with abortion and the moral risk to individuals, families and society. Doug Anthony argued, for instance, that abortion set society on a dangerous course, lessening respect for the lives of those with ‘less potential for usefulness’.\textsuperscript{113} He stated, apparently without irony, that ‘we should not allow ourselves to move … into a kind of society which accepts the subordination of the rights of the individual’.\textsuperscript{114}

There were two main perspectives on physical risk. Proponents of law reform argued that legalisation and regulation were required because women sought terminations regardless of

the law. Without access to safe and affordable abortion, women risked the possibility of death or permanent injury accessing clandestine backyard abortions. On the other hand, legal abortion was a safe and effective procedure, posing little risk to women if carried out by a medical practitioner in sanitary surroundings. McKenzie pointed out that the law, at the time that it was drafted, was designed to protect women from the harm that was associated with any medical or surgical procedure. He added that it was not a matter of whether one agreed with abortion – ‘I do not, and very few people do’ – but whether, when it happened, it occurred under favourable or unfavourable conditions. Opponents of law reform focussed on the short and long-term side effects of abortion itself. They quoted reports of infertility, consuming guilt and danger to the child of any subsequent pregnancy following abortion. They also argued that illegal abortion would continue regardless of legislation, selectively quoting, as ‘proof’, the British Medical Journal (BMJ), the MJA and the later discredited Wynn report, a submission to the Lane Committee of Inquiry into the working of England’s abortion laws, distributed to MPs by the RTL. The Wynn submission claimed, for instance, that multiple abortions could lead to serious pre-natal or perinatal handicap in subsequent children. It was not written by medical authorities or based on medical research, although federal MPs had been led to believe otherwise. Opponents of the bill, who utilised articles from the MJA to ‘prove’ that backyard abortion would remain a problem whether or not termination was legal, failed to quote an editorial in the same issue that actually disproved their argument. This tactical use of information supplied by the RTL allowed the moral focus to remain on the ‘death of innocent children’ rather than the death or injury of adult women, some of whom were already mothers – a problem that might otherwise have swayed some parliamentarians.

RTL campaign

Emotive and inaccurate information of this kind supplied by the RTL convinced some supporters of law reform to oppose the bill. Don Chipp, for instance, stated that he was finally persuaded to vote against it because of the Wynn report, claiming he ‘was confused by so much of this so-called evidence’ from the RTL.  

The RTL ran a well-funded, well-resourced and effective campaign, estimated to have cost between $200,000 and $300,000, although the association only admitted to receiving $20,000 from the Roman Catholic Church. Beatrice Faust believed that the church, the DLP and the Knights of the Southern Cross lent both financial and physical support to the campaign. By comparison, pro-reform groups simply did not have the resources – either financial or physical – to compete. RTL members had vastly outnumbered ALRA and WEL supporters outside Parliament House during the reading of the bill, with buses and chartered aircraft bringing opponents to Canberra. Speakers also referred to the sheer amount of correspondence that they had received on the topic of abortion, although it was only through a newspaper article that it became clear that a number of those letters came from children attending Roman Catholic primary schools. Snedden, for example, referred to the ‘many thousands of letters in opposition to the Bill ... and many hundreds in favour’ that he had received in the course of the campaign. This amounted to at least five hundred letters per day opposing the bill, each personally written and some as long as three pages. Snedden’s view was that those letters were ‘not part of a campaign’, unlike the printed campaign letters from those supporting the bill. The day before the reading of the bill, twelve petitions were tabled in relation to abortion, all opposed to liberalisation of the law.

The impact of the RTL campaign was extraordinary. Although it represented a minority view, the sheer size of the association’s campaign led MPs to overestimate the strength of

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120 Lot’s Wife, ‘Beatrice Faust on Abortion’, p. 16. Karen Coleman also argues that it is generally agreed that RTL is financed by the Catholic Church, either directly or indirectly via the National Civic Council, although the association denies this. See Coleman, ‘The Politics of Abortion in Australia’, p. 87.
122 Age, 27 April 1973, ‘Children’s abortion letters annoy MP’.
opposition to law reform. In turn, this shaped their response, which varied according to their own estimates of electoral safety. Race Mathews spoke angrily about the way in which the RTL had used fear of electoral defeat not only to ensure that the bill would be defeated, but also to prevent proposed amendments. Turner was the only politician who publicly questioned whether the enormous amount of anti-abortion correspondence received by parliamentarians really represented the views of their constituents. Evidence from recently published polls suggested otherwise, leaving him free to exercise his own judgement, although he too voted against the bill.

The RTL had been kept well informed of proposals regarding abortion, allowing members to mount what Chipp called the ‘most cohesive organised pressure campaign that it has been my experience to see since I came into this Parliament’. He regarded it as ‘the height of impertinence’ that, once MPs let the RTL know that the bill had no chance, the association then focused on ensuring the royal commission did not go ahead. The RTL claimed that a royal commission of inquiry into abortion, proposed during debate on the bill, was a device to enable abortion on demand to be brought again before the parliament. Mathews described the group’s claim as a ‘gratuitous … attack upon the freedom of inquiry in this country’. Two-thousand-five-hundred telegrams were delivered to MPs in the two days prior to the debate, ‘paid for by God knows who’, demanding they ‘vote against the amendment’. ‘What that means in simple language is the Association will forbid this Parliament and members of this Parliament spoiling a good argument by the addition of a few facts.’ Chipp foreshadowed a motion for an inquiry into abortion, stating that he would ‘not be daunted by a pressure group such as this’.

Jarman on the other hand commented that supporters of reform had attempted to ‘brand the anti-abortion on demand movement as some sort of sinister plot by the Roman Catholic Church’. He wanted it noted that Anglicans, Baptists and people of many other faiths,

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125 CPD, HR, vol. 84, 17 May 1973, Don Chipp, p. 2282.
130 CPD, HR, vol. 84, 17 May 1973, Don Chipp, p. 2282.
including his own Presbyterian Assembly, rejected liberalisation of abortion laws. Jarman exaggerated. While it was true that church members held diverse views on abortion, Protestant church leaders generally favoured reforms to abortion laws under at least some circumstances. The opinions of different church governing councils in relation to abortion have been examined in chapter three.

3.1.3 Outcomes

Amendment to the abortion bill

It was clear to members of parliament well before the day of the debate that the bill was not going to be passed as drafted. An *Age* editorial published immediately prior to the debate commented prophetically that it was a sad fact 'that realistic consideration of abortion reform' had been 'postponed for a decade'. In order to avoid the subject being 'swept under the carpet', Mathews had prepared an amendment to the bill, providing for a royal commission to inquire into and report within twelve months on a number of questions relating to abortion and unwanted pregnancies in Australia.

Mathews argued for the royal commission as a means of obtaining information, informing the public and reconciling opposing points of view. The confusion over the legitimacy and use of statistical and other published information informing speeches in the debate certainly suggested the need for clarification about the sources and validity of much of this data. Turner, who seconded the motion, presented the amendment as a third option for those who could not support the bill, but did not want to ignore the problem of abortion. Opponents of abortion referred to the amendment as a 'subterfuge' for bringing abortion on demand back into parliament, a claim directly attributable to the RTL. Interestingly, pressure groups both for and against reform saw an inquiry as a device to postpone decision-making – the RTL because it gave MPs the means to avoid declaring their views publicly, ALRA because adequate information already existed to justify law reform. The motion for the royal commission was defeated by eighty votes to forty-two. Only six Liberal Party members voted for it. The abortion bill was also defeated, by ninety-eight votes to twenty-three. The

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135 *Australian*, 3 May 1973, 'Uren says he will back abortion bill', p. 4.

prime minister and nine other cabinet ministers voted for the bill, while all members of the opposition voted against it.\textsuperscript{137}

\textit{Abortion inquiry}

After the defeat of the bill, Mathews foreshadowed another motion for an inquiry into abortion.\textsuperscript{138} Mathews’ two-part motion, proposed in September 1973, took a somewhat different form from that foreshadowed.\textsuperscript{139} The first part was a judicial inquiry into the social, educational and legal aspects of sexual relationships with particular emphasis on the concepts of responsible sexuality, responsible parenthood and family life. The main focus of the inquiry was to be fertility control and sex education, and included information-gathering around pregnancy support services. The second part of the motion proposed that all matters relevant to the inquiry be investigated ‘with regard to the sanctity and preservation of life, and to enabling the maximum number of persons to act according to their own religious, social and moral convictions’.\textsuperscript{140} Charles Adermann had also foreshadowed a motion for an inquiry aimed at discouraging ‘promiscuity or denigration of moral responsibility’ and emphasising the ‘sanctity and preservation of life’.\textsuperscript{141} He emphasised the similarity between his proposal and Mathews’ amended one.

Mathews was clearly mindful of extending the terms of reference to take into account criticisms raised in May that the abortion bill did not give enough consideration to prevention of conception. The second part of the motion appeared designed to appease those who saw any inquiry as a pretext for acceding to abortion on demand.\textsuperscript{142} Nevertheless, opponents accused Mathews of using ‘various kinds of plastic surgery’ to try to ‘camouflage the … right or otherwise of women to have legalised abortion’.\textsuperscript{143} Mathews had consulted ALRA committee members about the terms of reference for the motion.\textsuperscript{144} He described abortion as a symptom of shortcomings in sex education and family planning services, blaming ignorance and irresponsibility on the part of many couples, compounded by irresponsibility on the part

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\textsuperscript{137} See \textit{Age}, 11 May 1973, ‘Abortion bill crashed, 98 to 23, as crowds chant outside the House’; \textit{Australian}, 11 May 1973, ‘Essential cases already provided for – Anthony’, p. 7. David McKenzie sees it as noteworthy that it was predominantly ministers that supported the bill, suggesting that they felt safer in their electorates than their non-ministerial colleagues. Interview, David McKenzie, 16 June 2004.
\textsuperscript{138} \textit{CPD}, HR, vol. 84, 23 May 1973, Race Mathews, p. 2473.
\textsuperscript{139} \textit{CPD}, HR, vol. 85, 13 September 1973, Race Mathews, pp. 945-69.
\textsuperscript{140} \textit{CPD}, HR, vol. 85, 13 September 1973, Race Mathews, p. 946.
\textsuperscript{142} \textit{CPD}, HR, vol. 85, 13 September 1973, Race Mathews, p. 950.
\textsuperscript{143} \textit{CPD}, HR, vol. 85, 13 September 1973, Francis Stewart, p. 954.
\textsuperscript{144} \textit{ALRA newsletter}, September/October 1973, ‘Black day in parliament (again)’, Jan Harper papers, AN78/120, University of Melbourne archives.
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of a society that failed to make proper arrangements for those services. Chipp, who seconded
the motion, was direct about wanting a proposal that would be both effective and acceptable
to the majority of members of the House.

A foreshadowed amendment, sponsored by Malcolm Fraser, extended the terms of reference
of the inquiry, emphasising the sanctity and preservation of human life. Fraser described
Mathews' motion as 'negative, misdirected and inadequate', based on an 'unproved
presumption that greater sexual and contraception knowledge would provide a solution' to the
problems raised. Fraser wanted a greater emphasis on the psychological, social and
economic factors that led to unplanned pregnancies, with a focus on personal, rather than
purely sexual, relationships. According to Chipp, because the word 'sex' was not mentioned
in the amendment, it altered the nature of the research substantially, and muddied the terms of
reference. John Gorton also thought that the removal of the phrase sex education rendered
the amendment ineffective. He preferred to put off the decision to investigate abortion for a
year or two, until it could be done effectively. In ALRA's view, Fraser's amendment omitted
'most of the potentially valuable clauses' from the original motion.

As the debate came closer to being finalised, MPs debated the topic with increasing heat.
Donald Cameron highlighted the emotive language used by opponents of law reform as
evidence of the degree of emotion brought into what should have been a rational, emotion-
free debate. Keith Johnson was mindful that the debate could not be otherwise given the
strength of feeling surrounding abortion. He cited the enormous amount of information that
had been available to MPs and in the community and added that there had now been ample
time to make a decision on the matter. He regretted that the House had not been prepared
to take a positive stand on 10 May when the abortion bill was debated. Fraser's amendment
was finally supported by eighty-five voters to eleven, despite undisguised dissatisfaction with
the wording. But MPs were keen to finalise the debate and move on to less controversial
topics.

As it turned out, the Royal Commission on Human Relationships was a controversial,
thorough and useful inquiry, although the specific focus on abortion was lost in an inquiry

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146 Chipp noted that the amendment now referred to an inquiry into 'the extent and effectiveness of
existing education programs to provide a sound basis for inter-personal relationships', rather than the
effectiveness of sex education programs to do so. CPD, HR, vol. 85, 13 September 1973, Don Chipp,
p. 958.
147 ALRA newsletter, September/October 1973, 'Black day in parliament (again)', Jan Harper papers,
AN78/120, University of Melbourne archives.
into 'everything except abortion', according to Mungo McCallum.\textsuperscript{149} The commission found that the existing abortion law caused more harm than it prevented by driving abortion underground, thus being ineffective either in preventing abortion or in regulating abortion practice.\textsuperscript{150} One of the commissioners, the Reverend George Martin, commented, 'It is hypocritical that a society can act to deny abortion to women quite capable of making a decision about an unwanted pregnancy, while at the same time claiming concern about physical and mental health, quality of life, poverty and human rights'.\textsuperscript{151} He was referring not only to the royal commission but also to the findings of the Henderson Commission of Inquiry into Poverty, first set up in 1972.

### 3.1.4 Implications

While the abortion bill was presented as a non-party bill subject to a conscience vote, the fact that ALP members had proposed the bill and all Liberal MPs opposed it – even those who had previously advocated reform – suggests that the outcome was more about adversarial party politics and fear of electoral defeat than about conscience. Parliamentary support for an inquiry may have been a stalling device to avoid abortion law reform, or a way to move forward from what appeared to be a political stalemate. Surveys and opinion polls showed that most Australian voters were in favour of at least some form of abortion law reform, leading Allan Barnes of the \textit{Age} to suggest that the attitude of the majority of MPs was 'determined by pure political muscle of the most naked kind'.\textsuperscript{152} The RTL campaign was 'one of the best organised lobbying campaigns since the doctors-bankers-oil companies push against the Chifley Government in 1949', he said, and 'it worked just as effectively'.\textsuperscript{153}

\textsuperscript{149} In fact the report was not released, no doubt for political reasons in the midst of the election campaign in 1977, but presented to the governor general after controversial recommendations were leaked to the press. According to Stefania Siedlecky and Diana Wyndham, only twelve copies of the second volume were distributed given the fact that it was viewed as scandalous at the time. The report remains arguably the most comprehensive account of sexual and family behaviour in Australia. See S. Siedlecky & D. Wyndham, 1990, \textit{Populate and Perish: Australian Women’s Fight for Birth Control}, Allen & Unwin, Sydney, p. 17. Anne Deveson, one of the commissioners, also published an account of the royal commission. See A. Deveson, 1978, \textit{Australians at Risk}, Cassell, Sydney.

\textsuperscript{150} E. Evatt, 1977, \textit{Final Report: Royal Commission on Human Relationships (RCHR)}, Australian Government Publishing Service, Canberra, vol. 1, part 1, ‘Introduction, Summary and Recommendations’, p. 76, box 1, Karina Veal papers, AN93/68, University of Melbourne archives. Recommendations 70-102 related directly to abortion, including the recommendation that abortion on request should be free of legal regulation up to twenty-two weeks gestation and after that time only to preserve the life or in cases of grave risk to the health of the mother. Other recommendations reflected the abortion bill, particularly those regarding consent, protection for doctors, contraceptive advice and access to services. Recommendations for access to abortion included the establishment of public and private services as part of broader general health services within a context of a range of fertility control services.


\textsuperscript{152} \textit{Age}, 11 May 1973, 'Conscience yields to muscle', Allan Barnes.

\textsuperscript{153} \textit{Age}, 11 May 1973, 'Conscience yields to muscle', Allan Barnes.
Barnes was interested in seeing the response to the 'so-called small "I" liberals' who 'left their principles at home' for the debate.\textsuperscript{154} Tony Lamb also claimed, in a letter to ALRA following defeat of the bill, that the outcome was 'due to Political pressure rather than a display of conscience by individual Parliamentarians'.\textsuperscript{155}

In a postscript to his earlier advice to WEL regarding abortion law reform, Peter Cullen wrote on 10 August 1973 that a law granting abortion on request would not, in the current climate, be passed by parliament. He believed that members of the opposition had folded under pressure from the RTL, despite having told WEL members that they supported abortion law reform.\textsuperscript{156} Faust argued that the parliamentary discussion was not so much a debate as the presentation of a series of prepared monologues influenced by RTL propaganda and the impact a particular position was calculated to have on an electorate.\textsuperscript{157} While she had advocated the introduction of repeal bills in parliament, in retrospect Faust believed the bill had come before ALRA had enough members to conduct a campaign without straining resources, and she believed the timing of the bill set back the cause of abortion law reform.\textsuperscript{158}

The WAAC, having run a concerted campaign with minimal resources, viewed defeat of the bill as an indication of the strength of patriarchal feeling. \textit{Sisters} described this most colourfully as 98 against, 23 for, '121 scum pricks in all'.\textsuperscript{159} Pro-choice campaigners experienced the behaviour of politicians who had privately espoused freedom of choice for women as betrayal, and declared that they would ignore legislation and set up abortion services.\textsuperscript{160} This was a course of action that some have seen as more effective in terms of actually achieving reproductive rights.\textsuperscript{161}

\textsuperscript{154} \textit{Age}, 11 May 1973, 'Conscience yields to muscle', Allan Barnes.
\textsuperscript{155} 16 May 1973, letter from Antony Lamb to ALRA, box 17, Wainer papers, MS13436, SLV.
\textsuperscript{158} B. Faust, 'President's Report', ALRA, 18 March 1974, Betty Marginson papers, AN79/110, University of Melbourne archives.
\textsuperscript{159} \textit{Sisters}, vol. 1, no. 2, June 1973, pp. 1-2, box 2, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
As we have seen, parliament was concerned with the lack of clarity in law for doctors as well as the blatant profiteering of medical abortionists operating outside the public hospital system. The threat that non-medical abortionists posed to women and to the medical profession was also of concern. Therefore, interest lay in expanding the legal definition of a therapeutic abortion to allow medical practitioners to exercise control over the practice.\textsuperscript{162} But had legislation reflecting conservative medical practice been passed, it would have had the effect of reducing women’s access to abortion, particularly in NSW and Victoria, where private clinics had begun to offer abortion, in effect on request, as well as supporting ongoing illegal practices. David McKenzie argues to this end that defeat of the bill was a Pyrrhic victory for the RTL. Given publicity surrounding the debate, ‘every household was discussing abortion around the kitchen table’, resulting in more informed and open-minded attitudes.\textsuperscript{163} For McKenzie, this has meant that since 1973 every woman wanting an abortion has been able to access one. Kristen Luker agrees that the abortion debates of the 1970s made it acceptable for people to discuss whether a change in the law was required, as well as the moral basis for such a change.\textsuperscript{164} She argues that, in practice, medical control of abortion became ‘nothing more than a legal fiction’.\textsuperscript{165} But, in fact, it was far from clear in 1973 that greater access to abortion would follow defeat of the bill.

3.2 The Trayling Proposal in Victoria

Undeterred by federal inaction, on 20 May 1973, Faust wrote to Lamb asking him about the attitudes in the Victorian branch of the ALP. She was ‘thinking in terms of a private member’s bill in the Legislative Council’.\textsuperscript{166} Faust had two Liberal Party members in mind, although she did not name them; in the end, only John Tripovich from the ALP looked likely.

3.2.1 Process and presentation

In October 1973, a month after Mathews had proposed a judicial inquiry into the social, educational and legal aspects of human relationships, Ivan Trayling suggested an abortion

\textsuperscript{162} See, for example, the response of the National Health and Medical Research Council (NH&MRC), cited in chapter 3, footnote 233.
\textsuperscript{163} Interviews, David McKenzie, 21 January & 16 June 2004.
\textsuperscript{164} K. Luker, 1984, Abortion and the Politics of Motherhood, University of California Press, Berkeley, p. 98.
\textsuperscript{165} Luker, Abortion and the Politics of Motherhood, p. 94.
\textsuperscript{166} 16 May 1973, letter from Beatrice Faust, ALRA, to Antony Lamb, MHR, box 17, Wainer papers, MS13436, SLV.
inquiry in Victoria. In 1970 Trayling had flagged his interest in abortion law reform, claiming the government had been ‘blackmailed’ by the DLP with an ultimatum to ‘oppose abortion law changes, or lose vital DLP preferences’. At that time Trayling was the Labor candidate for the Liberal-held seat of Prahran and a member of ALRA. Now in parliament in 1973, Trayling moved to appoint a joint select committee of both the Legislative Council and the Legislative Assembly to inquire into and report upon abortion in Victoria. Trayling argued that an inquiry was necessary as the Menhennitt Ruling had failed to clarify abortion law in Victoria, leaving ‘the way open for extortion, blackmail and the like’. He was supported by criminologist Paul Wilson, who maintained that the actual practice of abortion appeared to ‘have remained unaltered during the twenty-six-month period after the Menhennitt Ruling’. Trayling claimed that abortion law reform would drive out backyard operators and ensure medical regulation of abortion practice. While the motion was to seek an inquiry into the problem of abortion, the debate focussed more particularly on MPs’ views on abortion law reform. The president of the House allowed a fair degree of latitude, acknowledging that it was difficult to confine the debate to the question of whether a committee should be formed, without commenting on abortion in general.

In Jo Wainer’s view, the Trayling motion was ill-timed, following on the heels of the Commonwealth inquiry. As such, it was unlikely to succeed, but is nonetheless notable as the only attempt to debate abortion in Victorian parliament in a systematic way. When debate opened on 28 November 1973, Acting Premier Murray Byrne dismissed the motion as the work of an ideologue. Byrne claimed that Trayling had considered getting ‘on some yacht’ to protest against the French government’s nuclear tests in the Pacific, but had brought this emotive private member’s motion before the House instead. Byrne suggested that Trayling’s strong views on a number of subjects, including opposition to the Vietnam War, branded him a ‘crusader who has sincere views’, but not a realist. Byrne also highlighted

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169 The terms of reference included the extent of the existing practice; any changes in practice since the Menhennitt Ruling in 1969; the attitude and responsibilities of law enforcement agencies; the factors leading to unwanted pregnancies and abortions; the availability of services to assist women, including single parents; and an evaluation of family planning services.
172 Interview, Jo Wainer, 22 May 2002.
173 Trayling’s statement prior to the vote also indicated his lack of confidence in the motion. ‘With certain knowledge of the outcome ... I sincerely hope that at some time in the not too distant future another move will be made, preferably from the government, for an inquiry of some sort’. See VPD, LC, vol. 315, 28 November 1973, Ivan Trayling, p. 2676.
Trayling’s belief that women should have a choice regarding abortion. Given Trayling’s wide-ranging introduction to the motion, it is pertinent that Byrne chose to counter the motion by linking it with the controversial idea of ‘women’s choice’. On the other hand, medical practitioners were treated with the greatest respect and, like his colleagues, Byrne was careful to note that doctors were already performing abortions legally. One of the differences between those arguing for and against abortion law reform was interpretation of the Menhennitt Ruling. Conservative parliamentarians argued that the ruling had clarified the principles of lawful and unlawful abortion upon which the Victorian courts had been acting for many years. Proponents of law reform argued that the practice of abortion had not changed since the ruling, strongly suggesting that medical practitioners lacked confidence in their legal position. Charles Hider, for example, argued that many doctors refused to carry out abortions, not for religious or moral reasons, but because they believed they risked criticism or prosecution.176

There was less concern about the electoral response to abortion debates in Victoria than there had been in federal parliament. Byrne quoted from a recently published book, citing surveys and Gallup polls that suggested that abortion, while controversial, was not significant in decision-making at the federal election.177 His point was that the women’s vote – and therefore the impetus for abortion law reform – might not have been as significant as anticipated. However, Henry Mayer’s analysis indicated that some outspoken proponents of abortion law reform in the federal arena had achieved an increased vote.178 Speakers in Victoria’s legislature may thus have felt freer to express their own views about abortion.

3.2.2 Arguments and themes

*Women’s rights and control over decision-making*

Speakers similarly appear to have taken the role of women more seriously than their federal colleagues. No doubt the strength of reaction from the women’s movement and from the press following the outcome of the debates in the Commonwealth parliament added weight to the growing importance of the ‘women’s vote’. Trayling claimed that if women were in power they would have acted on abortion law reform already. Where questions of social

change were concerned, 'men are found to be lacking in courage, remarkably slow to recognize social change and incredibly reluctant to consider the views of the majority of the people who elect them'. Opinion polls had shown strong support for abortion law reform, although parliamentarians remained nervous of the small but vocal opposition. Politicians thus distanced themselves from abortion on request even when supporting reform.

Charles Hider saw the role of parliament and democracy as upholding the importance of the individual. It was this, rather than a belief in women’s choice, that underpinned his opinion that the 'mother's' views about abortion were extremely important and that women should be included in any inquiry. Other speakers lauded his moderate views, including Roy Ward, who had originally favoured a direct referendum among women only, but had been convinced by Hider's comments that men should bear an equal responsibility with women. Again, the juxtaposition of responsibility and choice, with control over decision-making denied to women on the pretext that men should also be 'responsible' for the abortion decision was evident in the debate, although there was little reference to men's responsibility regarding contraception or parenthood. Murray Hamilton argued that the problem of unwanted pregnancy could be resolved either by supporting women or preventing the pregnancy. Doug Elliot agreed that women 'in trouble' deserved support and compassion, as well as every encouragement to continue with an unplanned pregnancy, but thought it was 'presumption' to tell a woman what she should do with her own body. His interest in an inquiry centred on a concern that there were too many one-parent families in Australia.

Social justice

While, in the federal debates, women's 'right to choose' was equated with abortion on demand, for which there was little support, in the Victorian debate, abortion on demand was also linked with socio-economic factors. This suggested that some MPs recognised that it was their socio-economic situation, rather than selfishness or desperation, that had long driven women's reproductive decision-making. Doug Elliot, for instance, shocked by the findings of the Henderson report into poverty, argued in favour of abortion. He gave examples of hardship from his electorate that suggested that many women who sought abortion were deserted wives with a number of children. Alexander Knight also stated that

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abortion was common in his western suburbs electorate because of the economic situation of some families. While sympathetic, he wanted to clarify that he was 'not a supporter of abortion on demand'. He was keen to ensure that the government focussed on eliminating or minimising the socio-economic and cultural factors that led to abortions. Herbert Thomas added that if abortion were to be legal, it should be universally safe and accessible, unlike the current situation, which discriminated in favour of the wealthy. Those who represented disadvantaged electorates were most likely to support Trayling's motion.

Hider pointed out that if the community was not prepared to accept abortion, it must be prepared to accept financial responsibility for the single mother and her child. Conservative opponents of abortion law reform, however, largely denied the need for such support or for abortion on socio-economic grounds, pointing to unmet demands for adoption. Because of the precedent set in England, where abortion legalised on socio-economic grounds was increasingly equated with abortion on demand, it seemed that MPs were fearful of acknowledging such grounds for abortion in Victoria. Fiscal concerns of the Liberal government may also have encouraged this attitude. While the RTL and other anti-choice advocates argued that there was no such thing as an 'unwanted' child, proponents of law reform argued that the problem of unwanted children was enormous, both socially and economically. The ill-treatment of children was one aspect of that problem. Hider added that the assumption that women should 'breed for other people' was a 'most callous disregard ... for the role of a parent and of the family unit in bringing up the child'.

Speakers largely equated unwanted pregnancy with single parenthood, arguing that the stigma attached to an unwanted pregnancy led women to abortion. It is certainly true that single mothers were stigmatised, as Shurlee Swain and others have pointed out. However, the assumption that children born to single mothers were 'unwanted' was increasingly inaccurate by 1973, and it was unlikely that those who denied the need for socio-economic abortion would have supported generous benefits to single mothers anyway. MPs' denial of the demand for socio-economic abortions among married couples suggested either an inability to comprehend the extent of poverty facing many Australian families, a lack of political will to do so, or fear that such admission would usher in abortion on demand.

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192 See chapter three for further details.
Foetal rights

Eric Kent noted with some disappointment that, while there had been a considerable amount of argument about the rights of the unborn, much less emphasis had been given to the importance of economic and social equality to achieving rights for children and adults after birth. Hider also stressed that, rather than rights, the most important consideration was the quality of life of the individual.

Anti-choice advocates, however, stressed the rights of the foetus, capturing what appeared to be a morally superior argument. Proponents of law reform made no attempt to assert an equivalent moral position in relation to women's decision-making. Instead, they generally utilised law, logic and science to dispute the rights of the foetus. This was also reflected in the parliamentary debates. Hider, for instance, agreed about the importance of life, but not about the point in time at which a life should be protected. Trayling argued that a foetus was not viable under a period of twenty weeks and that legal considerations did not accrue to an unborn child until after birth. This was a problematic argument for advocates of reform. As Roy Ward and Murray Hamilton pointed out, the age of viability of the foetus was subject to change with advances in medical science. Hamilton used information provided to him by the RTL to suggest that the differences between a 'six-week old embryo, a six-month old foetus, a one-week old child or a mature adult were merely stages of development and maturation', while the Roman Catholic Church justified its opposition to contraception by including gametes in this continuum. The RTL commonly presented a foetus as a fully developed child and opponents of abortion used 'foetal rights' and 'children's rights' interchangeably. Of course, as noted in relation to the federal debate, even if the foetus was deemed to be a person, this 'does not resolve the issue of a woman's autonomy nor define when she has a right to decide to have an abortion'.

Like many of his colleagues, Roy Ward argued that the Menhennitt Ruling was consistent with a position that accepted the rights of the unborn child, as the ruling did not support abortion on demand. Such comments indicated that MPs viewed the ruling as a

199 Hadley, Abortion, pp. 71-72.
compromise where, at least in theory, abortion was available to women, thereby regulating the practice without giving the women concerned control over decision-making.

**Family planning**

Emphasis on preventing unwanted pregnancies through increasing access to ‘family planning’ education, information and products featured strongly in both federal and state debates. Hider argued that if the context in which unwanted pregnancies occurred were ascertained, abortion would be ‘totally unnecessary’ – at least for social reasons.\(^{201}\) Both Hider and Trayling also highlighted current population control mantras in arguing that limiting births benefited the state, as well as individuals.\(^{202}\) Yet Trayling acknowledged that, while contraception might appear to be the ideal solution, the time before reliable, safe and widely accessible contraception was available was decades away.\(^{203}\) And Tripovich added that ‘facing the facts of life’ required recognition that ‘no matter to what extent the economic factors are dealt with and family planning help is made available, there would be unwanted pregnancies’.\(^{204}\) This was one of the few acknowledgments that abortion was a component of birth control, rather than an alternative to contraception. Largely, both in parliament and within the broader community, abortion was portrayed as a dangerous and complicated ‘last resort’ of the unlucky or the foolish.

**Abortion and risk**

A number of claims had been made in and outside federal parliament that abortions were unsafe for women. Articles in the *MJA* fuelled these claims. For instance J. Newlinds had argued that, despite legislation, abortion continued to pose a risk to women of haemorrhage and infertility, as well as spontaneous abortion and premature labour in future pregnancies.\(^{205}\) This did not go unchallenged, however. G. Joslin countered that claims that statistics proved that abortion was dangerous per se relied on reports that ignored the period of gestation and the experience of the doctor, and did not differentiate between minor and major complications.\(^{206}\) Trayling introduced claims about the dangers of abortion into the Victorian parliament in order to refute them. He noted, for instance, that medical sources agreed that

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abortion was five to ten times safer than childbirth. He also noted that there was no proof that abortions led to sterility or severe psychological sequelae. There were few arguments to dispute Trayling’s claims, suggesting that doubts that had been raised in federal parliament regarding the validity of information provided by the RTL on this matter had been acknowledged.

Interestingly, there was little reference to the dangers posed to women by backyard abortions. Ivan Swinburne, from the Country Party, was exceptional in this respect. While backyard operators might exist, he said they did so in ‘almost every sphere of activity’. Swinburne’s position was consistent with arguments that deemed women responsible for their own predicament and saw the dangers of backyard operations as a consequence of ‘immorality’. The impact of recent challenges to women’s traditional role by the women’s liberation movement was yet to have substantial effect in parliament, particularly among older, more conservative politicians. On the other hand, the actions of the RTL, which encouraged a conservative view of women, continued to influence many Victorian parliamentarians as well as their federal colleagues.

RTL campaign

Prior to the Trayling motion in October 1973, three petitions were tabled in state parliament requesting that the House reject any proposal to alter existing abortion laws. A further petition opposing Trayling’s motion was tabled in November 1973. In the lead-up to the debate, Swinburne had received hundreds of letters from a ‘wide variety of people with differing interests’, 99 per cent of whom opposed the motion. Trayling also referred to the amount of correspondence received from the RTL and expressed his disappointment with its manner and style, which he found ‘offensive, in part highly objectionable and very careless with the truth’. As in federal parliament, members of the RTL were keeping a close watch on debates in the Victorian parliament. During his speech, Trayling received a telegram from the RTL alleging that his motion was a tactic to obtain legalised abortion.

Apart from Trayling, parliamentarians on both sides of the House were generally careful, even sycophantic, in their treatment of the RTL, suggesting that the organisation was

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perceived as powerful. John Walton did not agree with the views of the RTL, which he said constituted a vocal minority. However, rather than criticise them, he suggested that they be congratulated for taking an interest in the matter and expressing a point of view within ‘the framework of the Parliamentary law-making process’. Elliot too expressed admiration; while many members of the association had been described as emotional, he had found them dedicated, ‘stimulating’, worthy of ‘a high respect’. Hamilton criticised Trayling for the ‘caustic comments’ he made about a group of ‘extremely sincere, dedicated people working for a goal in which they deeply believe’. Even those who supported Trayling’s motion went to some lengths to ensure that they did not get offside with the RTL. For example, Dolph Eddy stated that he had never said that he supported abortion on demand and ‘probably will not do so’. He offered his thanks to members of the RTL who had corresponded with him and outlined their case.

The RTL ran a powerful and successful campaign if defeat of the bill alone is a measure of success, and did so with the physical and financial backing of the Roman Catholic Church, which, as we have seen, was the main religious body opposing an inquiry into abortion law reform. Opinion polls indicated that while the official position of the church might be anti-abortion, this was not the view of all of its members. Rather, they wanted to see the most satisfactory social solution to the problem. Eddy argued that an inquiry that could call upon ‘top medical practitioners, gynaecologists and members of the nursing profession to give evidence’ might find such a solution. Although it was not stated as often or as emphatically in the Victorian as in the federal debates, those able to provide ‘expert’ evidence were assumed to be medical personnel.

Select Committee

Despite the amount of time that went into arguing the pros and cons of abortion law reform, the motion under debate was the appropriateness of a select committee to examine abortion.

217 The specialist committee set up by the Methodist Church, for instance, noted that abortion laws in Victoria resulted in ‘hypocrisy, discrimination against the poor, unscrupulous medical practitioners who exploit the human situation for personal gain, and “backyard” abortions, performed ... with attendant squalor, shame, infection, morbidity, sterility and the occasional death of a mother. It therefore behoves us to consider what are the alternatives offering’. Cited in VPD, LC, vol. 315, 28 November 1973, John Tripovich, pp. 2670-01.
Concern centred on the fact that the terms of reference focused on abortion without detailing an alternative to it. Murray Byrne claimed, for instance, that 'no honorable member would be prepared to argue, for whatever reason, that abortion is naturally a good thing'. Elliot, while not opposed to an inquiry, did not trust the members of a joint select committee to keep an open mind. In Victorian parliament, as federally, speakers had little confidence that the members of the House would have the time or knowledge to undertake an inquiry of the size suggested. It was clear that differences of opinion between MPs, fuelled by the adversarial nature of party politics, were so strong, and opinions in relation to abortion so deeply held, that the members did not trust each other to reach a balanced decision.

Trayling had not posed any alternatives to a select committee because, under its procedural rules, the House could only set up a select committee consisting of its own members. According to some MPs, a Victorian inquiry would be useless, first, because the Commonwealth government had recently set up a similar inquiry, and second, because medical practitioners were not restricted by state legislation. Byrne added that examining the practice of unqualified abortionists would be almost impossible given witnesses' reluctance to discuss illegal practices. Other speakers suggested a select committee would be a waste of time and that the government could implement law reform by simply codifying the law and putting the Menhenitt Ruling in the statute book so that 'people will know where they stand'. There was wide support for law reform on the basis of the Menhenitt Ruling. Tripovich suggested that anyone who wanted an 'easy way out of this problem' could not fail to support the ruling.

### 3.2.3 Outcomes

Trayling's motion was defeated. Liberal and Country Party members voted against the motion en masse. This included Hider, who clearly supported abortion law reform. Only seven members of the ALP voted for the motion, each of them representing poor electorates north and west of Melbourne and in Gippsland. There have been no similar debates either for

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222 Nevertheless, these arguments did not lead to calls for a uniform federal law. South Australian laws requiring an applicant for abortion to be a resident of the state for two months could not be enforced because the Commonwealth Constitution forbade a resident from one state being discriminated against in another state according to the *Sunday Observer*, 20 September 1970, 'Doubt on SA abort law', Don Whittington, p. 8. Jo Wainer also suggested, in an interview on 22 May 2002, that the Commonwealth inquiry had the resources to address the broad questions raised. She thought that a simultaneous Victorian inquiry would stretch the resources of the small organisations that the government relied on to provide well-researched information and access to community views.
an inquiry into abortion or for abortion law reform in state parliament in Victoria since that time. There were, however, ongoing calls for abortion law reform to catch up with practice. State Opposition Leader Clyde Holding, for instance, pointed out in Victorian parliament in November 1973 that the Menhenott Ruling did not establish any right of conscientious objection for members of either the medical or nursing professions. This was in response to union claims that nurses were forced to assist in abortion operations against their will. A survey of theatre staff attitudes, carried out at the Queen Victoria Hospital, suggested that about a quarter of staff were adversely affected and should be given the option of different rosters. Carl Wood, who was involved with the study, suggested that the reluctance of medical staff to perform abortions in Victoria was partly attributable to conservatism, partly to the association of abortion with criminal activity, but also to the absence of true legal protection.

Ian Truskett and David Pfanner, on a different note, suggested that continued attempts to alter abortion laws in Australia were unnecessary and might lead to even more rigid interpretations of the law, further restricting women's access to abortion. They suggested that the impetus for abortion law reform would come about with the gradual realisation by the bulk of the community that they had a right to the same quality of medical care as their 'wealthier compatriots'. Yet public hospitals were clearly facing problems dealing with the numbers of women seeking an abortion. Truskett and Pfanner called for resources to be directed

326 The number one branch of the Hospital Employees Federation went before the Hospital and Benevolent Homes Wages Board to ask for provisions for protection of conscientious objectors to abortion to be inserted into Victoria's main general hospital award on 13 November 1973. The majority of people demonstrating outside the board were members of the RTBU. The nursing committee of the National Health and Medical Research Council (NH&MRC) had previously determined that nurses had a right to refuse certain medical and surgical procedures if they had a conscientious objection. The Royal Victorian College of Nursing had not received any complaints from nurses. See Age, 13 November 1973, 'Nurses seek right not to help with abortions', p. 4. See also ALRA Newsletter, November/December 1973, Jan Harper papers, AN78/120, University of Melbourne archives, and VPD, LA, vol. 314, 14 November 1973, Bruce Chamberlain and Alan Scanlan, pp. 2016-17.
327 C. Wood & K.W. Waldron, Department of Obstetrics and Gynaecology, Monash University, cited in Abra, no. 6, 25 May 1971, p. 3, Betty Marginson papers, AN79/110, University of Melbourne archives.
331 Medical superintendent of the Royal Women's Hospital, cited in ALRA Newsletter, March/April 1974, Betty Marginson papers, AN79/110, University of Melbourne archives.
toward private centres with 'fewer obstacles ... placed in patients' paths by the community in general and by the patients' medical practitioners in particular'.

3.2.4 Implications

The fact that the Trayling motion was defeated when it was simply a bill for an inquiry into the problem of abortion, not for abortion law reform per se, suggests two things. The first was that the RTL, which had opposed the bill, was a powerful voice against abortion law reform. The second was that the state Liberal government was not willing to risk the loss of DLP preferences by supporting any debate about law reform that might arise from such an inquiry. Again, it was adversarial party politics and fear of electoral defeat that determined the outcome of the bill.

For the women's movement and other abortion law reform campaigners, the defeat of Trayling's motion and the denial of the need for reform of abortion laws confirmed a growing conviction that parliamentary processes systematically excluded women, limiting their rights to full citizenship. Albury argues that the state response to women's calls for control over their own sexuality and reproduction met some demands for greater fertility control without surrendering to demands for female autonomy. On the other hand, medical control was confirmed in terms of control over both moral and medical decision-making and the delivery of services.

There were notable shifts among members of ALRA and the Women's Liberation Movement (WLM) following the defeat of the bills. Many became increasingly cynical about the possibilities of change via parliament and confirmed in their belief about the limitations of law reform as a vehicle for liberating women from 'reproductive slavery'. The rejection of the abortion bill and the experience of being excluded from parliamentary debates and medical and health policy decision-making, was, according to many activists, a turning point in the campaign for women's control over reproductive decision-making. As Bon Hull stated, 'women knew then, that any changes in gaining control of their own bodies, their own fertility, could only be achieved by their own action'. ‘We found within limits we could demand equal pay, equal education and equal job opportunities’, she said, 'but to demand


\[233\] Albury, 'Speech and Silence', p. 48. In this case Albury was discussing the 1979 Lusher motion in the federal legislature, but her comments are as relevant to the 1973 debates.
control of our own fertility was more than the church and the state could tolerate. It was at that point that the struggle for feminist women's services began. The Melbourne Women's Health Collective, for example, was established on 11 September 1974, in response to women's desire for reproductive control and to escape the 'punitive and moralistic attitudes towards abortion, venereal disease and contraception' that characterised traditional medicine, especially for young and single women. The next decade saw the establishment of a range of women's health and community services.

4. Similarities

In the federal and state parliaments, debates about abortion were framed in such a way as to legitimate restricting women's access to abortion. Arguments against each of the bills – and often in support of the bills – were constructed around two main themes. These were questions of rights, expressed as morality, equity or fairness, and risk, often expressed as protection.

4.1 Rights

Arguments centred on questions of 'rights' that were given no place in other existing legislation. Those most championed were the rights of the foetus – or child as it was often called – in response to the demand for women's right to control reproductive decision-making. Views on the right to life of the foetus differed only in terms of the point at which that right commenced, based on the viability of the foetus. The rights of the father of the child or the parents of a young pregnant woman were expressed in terms of their right to be consulted or give consent to the abortion. Many speakers also argued that women had the 'right' to prevent a pregnancy via access to effective contraception. The principle of women's right to control reproductive decision-making, however, was not given serious consideration.

Chapter one outlined arguments suggesting that, rather than foetal rights, it was discomfort about the emancipation of women that actually drove opponents of abortion law reform, with abortion representing broader ideological struggles about the changing roles of women.

234 B. Hull, 1975, 'Melbourne Women's Health Collective', paper to the National WAAC Conference, Sydney 14-15 June, box 1, WAAC papers, AN100/222, VWLLF archives, University of Melbourne.
235 Hull, 'Melbourne Women's Health Collective'.
236 Aims and Development of the Melbourne Women's Health Collective, undated, box 1880/5, Victorian Medical Women’s Society papers, MS11710, SLV.
Such concerns were clearly voiced in the parliamentary debates. Conservative MPs argued that legalised abortion would either have far-reaching effects on civil liberties, or result in a moral decline so great that it could lead to the downfall of the country. Senator Vince Gair and the DLP had certainly campaigned hard on this issue. The *Bulletin* pointed out that Gair ‘poured demand-abortion, legalised homosexuality, the end of censorship and easier divorce into one steaming bucket and labelled it permissiveness. This would destroy the nation, he prophesied, citing as usual the downfall of the Roman Empire’.238

Rights discourse is a powerful tool for arguing for access to abortion and, for women as a group, the ‘right to decide’ is an important aspect of social, political and economic freedom.239 Similarly, ‘foetal rights’ is a more persuasive argument than opposition to the emancipation of women. However, presenting rights as though they are in competition with each other – woman versus foetus, husband versus wife, doctor versus patient, parent versus child – ignores the fact that those interests are invariably linked. To assume women are the adversaries of their doctors, parents, children and partners is simplistic, generally inaccurate and ignores the community-centred ways in which women frequently approach moral decision-making.240 Moreover, if a woman’s parents, partner or doctor deem the pregnancy unwanted through giving ‘consent’, does this endow the abortion with a moral imprimatur that does not otherwise exist? The argument that women require consent simply suggests that they are not perceived to be morally responsible citizens capable of making a decision and of taking the rights of others into consideration in doing so. A similar debate about the control a doctor, parents or partner should have over whether a woman is allowed to continue a pregnancy might clarify the ideology behind consent. China’s one-child policy and reports of forced abortion demonstrate that it is not the availability of abortion alone, but control over reproductive decision-making, that is crucial to women’s equality within any society.

No doubt the women’s movement contributed to the conceptualisation of woman as an island of self-determination through the use of campaign slogans such as the ‘right to decide’.

However, the right to decide whether or not she has an abortion does not mean that a woman, in making that decision, either should not or does not consult with all those affected by the decision. It simply means that, once all those interests are taken into account and prioritised, it is the woman herself who must make the final decision. Nickie Charles argues, though, that the very framing of abortion as a matter of competing rights is an indication of the success of

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the women's movement in changing the cognitive framework within which abortion was understood and challenging the underlying values that support an anti-abortion position.\textsuperscript{241}

Social ethicist David Boonin argues that while the abortion debate is portrayed as completely polarised, in fact those for and against abortion law reform would agree with a number of each other's claims.\textsuperscript{242} The Oppose Abortion Committee (OAC) had written to ALRA in 1972 in an attempt to find common ground between the organisations, particularly increased resources for single mothers and family-planning facilities. OAC members reported frustration at being aligned with a section of the community that 'couldn't really give a stuff about removing the social causes of abortion, as long as a moral principle is upheld'.\textsuperscript{243} In order to achieve self-determination in reproductive matters women require access to and control over a range of resources over and above contraceptives, abortion and family-planning programs.\textsuperscript{244} Some opponents of abortion are likely to be strong allies in the pursuit of a number of such aims. However, the adversarial nature of the Australian political system encourages polarised debate rather than an opportunity to establish common ground. This resulted in campaigns that presented rights as opposites, rather than focusing on the fact that women and children's interests are closely linked, or resolving the question of how to prioritise such rights.

Moss Cass suggests that MPs at the time simply did not understand the premise that women had the same right to equality and citizenship as men.\textsuperscript{245} They saw a woman's role as revolving around her home and family. Petchesky agrees that 'the feminist concept of abortion as rooted in women's right/need to control their bodies was never accorded legitimacy by the state'.\textsuperscript{246} Instead, the debate was framed in terms of therapeutic need and the abstract notion of doctor-patient confidentiality, thus pseudo-privatising abortion as an individual issue. A woman's limited 'right to choose' within this medical framework defines that right as an individual right when, as Charles points out, a feminist claim for the right of women to control reproductive decision-making 'involves a recognition that reproductive rights are social and are a prerequisite for women's full participation in the public sphere'.\textsuperscript{247}

For women to achieve full citizenship, they require both legal rights and the resources to

\textsuperscript{241} Charles, \textit{Feminism}, pp. 173-74.
\textsuperscript{243} Letter from Michael Kelly, Oppose Abortion Committee, to ALRA, 9 August 1972, box 11, Wainer papers, MS13436, SLV.
\textsuperscript{245} Moss Cass, interview, 6 May 2002.
translate those rights into reality. Ongoing restrictions in accessing abortion ensure ongoing control over women’s sexual behaviour, reinforcing ‘the link between heterosexual sex and motherhood which a woman’s right to choose is in danger of completely severing.’

4.2 Risk and protection

MPs argued that women should be protected from the dangers of abortion. This included, for proponents of the bills, the risks to women’s health associated with backyard abortions. For those opposing the bills, women were to be protected from the danger of undergoing a surgical procedure, risking infertility, psychological harm and future child-bearing difficulties. ‘Husbands’, too, were to be protected from the danger of unknowingly marrying an infertile woman. Further, denying women control over reproductive decision-making was represented as a means of ‘protecting’ them from men who would otherwise avoid responsibility for contraception or abortion while using women’s bodies for their own pleasure. And governments were not to be permitted to avoid responsibility for the provision of adequate social and financial assistance, nor ‘society’ to avoid responsibility for tackling the stigma attached to single parenthood. The juxtaposition of responsibility and control was a feature of each of the debates where the emancipation of women was under consideration. The tools for protection were the product of a patriarchal system of parliamentary control and medical expertise.

While claims that abortion is ‘false liberation’ ignores women’s agency in reproductive decision-making, it does raise the question of whether the ‘right’ to ‘choose’ an abortion alone constitutes reproductive choice for women. Judith Allen points out that feminist rhetoric of the 1970s justified women’s right to abortion in terms of sexual freedom, self-determination and socio-economic necessity. She adds that more recent studies have broadened our understanding of the complex reasons for which women seek an abortion, including the fact that abortions sought by young, sexually exploited women signal ‘their

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247 Charles, Feminism, p. 168.
248 Charles, Feminism, p. 167.
249 Francis Stewart claimed that a man that ‘marries a girl who has had an induced abortion’ only to find he has a ‘sterile wife or a stillborn, premature or defective child’ is an ‘innocent bystander’. See CPD, HR, vol. 85, 13 September 1973, Francis Stewart, p. 955.
250 ‘Abortion – a false liberation! – a false feminism’, P. Byrne & J. Herzog, National Civic Council., box 1, Karina Veal papers, AN93/68, University of Melbourne archives. It is unclear whether the NCC believed their own logic, that women were therefore not oppressed when abortion was illegal.
failure to negotiate a pattern of sexual activity that works in their own interests. The possibility for women to be sexually exploited does not justify denying them the choice of abortion, but the fact that abortion might collude in hiding sexual exploitation of women, as it might hide poverty and inequality, is a dilemma that cannot be ignored in the quest to ensure safe and accessible abortion for all women, or indeed to secure women's rights and responsibilities as citizens. It is no more accurate to cast all women choosing to end unwanted pregnancies as bold and self-determining sexual beings than it was for parliamentarians to cast them as victims of men's seduction.

5. The Limits of State Action

Rosemary Pringle and Ann Game have analysed the actions of the organised women's movements during the reign of the Whitlam Labor government in the early to mid-1970s. They argue that in both WEL and the WLM there was a 'conception of a "male power structure" which could be infiltrated or influenced or forced to make concessions.' Pringle and Game argue that this conception ignored the role of the state in maintaining the political dominance of capitalism, within which gender struggles occur.

Charles notes that the conflict over abortion rights took place largely on the legal terrain, given that political parties were in control of the legislative process and feminist social movements only one interest among many. As such, it has been difficult for feminism to have an impact, as parliamentary procedures are a particularly masculinised part of the state, notably resistant to feminist discourse and language. Australian barrister Jocelynne Scutt argues that legislative change is unlikely to bring about real advances in equality for women. She points out that the problem lies in the very nature of law and in the dominant ideology of those who interpret it, who do not have a record of dealing fairly with women, 'women's issues' or 'women's interests'. In fact, legislative and administrative reforms can disadvantage women, while giving the illusion of equality. This is because male-dominated parliaments and courts hold the power to construct the law, via their power to define and limit

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252 Allen, Sex and Secrets, p. 216. See also J.A. Allen, 1987, 'Abortion, (Hetero) Sexuality and Women's Bodies', Australian Feminist Studies, no. 5, summer, pp. 85-94; and Petchesky, Abortion and Women's Choice.


255 Charles, Feminism, p. 177.


257 Scutt, 'In Pursuit of Equality', p. 137.
the parameters of law reform debates, resulting in outcomes that are unlikely to reflect the initial intentions of reformers.259

Having to engage with the more central and repressive arms of the state obviously made it difficult for feminist organisations to gain control over policy and practice. In engaging with the state, feminist movements risk lending it legitimacy and thus reduce their ability to maintain a critical stance towards it.260 Nevertheless, Charles argues that women had no choice but to do so because the state regulates access to the resources that they need in order to be able to change the gendered relations of power. Rosalind Petchesky points out that, for this reason, ‘feminist ideas and the feminist movement must find a louder, stronger voice in popular culture and consciousness before they can have a lasting impact on state power’.261 Charles adds that, while the women’s movement recognised the importance of encouraging a popular feminism in its attempts at consciousness-raising, this did not become the dominant discourse. Instead, medical and neo-Malthusian ideas about abortion, rather than feminist ones, prevailed.262 As a result, private members’ bills that presented abortion within a framework of women’s right to abortion on request, even in a limited way, were doomed to failure.

6. Conclusion

Analysis of the private members’ bills point to three interrelated conclusions. First, despite the existence of a conscience vote, neither state nor federal parliamentary Liberal Parties intended to allow abortion law reform at any stage in the period under study. The possibility of electoral defeat, rather than ideological commitment, had greatest influence over that decision. Karen Coleman also found in her analysis of the politics of abortion in Australia that the outcome of the struggle over abortion reflected the importance of DLP preferences to the Liberal Parties’ electoral success.263 Through the DLP, the church continued the tradition of Roman Catholic influence over electoral and party politics in Australia. Harry Herbert argues, for instance, that while ‘Sir Warwick Fairfax and friends discovered abortion and “permissiveness” for the Liberals to use against their opponents’, they were aided by the DLP.264 However, Coleman claims that, by forcing the government to support judicial rather

262 Charles, Feminism, p. 165.
than legislative reform, the church ‘unwittingly opened up the possibility for abortion on demand’ in Victoria. The Liberal government was not concerned with the availability of abortion, but with the possibility that the DLP might hold it responsible for paving the way for termination simply on the request of the woman involved. This resulted in the government taking the chance that it could ride out accusations of corruption and intense community pressure to liberalise abortion laws because it knew that law reform guaranteed defeat.

Second, medical practitioners were, without question, assumed to be the experts in relation to abortion policy and practice. Albury points out that it is a common tactic of a politician to hand difficult issues to an ‘expert’, and the way in which medical expertise was assumed in decision-making in relation to abortion was no exception. As we have seen, this had been the norm since the turn of the century, as a corollary of the progressivist scientific approach to social policy and welfare practice. The medical profession’s right to control decision-making in that regard was, therefore, both the purpose and the outcome of any clarification of abortion law proposed.

Third, parliamentarians did not consider that women should control decision-making over abortion, either in law or in practice, thereby denying women control over their own lives, and the concomitant rights and responsibilities of full citizenship. Parliamentary debates reflected the pattern of other abortion debates in different sections of the community in the 1960s and 1970s. Arguments clustered around civil liberties and humanitarian stances, or around religious and moral arguments that sought to suppress abortion and protect foetuses. Although women’s rights were raised, this was generally within either a civil liberties framework or a conservative argument about women’s right to be protected from abortion. Only one or two speakers in each of the 1973 debates supported a feminist stance, asserting women’s right to reproductive control. Further, none of the speakers supported the practice of abortion as a legitimate method of contraception. Even those in favour of reform spoke of their distaste for the practice, putting some energy into differentiating between their support for abortion law reform and abortion itself.

The construction of parliamentary debates was such that it focussed on highlighting differences, rather than presenting a continuum of views. This is especially evident in the way in which rights were cast in opposition to each other, in particular women’s rights versus foetal rights. The Bulletin noted that many churchmen were distressed by ‘a thousand shades

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of honest opinion’ being ‘reduced to two hard-edged slogans’. Because arguments were mostly limited to law reform, family planning and social welfare within a conservative Judeo-Christian framework of morality and individual responsibility, the broader questions of justice and equality for women inherent in women’s calls for reproductive self-determination were overlooked. Abortion law reform groups colluded in presenting the debate in such a way as to avoid the controversial claim of women’s control over reproduction, instead highlighting contraceptive responsibility. Despite this, the very process of debating abortion law reform was of benefit in ensuring women’s access to safe and affordable abortion. Media coverage of the debate, including editorials and more in-depth articles exploring abortion law reform, assisted in informing the public and somewhat mitigated the taboo attached to abortion. Equally, it was a reflection of the shifting position of women in Australian society and the growing strength of the women’s movement that the debate occurred in the first place.

Many women felt betrayed and defeated by state and federal parliamentary inaction. However, ironically, there is much evidence to suggest that law reform along the lines proposed in the period under study would have resulted in a more restricted availability of abortion than currently enjoyed by Victorian women. Following legislation in 1970, women in South Australia had more difficulty accessing abortion than women in Victoria or New South Wales, as public hospitals struggled to meet the demand and conservative doctors refused to carry out terminations. Similarly, in Western Australia, where partial repeal of abortion laws in 1998 has been touted as the country’s ‘most liberal’ reform, the legislation actually creates prohibitions on access to abortion that did not previously exist. One anti-choice parliamentarian was quoted in the Sydney Morning Herald as saying ‘over time, the legislation would become a framework to implement greater restrictions’. Ironically, then, the cowardice and political manoeuvring of politicians in the late 1960s and early 1970s served to benefit women.

266 Albury, ‘Speech and Silence’, p. 52.
268 Age, 23 March 1998, ‘Abortion crusader fights for just one political cause’, Tania Ewing, p. 3.
269 As Margaret Kirkby points out, partial repeal of abortion laws in Western Australia might be represented in the mainstream media as a ‘victory’ for women, but, in reality, it is a victory for the medical profession, as only physicians can now perform a legal abortion. Women must now also seek the opinion of two medical practitioners prior to accessing an abortion. Kirkby also notes the additional restrictions on women under sixteen and abortions post twenty weeks. See M. Kirkby, 1998, ‘Western Australia’s New Abortion Laws’, Australian Feminist Studies, vol. 13, no. 28, pp. 305-12.
7. Postscript

In August 1973, shortly before the proposed National Health Bill signalling public funding of abortion was debated in parliament, one of the private health insurance agencies announced a new item number for ‘evacuation of the contents of the gravid uterus by curettage or suction curettage’.

This provided a $42 refund, compared with the $30 refund for a ‘dilatation and curettage’ previously used to claim for services including abortion.

The AMA also listed abortion in its new schedule of fees.

By 1974 the MJA reflected an increasing acceptance of abortion practice among medical practitioners, despite a continuing concern about abortion per se and the low rate of contraceptive use among women seeking abortion.

The picture in Melbourne generally was reported as ‘older doctors still giving women a hard time’, but abortions becoming generally cheaper and easier to come by. There were still cheaper abortions to be found among the ‘backyarders’ in working-class suburbs but, on the whole, the Menhennitt Ruling had ‘brought abortion back to doctors where it belonged’. Doctors were now more aware of their legal position and a number of the previously well-known abortionists had closed down.

Abortion was increasingly accepted as a component, albeit the least favoured component, of birth control. As one reporter wrote, ‘yesterday’s dark deed’ was now known as ‘family planning’.

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271 An article described the bill as a ‘hot issue’, which would result in free treatment in hospitals, and by cooperative private doctors. See Union of Australian Women Newsletter, August 1973, p. 1, box 3, Eileen Capocchi papers, AN100/218, VWLLF archives, University of Melbourne.

272 Letter to Wainer from Bill Hayden, Minister for Social Security, dated 9 August 1973 in response to Wainer’s advocacy for such an item to be included in the Medical Benefits Schedule, box 12, Wainer papers, MS13436, SLV. The Hospital Benefits Association (HBA) had been criticised in October 1972 for having a ‘clear policy of discrimination against family planning clinics’ and may have wanted to redress this in light of the proposed bill. ALRA Newsletter, October 1972, Betty Marginson papers, AN79/110, University of Melbourne archives.

273 Letter to Wainer from Bill Hayden.

274 ALRA Newsletter, September/October 1973, Jan Harper papers, AN78/120, University of Melbourne archives.


Following the passing of the Health Insurance Bill, Medibank was established on 1 July 1975. This resulted in public funding for abortion services performed on public patients in public hospitals. The Royal Women’s Hospital’s Pregnancy Advisory Service commenced shortly after this time. Women now had effective access to publicly funded abortion services in both hospital settings and private clinics, as abortion became an ordinary rebatable item. In response, the RTL shifted its focus to preventing abortions taking place. For example, in March 1974, RTL members accused the Queen Victoria Hospital of carrying out illegal abortions. While the Minister for Health, A.H. Scanlan, dismissed their claims as inaccurate, RTL members went on to try to take over the board of the Queen Victoria Hospital in a concerted attempt to stamp out abortions in the public sector. The twin goals of preventing abortions taking place and overturning legislation that facilitates women’s access to abortion have continued to shape the activities of the association.

Action groups also continued to fight for abortion and law reform, including Children by Choice, set up at the University of Melbourne in 1973 with the dual aims of repealing abortion laws and encouraging the spread of contraceptive knowledge and use. In May 1974 the Victorian Association for Repeal of Abortion Laws (VARAL) distributed its first newsletter. The VARAL, based at Wainer’s Fertility Control Clinic, was a loose-knit group of individuals and affiliated organisations with the joint aims of ensuring women’s access to safe abortion and providing doctors with legal clarity. The belief that only a qualified and experienced medical practitioner could perform a safe abortion continued to frame the work of VARAL, thus members continued to agitate for medical authority to control abortion decision-making. The Right to Choose Coalition replaced ALRA in 1974 and a new WAAC group formed in Melbourne in early 1978, following a socialist feminist discussion day, to fight for women’s control over reproductive decision-making. The aims of the groups suggest ongoing differences of opinion about what constitutes appropriate access to abortion.

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280 FPDB, LA, vol. 316, 6 March 1974, Clyde Holding and Alan Scanlan, p. 3688.

281 ALRA Newsletter, July/August 1973, Jan Harper papers, AN78/120, University of Melbourne archives.

282 VARAL booklet, undated circa 1974, box 4, Bon Hull papers, AN100/108, VWLLF archives, University of Melbourne.

In the final chapter I draw together the disparate factors that impacted on women’s struggle for abortion from 1959 to 1974. In doing so, I examine the impact that those groups and individuals that fought for abortion law reform had on women’s access to abortion in Victoria today, as well as on women’s control over reproductive decision-making generally.
CONCLUSION

The ultimate dilemma for those who seek to enhance reproductive and sexual freedom is how to create a sense of collective purpose – of feminist and social solutions – concerning matters that seem so intrinsically personal and private.¹

1. Introduction

Those who have written extensively on the history of birth control trace women’s knowledge of contraception back as far as evidence of civilisations is available. Their work suggests that women enjoyed an extensive knowledge of methods of birth control, including drugs, herbs, potions and abortion, which they shared with each other in a deliberate attempt to limit the numbers and timing of childbirth. Although accessing safe abortion was not always easy for women, it became much more difficult in the 1950s and 1960s once those traditional networks had been effectively destroyed. Women’s reasons for birth limitation have shifted historically, for political, social, geographic, religious, cultural and economic, as well as personal, reasons. Similarly, the meaning of abortion as a practice has shifted over time from a traditional method of birth limitation, to a ‘selfish’ attempt to limit child-bearing, to a medical procedure, to the ‘deliberate destruction’ of potential life, to one of a number of human and health care rights necessary to women’s reproductive health and freedom.

Of course these understandings are not mutually exclusive and abortion remains contested both in meaning and in practice. Nevertheless, despite these shifts and regardless of its legality or relative safety, women in Victoria have continued to seek abortions in order to prevent childbirth or control the numbers and timing of children. In this context, safe, legal and accessible abortion is a matter of continuing importance to women. Whether individually, in seeking to determine her own future, or politically, in seeking equality between men and women in both the private and public spheres, access to abortion is one of the conditions necessary for a woman to gain economic and sexual self-determination, and control over her reproductive health and freedom. Given this, because access to abortion is a specifically gendered requirement of reproductive control, it can be a telling indicator of women’s status as citizens.²

What is equally clear is that abortion as a method of birth limitation can be used either to liberate or to oppress women. Where abortion is used as a eugenic or cost-saving measure in order to control populations it can be oppressive. Where abortion is available as one of a series of human and health-care rights, in which women’s autonomy over reproductive decision-making is stressed, it can be liberating. It is not, therefore, simply the availability of abortion that is important to women, but also the basis on which abortion is available.

In this dissertation I set out to explore the extent to which the history of abortion law reform in Victoria can be understood as part of the struggle of women for sexual self-determination and hence for full citizenship. In doing so, I examined the goals and actions of the abortion law reform movement and the impact of the emerging women’s liberation movement on attitudes towards abortion and the shaping of law reform. The purpose of this examination was to elucidate the nature of the contemporary relationship between women’s reproductive rights and women’s status as citizens.

In this context I examined the role and purpose of state intervention in women’s fertility, based on a conceptualisation of the state as both a ‘body’ and a ‘constantly intervening series of relationships’. This involved an exploration of the key organisations and professions that influenced and assumed a part in state control over abortion policy and practice, specifically the police, judiciary, government and medical profession. A close examination of the role and culture of the police force in enforcing a particular code of morality via a widely unpopular law led not only to an examination of the impact of this on women’s struggle for freedom and equality, but also to an analysis of the part it played in the development and maintenance of systemic corruption.

Through an analysis of public, political and parliamentary debates I explored prevailing attitudes towards women and abortion. This included an examination of the influence of the church, media, political parties and pressure groups, as well as the language used by individuals as evidence of their attitudes. In particular, my interest was in examining the degree to which support for women’s autonomy was reflected in public discourses as opposed to support for abortion for reasons of population control, regulation of sexuality, foetal rights, doctor’s rights or state fiscal considerations.

The examination and discussion of the research findings have been located within a broader politics of reproduction, allowing exploration of the relevance of ‘choice’ and ‘rights’ as frameworks for considering abortion. This approach makes it possible to be critical of attempts to bring about abortion law reform, while also recognising the historical context in which those attempts were located. Ambivalence about abortion and lack of attention to building a feminist morality of abortion to counter the moral high ground hijacked by those championing the cause of foetal rights are cases in point.

The history of abortion law reform in Victoria as considered in this dissertation can be understood as a case study of conflict, co-option and cooperation within and among five main arenas of vested interest. These were state interests in fertility control as a reflection of national concerns about population and thus women’s sexual behaviour; a struggle for industrial control of a lucrative abortion industry leading to widespread corruption; the political manoeuvring of a government determined to retain power by framing abortion as a medical rather than a legislative problem; the professional struggle for medical control over reproduction supported by civil liberties advocates and liberal feminists seeking access to abortion; and the struggle by an increasingly organised feminist movement to reframe abortion as a political issue of women’s sexual self-determination expressed as control over reproductive decision-making.

Victorian feminists fought for control over abortion policy and practice as a vital condition of the struggle for liberation. Today, a woman’s right to choose is reflected in abortion practice in Victoria, although women’s ability to choose remains fraught and the principle is still not conceded. It is not just access to abortion that is important to women’s struggle for sexual self-determination, but control over the basis on which abortion is available. Whether women have achieved self-determination must be judged not only in terms of their access to high quality abortion services, but also in terms of the political fit between the basis on which women access the ‘right to choose’ and the goals of the women’s liberation movement. It is the nature of the contemporary relationship between women’s reproductive rights and the goals of the women’s liberation movement that is the focus of the conclusion.

2. The Contemporary Relationship Between Women's Reproductive Rights and Women's Status as Citizens

The various interest groups identified with abortion policy and practice in the course of this dissertation remain interested in either supporting or opposing the availability of abortions, and so the struggle for hegemony over policy and practice continues. No one group controls the entire field of power relations and so a variety of discourses and practices continues to influence the relationship between women's reproductive rights and women's status as citizens, acting sometimes in concert and sometimes in conflict.

Governments remain 'ambivalently pro-natal'.\(^4\) In the 2004 May budget, federal Treasurer Peter Costello announced an increased baby bonus and urged women to 'go home and do your patriotic duty tonight'; at the very least, to have one for the wife, 'one for your husband and ... one for the country'.\(^5\) The budget was aimed at the electorally popular target of intact heterosexual 'families', and was structured to assist high-income earners, not the poor. This suggests that the government remains keen to have women reproduce, so long as they are married and well-off. As journalist Christine Jackman remarked, Howard and Costello wanted the 'under-utilised and downright un-Australian ovaries' of modern middle-class women to be put to good use.\(^6\)

Similarly, ambivalence about whether to focus primarily on women's rights or medical control remains. For instance, in October 2000, Meg Lees, then leader of the Democrats, argued that banning abortion drug RU486 denied Australian women 'greater control over their own bodies'. She added, though, that it was 'not without risk' and thus required 'medical supervision'.\(^7\) The question remains how is it possible for women to gain 'greater control over their own bodies' while the technology for that control is in turn controlled by a profession renowned for its conservative and patriarchal attitudes towards women.

For post-structural theorists the once seemingly omnipotent state is no longer viewed as a threat – in fact it is the dismantling of the state as a body that most threatens the struggle for equality today – and concern has now shifted to the seemingly omnipotent force of global capitalism. As a result, the politics of reproduction places the struggle for women's reproductive autonomy, and thus full citizenship, within a broader struggle for freedom from

\(^7\) *Age*, 2 October 2000, 'Denying women choice on abortion', editorial, p. 10.
oppression across and within nation states. Access to safe abortion, then, is conceptualised as one of the components in that struggle, as is the ability to affect the basis on which abortion is available to women.

2.1 Access to abortion in Victoria in the twenty-first century – have women gained the ‘right’ to abortion?

Since the 1960s attitudes towards abortion have become increasingly liberalised and a ‘woman’s right to choose’ characterises both abortion practice in Victoria and attitudes towards abortion. Abortion today is a rebatable item under Medicare; it is a safe and simple procedure and services aim to provide a woman-centred environment even though permission of doctors is still required. While women have not gained an absolute legal right to abortion, which remains a crime under the Victorian Crimes Act 1958, it is likely that if a woman were denied an abortion in Victoria without good reason she would successfully seek an alternative opinion. Access to abortion in practice thus represents a significant gain for women who are now able to make decisions in a context of safe and accessible services and support for their reproductive autonomy.

On the other hand, research in 1994 and 1996 indicated that women continue to experience abortion differently. Where social, economic and political changes had began to blur the differences between women in the 1950s and 1960s, neo-liberal policies over the ensuing decades have seen a significant increase in the gap between rich and poor in Australia. Access to abortion remains conditional upon medical discretion and the outcome of requests varies according to the woman’s age, marital status, gestation, and geographical location, as well as the numbers of doctors willing to perform the procedure. Similarly, the cost of an abortion varies according to a woman’s access to public hospitals, private clinics or private gynaecologists. This leaves poor, rural and young women, and women with pregnancies in the second trimester, facing the highest costs and greatest difficulties accessing services. The Menhennett Ruling does not specify how physicians are to resolve factors such as parental

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8 L. Ryan, M. Ripper & B. Butfield, 1994, We Women Decide: Women's Experiences of Seeking Abortion in Queensland, South Australia & Tasmania, Flinders University of South Australia, Adelaide. See also National Health and Medical Research Council (NH&MRC), 1996, An Information Paper on Termination of Pregnancy in Australia, NH&MRC, Canberra, p. 52 (withdrawn).

9 The Right to Life Association (RTLA) focuses its energies on disrupting access to abortion through parliamentary bills targeting public funding for abortions, bogus 'counselling' services, pickets outside abortion clinics, and legal action against medical practitioners. The RTLA does not operate as ferociously as similar groups in the USA, although overseas action no doubt leaves Australian doctors uncertain. In the US, between 1990 and 1995, five abortion clinic workers were murdered and there were a further twelve attempted murders. There were 196 death threats, 65 actual and 30 attempted
consent or the stage at which an abortion might be performed, allowing a fair degree of professional latitude on the one hand, but leaving individual women vulnerable to the opinion of their doctor on the other.\textsuperscript{10} Conservative politicians, most notably Tony Abbott, are working hard to put abortion restrictions back on the political agenda.\textsuperscript{11} The fact that abortion remains a statutory crime affects the willingness of medical practitioners to perform abortions \textit{and} provides justification for controlling and restricting services.\textsuperscript{12}

2.2 Is the right to abortion synonymous with reproductive rights?

Since the early 1970s significant advances in knowledge about embryonic and foetal development have shifted the political and social context of debates about abortion. Greater intervention in monitoring pregnancies has led to routine procedures that include foetal imaging, genetic tests and the possibility of sex selection.\textsuperscript{13} Premature babies are 'viable' as

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\textsuperscript{10} Apathy among physicians coupled with the loss of women’s traditional community networks of knowledge and practice over the twentieth century is the greatest threat to abortion availability.

\textsuperscript{11} Federal Health Minister Tony Abbott has made a series of speeches in which he suggests that there might be growing community support for banning late-term abortions. He regularly cites ‘thoughtful feminists’ as rethinking ‘sexual freedom’ and ‘the abortion culture’. Early in 2004 he expressed his personal concerns about being a Catholic in charge of a health system that carried out 100,000 abortions a year. Yet, he neither acknowledges, nor works to redress, the impact of his own party’s neo-liberal polices on socio-economic conditions. As a result, unlike the DLP, he colludes in compounding the sorts of conditions under which some women ‘choose’ abortion. See \textit{Australian}, 2 August 2004, ‘Public mood swing on abortion: Abbott’, p. 1.

\textsuperscript{12} For instance, quota systems operate in those Victorian hospitals that perform abortions, limiting the number of free abortions available in Victoria to around 1500 per year on my own estimates, which are based on information gathered when I worked at the RWH. Judith Allen points out that abortion now is a less publicly funded procedure than any other minor surgery, with women in 1990 paying 42 per cent of the cost of an abortion compared with 10 per cent in 1975. J.A. Allen, 1990, \textit{Sex and Secrets: Crimes Involving Australian Women Since 1880}, Oxford University Press, Melbourne, p. 214. I estimate the cost in 2004 at between 41 and 60 per cent for a termination of pregnancy up to twelve weeks, based on information from the Health Insurance Commission, the RWH and two private clinics. The cost varies between a private patient in a public hospital and a private patient at a private clinic. The total cost is estimated at $600, including consultation, surgical procedure, anaesthetist and theatre fee. Following rebates from the Health Insurance Commission, a woman’s out-of-pocket expenses vary between $248 and $360. Women eligible for a health care card pay less at the top end, women with private health insurance may be able to claim additional costs and women with a pregnancy in advance of twelve weeks pay significantly more. This does not include travelling and accommodation expenses for women from rural areas.

\textsuperscript{13} State-of-the-art 3-D/4-D scanning equipment showed images of foetuses at 26 weeks exhibiting facial expressions. This led to ‘renewed calls for abortion to be outlawed’ by anti-abortionists including Senator Brian Harradine. They held that the pictures provided scientific evidence of the fact that a ‘foetus was a human being with human characteristics’, arguing that a review of abortion laws was required. Pro-choice advocates such as Geoff Brodie, medical director of Australian Birth Control Services, claimed that there was little argument that the foetus was human, but that such views still ignored the fact that ‘women have a right to choice’. \textit{Sunday Age}, 14 September 2003, ‘“Smile” in the womb fires abortion row’, Rebecca Urban & James Meikle, p. 1. Melinda Tankard Reist, Harradine’s ‘adviser on bioethical and human rights issues’, continues to use the images to argue against abortion. See \textit{Sunday Age}, 8 August 2004, ‘The choice is yours’, Melissa Tankard Reist, Sunday Forum, p. 15.
early as twenty-four weeks gestation\textsuperscript{14} and reproduction-aiding technologies assist some infertile couples to have children. For most Victorian women advances in medical knowledge and a high standard of living mean that childbirth is relatively hazard free. Despite this, obstetrics has become a high-cost, high-tech, high-profile business, with the foetus, rather than the woman, shifting to the centre of obstetrical interest.\textsuperscript{15} Pregnant women are now referred to as the ‘maternal environment’ in medical journals.\textsuperscript{16} This shift has been compounded by research into reproduction-aiding technologies, where the production of a ‘baby’ has become the business of scientists, rather than the natural function of women.

Writers such as Angus McLaren argue that the need to defend women’s control of their bodies is all the more urgent given research on a vast range of reproductive technologies. Those developing the technologies show little concern for the interests of women, who are considered objects, rather than subjects, of medical and scientific ‘research’.\textsuperscript{17} The technologies can best be understood as a medical response to infertility without acknowledging the principle of autonomy for women regarding child-bearing.\textsuperscript{18} Those factors that make access to abortion more or less difficult are the same factors that impact on access to reproduction-assisting technologies – state legislation regulates the technologies, the medical profession controls access to services, and political questions about women’s rights, children’s rights, sexuality and motherhood guide policy decisions.\textsuperscript{19}

Where political concern regarding abortion focussed on the circumstances under which women might be permitted to have an abortion, with reproduction-aiding technology it centres on the circumstances under which women might be permitted to have children.\textsuperscript{20} As a

\textsuperscript{14} Despite the argument about ongoing shifts in foetal viability, in fact it has not shifted greatly in the last fifteen years, although there were dramatic shifts in the decade or so before then.

\textsuperscript{15} The Victorian Year-Book noted in 1964 that ‘now that the maternal death rate is so low the standard of practice in a maternity hospital must be judged by the death rate in the babies’. Victorian Year-Book, 1964, p. 156. Abolition of puerperal sepsis made hospital births safe, according to the yearbook and so ‘from the medical point of view it is much better to have the patient in hospital, where all facilities are available to cope with any emergency that may arise’. Ibid, p. 154. See also R.P. Petchesky, 1987, ‘Foetal Images: The Power of the Visual Culture in the Politics of Reproduction’, in M. Stanworth, ed., Reproductive Technologies: Gender, Motherhood and Medicine, Polity Press, Oxford.


\textsuperscript{20} As Rosalind Petchesky argues, we must of course question whether the (inexpertly called) right not to have children is the same as the right to have them. ‘While compulsory pregnancy and childbirth is incompatible with the existence of women as moral agents and social beings … the desire to have a child … [is] a fundamental dimension of human – as opposed to gender-specific – fulfillment …
result, single and lesbian women have been denied access to publicly funded reproductive technologies unless they can prove medical infertility. However, legislation does not prevent women from accessing donor gametes through their own networks; nor could such legislation be policed. The history of abortion law reform shows that where access to popular technologies or services is denied for political or morally prescriptive reasons, the state implicitly condones an underground industry. There are strong signs of growth in an underground trade in surrogate parenting and gamete donations. While the government might use the rhetoric of concern for the rights of children born as a result of the technology in justifying its opposition, the fact that it is powerless to prevent such births outside the public arena suggests otherwise. It is more likely that broad access to the technology would support the ability of governments to protect children's interests.

As Linda Gordon points out, wherever there is opposition to women's reproductive control, it is strongly associated with a defence of traditional gender systems. Opposition to public access to services centres on the moral objections of a small but powerful minority, who, in

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21 In August 2000 the federal Liberal government proposed ‘amendments’ to equal opportunity legislation to prevent lesbian and single women from accessing in vitro fertilisation (IVF). A cross-party committee, the Senate Legal and Constitutional Legislation Committee, rejected the changes given that they would create a precedent for future attacks on rights enshrined in sex discrimination law. Committee members added that ‘introducing discussion of children’s rights into what is essentially a debate about discrimination in women’s access to fertility services’ was confusing. See Age, 28 February 2001, ‘PM’s stand on IVF rejected: A Senate committee backs lesbian access to fertility treatment’, Darren Gray, p. 7. The Victorian Labor government responded by legislating to prevent women who were infertile for ‘social reasons, or their own choice in lifestyle’ from accessing infertility treatment. Steve Bracks, cited in Sun, 2 August, ‘IVF secret revealed: Single women, lesbians beat ban on baby treatment’, Jen Kelly, pp. 1, 2. Some Melbourne services have found a way around the legislation. Melbourne IVF and the RWH state that women who have attempted to impregnate themselves with donor sperm without success on four occasions have proved medical infertility and can access IVF. Those agencies will also provide screening, storage and registration of donor sperm for self-insemination for lesbian and single women from late 2004. See Age, 3 August 2004, ‘Lesbians get OK for donor sperm’, Amanda Dunn, p. 3.


this case, find single and lesbian women seeking motherhood threatening to their own concepts of sexuality, motherhood and traditional gender relations. Anti-abortion Senator Brian Harradine features in opposition to many bills that incorporate broader reproductive choices for women. Harradine’s support, like that of the DLP, has been essential to conservative government agendas, suggesting that the pursuit and retention of power, not the shaping of just or visionary policies, remain the primary goals of government. Women’s differential access to reproductive technologies suggests, therefore, that support for the ‘right to choose’ abortion has not translated into support for women’s control over reproductive decision-making.

2.3 Power over policy and practice – what is the basis on which women access abortion?

While arguments regarding the viability of the foetus or the beginning of life continue to frame abortion debates, there is an equal, in some circles taken-for-granted, assumption that women nevertheless have a right to choice. Current abortion debates are more likely to reflect, or at the very least include, a feminist discourse on abortion that assumes that questions of morality are much broader than simply the ‘rights’ of the foetus. The disputants now recognise that women’s decision-making incorporates a range of moral, social, economic, political, cultural and other considerations. Even those who continue to oppose access to abortion acknowledge that a ‘woman’s right to choose’ is central to modern considerations of abortion, although they also continue to lament that fact.

25 Instead, politicians are likely to be concerned about the electoral impact of being associated with moral ‘deviance’. No doubt the same concerns have driven both Liberal and ALP opposition to gay marriages in 2004, an election year.


27 For instance the 1998 parliamentary abortion debates in Western Australian offered an opportunity to articulate a feminist abortion morality that held the moral and social agency of women to be central to the decision-making process, according to Jasmina Brankovich, 2001, ‘Constructing a Feminist Morality in the Western Australian Abortion Debate’, Journal of Australian Studies, March, pp. 86-95.

28 In 2004 federal minister Tony Abbott condemned Australian women for taking ‘the easy way out’ in seeking abortion, contributing to a lack of ‘moral health’ in Australian society. On the other hand, he branded female-headed families ‘dysfunctional’, suggesting an ongoing pro-natal ambivalence. See Australian, 17 March 2004, Opinion, Tony Abbott. Christopher Pearson, a former speechwriter for Prime Minister John Howard, complained in 2002 that moral debates have been silenced now that there is an assumption that it is a ‘woman’s right to choose’, suggesting that Pearson is yet to come to terms with women’s abilities to make moral decisions. Age, 5 March 2002, ‘The silent tragedy of the population debate’, Christopher Pearson, p. 15.
Women, then, have gained access to at least some of the women’s liberation movement’s demands for reproductive freedom. They have access to abortion and to effective contraception, they are recognised as central to abortion decision-making and they are, increasingly, treated as moral agents. In the early 1970s, feminists were fearful that their demands for reproductive control would be co-opted by the state for its own purposes; that fighting for abortion alone was a limited goal; and that access to abortion without systemic change might result in apathy. These issues continue to frame contemporary struggles.

In 1968 a quarter of Victoria’s medical practitioners supported abortion on request, reflecting their first-hand knowledge of the economic, social and personal conditions of women’s lives. Reports in both 1937 and 1944 recognised that women made reproductive decisions on the basis of sweeping social, economic and political conditions that were outside of their control.29 There is also evidence that women’s actions were motivated by personal desires for a life outside of motherhood in the 1904 royal commission.30 In 2004, there are few legal obstacles in the path of women’s access to abortion. However, the social and economic conditions that constrain women’s choice remain unresolved. Inequalities of class and ethnicity have increased since the late 1960s, and, as a result, reproduction continues to be experienced differentially by women, both in terms of access to health care and opportunities for considering roles other than motherhood.31

The women’s movement of the early 1970s sought control and autonomy over reproductive decision-making in order to be free from the oppression of uncontrolled pregnancies that tied women to the private sphere and rendered them dependent on a male breadwinner. It was a fight against a seemingly omnipotent state that sought to control women’s sexual and reproductive behaviour in the interests of that state. The terms in which the struggle was

31 For example, teenage fertility rates among indigenous women are over four times the Australian and nearly five times the Victorian rate. See table 8, appendix 2. While this is, in part, a political response to policies that sought to wipe out indigenous populations, the social and economic inequalities that continue to dominate the lives of Aborigines, as they do many other populations, indicate that there is little change in the conditions that make reproductive choice possible. See Human Rights and Equal Opportunity Commission (HREOC) website at www.hreoc.gov.au/social_justice/statistics/index.html. HREOC figures show that, in relation to maternal and infant mortality, Australia lags well behind other comparable countries with indigenous populations, and also behind many non-developed countries. See also N. Thomson, ed., 2003, The Health of Indigenous Australians, Oxford University Press, Melbourne, pp. 60-4.
expressed were the liberal values of autonomy, choice and rights. However, freedom expressed in these terms can also be used to support a neo-liberal agenda, where social support is increasingly removed from the control or interests of the state. Free and autonomous individuals work to realise their own desires, fulfil their potential through their own endeavours and determine the course of their own existence through acts of choice.\(^{32}\) While women’s demands for ‘choice’ and ‘autonomy’ are easily incorporated into neo-liberal rhetoric, policies within this framework actively discourage consideration of the conditions necessary to make those demands possible.\(^{33}\) Under these circumstances, ‘women’s choice’ is simply a mechanism for locating responsibility for reproductive control with women, reminiscent of the way in which control and responsibility were juxtaposed in the parliamentary debates of 1973. That the freedom to choose abortion has not been accompanied by empowerment suggests that ‘the other face of unencumbered freedom is insignificance of choice’ – why bother to prohibit what is anyway of little consequence?\(^{34}\)

As noted in chapter one, prohibitions and resource restrictions on abortion and other methods of birth control have been replaced with new forms of social control that arise out of the construction of desires to which we aspire – sexual freedom, small families and high standards of living.\(^{35}\) In order to satisfy those desires, men and women must participate in a global economy that is increasingly hostile to family commitments, given the need for a ‘flexible’ workforce to cope with short-term and insecure employment opportunities.\(^{36}\) Abortion availability under these circumstances ‘frees’ women so that they can participate in the paid workforce on the same basis as men. As a result, those women who expect to benefit from this economic order are more likely to view abortion as liberating. Those women who cannot expect to benefit, but who are nonetheless urged to limit their demands for state support, might view abortion as oppressive. Michael Gilding points out that as the small family has become the norm, rather than birth control being used by women to radically redefine their ‘nature’, it has been ‘stripped of its subversive qualities’.\(^{37}\) Ironically, the combination of a need for reproductive certainty and the demonising of abortion has led to medical encouragement and women’s willingness to use increasingly more interventionist


forms of fertility control in order to prevent the need for repeat abortions. Women have internalised the idea that placing their own health at risk is preferable to abortion, despite knowledge that simple barrier methods of contraception with back-up abortion are far safer. The resurfacing of abortion ‘debates’, as a result of the screening of the British documentary My Foetus on ABC television in August 2004, works to increase women’s guilt in seeking an abortion and maintains the idea that abortion must be avoided at all costs.

The fact that abortion (and those more interventionist forms of fertility control) can be co-opted to benefit interests other than women’s does not minimise their importance, however. Nor does the fact of a woman’s limited ability to take control over all aspects of her life alter the legitimacy of her decision to have an abortion, or justify taking away one of the few elements of control over her life that she may have. In fact, abortion may free her to pursue actions and activities that can increase her life choices. The ambivalence to abortion characteristic of the feminist struggle for law reform in the 1970s seems to be played out today in feminists’ recognition that choice is not the most useful framework for conceptualising access to abortion. This feminist discourse has been misinterpreted to imply that feminists who question the existence of ‘choice’ or raise questions about sex selection are ambivalent about abortion. This is patently false. In fact the discussion is aimed at emphasising the ongoing importance of locating abortion as just one element of the struggle for a ‘just society’ that has long been the basis of the platform of the women’s liberation movement.

2.4 Can reproductive rights ensure women’s struggle for full citizenship?

Zygmunt Bauman argues that those endowed with fewer resources and thus less choice have had to compensate for their individual weaknesses through collective action, thus explaining

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38 These include the contraceptive pill and IUD, and, more recently, depo provera and contraceptive implants that provide months of contraceptive ‘protection’. Angus McLaren also points to the fact that the ‘modern nuclear family is both the cause and effect of highly effective forms of contraception’. A. McLaren, 1990, A History of Contraception: From Antiquity to the Present Day, Blackwell, Cambridge Massachusetts and Oxford U.K., p. 2.
40 The documentary, made by film maker Julia Black, shows an abortion as well as a series of 3-D ultrasound images of foetuses that anti-choice writers and Black herself, supposedly pro-choice, have dubbed the ‘reality of abortion’. See Sunday Age, 8 August 2004, ‘The choice is yours’, Melinda Tankard Reist, Sunday Forum, p. 15. Women, and the reality of a woman’s decision-making process, is ignored in a self-indulgent film that focuses almost exclusively on the foetus.
the emergence of social movements such as the women’s movement. However, contradictory pressures to behave autonomously, in part sought by those movements, work against the development of collective understandings, stripping us of ‘the protective armour of citizenship’ provided by belonging to a ‘society’.  

Women in Victoria are now more or less free from the fear of an unplanned pregnancy. But, as de Tocqueville suspected some two hundred years ago and feminists some thirty years ago, ‘setting people free may make them indifferent’. If individual freedom is the goal, what are our common interests? Bauman argues that there is a wide and growing gap between the plight of individuals and their chances ‘to be in control of their fate and take the choices they truly desire’. Individual efforts alone cannot provide the means and resources to bridge a politically created gap; yet, told repeatedly that we are masters of our own fate, we become uninterested in that which we cannot personally control.

As a result of these understandings, feminists have shifted from the absolute confidence in slogans of ‘choice’ and control over one’s body characteristic of the 1970s. The ‘right to choose’ now incorporates political consideration of the conditions necessary for women’s choice to be other than illusory. This results in calls for repeal of abortion laws to remove legal restrictions to abortion, as well as for the institution of measures to redress the material and social injustices pertinent to making choice possible.

Today, our fight for freedom, paradoxically, involves the fight for recognition of the fact that we are interdependent, rather than autonomous, beings. In order to share reproductive responsibility, women must give up some ‘control over’ in order to gain ‘cooperation with’. This is not ambivalence about women’s right to abortion, it is ambivalence about a political system that locates responsibility for circumstances beyond their control with individuals.

For women as a sex, access to safe, legal abortion is indicative of greater freedom and autonomy. For women as individuals, abortion continues to be a variable experience according to their political, social, economic and personal capacities to make choices either

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42 Bauman, The Individualized Society, p. 49.
45 Bauman, The Individualized Society, p. 106.
46 Brankovich, ‘Constructing a Feminist Morality’, p. 86.
about reproduction or about their lives generally. As a result, abortion continues to be both ‘minimal and indispensable’ to women’s struggle for citizenship. 47

In the twenty-first century, framing the struggle for sexual self-determination as the struggle for citizenship, understood as freedom from oppression and equality within and across classes and gender, becomes all the more important. The recognition that citizenship encompassed both rights and responsibilities was intrinsic to first-wave feminist struggles. In a neo-liberal age, our need to conceptualise the struggle for collective action within an understanding of our interdependence, our responsibility for each other, is all the more important as the hallmark of a ‘just society’. 48

48 Bauman, The Individualized Society, p. 49.
APPENDICES
APPENDIX ONE
THE METHODS USED TO GATHER DATA

Both Barbara Baird and Judith Allen cited difficulties accessing historical records in order to write their histories of abortion in South Australia and New South Wales respectively. Along with other writers researching women's sexual politics, they found that collection, maintenance and indexing of public records of this nature have only assumed importance more recently. When I outlined a research proposal in 1999 I expected to encounter similar difficulties and assumed that I would have to rely largely on interviews with those people who were involved in the abortion law reform movement in the 1960s and 1970s. Of course, a number of those people were no longer alive, making reconstruction difficult. Shortly after beginning work on this topic, however, two major collections of direct relevance became available. They are described below.

PRIMARY SOURCES

Archival information

The first of these new materials came from the establishment in 2000 of the Victorian Women's Liberation and Lesbian Feminist Archives at the University of Melbourne. This rich source of data includes records specifically relating to the abortion law reform movement, including the Women's Abortion Action Coalition/Campaign (WAAC) papers, Bon Hull’s extensive collection, the Frances Ryan papers, the Sally Mendes/Alva Geike papers, the Ilka Efkemann papers and the Eileen Capocchi papers. There are also a number of other collections cross-referenced to abortion in the University of Melbourne archives. They include the collections of Jan Harper, Betty Marginson and the Abortion Law Reform Association of Victoria (ALRA), the Right to Choose Coalition/Women's Electoral Lobby (WEL) papers and the Karina Veal papers. These amount to more than forty boxes of archival material, providing access to a rich collection of meeting minutes, campaign letters, badges, posters and fliers, newsletters, articles, handwritten notes, letters, magazines and the like. The materials allowed a reconstruction of a history of abortion law reform that encompassed the activities of humanitarian and civil libertarian, liberal feminist, socialist feminist and radical feminist individuals, groups and associations.

The second major new source was Jo Wainer’s donation of the Wainer papers to the State Library of Victoria in 2002, coincidentally on the same day that I approached the staff of the manuscripts collection for their holdings related to abortion. This donation makes available an enormous amount of material not previously in the public domain. Those papers include material relating to Jo and Bertram Wainer’s work over four decades. I have predominantly used those aspects of the collection that relate to their abortion-related activities in the 1970s. However, I am indebted to Jo Wainer for allowing me to collate the Wainer papers, thereby giving me immediate access to this seventy-two box collection. By collating the collection I was able to gain insights into Bert’s character, giving me the opportunity to place his abortion-related activities in a broader context.

There are a number of other key papers among the Manuscripts Collection of the State Library of Victoria that were useful for research purposes. These were the papers of the Democratic Labor Party (DLP), the Zelda D’Aprano papers and ABRA, the bi-monthly news magazine of the ALRA. To a limited extent, information in the papers of Mrs Whitney (Ethleen Bridges) King, the Women’s International League for Peace and Freedom Australian Section, and the Victorian Medical Women’s Society, which included the minutes of the
National Council of Women and the United Nations Status of Women Committee, provided further insights into activities related to abortion law reform.

I also examined the abortion-related holdings of the Public Record Office of Victoria (PROV) at the Victorian Archives Centre in North Melbourne. Although the holdings were not extensive, they did include data that was unavailable elsewhere, including correspondence and file notes of the Victoria Police. This information included detailed accounts of some of the abortion-related investigations of the Victoria Police dating back to 1952.

**Statistical information**

Statistical information used to compare maternal death rates and rates of abortion was available from two sources. The *Victorian Year-Book* includes detailed information about abortion-related deaths, including women's ages, marital status and the type of abortion performed. This information, recorded from 1932/33 but encompassing statistics from 1871, is presented in tables and diagrams, predominantly in chapter two. However, the way in which information was recorded varied with advances in knowledge about and treatment of disease processes, making it difficult to compare death rates after 1954. This also reflected the dramatic decrease in maternal deaths after the introduction of antibiotics and a concomitant shift to interest in the foetus, rather than the woman, by 1964.

Unfortunately the *Victorian Year-Book* does not cite the data source for abortion-related deaths. I scoured various government reports and records, and picked the brains of information officers and data analysts at the State Library of Victoria and the Melbourne and Canberra offices of the Australian Bureau of Statistics, in an attempt to locate data that was not recorded in the yearbooks. The only source of information that I could find was in the reports of the Victorian Consultative Council on Maternal and Perinatal Mortality. As noted in the footnotes that accompany tables 3 and 4, there are discrepancies between the council's data and data recorded in the yearbooks. These raise some questions about the reliability of the council's data on abortion-related deaths.

I have used a variety of sources including reports from the Royal Women's Hospital in Melbourne and the World Health Organisation to present other relevant data comparing rates of abortion. Diagrams and tables are mostly presented following reference to the data, in the relevant chapter. Additional tables are included in appendix two. All data sources are cited in the corresponding footnotes.

Chapters two and four include statistical information regarding police activities in relation to abortion. Judith Allen and Barbara Burton had already compiled data on the numbers of indictments and convictions for abortion in NSW and Victoria from 1880 to 1939 in their own research and I have presented their data in tabular form. Finding accurate information for Victoria from 1940 to 1958, however, proved impossible, and any statistical information for this period relies on estimates based on newspaper articles. The Victorian Police Historical Unit has a statistical services arm that can provide information after 1993, but not prior to this time. The Office of Public Prosecutions (OPP), which holds the relevant records, have introduced a pricing policy that makes the cost of undertaking research or extracting even routine material prohibitive.¹ The *Statistical Review of Crime*, published by the Victoria Police Force from 1959, provides data for the years 1959 to 1965 and 1968 to 1974. The review was not published in 1966 and 1967, despite active policing of medical abortionists in these years. As a result, I am unable to present accurate data for these years either.

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¹ See *Sunday Age*, Agenda, 30 May 2004, ‘He said, she said’, Liz Porter, p. 7 for discussion of similar problems by former Victorian Law Reform Commission researcher Dr Melanie Heenan.
On the other hand, finding statistical information to compare the rate and numbers of abortions over more recent times was easily available. The Health Insurance Commission has set up a website that includes software that automatically collates requested information into tables and graphs. The Victorian Department of Human Services provided additional information that was not available from the Commonwealth, after passing on the request to a data analyst. This information is set out in appendix two.

*Other primary data*

Other primary sources of data included the 1971 *Report of the Board of Inquiry into Allegations of Corruption in the Police Force in Connection with Illegal Abortion Practices in the State of Victoria* (the Kaye Inquiry) and copies of transcripts of the proceedings of the inquiry. I also read selected pages of the three-million-word transcript of the inquiry. Because the dissertation focuses on a history of abortion law reform rather than a history of police corruption, I did not analyse the entire transcript. Nevertheless, this would be a fascinating topic for further research.

I examined the *Medical Journal of Australia (MJA)* from 1959 to 1974, as well as the *Australasian Medical Gazette (AMG)* from 1881 to 1914 and the *Australian Medical Journal (AMJ)* from 1911 to 1913 for articles, letters and editorials on the subject of abortion. The purpose of the examination was to elucidate the opinions and attitudes of medical practitioners towards the practice of abortion and abortion law reform. I had examined the earlier journals prior to clarifying the historical bounds of the study, but they nevertheless proved a rich source of data for chapter two, which sets the historical context for the thesis. An examination of those journals published between 1914 and 1959 would no doubt prove equally valuable.

I also examined the *Commonwealth Parliamentary Debates* for the House of Representatives and the Senate, and the *Victorian Parliamentary Debates* for the Legislative Council and the Legislative Assembly. The purpose of the examination was twofold. First, I was interested in finding out the context in which abortion debates occurred in parliament during the period under study. Second, I analysed the debates in order to elucidate parliamentarians' attitudes towards abortion, women and abortion law reform. In each case I searched for abortion-related entries through the index, checking for any questions, debates, bills, speeches, comments, reports or petitions relating to abortion, maternal mortality, corruption, police, crime, population, contraception, family planning, health, illegal operations, adoption and pregnancy. Because abortion was not referenced separately until August 1968 I crosschecked other topics for either direct or indirect reference to abortion.

*Newspaper articles*

Chapters three and four in particular rely on newspaper articles from which an analysis and reconstruction of the relevant events proceed. There was extensive press coverage of the Kaye Inquiry, and Wainer's activities in particular, in the major daily newspapers, interstate dailies and the local papers. This included letters to the editors, editorials, feature articles, political commentary and news. I undertook a thorough examination of bound copies of the *Australian* and the Melbourne *Age, Sun, Herald* and *Truth* from 1959 to 1974.

I have also cited articles from a wide number of papers including the *National Times, Sydney Morning Herald, Sunday Observer, Daily Telegraph, Daily Mirror, Canberra Times,*

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2 The *Australasian Medical Gazette* was the official organ of the combined Australasian branches of the British Medical Association and volumes one to thirty five were published during these dates in Sydney. A new series, volumes one to three, was published in Melbourne from July 1911 as the *Australian Medical Journal*. The *Medical Journal of Australia* was published in Melbourne from 1914.
Canberra Sunday Post, Adelaide Advertiser, Western Australian, Newsday, Sunday Telegraph, Melbourne Times, Warrnambool Standard, Launceston Examiner, Tribune, News Weekly, Advocate, Catholic Weekly, Review, Spectra, Sydney Sun, Melbourne Express, Sun-Herald, Canberra Sunday Post and the Argus. The impetus for sourcing articles from these papers arose because the Wainer papers contained a series of scrapbooks of abortion-related articles that had been compiled by both Peggy Berman and the Wainer camp. Many of these articles were undated or unsourced, but provided useful information that I wished to cite in the dissertation. As a result I ordered bound copies of some papers and checked microfiche sources of others, finding many articles that were not included in the scrapbooks.


Many appeared in the various archives more than once. In comparing those articles and checking microfiche copies of newspapers where the full citation was not attached to the article, it was clear that different versions of articles appeared in different editions of newspapers. This led to some variation in the title of the article and, on occasion, an article was dropped completely from one edition to the next. I was unable to find a small number of articles on microfiche in order to provide full citations and so have included a photocopy of those articles in appendix three. There are no archival copies of one of the newspapers from which a number of Wainer's scrapbooks were sourced. Newsday, put out by the publishers of the Age, was only published from 30 September 1969 until 2 May 1970. This made it a key source during the Kaye Inquiry.

I have referenced the titles of newspaper articles in sentence case, rather than transcribing the heading exactly as it appeared in each paper, particularly as many headlines appeared in capitals. I have also written numbers in full, although there was a variation between this approach and using the numeric symbol. Other abbreviations appear as they appeared in the title of the article.

**Interviews**

Finally, I conducted interviews with a small number of people who were key players in abortion law reform during the time period under study. Responses from Jo Wainer, Moss Cass, Beatrice Faust and David McKenzie add texture and clarity to other data collected. In each case I prepared a series of questions relating to their involvement in abortion law reform. I used the questions to structure the interviews and gather data that I had identified as pertinent, but also encouraged each interviewee to add information that s/he thought would be useful to me. Copies of the interview questions are set out below.

**SECONDARY DATA**

Chapter two relies on the work of a number of Australian writers who have themselves researched the socio-economic circumstances, the social-sexual position of women within and outside marriage, the broad political context in Victoria and the politico-legal situation in relation to abortion from white settlement to 1959. Their research provides the basis from which an analysis of women's attempts to gain reproductive and sexual self-determination proceeds. Much of the abortion-related information relates to New South Wales, and Sydney in particular. While there are many similarities between the two states in relation to the
abortion ‘industry’, there were also some key differences that arose because of the different cultures that developed in the two colonies. While I have tried to balance this by including Victorian research in the other historical areas relevant to women’s sexual self-determination — and including as much primary data as I was able reasonably to locate given the historical focus of the dissertation — extended and thorough research in the time period prior to 1959 remains to be done.

Research problems

Abortion operators

Information about the different operators who performed abortions in Victoria in the period under study remains somewhat confused. The difficulties arise as a result of the political use of information to support the cause of law reform. Anti-choice advocates minimised the problem of backyard abortion and women’s deaths in order to assert that law reform was unnecessary. Reformists reported an extensive network of backyard abortionists, which had flourished following the police crackdown on medical abortionists from the mid-1960s. Clearly the only possible response was to save women by legalising physician-performed abortion. Yet there was growing evidence that women also faced death or injury at the hands of medical practitioners, whose standards of practice left a lot to be desired as a result of their attempts both to avoid prosecution and to pursue profits. Some non-Australian studies showed that physicians performed the majority of abortions by the mid-1960s, while others suggested that this was only true for middle-class women. US studies in particular showed clear differences in access to physician-induced abortions on the basis of class and race. In Australia, researchers agreed that a reasonably high living standard resulted in a majority of abortions being carried out by medical practitioners. Availability and finance are generally the greatest determinants of the nature of abortion and so in Australia, as elsewhere, the poorest and most marginalised women were likely to have accessed abortion under the worst conditions, regardless of the qualifications of the operator. The material available does not allow me to confirm this was the case in Victoria, though I suspect it was.

The question of the relative safety and incidence of self-abortion also warrants further examination, particularly in relation to the knowledge passed from woman to woman prior to the Menhennitt Ruling. Some writers suggest that self-abortion was the refuge of poor and isolated women, others that it was the procedure of choice among a closely networked working-class community. The material available does not allow me to confirm which was the case in Victoria.

Diversity

Analysis of the diversity of women’s abortion experiences is limited in this thesis. The dissertation concentrates on agitation for abortion law reform, contextualised in a white capitalist patriarchy in which abortion was seen in freedom-enhancing terms. Further research regarding Aboriginal women’s experiences of and access to abortion is necessary, as is investigation of the different experiences of migrant, poor and isolated women. This may also shed further light on the different types of abortion that women were able to access and their relative safety.

Anti-choice position

I have given little time or attention to examining the position of those groups and individuals opposed to abortion choice. My aim is to investigate women’s struggle for sexual self-

determination, through an analysis of reproductive politics, with the history of abortion law reform in Victoria from 1959-1974 as the principal focus for analysis. Clearly this is a feminist approach aimed at elucidating issues related to women’s reproductive role and rights. For this reason, I have only presented the actions of those opposed to abortion when they are relevant to explaining some of the directions taken in a history of abortion law reform.

INTERVIEWS

Interview questions – Jo Wainer, 6 April 2001

- Can you provide a broad orientation to the period under study: 1959-1974?

- Who were the players (groups, individuals, organisations) involved in advocating abortion law reform at this time?

- What was the public reaction to abortion law reform?

- How was abortion understood as an issue by the different individuals, groups and organisations involved in advocating law reform?

- What were the differences in approach by the key players?

- What were some of the main points of contention in the campaign?

- How effective was each of the key players?

- What can you tell me about Bert’s role in abortion law reform?

- What can you tell me about Bert’s personal experiences of the campaign?

- What can you tell me about your own role and personal experiences of the campaign?

- How did other people react to Bert’s actions – support and opposition?

- What were the key events that stimulated any changes in the direction of the campaign, the strategies used or your energy for advocating change?

- In what ways might your understanding of abortion as an issue have changed?

Interview questions – Jo Wainer, 22 May 2002

- What are your views on the timing and effectiveness of the Trayling motion in Victoria in 1973. What was the difference between this and the Federal debate?

- You mentioned in the last interview that Bert did not perform the abortions that were publicly announced in 1969. When did he begin to perform abortions, if at all?

- What was the basis of the relationship between Bert and Beatrice Faust/ALRA?
• Moss Cass argues that politicians in 1973, unlike the current generation, had little understanding of women's rights. Was that your experience and do you think this has changed?

• Do you see legal change as either possible or desirable?

Interview questions – Moss Cass, 6 May 2002

• What motivated you to enter parliament?

• What was happening in relation to abortion in Victoria and federally prior to the Menhennitt and McKenzie/Lamb activities?

• What was your involvement in abortion prior to and in the lead-up to the Menhennitt ruling in 1969?

• Who else was involved to your knowledge and in what way?

• Who else was involved in the lead-up to the McKenzie/Lamb bill in 1973?

• After the defeat of the bill, what was your involvement in abortion?

• Who were the players in parliament in relation to abortion law reform – for and against?

• How do you think parliamentarians conceptualised abortion law reform and abortion as an issue?

• What was the impact on parliamentary decision-making re abortion of the activities of ALRA, the RTLA, WLM and WEL?

• Who do you think fed information to the RTLA about what was happening in parliament/politically re abortion?

• What was the relationship between parliament and the activities of groups in the community regarding abortion?

• Why do you think the Liberal government took the position it did in relation to abortion law reform?

• What was your involvement with Bertram Wainer and what sort of man did he appear to be?

• Was there any sense among you and your colleagues that abortion would be legalised?

• What else would be useful for me to know that I haven’t already asked?
Interview questions — David McKenzie, 21 January 2004 and 16 June 2004

- How did you come to propose the Medical Practices Clarification Bill and who else was involved?
- How long had you been in parliament when you proposed the bill – your background and interests in the area?
- Where did the impetus for the bill come from?
- Why was reference to the Northern Territory withdrawn from the proposed bill?
- Where did the information that informed the debate come from?
- Why do you think the bill was defeated?
- What other information might be useful to my understanding of the parliamentary and advocacy processes?

Interview questions — Beatrice Faust, 16 February 2004

Begin with specific questions re organisations, experiences and individuals then shift into a more general discussion of abortion law reform.

1. When was the VCCL established; when did you join? Why did it take up the ‘problem of abortion’ via the subcommittee at that particular point in time? Who were the players and what was the general sense of possibility for law reform?

2. What was the link, if any, between the VCCL subcommittee on the problem of abortion and the establishment of ALRA? When did you join? Who were the driving forces behind ALRA/what were the driving forces behind abortion law reform?

3. ALRA utilised the same tactics for law reform as that used by the suffrage movement in Britain and Australia from the 1870s (ie educate MPs, encourage repeal, introduce private member’s bills, concentrate on federal sphere). Was this a coincidence or purposeful?

4. At the 1974 AGM a by-law to reject applications for membership from anyone involved with groups ‘which in their honest opinion exploits pregnant women for financial gain or supports objectives or means’ in conflict with the aims of ALRA. This was used to reject membership of counsellors from Wainer’s FCC. Why? What was the relationship between the two organisations; between you and Wainer? Of the various descriptions of him in the popular press, which one most accurately describes your experience of him; eg witty, charming, arrogant, drunkard, crusader, self-interested, etc? What, specifically, was your concern with Wainer? Do you see this the same way today?

5. What was the impact of: What was your relationship with:
   - Wainer - ALRA - WAAC
   - VCCL - WLM - WEL
   on abortion law reform or the climate of possibilities for repeal?
6. Who was most important to the campaign for safe and accessible abortion at different points in time? (In parliament, in government, in the women’s movement, in the medical profession, in the police force, in the judiciary, in academia, in practice, etc.)

7. What was the difference between the Women’s National Abortion Action Campaign set up 9 August 1972 after the Sydney meeting on 7th doing the same thing; and the Women’s Movement Abortion Coalition (later WAAC) set up on 10 April 1973 as a coalition of ALRA, WEL and WLM. Was WAAC a joint campaign of the three organisations or more of a WLM group?

8. On what basis was the decision made to push contraception as positive and abortion as negative - ie to focus on abortion as the ‘lesser of two evils’ - as policy and practice within ALRA? Was it a belief or a tactic? What is your sense now of this as the way to go in order to gain access to abortion?

9. You have been criticised for your views on the WLM and various topics close to the heart of feminism. How would you describe your own views on the relative importance of abortion as an issue for women? Do you think this is the same today as it was in the late 1960s/early 1970s?

10. You have been quoted variously as being in favour of reform, of being opposed to moderate reforms, seeing civil disobedience as preferable to moderate actions, of preferring moderate actions to demonstrations, etc. What were your own thoughts on reform versus repeal of abortion laws?

11. What attention was paid to altering the sorts of conditions that might make choice possible for women – socially, politically, economically – or was a single-issue campaign essential at the time?

12. You must have thought about the history of abortion law reform in Victoria many, many times over the years. What, for you, is/was most important:

- in terms of markers or significant events at the time
- gains of the ALF movement
- losses
- tactics and approaches

What would you do differently/the same today?

13. What have I not asked (or it is clear I don’t know) that you think is important to my understanding of the history of ALF during the period under study?
APPENDIX TWO
ADDITIONAL TABLES

Table 1: Rate of Abortion as a Ratio of the Total Child-bearing Population of Victoria

[Copyrighted material omitted. Please consult the original thesis.]

1 The item number under which claims for termination of pregnancy are processed includes other procedures for which a curette may be performed. However, the figures do not include services provided by hospital doctors to public patients in public hospitals, or in cases where services do not qualify for medical benefits. The latter includes procedures performed on international students, immigrants awaiting permanent resident status, those awaiting refugee status and those who do not present claims to Medicare for confidentiality reasons.
3 The most recent data is 2001, Australian Bureau of Statistics, Census of Population and Housing, Victoria, slightly effecting the accuracy of the rate of abortion.
4 Health Insurance Commission online at www.hic.gov.au for July 2002 to June 2003
5 Department of Human Services (DHS), July 2002 to June 2003 – terminations of pregnancy episodes in Victorian public hospitals on public patients. See letter attached from DHS for explanation of data extraction.
Table 2: Claims for Medicare Item no. 35643 from July 2002 to June 2003\(^6\)

[Copyrighted material omitted. Please consult the original thesis.]

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\(^6\) Data source: Health Insurance Commission online at [www.hic.gov.au](http://www.hic.gov.au). These figures do not include services provided to public patients by hospital doctors in public hospitals. The item number refers to all curettes performed, not only those performed for an elective abortion. Services are those that qualify for a medical benefit (so does not include those awaiting refugee status, overseas students, sponsored immigrants awaiting permanent resident status, etc). Does not include women whose claim was not processed by HIC for reasons of confidentiality.
Table 8: Teenage Fertility Rate – Births per 1,000 Females Aged 15-19 Years

[Copyrighted material omitted. Please consult the original thesis.]

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Department of Human Services
Incorporating: Health, Community Services, Aged Care and Housing

Request for Statistics 2002/03 Financial Year
Termination of Pregnancy Episodes in
Victorian Public Hospitals on Public Patients

[Copyrighted material omitted. Please consult the original thesis.]
APPENDIX THREE

NEWSPAPER ARTICLES WITHOUT CLEAR REFERENCE

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1 All articles are sourced from scrapbooks in the Wainer papers, MS13436, State Library of Victoria

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Newspaper articles

[Copyrighted material omitted. Please consult the original thesis.]
Newspaper articles

[Copyrighted material omitted. Please consult the original thesis.]
APPENDIX FOUR

BIOGRAPHICAL NOTES ON THE RELATIONSHIP BETWEEN THE MAIN CHARACTERS IN THE KAYE INQUIRY AND THEIR INVOLVEMENT IN THE PRACTICES ALLEGED

The Police Officers Named in the Inquiry

**Frederick John Adam**, 63,\(^1\) joined the police force as a constable on the beat in North Melbourne in 1928 and served for thirty-eight years until December 1966.\(^2\) He was a member of the homicide squad from 1943-62. He retired from the force on 19 December 1966 at age 60. In January 1969 Adam went to work as a law clerk with Mr A.J. Fisher, who appeared for him in the Kaye Enquiry.\(^3\) Adam died on 14 April 1972 aged 65.\(^4\)

**John Edward Matthews**, 60, known as Jack, joined the police force in 1933 and officially retired on 14 July 1970 as a superintendent.\(^5\) He was in command of the homicide squad from 16 November 1959 until 28 December 1964. Only one medical abortionist was charged during his reign as chief of the squad. Matthews was said to have taught Ford ‘the business’.\(^6\) Matthews was well regarded as an investigator within the force.\(^7\) He had been given the ‘status assignment’ of investigating then-prime minister Harold Holt’s disappearance in 1968.

**Francis Gerald Holland**, 55, known as Frank, had been in charge of the homicide squad from 1 November 1965 to 2 June 1969 when Jack Ford took over.\(^8\) Holland was responsible for around ten arrests of medical abortionists during his period as chief of the squad. Holland was a Roman Catholic born in Kensington, Melbourne in 1915 whose father, John, was the Labor member for Flemington in state parliament for many years. His brother, Kevin, succeeded his father to the Flemington seat on his death. Both his grandfather and uncle were policemen. Holland had also worked with the Consorting Squad from 1941-50. Holland was credited with having plotted with Sydney’s Inspector Ray Kelly the ruse that trapped the Melbourne gaol-breakers, Peter Walker and Ronald Ryan.\(^9\) At the time of the Kaye Inquiry Holland was the chief crime prevention coordinator for the VPF.\(^10\) Holland retired from the police force in May 1975 after a 40-year career.\(^11\)

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\(^1\) All ages are dated from the Kaye Inquiry in 1970.
\(^2\) *Sun*, 17 March 1971, ‘Mrs B. threatened to bomb me, says Adam’, p. 20.
\(^7\) *Sydney Sun*, 28 January 1970, ‘Big names in crime and politics may be revealed’, Ben Davie.
\(^9\) *People*, 21 September 1966, ‘The real men of homicide (continued)’, p. 15; *Sun*, 31 December 1965, ‘Manning the hunt ... “There isn’t one man in the Victorian homicide squad I wouldn’t back against Ryan and Walker”’, Tom Prior.
Jack Ralph Ford, born in Geelong in 1916, joined the police force in 1939/40. He began an apprenticeship in butchering before joining the police force at 23. Ford was a member of the homicide squad for fourteen years and acting officer in charge of homicide for two periods from 28 December 1964 to 1 February 1965 and from 29 June to 31 October 1965. He was appointed chief on 2 June 1969 and remained in that position until the commencement of the Kaye Inquiry. Ford was responsible for the arrest of three medical abortionists and seven members of a major backyard abortion ring after he took over the squad in 1969.

Martin Robert Jacobson, 40, joined the homicide squad on 18 October 1961 and resigned on 13 October 1968 as a detective constable following allegations of corruption. He was separated from his wife and several children and much was made of the maintenance that he paid to support them. Jacobson had lived with Maureen Twisse, who worked for Dr Troup, for eight and a half years as his de facto wife. He worked on the same homicide squad team as Jackson and O'Brien.

Gordon Albert Timmins, 52, served as a member of the homicide squad from 7 July 1955 until 15 April 1966, when he resigned. At the time of the Kaye Inquiry he was the chief security officer for the TAB. There were strong allegations that Timmins had protected the practises of Doctors Brethren and Catchlove, using John Brookes as the intermediary.

Noel Murphy, a senior detective and member of the homicide squad, was responsible for following up the Ryan and Walker escape case, as well as the death of Lady Rylah, the estranged wife of Chief Secretary Arthur Rylah. Allegations were made at the inquiry that Murphy had conspired with Dr J. McNamara, the government pathologist, to smother the cause of Lady Rylah's death. Speculation was fuelled by the failure of the coroner to order a routine inquest, her cremation three days after her death and the failure of the doctor who certified the death to sign the death certificate. The police came directly under Rylah's ministerial charge, and conducted only a brief investigation. It was of interest that the daily papers chose not to publish Ford's claim at the inquiry that evidence previously given by Holland about Lady Rylah's death was completely false. Rylah's family stated publicly that there were no suspicions as far as they were concerned. On the other hand, the Kew branch of the Liberal Party asked Rylah not to stand at the next election, citing 'domestic' reasons.

12 People, 21 September 1966, "The real men of homicide (continued)", p. 15.
16 Raymond Hoser argues that this position allowed untold corruption within the gambling industry. See R. Hoser, 1999, Victoria Police Corruption, Kotabi Publishing, Melbourne, p. 23.
18 Herald, 1 May 1970, "A bad influence on Berman". Wainer a Coward – Ford'.
23 Age, 7 February 1970, 'Liberals ask Rylah to stand down', Kevin Childs, p. 1. Nation claimed that Lady Rylah's death formed the background to 'rumblings' in Kew.
Charles Herbert Petty was officer in charge of the homicide squad from 12 February 1958 to 15 November 1959. He retired as a deputy commissioner prior to the inquiry.

John Barry O’Brien was a senior detective and serving member of the homicide squad, commencing on 11 November 1966. O’Brien worked in the same team as Jackson and Jacobson.24

Ronald Henry Jackson was a senior constable and member of the gaming branch in the early 1960s and of the homicide squad from 26 April 1966 to 22 September 1969.25 Jackson had arrested Wyatt for bookmaking in 1962 and there was evidence that since that time they had established a close and nefarious relationship. Jackson was married to medical abortionist Rodney Bretherton’s cousin.26

William Wall Warner Mooney was officer in charge of the homicide squad from 2 February to 28 June 1965. Promoted to chief inspector, he became deputy chief of the criminal investigation branch (CIB) from August 1965 up until his retirement on 26 June 1968, when John Heath employed him.27 Mooney was also a director of two subsidiary companies of the Carlton and United Breweries Ltd.28

Eric Royston Suttie worked at Dandenong police station as a detective sergeant and had known Wyatt since 1959. On his own admission, they had met socially and in the course of business about once every three months for ten years, at Suttie’s home and elsewhere. Similarly, Suttie had accepted Wyatt’s hospitality, had placed bets for him and collected winnings. Suttie had borrowed Wyatt’s car and had used his influence as a police officer to prevent Wyatt being charged with traffic infringements.29 Wyatt made a series of unworn allegations against Suttie, including that he arranged for gelignite to be ‘planted’ in one man’s car and that he was ‘a go-between for large sums of money’ for cases to be fixed.30 Wyatt stated that this was organised by Harry McMennemin, whom Suttie had acknowledged as a friend. There were no specific allegations against Suttie within the terms of the inquiry.

Colin Raffaele Sharp, nicknamed ‘the rat catcher’, was a detective chief inspector with the licensing squad then, from July 1968, deputy chief of the CIB. Sharp was friendly with Harry McMennemin and the late inspector Slater who were both involved in an inquiry held by Petty.31 There were allegations during the Kaye Inquiry that Sharp had access to all the mail and complaints from the chief commissioner and that Wyatt worked as a go-between for Sharp and McMennemin, passing on information.32 Wyatt claimed to have introduced Sharp to two-up operators and starting price (SP) bookmakers so that he could organise protection money.33 There had been an inquiry into Sharp’s relationship with Wyatt the previous year.34 There were no specific allegations against Sharp within the terms of the inquiry.

26 Sun, 9 April 1970, “No idea Wyatt an abortionist”, p. 17. Bretherton described him as his ‘stepmother’s brother’s daughter’s husband’ whom he had not seen since his stepmother’s funeral in 1967. While clearly wanting to suggest a very distant relationship, in fact Bretherton’s mother had died when he was only a week old and his father remarried and had another son while Rod was still young. See R. Bretherton, 1997, Abortion: RU486: Anecdotes of Anguish and Hope, Rodney Bretherton publisher, Daylesford Victoria, p. 4.
William Henry ‘Harry’ McMennemin retired as deputy chief of the CIB in March 1963 after thirty-nine years in the police force. He was investigated by Petty towards the end of his career due to an association with a known criminal. On his retirement McMennemin went to work with his son Roy H. McMennemin, a solicitor with a practise in West Melbourne who, in 1964, opened an office above Wyatt’s shop in Geelong. McMennemin acted as debt collector for medical abortionist Mario Marchesani on request from Marchesani’s son-in-law, Sergeant Janetski of Geelong CIB. There were a number of allegations that McMennemin ran an organisation in Melbourne known as Crime Incorporated. Much of the activities of the organisation were unrelated to the inquiry, although they did suggest systemic corruption within the police force.

The Witnesses who made Affidavits

Margaret ‘Peggy’ Dorothy Berman, 46, was the key witness to the inquiry. Berman began working as a receptionist for abortionist Dr Lewis Phillips in 1954 after she had consulted him as a patient, although she had neither medical nor nursing training. Berman then worked with Dr Arnold Finks after he bought Phillips’ Bourke Street practise about three weeks later. Finks transferred the practise to Hoddle Street East Melbourne in 1957 and in 1960 entered into practise with Dr James Troup. Troup took over the practise in full on Finks’ retirement in December 1963.

Berman lived close to the practise and from 1954 until her arrest in February 1968, acted as a go-between for policemen and medical abortionists. At the time of the inquiry she was awaiting trial. Berman decided to make an affidavit in June 1969 after she heard that Matthews had set Wyatt up as an unqualified operator. She also admitted to being fearful of charges.

Berman’s biographical material described her as ‘twice divorced’ and the mother of a 23-year-old son by her first marriage. Age reporter Leonard Radic described her as a softly spoken, tragic figure of a woman.

In 1965 Berman had a mastectomy due to breast cancer and by 1967 had developed secondary cancer of the spine and was not expected to survive for more than about eighteen months from the date of the inquiry. Her remission was remarkable given that she lived for over thirty years after the trial, dying in December 2002.

37 Age, 18 March 1970, ‘McMennemins were visited. Police quiz on dud $10s. Denial by solicitor’.
39 Age, 24 January 1970, ‘Police gave doctor warning before raids, abortion inquiry is told’.
45 Age, 16 April 1971, ‘It all began with an ad. in the paper’, Leonard Radic, p. 8.
47 Obituary for Margaret ‘Peggy’ Berman, 17 March 1923 to 8 December 2002 by Kevin Childs, Age, 26 December 2002, ‘Abortion inquiry witness exposed web of corruption’, p. 11. See also Herald Sun,
James Gavin Amess Troup qualified in medicine at the University of Melbourne in 1945 and undertook postgraduate studies in obstetrics and gynaecology. He worked with medical abortionist Dr Rodney Claude Bretherton in Prahran from 1954/5 to 1957 before opening his own practise. Troup’s father was also a doctor and, like Bretherton’s, probably worked as a medical abortionist. It was Troup’s father that first introduced him to Adam, in the 1940s, and Troup said he knew then that doctors were paying police officers.

Troup began a gynaecology practise in George Street East Melbourne in 1957 and in 1959 bought into Fink’s abortion practise in Hoddle Street, working between the two until 1965 when he stopped practising in East Melbourne. Troup said the lane at George Street East Melbourne opened via a gate into the Hoddle Street practise and was used to transfer patients. Troup averaged fifteen to twenty patients a week after entering into agreement with Finks to pay a portion of his money to police.

Troup said he decided to make an affidavit about police corruption because he felt he had been conned into paying police for a long time: ‘The whole standoff theme that had been going on for years only resulted in our being arrested’. Troup believed that they were paying the wrong police officers as Matthews and Ford were no longer in control of the homicide squad. Troup also said that he recommenced practise with Ford’s permission in 1969 while awaiting trial: ‘One felt a lot more secure’ because Ford was head of the homicide squad.

Troup was generally described as a weak man, perhaps leaving him a perfect target for police protection. On a number of occasions Troup appeared to have paid for protection even when he did not believe his actions had been illegal.

Maureen Marian Young was a trained nurse who worked for Troup for seven years from October 1962. Young understood before she went to work with Troup that he was an abortionist and that police were extorting money from him. She said she ‘accepted police receiving money from doctors engaged in illegal abortions as “fairly natural”’, like with other illegal activities such as gambling. She was awaiting trial on abortion-related charges as well as conspiracy to prevent the course of justice, arising out of the 1968 raid, for her assistance in creating the documents that were later placed on Jackson’s doorstep.

Young made her affidavit after the campaign by Wainer. Young corroborated Berman’s evidence in relation to Matthews and Ford and was viewed by Kaye to be a witness that showed respect for the sanctity of her oath and a determination to be accurate.

50 Sun, 5 February 1970, ‘Doctor admits “thirty-five abortions a week” ten in day’, p. 3.
54 Kaye, Report of the Board, p. 117.
William Fenton Bowen, 64, qualified as a doctor at the University of Melbourne in 1932 and had a practise in Lonsdale Street from November 1935 until 1969. He did not have any postgraduate specialist degrees, but said he specialised in ‘office gynaecology’ – a US term in connection with venereal diseases and gynaecological disorders. He performed three or four abortions per day. Fenton Bowen suffered a cerebral haemorrhage in 1968 resulting in paralysis of his left side, which left him incapacitated for three months. He was convicted of abortion-related offences in September 1969 and placed on a three-year good behaviour bond, then, three days later, charged with a further twenty-eight abortion-related charges. Fenton Bowen had referred patients to backyard abortionist, Charlie Wyatt, on a commission basis, claiming he thought Wyatt was representing ‘unnamed doctors’. On 6 December 1969 the medical board deregistered him. At the time of the inquiry, he was still awaiting trial.

Fenton Bowen was first charged but not committed for trial in connection with an abortion in 1940 in association with Dr Lew Phillips, when Fenton Bowen acted as anaesthetist. He did not have contact with police between 1940 and 1953. He claimed that he began performing abortions himself in 1950. Fenton Bowen referred patients to Doctors Troup, Heath and Catchlove for a $10 commission following his conviction and to Wyatt for $50 per patient from April or May 1969 until Wyatt’s arrest on 20 August 1969. Wyatt said he paid Fenton Bowen more than 10,000 dollars for referrals so that Fenton Bowen would be responsible for after-care.

Fenton Bowen alleged that he had paid money through an intermediary for police protection in 1954, in relation to an incident investigated by Petty and Ford. Jean Field had claimed in an affidavit that she was the intermediary, but retracted her statement at the inquiry. Fenton Bowen also distanced himself from his affidavit under oath, claiming that others had told him what to say. Berman suggested that his actions were motivated by political pressure.

A couple of weeks later, Wyatt secretly tape-recorded a conversation with Fenton Bowen who admitted to ‘going lightly’ in his evidence. He said he was afraid that if nothing happened as a result of the inquiry the police could ‘put the boots into him’. When questioned about this at the inquiry, Fenton Bowen then said he lied to Wyatt in the course of the conversation.

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In November 1971 Fenton Bowen faced court with Lewis and Wyatt.\footnote{Herald, 3 November 1971, ‘Arrest of abortion trial three ordered’, p. 3; Age, 4 November 1971, ‘Abortion trial three face arrest’; Sun, 4 November 1971, ‘Abortion trial: Three arrests ordered’, p. 27; Herald, 5 November 1971, ‘Police seek man in abortion trial!’; Age, 27 November 1971, ‘Doctor’s ability was “in doubt”’.} Fenton Bowen’s defence was that he had been advised to retire after a serious stroke on Christmas Day, 1967, that affected his judgement.\footnote{Age, 7 December 1971, ‘Jury finds two guilty of abortion’.} Wyatt and Lewis were found guilty on twenty-five charges and Fenton-Bowen was acquitted.\footnote{Age, 8 December 1971, ‘Bowen seeks reregistration’.} Fenton Bowen immediately applied for reinstatement as a doctor.\footnote{Truth, 3 February 1973, ‘Fenton-Bowen licensed again’, pp. 1, 2.} He was found fit to resume practise and re-licensed in February 1973, despite the evidence presented during his trial.\footnote{Kaye, Report of the Board, p. 17.}

\textbf{Stanley Charles Wyatt}, 44, sometimes known as ‘Mr White’, was a member of the VPF for a year, serving in the gaming squad detecting starting price (SP) bookmakers.\footnote{Kaye, Report of the Board, p. 17; Age, 5 March 1970, ‘Wyatt alleges feud between police chiefs’.} He resigned in 1948 to work as an SP bookie.\footnote{Age, 4 April 1970, ‘Knowledge of gun denied’; Sun, 4 April 1970, ‘Charlie Wyatt “was big-time”’.} Wyatt had been apprehended by the police on many occasions and convicted of two offences in 1954 for being found in a common gaming house, one for offensive behaviour in 1962 and four in 1969 of being armed with felonious intent, assault with a weapon, wilful damages and discharging a firearm.\footnote{Herald, 9 November 1971, ‘Fake doctor did abortions, says Crown’, p. 3.} He was imprisoned at Pentridge for the 1969 charges after failing to have adjourned, or attend, an appeal. Interestingly, Wyatt, Wainer and Kaye all noted that the latter charges arose out of an altercation with his wife, as though that somehow lessened the crime, as did Galbally, Wyatt’s counsel.\footnote{Sun, 3 March 1970, ‘Ex-PC was abortionist – probe evidence’, pp. 14, 15.} Other charges against Wyatt had been dismissed, including one trial where Jackson was accused of being an accomplice of Wyatt’s.

At the time of the Kaye Inquiry Wyatt had lived with Belle Lewis/Moran, with whom he also worked, for eleven years. Wyatt liked to see himself as ‘big time’ although he was, more likely, a petty criminal.\footnote{Kaye, Report of the Board, p. 17.} A lawyer described him as ‘a rather unusual customer, gaily arrayed in pink shirt and redolent of strange perfumes’.\footnote{Kaye, Report of the Board, p. 17.}

Wyatt owned a television business in Geelong from 1963 to 1969, despite being declared bankrupt as a result of this business in 1964, from where he appeared to engage in a range of illicit activities. He was also involved with racehorses and owned more than one with some success. Wyatt performed the ‘male voice’ for Jean Field from 1966, to give patients the impression a doctor was performing the abortion, allowing her to charge higher fees.\footnote{Age, 4 April 1970, ‘Knowledge of gun denied’; Sun, 4 April 1970, ‘Charlie Wyatt “was big-time”’.} Field, a nurse who had worked as an abortionist since 1950, taught Wyatt to perform abortions, and a Geelong doctor, Mario Marchesani, taught him to administer anaesthetics. Wyatt became the principal abortionist in April 1969 after Field retired, accepting the bulk of his referrals from medical practitioners.\footnote{Sun, 3 March 1970, ‘Ex-PC was abortionist – probe evidence’, pp. 14, 15.} Fenton Bowen, for example, admitted to referring about fourteen women a week to Wyatt in the time leading up to Wyatt’s arrest in 1968.\footnote{Sun, 13 February 1970, ‘Told off by Ford’, p. 17.}
was clear evidence that Wyatt's backyard abortion practise was protected by members of the homicide squad.87

At the time of the inquiry Wyatt was awaiting trial for twenty-one abortion related charges, imposed while he was in jail. He believed that both Ford and Matthews were responsible for his arrest, their betrayal leading to his decision to make an affidavit.88

Wyatt was charged with false pretences and larceny in November 1970 and committed for trial.89 In 1973 he was acquitted of the charges.90 In November 1971 a warrant was issued for his arrest after he failed to appear in the County Court to answer abortion charges.91 Wyatt was arrested on 5 November after twice failing to appear.92 He pleaded not guilty.93 Wyatt was found guilty and sentenced to four and a half years' jail in December 1971.94 He faced the County Court again in November 1972, on charges of having stolen and used cheques and credit cards.95 He was found guilty.

Bertram Barney Wainer was born in Edinburgh, Scotland, in 1928, the son of a Jewish psychiatrist and a prosperous Protestant Scots woman. His father died three months before his birth, plunging his family into poverty and Wainer grew up in the slums of Gallowgate near the Gorbals.96 Wainer left school at thirteen for economic reasons, joining the merchant marines, the army and then the fire brigade.

In November 1949, Wainer migrated to Australia with his family where he studied medicine, qualifying as a doctor in 1958. He had joined the Royal Australian Army Medical Corps in 1956 to fund his studies and was posted to New Guinea upon graduation, then to Mount Isa and Brisbane.97 He retired from the army on 5 January 1966 and opened a small private practise in St Kilda. Wainer linked his military training with a respect for the discipline of institutions such as the police force, and claimed the police to be allies as working-class men.98

Wainer's role centred on a relentless campaign to have the abortion network investigated and he did this without regard for the rules of evidence and due process important to the Board of Inquiry, citing anecdotal evidence, exaggerating claims and using the media to advertise and investigate his claims. Wainer said that he was simply 'investigating as a private citizen such

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88 Australian, 5 March 1970, 'Double-crossed, says witness. Wyatt tells inquiry of ill-will to Police'.
90 18 November 1973, Letter to Wainer from Wyatt, 'A' Division, Pentridge, box 10, Wainer papers, MS13436, SLV.
91 Herald, 3 November 1971, 'Arrest of abortion trial three ordered', p. 3; Age, 4 November 1971, 'Abortion trial three face arrest'; Sun, 4 November 1971, 'Abortion trial: Three arrests ordered', p. 27.
92 Age, 6 November 1971, 'Policeman arrest Stanley Wyatt', p. 4.
93 Age, 9 November 1971, 'Three deny abortion charges'.
94 Age, 8 December 1971, 'Sentence day on abortion'; Age, 10 December 1971, ""Greed and callousness" in backyard abortions'.
95 Age, 25 November 1972, 'Shopping was a steal, jury told'.
96 Sydney Morning Herald, Good Weekend, 10 May 1986, 'Business is down 50 per cent and Bert Wainer is thriving', Keith Dunstan, pp. 22-24, box 30, Wainer papers, MS13436, SLV.
97 Sydney Morning Herald, Good Weekend, 10 May 1986, 'Business is down 50 per cent and Bert Wainer is thriving', Keith Dunstan, pp. 22-24, box 30, Wainer papers, MS13436, SLV.
98 P. Tennison, 'Wainer', Australian Penthouse, vol. 1, no. 12, September 1980, pp. 70-72, 74-76, box 12, Wainer papers, MS13436, SLV.
details that no one else seemed to be taking any heed of. His all-or-none approach resulted in him clashing with a number of people who found his style frustrating and his tactics manipulative. For others, his charm, intelligence and wit meant that they forgave him all sorts of behaviours.

Wainer claimed as motivation for his campaign the near death of a young woman who came to his surgery in 1966 following a backyard abortion. It was often said, however, that he could have taken up any number of causes - that fighting injustice was in his nature.

Wainer died of a heart attack on 16 January 1987 at the age of fifty-nine. In an interview prior to his death he claimed that it was not the Kaye Inquiry, but the Beach Inquiry that ruined his health. His funeral was held at the Collins Street Uniting Church on 22 January. Marina Prior sang and Jack Thompson spoke, along with journalist Evan Whittton and Wainer's son Rory. Whitton described Wainer as 'the most extraordinary man I ever met. Here we had kindness, intelligence, wit, bravery, fortitude and a sense of justice all in the one man'. Dr Francis Macnab who conducted the service said that it was not notoriety that pushed Wainer, but a huge compassion for the poor and those who were suffering.

Other Witnesses of Note Named in the Inquiry

John Read Heath operated from 94 Collins Street Street Melbourne. He had practised as an abortionist for many years, with an abortion inquiry in 1944 alleging his involvement in the death of a woman. The police were refused an exhumation order by the Supreme Court. Allegations during the Kaye Inquiry suggest that he operated with police protection from Mooney, Holland and possibly also Matthews. In a conversation between Wyatt and Matthews taped after the inquiry, Wyatt referred to Heath as a great mate of Attorney General George Reid, until Heath was charged and 'Reid dropped him like a hot potato'.

A number of doctors operated from Heath's rooms, including Arthur Stapleton, John Levin and Arnold Finks, and each of them enjoyed similar protection. Faust also claims that Doctors Charles Sizeland and Peter Bayliss were initially 'apprenticed' with Heath, as were many other doctors.

Both Heath and his wife Corrie failed to appear when called on summons. Following the amendment of the Evidence Act on 25 February 1970, they were summonsed again. Heath received his summons as he entered the City Court on 3 March to face charges over abortion. Heath refused to answer any questions addressed to him that related to the inquiry. He was fined $25 for refusing to answer. Justice Starke said the circumstances of

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99 *Sun*, 21 February 1970, 'Probe told a tape about Matthews was stolen', p. 9.
100 *Sydney Morning Herald*, Good Weekend, 10 May 1986, 'Business is down 50 per cent and Bert Wainer is thriving', Keith Dunstan, pp. 22-24, box 30, Wainer papers, MS13436, SLV.
102 *Age*, 23 January 1987, 'Piper's lament pays tribute as death silences a campaigner', Keith Dunstan.
103 *Sun*, 17 March 1971, 'Mrs B. threatened to bomb me, says Adam', p. 20.
105 Tape recording – Mathews and Wyatt, box 29, Wainer papers, MS13436, SLV.
106 Interview, Beatrice Faust, 16 February 2004.

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Heath’s case meant that only a nominal fine was justified. Corrie Heath continued to refuse to attend without explanation. Kaye noted in his final report that Heath’s refusal ‘precluded the Board from investigating a number of incidents extending over more than ten years as well as the association between Heath and certain police officers’ relevant to the inquiry.

Kaye found that a body of evidence established an affinity between Mooney and Heath that disadvantaged Mooney in his duties and enabled Heath to exploit and manipulate him to Heath’s advantage. Evidence also pointed strongly to Holland’s guilt in this regard.

Maureen Jacobson/Twisse worked for Troup from 1966 under the name Sister Burns and kept a false hospital benefits card in that name to avoid detection by police. She was not charged over her activities until after she had failed to attend committal proceedings, around eight months after the raid. Holland said he did not know of Twisse until a subpoena was served on her in September 1968. Twisse had left Troup’s employment unexpectedly, a few days before the raid.

Winifred Mary Telgenkamp/Read, the wife of traffic policeman Johanus Enbertus Telgenkamp worked for Troup for one week before the February 1968 raid. She was hired to replace Twisse. Telgenkamp had worked for Finks on two occasions, as well as for Rodney Bretherton some years before. Berman offered her a job after Finks dismissed her. Telgenkamp was employed under her former name, Read, the name she gave the police at the time of the raid.

Pauline Dorothy Green had worked as a nurse for Finks from November 1961 until Troup took over the practise and then for Troup up until October 1965. After a falling out with Berman, Green went to work with John Heath in November 1968. Green stated that both practices were protected, but that the secrecy and tension that existed at Hoddle Street was absent from Heath’s practice. Mooney had intervened to have charges against Green dropped. According to Green, Heath examined and interviewed women who came in for abortions, but Stapleton, Finks and Levin normally carried out the operations. There were approximately thirteen to fourteen abortions performed each day at the practise.

Elva Isobella Moran reverted to using her maiden name Belle Lewis after divorcing in 1962. She had lived with Wyatt for eleven years. Lewis was the licensee of the Red Lion Hotel in Carlton from 1959 to 1962 but lost her victualler’s licence because of Wyatt’s unlawful betting operations in and around the hotel.

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110 Age, 3 April 1970, ‘Inquiry in closed session’; Sun, 3 April 1970, ‘Dr Heath’s wife “is far away”’.  
112 Kaye, Report of the Board, p. 94.  
114 Age, 17 February 1970, ‘Receptionist not charged until eight months after raid. Troup’s employee lived with policeman. He was in homicide squad’, p. 8.  
115 Age, 19 February 1970, ‘Superintendent says he knew of Ford-Berman association: “Ford could have been security risk”. Woman on the homicide squad’s silent number’, Sue Preston and Dick Shepherd, p. 12.  
116 Australian, 20 February 1970, ‘“Woman paid $153,000 to police”. Recorded voice is mine, constable admits at inquiry’, p. 2.  
Lewis had worked for Bretherton for about six months, assisting in the performance of abortions, as she had with Jean Field, Wyatt and unqualified operators Gert Rose and Edward John Daggard.\textsuperscript{120} Lewis alleged that Field brought Bretherton along to a hospital in Brunswick 'to get him started'.\textsuperscript{121} She also claimed that the backyard practise was protected from 1953, with Field arranging payment. Lewis and Field quarrelled in the late 1950s over Berman and split up, renewing their friendship in 1965.\textsuperscript{122}

Lewis was released from Fairlea Women’s Prison on 27 February 1970 after serving a two-year sentence on an abortion conviction.\textsuperscript{123} She was awaiting trial on further charges. Kaye found Lewis to have manifested a 'conscious endeavour to be truthful'.\textsuperscript{124}

\textbf{Jean Warnock Field} qualified as a nurse in 1927 and was one of the few surviving midwife abortionists in Melbourne. She admitted to working as an abortionist from 1950 to 1958, then again from 1965-1969 up until her arrest in May.\textsuperscript{125} During this time she worked with Dr Hart in 1950, Dr Heath in 1951 and with Wyatt, Lewis, Rod Bretherton and John Brookes. Field was credited with having taught Bretherton and Wyatt how to perform abortions.

Field had sworn a statement on 21 January 1970 implicating Timmins and Petty, but when giving evidence to the inquiry she retracted her allegations, saying she had fabricated the allegations under duress from Wyatt and Lewis.\textsuperscript{126} Senior Detectives Evenden and Porter met Field upon her release from Pentridge on 3 February. Field was deemed too ill to give evidence to the inquiry on 27 February having collapsed at her parole board hearing that morning.\textsuperscript{127} Evenden was also in charge of the investigation into Wyatt’s latest charges.

Field claimed she had not paid the police and believed they left her alone because her patients were well treated and not charged excessive fees. She said she did not advertise but neither did she make a secret of her trade.

Field was the sister of Bessie Watts/Shaw and of Donald Shaw/Jack McLeod and sister-in-law of Annie Shaw/McLeod, each convicted abortionists.

\textbf{John William Brookes} was described as an unqualified man who performed abortions.\textsuperscript{128} Wyatt alleged that Brookes was Bretherton’s half brother, although there was no evidence to support this.\textsuperscript{129}

Brookes had been charged with abortion offences in 1955, when he was only twenty-five years old. The matter did not go to trial until 1957 and Brookes was released on probation, despite the ‘enormous evidence of a scandalous and sensational nature’.\textsuperscript{130} The names of

\textsuperscript{120} Kaye, \textit{Report of the Board}, p. 110.
\textsuperscript{121} \textit{Herald}, 25 March 1970, ‘I helped with abortions - Mrs Lewis’, p. 3.
\textsuperscript{128} \textit{Age}, 5 February 1970, ‘Dr Troup tells about practice. Doctors did thirty-five abortions each week’, Dick Shepherd and Sue Preston, p. 15.
\textsuperscript{129} \textit{Age}, 24 March 1970, ‘“Mrs. Berman threatened me,” Dr. alleges’. Bretherton had two brothers – Ken, who was also a doctor, and a half brother, Bruce.
\textsuperscript{130} \textit{Herald}, 24 September 1957, ‘Man goes free on probation’, p. 5.
'certain city doctors' had been mentioned in connection with the case, but police agreed that they 'should not be given in evidence'.

It was alleged during the inquiry that Brookes worked from Bretherton's rooms and that he returned to this practise immediately after being released on a bond in 1957. Bretherton admitted that he had raised the money for Brookes defence and there was evidence of a close business relationship between Bretherton and Brookes, with Bretherton having invested money into three companies set up by Brookes – Brookes Aviation, Brookes Industries and a civil flying school.

Brookes did not appear before the Board. Although a summons was issued it was not served because of an 'inability to ascertain' either his whereabouts or his 'usual place of abode'. James Glennom Brookes was also issued a summons but did not appear, having jumped bail in 1955 when he was charged alongside his brother.

**Rodney Claude Bretherton**, 50, son of the locally famous doctor, Albert Bretherton, qualified as a doctor in 1944. In 1952 he was investigated after the police received a letter that he worked as an abortionist, with investigations also implicating a Moira Moran of Coburg. While there was strong suspicion against him, there was 'practically no evidence ... to date'. Police files noted addresses in Queens Road Melbourne, High Street Prahran, Barkers Road Kew and Brunswick. The Queens Road address, a private hospital with associated doctor's rooms known as 'Stanhill', was also the subject of police investigations in 1955. From 1955 to 1957 Bretherton worked with James Troup.

Bretherton's cousin on his stepmother's side was married to Senior Constable Ronald Jackson and there were allegations that Jackson protected Bretherton's practise. Wyatt also alleged that Jean Field had taught Bretherton how to perform abortions. Bretherton did not have any post-graduate qualifications. Bretherton's mother was a member of the Moran family, although it is unclear whether this was the same family as Belle Moran/Lewis.

On 10 February, in the middle of the Kaye Enquiry, Bretherton was remanded on abortion related charges, with Murphy the officer responsible for the case. Bretherton initially failed to appear at the inquiry and then later insisted on giving evidence in an open session despite Kaye warning him of the risks of doing so. In a press statement he said he had refused to answer questions unless in open session in order to refute some serious allegations that had

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131 *Argus*, 7 September 1955, 'Evidence 'scandalous, sensational'': Nurse, man ordered face trial'.


133 Public Record Office Victoria (PROV), VA 724, Victoria Police including Office of the Chief Commissioner, VPRS 2400/P1 General Correspondence, unit 23, item 17/2 Abortion 1952-1956, police files on James and John Brookes.

134 Albert William Bretherton was well known as an empathic doctor who worked tirelessly treating the poor in Prahran, including performing abortions for poor women. When he died in 1937, 5,000 people lined the streets of Prahran for his funeral. See Bretherton, *Abortion: RU486*, p. 5.

135 It is not clear whether either Moira Moran or Elva Isabella Moran (Belle Lewis) were related to Bretherton, whose mother was part of the Moran family. See Bretherton, *Abortion: RU486*, p. 2.

136 PROV, VA 724, Victoria Police including Office of the Chief Commissioner, VPRS 2400/P1 General Correspondence, unit 23, item 17/2 Abortion 1952-1956, police files on Rodney Bretherton.

137 *Sun*, 9 April 1970, "'No idea Wyatt an abortionist'", p. 17. Bretherton continued to deny that there was any evidence of police corruption in relation to abortion. The only incidents he cites are Kelvin Churches comment that the gangster Squizzy Taylor was a 'standover protectionist' of abortionists and that on one occasion someone shot at his father, presumably in the early 1930s. See Bretherton, *Abortion: RU486*, pp. 34-35.


139 *Newsday*, 23 March 1970, 'I owed tax $100,000 doctor Tells abortion probe'.
been made.¹⁴⁰ Kaye had earlier refused an application from Bretherton to give evidence in public. Bretherton said he believed witnesses were lying about paying money to police officers.¹⁴¹ He said he had never performed an illegal abortion and supported Wainer’s main cause of abortion law reform but not his cause of obtaining publicity about alleged police corruption.¹⁴² Bretherton said that Berman threatened to have police raid his rooms and Wainer to ruin his image unless he agreed to their demands.¹⁴³ Like other medical practitioners facing trial for abortion, Bretherton was a reticent witness. Kaye noted that Bretherton was not ‘a witness of truth’ and that ‘his evidence was contrived where he believed it suited his interests’.¹⁴⁴

John Levin, a medical practitioner with a close association with Heath and Finks, administered anaesthetics for a number of doctors. He was the anaesthetist for Finks in the Buckstein case that led to the delayed inquest after Finks left the country.¹⁴⁵ There were also allegations that he performed abortions upon referral from Heath.

The Board did not consider Levin a reliable witness, particularly given his close association with Heath and his activities in relation to abortion. Kaye summarised that there ‘were many matters deposed to by Levin which rendered him a witness on whose oath the Board considers it could not rely’.¹⁴⁶

Levin joined Wainer and Peter Bayliss in their practise at the Fertility Control Clinic in 1974.

Mario Marchesani, a doctor who practised in Geelong, was said to perform abortions and to have taught Wyatt how to perform an anaesthetic. Harry McMennemin collected debts on his behalf, following a request from Marchesani’s son-in-law, sergeant Janetski, officer in charge of Geelong CIB.¹⁴⁷ There were allegations that both Mooney and Holland showed favour to Marchesani’s practise.

Anna Margaret Ashton qualified as a medical practitioner in 1955.¹⁴⁸ She worked for Rodney Bretherton in Prahran from 1962, performing anaesthetics for abortions performed by qualified medical practitioners, and, in Bretherton’s rooms, to patients aborted by John Brookes.¹⁴⁹ In September 1963 Ashton began working with Dr Hamilton Lister Catchlove in Richmond, moving with him to Albert Street East Melbourne in September 1964 and remaining up until October 1965 administering anaesthetics and assisting him with surgery and reception duties.¹⁵⁰ Catchlove had paid Matthews for protection in 1963. Ashton then worked for Peter Bayliss for two months from October 1965 before moving into a general practise as an assistant. Ashton gave evidence supporting Berman’s allegations against

¹⁴³ Age, 24 March 1970, ‘“Mrs. Berman threatened me,” Dr. alleges’.
¹⁴⁷ Age, 18 March 1970, ‘McMennemins were visited. Police quiz on dud $10s. Denial by solicitor’.
¹⁴⁹ Sun, 10 March 1971, ‘Ford told of money paid to him. Doctor’s claim’.
¹⁵⁰ Sun, 10 March 1971, ‘Ford told of money paid to him. Doctor’s claim’.
Ford. Kaye noted that she was an unwilling witness whose evidence required close scrutiny. Nevertheless, he found she gave evidence with care and its detail was confirmed by documentary evidence.

Following the inquiry, Ashton changed her name by deed poll to Anna Sturrock. In January 1971 she was acquitted of a charge of having neglected her four-year-old intellectually disabled son. The police alleged that they found the child alone and crying in a St Kilda flat. Sturrock said her son was left alone for short periods while she went shopping, due to his behaviour and the impossibility of finding a baby-sitter. The prosecution said she had been placed in a difficult position and having regard to the medical evidence and other witnesses, he dismissed the case.

Lawyers to those Accused

Apart from the extraordinary number of links between the police officers, medical practitioners and backyard abortionists involved in the inquiry, there were also a number of links between these groups and the barristers and solicitors involved in their defence. No doubt there were few barristers or solicitors at the time with experience in defending criminal abortion charges, but the pattern of relationships is of interest and, in at least some cases, unlikely to be coincidental. I have not included the details of every barrister or solicitor who appeared. Rather, I have looked for the patterns in use of lawyers, where that information appears on the public record. This information can be read in association with the diagram representing relationships with lawyers in appendix five.

Cairns Villeneuve-Smith appeared on behalf of both Heath and Mooney, and was instructed by the same solicitors, Gilbert Field and Warne, who were engaged by Dr James A.P. Buchanan and Dr Harold Grinblat. The fact that these solicitors had also written to Mooney on behalf of Green was not lost on Kaye. Villeneuve-Smith, described as a ‘thin-faced, greying man’ with ‘a wickedly acid tongue’ was involved in a number of exchanges with Kaye during the inquiry. On one occasion Villeneuve-Smith said Heath would not get the ‘semblance or ghost of a fair trial’ with the allegations being made. Kaye pointed out that he was appearing for Mooney, not Heath, at the time.

Holland hired the prestigious QC, Barry Beach, to appear on his behalf, which seemed unusual given his police officer’s salary and the fact that he was not initially named in the allegations. Beach went on the chair the Beach Inquiry into allegations of police corruption urged by Wainer and was assisted by Villeneuve-Smith, whom Wainer later sued for libel.

In 1967, William Kaye QC, who headed the Kaye Inquiry, had represented Grinblat.

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154 Herald, 1 April 1971, ‘Woman doctor did not neglect baby – court’, p. 3.
John Starke, who presided over the police trial in 1971, had appeared for Dr Lew Phillips in 1959. Starke had also sentenced prison escapee Ronald Ryan to death on 3 March 1966, a notably political decision.\(^{159}\)

Frank Galbally sought leave to appear for both Wyatt and an ‘unnamed police officer’. Kaye would not give leave to appear for an unnamed person and raised concern at the possibility of him representing someone making allegations and someone against whom allegations were made. Galbally had previously appeared for John Brookes in 1955, Fenton Bowen in 1967-69 and for Jean Field, Belle Lewis and Donald and Annie Shaw in 1968-69. He had also appeared for Wainer in 1952 and 1966 in incidents unrelated to abortion.

Ray H. Dunn was Berman, Troup, Young and Telgenkamp’s solicitor in relation to charges pending, yet he instructed barristers for Senior Constable Jackson, Senior Detective O’Brien and Dr Davidson. Dunn had previously appeared for Dr Lew Phillips and Dr Grinblat in 1966.

Jack Lazarus, who appeared for Bretherton when he was charged during the Kaye Inquiry, had previously appeared for Dr Max Sizeland and Dr Peter Bayliss in 1965. He was also the barrister for Ken Davidson in 1969, the case that led to the Menhennitt Ruling on 22 May 1969. Bretherton and Levin engaged the same firm of solicitors, Cedric Ralph, although with different barristers.

Robert Vernon, who appeared in the Kaye Inquiry for Troup, Young and Berman, had previously appeared for Belle Lewis in 1967.

Although not named in Kaye’s list of instructing solicitors, Fenton Bowen was represented by Arthur Rylah’s firm, Rylah and Rylah.\(^{160}\)

Roy H. McMennemin was solicitor for his father, Harry McMennemin during the inquiry. Roy was also the solicitor for Bertram Kidd who, along with Dale Code, Wainer’s brother-in-law, was charged with the manufacture and distribution of counterfeit $10 notes. Code was serving a fourteen-year jail term for the offence and worked in Pentridge with Wyatt.

\(^{159}\) *Truth*, 17 April 1971, ‘When three top cops said goodbye to freedom’, Jack Ayling. Premier Henry Bolte intervened to ensure that Ryan was hanged, as he wanted to appear strong on law and order in the lead-up to an election in which he was looking somewhat shaky. While the *Age* refused to capitulate, Packer recalled and pulped the 31 January 1967 edition of the *Bulletin* as it contained an editorial and a Les Tanner cartoon that was anti-capital punishment. Packer also withdrew a BBC documentary that was critical of capital punishment that was to screen on GTV 9. See J. McCulloch, “The Neo-Liberal Fear Factory or How Howard Plans to Win the Election”, *Arena Magazine*, June-July 2004, p. 23.

### Officers in Charge of the Homicide Squad 1959-1974

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<tr>
<th>Date Range</th>
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<tr>
<td>12 February 1958 to 15 November 1959</td>
<td>Charles Petty (P)(^{161})</td>
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<tr>
<td>16 November 1959 to 28 December 1964</td>
<td>John (Jack) Edward Matthews (P)</td>
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<tr>
<td>28 December 1964 to 1 February 1965</td>
<td>Jack Ralph Ford (Acting) (P)</td>
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<tr>
<td>2 February 1965 to 28 June 1965</td>
<td>William Wall W. Mooney (RC)</td>
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<td>29 June 1965 to 31 October 1965</td>
<td>Jack Ralph Ford (Acting) (P)</td>
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<tr>
<td>1 November 1965 to 2 June 1969</td>
<td>Francis (Frank) Gerald Holland (RC)</td>
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<td>2 June 1969 to Kaye Inquiry</td>
<td>Jack Ralph Ford (P)</td>
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<tr>
<td>Kaye Inquiry to police sentencing</td>
<td>Kevin John Carton (Acting) (RC)</td>
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<tr>
<td>16 April 1971 to 18 June 1972</td>
<td>Kevin John Carton(^{162}) (RC)</td>
</tr>
<tr>
<td>19 June 1972 to 2 December 1973</td>
<td>Frederick Wenzel Russell (RC)</td>
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<td>20 December 1973 to 1975</td>
<td>Kenneth Phillip Walters (P)</td>
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</tbody>
</table>

\(^{161}\) "P" designates that the police officer was a Protestant and 'RC' that he was Roman Catholic.  
\(^{162}\) As a result of inconsistencies in the method of recording, it is possible that there are some inaccuracies in the dates provided by the Police Historical Unit from Carton's finish onwards.
APPENDIX FIVE

DIAGRAMS OF ALLEGED ACTIVITIES AND ESTABLISHED RELATIONSHIPS BETWEEN THE MAIN CHARACTERS IN THE KAYE INQUIRY¹

Diagram 10: Key to reading diagrams

Diagram 11: Doctor connections

Diagram 12: Doctor connections alleged

Diagram 13: Nurse connections

Diagram 14: Nurse connections alleged

Diagram 15: Lawyer connections

Diagram 16: Police connections

Diagram 17: Police connections alleged

Diagram 18: ‘Backyard’ connections

¹ To be read in conjunction with the biographical notes in appendix four.
KEY TO READING DIAGRAMS

Nurse/Receptionist

Lawyer

Medical practitioner

'Backyard' abortionist

Police officer

Barrister

Instructing solicitor

Qualified nurse

Retired

direction of referral

family relationship - marital

family relationship - direct

Those diagrams depicting alleged relationships use four different line styles as below and colours as above

A normal line denotes an allegation that appears likely to bear some truth

A double line denotes an allegation for which there is substantial evidence but not enough on which to base a conviction

broken line denotes an allegation that appears unlikely to be true, except in 'backyard connections' where it denotes an allegation

A dotted line denotes an allegation that was withdrawn under suspicious circumstances
Diagram 13: Nurse connections
Diagram 14: Nurse connections alleged
Diagram 15: Lawyer connections...
Diagram 16: Police connections
APPENDIX SIX

POSTERS AND FLYERS

1 All posters and fliers are reproduced from the collections of the University of Melbourne archives. The cartoons are reproduced from the Women's Abortion Action Campaign, Right to Choose, July 1978, C. O'Donnell, Sydney, Women's Abortion Action Coalition/Campaign papers, AN100/222, Victorian Women's Liberation and Lesbian Feminist archives, University of Melbourne.
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APPENDIX SEVEN

DETAILS OF MEMBERS OF PARLIAMENT CITED IN THE DISSERTATION

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[Copyrighted material omitted. Please consult the original thesis.]

2 Information varies from one source to the next
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- Frances Ryan papers
- Ilka Efkemann papers
- Sally Mendes/Alva Geike papers
- Women’s Abortion Action Coalition/Campaign papers

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2.4.2 Unpublished papers


2.4.3 Theses


