

THE AUSTRALIAN PRO-CHOICE MOVEMENT AND THE STRUGGLE FOR LEGAL CLARITY, LIBERAL LAWS AND LIBERAL ACCESS

The Extended Australian Report

of the

“The Johannesburg Initiative”

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**Full Report Australia, the Johannesburg Initiative, Unpublished
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A condensed version of this report was published in (2001) “The Australian Pro-Choice Movement and the Struggle for Legal Clarity, Liberal Laws and Liberal Access: Two case studies in B. Klugman and D. Budlender (eds) Advocating for Abortion Access: Eleven country studies, The Johannesburg Initiative, School of Public Health, Women’s Health Project, University of Witwaterstrand.

The Johannesburg Initiative

The Johannesburg Initiative is funded by the Government of the Netherlands and the Swedish Institute Development Cooperation Agency (Sida). The Australian Reproductive Health Alliance (ARHA) and Children by Choice (C by C) funded the research for the Australian Case Study, a summary of which is published in *Advocating for Abortion Access: Eleven Country Studies* (Women's Health Project, School of Public Health, University of Witerwatersrand, 2001). The Centre for Applied Philosophy and Public Ethics has funded the publication of the extended Australian Report.

The Johannesburg Initiative is the name given by participants to a three-phase international project of which the full title is "Capacity building for advocacy on expanding abortion policy and access: sharing of national experiences between countries from diverse regions."

Eighteen countries participated in the Capacity building project, which was initiated by South African activists after their achievement of liberal law reform in 1997. The aim was to compare and contrast the political and social contexts of countries with diverse abortion laws and access in order to draw generalisable conclusions about the social contexts and advocacy strategies that inhibit or facilitate change.

Phase one took place from December 1999 to June 2001, concluding with the publication of *Advocating for Abortion Access* in which case studies of abortion advocacy in eleven countries – including Australia - were described and a comparative analysis provided to assist activists to "learn from one anothers' experiences". [Klugman, 2001 #298]

The Purpose and Design of this Report

However, unavoidable limits on the length of the Australian contribution to *Advocating for Abortion Access* meant that important data and analysis was unable to be included. It was felt that this work may be of use to pro-choice advocates keen to understand and apply the

lessons learned by pro-choice advocates involved in the change processes in WA and the ACT in 1998.

We thus sought to produce a full report, tiered and organised by campaign stages, to enable activists to choose the level of detail they wished to read and to quickly access sections relevant to their current needs and interests. However, the report has also been designed to facilitate comparisons between WA and the ACT and thus encourage the building of the “mid-level” [Albury, 1989 #22] theory necessary to advance local understanding of what works and what doesn’t to achieve reform abortion law reform and enhanced access to services.

The author, ARHA and C by C are extremely grateful to the Centre for Applied Philosophy and Public Ethics (CAPPE) for offering its assistance in publishing the full report. We stress, however, that responsibility for its contents fall to us alone.

Objectives of the Australian Report

- To examine abortion policy, law and women's access to abortion services prior to, during and (insofar as possible) after legislative change that took place in 1998 -1999 in two Australian States: Western Australian (WA) and the Australian Capital Territory (ACT);
- To identify or to provide the basis for identifying the key factors facilitating and constraining achievement and/or maintenance of liberal and/or clarified abortion law and/or policies;
- To identify or to provide the basis for identifying the key factors facilitating and constraining achievement and/or maintenance of liberal access to abortion services in Australia;
- To make suggestions based on this analysis, where possible, for future pro-choice advocacy strategies

Conduct of the Research

Methods

In-depth case studies of two cases of recent political activity and legislative change around abortion were conducted. WA and the ACT were selected because both because there had been recent activity and change around abortion in these states/territories, and because the change was in opposing directions (in WA, laws and access were liberalised, while in the ACT laws and access were restricted).

Academic journals and government and non-government organisation reports were used to obtain background information on women's legal and practical access to abortion in Australia in general, and in particular in WA and the ACT. Pro-choice activists were then interviewed by phone or via e-mail. When available, the materials that activists used to support their advocacy (papers, reports, newspaper articles, press releases, speeches) were analysed.

Pro-choice Advocates Interviewed

Rebecca Albury, Senior Lecturer, Faculty of Arts, University of Wollongong

Gina Anderson, Postgraduate Student, Sociology Department, University of Western Sydney

Lindsay Beaton, Activist, Australian Reproductive Health Alliance

Wayne Berry, MLA, Legislative Assembly, Australian Capital Territory

Scott Blackwell, past President Australian Medical Association, Western Australia

Margot Boetcher, Activist, Association for the Legal Right to Abortion (WA)

Dorothy Broom, Epidemiologist, National Centre for Epidemiology and Public Population Health, Australian National University

Barbara Buttfield, Activist, Abortion Rights Network of Australia

Cait Calcutt, Activist, Association for the Legal Right to Abortion (WA)

Natasha Cica, Lawyer and Activist

Cheryl Davenport, MLA, West Australian Parliament

Dr Stan Doumani, past President Australian Medical Association (ACT)

Judith Dwyer, Chair, Expert Panel of the (Not-the-NHMRC) Information Paper on Termination of Pregnancy in Australia

Ruth Greble, Activist, Association for the Legal Right to Abortion (WA)

Dr David Grundmann, Service Provider, Queensland

Susan Kelly, Service Provider, Queensland

Carmen Laurence, MLA, Federal Parliament

Sandy Mackenzie, Executive Director, Family Planning ACT

Diane Proctor, Chief Executive Officer, Australian Reproductive Health Alliance

Lara Pullen, Activist, ProChoice

Sue Robinson, Assistant, Wayne Berry's Office

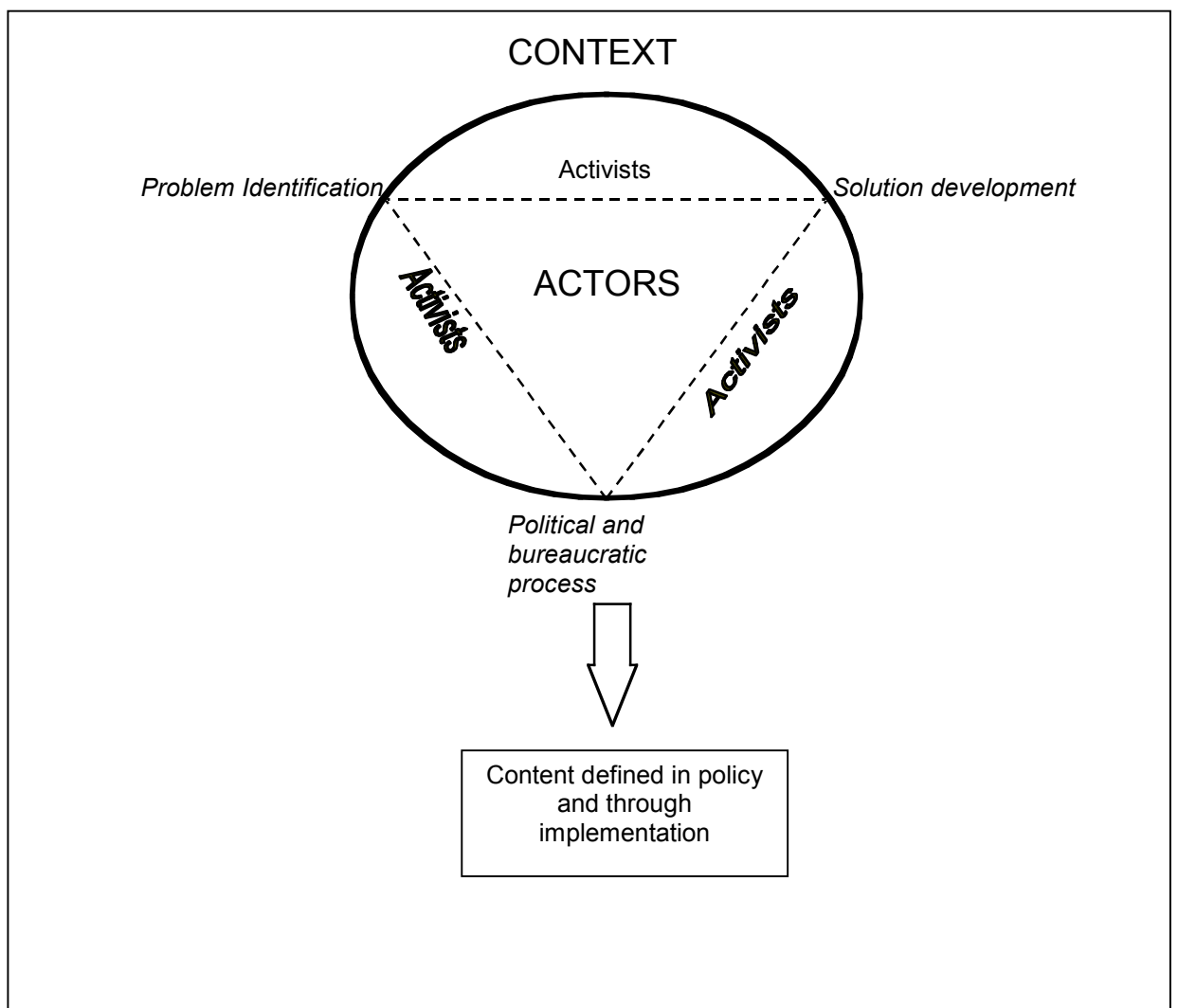
Dr Judy Straton, Associate Professor in Public Health, University of Western Australia

Diana Warnock, MLA, West Australian Parliament

Theoretical Framework

At the first meeting of the Johannesburg Initiative an analytical framework was developed and adopted to guide the research that was to take place in each individual country. The framework arose through the sharing of advocacy experiences and insights and reflects the shared understanding of what questions should be asked about each country's experience developed at that meeting. The framework guided the organisation and analyses of the data.

FIGURE 1: FRAMEWORK FOR ANALYSING FACTORS INFLUENCING POLICY DEVELOPMENT, CONTENTS AND IMPLEMENTATION



Abortion in Australia: An overview

Legal

Australia is believed to be the only place in the world in where abortion laws differ within the country [Women's Electoral Lobby (Perth), 1988, 1990 #2].

In every state and territory in the country, abortion appears in the relevant Crimes Act or Criminal Code. However, in all states and the legal advice required by territories amending legislation or judicial decisions define (or are thought to define) the terms, conditions and/or places in or under which a legal abortion can be performed. At the heart of such legislation and decisions is the defence of necessity, established in the 1938 English case of *R v. Bourne*. Essentially, the defence establishes the role of medical professionals' as "gatekeepers" of women's access to termination, as it is they who must form an honest belief on reasonable grounds that the termination is necessary to protect the woman's health in order for the termination to be lawful. In practice, it has meant that medical professionals are most often those at the centre of attempted prosecutions for unlawful abortion.

The states and territories in which the circumstances in which abortion could be performed legally have not been clarified by judicial or legislative definition are:

- Tasmania
- ACT

However, in the ACT the Levine judgement is thought to prevail.

The states and territories in which the lawfulness of abortion is prescribed in legislation are:

- South Australia (to 28 weeks)
- Northern Territory (to 14 weeks for social indications, to 23 weeks in the case of grave physical and mental risk to the mother)
- Western Australia (Before 20 weeks on request, after 20 weeks for severe medical conditions and then only with the approval of two medical practitioners from a designated panel in an approved facility)

In addition, while legislation passed in the ACT expressly seeks not to affect “the lawfulness or unlawfulness of abortion,” it does prescribe penalties for non-compliance of procedures surrounding the provision of abortion services.

The states in which the lawfulness of abortion is defined by judicial rulings are:

- Queensland - the McGuire judgement
- Victoria - the Menhennitt judgement (up to viability)
- New South Wales - the Levine judgement

These judgements stipulate that in order to show that an abortion is unlawful, the prosecution must show that the doctor did not form an honest belief on reasonable grounds that the abortion was necessary to preserve the woman’s physical or mental health. The Levine decision and its progeny are considered the most expansive of these rulings as they allow social and economic factors to be considered when assessing the danger to the woman’s health. They are also considered the most authoritative of these rulings as they have been affirmed and clarified by the majority of the NSW Court of Appeal in 1995 in *CES v. Super Clinics*.

Service Availability And Accessibility

- Tasmania

The one not-for-profit clinic in Tasmania closed in April 2000 due to a lack of demand caused by the public hospital providing a free service in comparison to the clinic fee of \$300. In November 2001 doctors across the state banded together to refuse all public hospital provision of services unless and until the legal status of abortion was clarified. As a consequence, women in the north of the state are now being flown to Melbourne, with most of the cost being footed by the “patient transfer assistance scheme.” In Hobart, the state government is paying the costs of flying a doctor and an anaesthetist in for one day each week to perform an estimated twelve terminations. Provision in Tasmania is available only to 12 weeks of pregnancy.

- ACT

One not-for-profit clinic. Under the 1998 regulations, the Minister for Health must approve all facilities. No expressed time limit.

- Queensland

Six owner-operated clinics, with provision in public hospitals rare. No expressed limit on gestational length, but most facilities refer to specialist clinics in Brisbane or Tweeds Head for pregnancies between 18 and 24 weeks.

- Victoria

Seven owner-operated clinics and some public hospital provision. Despite current medical technology making viability around the 22 to 25 week mark, providers are unwilling to provide terminations beyond 18 or, in extreme cases, 20 weeks.

- New South Wales

Fourteen owner-operated and one not-for-profit clinic operate alongside some public and private hospital provision. No expressed limit but no provision available beyond 20 weeks.

- South Australia

Public and private hospital provision and one public abortion clinic, the Pregnancy Advisory Centre, established in 1992. Despite expressed limit of 28 weeks (the likely age of viability at the time the legislation was written), services are reluctant to provide terminations beyond 20 weeks. A small number are done each year in the 20 to 24 week period for fetal indications.

- Northern Territory

Limited public hospital provision. In practice, women have to leave the state to obtain a termination beyond 14 weeks gestation.

- Western Australia

One owner-operated and one not-for-profit operated by Marie Stopes International.

Terminations provided up to 20 weeks. Limited public hospital provision available, mainly for women terminating pregnancies for fetal indications. In practice, terminations beyond 20 weeks are available in approved facilities when the fetus or woman has a severe medical condition that their doctor believes warrants a termination, and the doctor is willing to support the woman through the prescribed legislative process.

Safety and Cost

Approximately 7 of every 8 terminations are done in private specialised clinics, in day surgery units or by private practitioners in private or public hospitals. One in 8 are provided to public patients in public hospitals. There is no evidence of any remaining demand for, or availability of, non-medical service provision [NHMRC, 1996 #1]. The Medicare rebate available since 1975 goes some way to reducing women's costs, although privacy concerns means approximately 10% of eligible women do not submit claims. However, because the rebate has not been increased since its reduction and does not cover theatre fees, women still face substantial out-of-pocket costs to obtain a termination. The NHMRC information paper estimates that a procedure for an uninsured woman (and most patients in private clinics are uninsured) terminating in a private hospital with general anaesthesia will cost around \$600 dollars after the Medicare rebate of \$165.40. In Queensland, a termination of a pregnancy of under 12 weeks gestation done in a capital city will cost around \$170 after the Medicare rebate, but between \$350 and \$400 if done at a regional clinic. Up to \$2,500 is charged for terminations of 19 weeks and beyond.

CONSTRAINTS ON ACCESS

The following groups of women are disadvantaged in seeking timely, affordable, confidential and culturally appropriate advice/counselling and termination services:

- Poorer women/Public patients (in South Australia, these women may face delays of up to five or six weeks from time of first contact to the procedure);
- Rural women (who face similar disadvantage in accessing all health services);
- Indigenous women;
- Women from Non English Speaking Backgrounds

Religious Composition of The Country¹

At the 1996 Census, Australians' religious affiliations were:

Catholic	30%
Anglican	24%
Other Christian	24%
Non-Christian religions	4%
Uncommitted or professing no religion	18%

Fertility Rate

Australia's fertility rate has declined steadily since the end of the baby boom in 1962, falling below replacement level in 1976 and declining every since. The last decade of the 20th century saw particularly precipitous drops. From 1.9 babies per woman in 1990, it moved to 1.8 in the middle of the decade and at the start of 2000, was at 1.75. At present, it continues to decline rapidly, with the age of mothers at first birth moving steadily upward. The Australian Bureau of Statistics estimates that more than one in four currently fertile women will remain childless.

Abortion Rate

The uncertain legal status of abortion in Australia makes reliable data difficult to collect. Most estimates extrapolate from South Australian data, where legislation requires precise record keeping. The most reliable estimates suggest 80,000 terminations are performed in Australia

¹ [The following summary has been extracted from \Australian Bureau of Statistics, 2001 #219].

each year. Based on 1990 data, Australia's abortion rate (per 1000 women) is 19.7 %. In 1990, approximately 23% (or nearly 1 in 4) of all known pregnancies ended in abortion. It is commonly thought that approximately one in three Australian women will have an abortion in her lifetime. [Cannold, 1998 #11]

Attitudes About Abortion

Attitudes about abortion as measured by opinion polls vary significantly depending on the way questions are asked. In summary, polls appear to show that the vast majority of Australians believe that if a woman wants a termination, after counselling and in consultation with her doctor, then she should be able to access one that is safe (by which many people seem to mean "medically provided") and legal. Few Australians believe that women should have an unrestricted "right to choose" or "abortion on demand" and even less that abortion should be illegal in all circumstances.

The anti-choice movement rarely cites opinion polls on abortion and often tries to discredit them, because of the lack of support they give to the movement's total opposition to abortion in all or nearly all circumstances. President of LifeNet Services Paul Swope recently claimed that the anti-choice movement has long been confounded by the fact that while most people personally oppose most abortions (with women showing greater opposition than men), they are increasingly comfortable with and in favour of liberal abortion laws and access. [Swope, 1998 #90] This findings sits comfortably with that of a 1985 Cleo poll conducted by Product Development International which found 79% of women thought abortion should be available even when they themselves might not wish to have one. It also jives with the findings of an Australian poll conducted around this time that found that 60% of women and 36% of men believe life begins at conception. [Cited in \Fairweather, 1987 #96]

The following is a summary of the findings of Australian opinion polls on abortion. The polls tend to support Swope's contention that while a significant section of the community does not personally support or approve of abortion, the vast majority want the procedure to remain legal.

MORGAN GALLUP POLL - 1982

“Should an abortion for a woman who has had counselling be legal or illegal?”

70% legal
16% illegal

ANOP MARKET RESEARCH (COMMISSIONED BY WESTERN AUSTRALIAN GOVERNMENT) - 1986

“Should women be able to have an abortion if they so choose?”

76% Yes
24% No

IRVING SAULWICK AND ASSOCIATES FOR THE AGE - 1987

Do you approve of abortion?

14% No
2% Don't know
19% Yes
66% In some circumstances
 “If unhappy with the sex of the child?”
 7% Yes
 89% No
 4% Don't know

 “If the child is seriously deformed?”
 82% Yes
 9% No
 9% Don't know

 “If the mother has been raped?”
 83% Yes
 8% No
 9% Don't know

 “If the mother's health is at risk?”
 88% Yes
 7% No
 5% Don't know

SAULWICK AGE POLL – 1992

“Do you approve of abortion where...”

 “the mother's health is at risk because of pregnancy?”
 84% Yes
 10% No
 6% Undecided

“the child is likely to be physically handicapped?”

69%	Yes
21%	No
10%	Undecided

“a married couple do not want more children?”

42%	Yes
50%	No
8%	Undecided

AGB MCNAIR POLL - 1996

“Should the abortion decision be left to the individual and her doctor?”

77% Yes

BULLETIN MORGAN POLL – 1996

“Do you approve of....”

“contraception to prevent pregnancy?”

93%	Approve
4%	Disapprove
3%	Undecided

“tablets within one week of unprotected sex?”

64%	Approve
26%	Disapprove
10%	Undecided

“termination through surgical abortion?”

57%	Approve
33%	Disapprove
10%	Undecided

“tablets to terminate unwanted pregnancies?”

51%	Approve
37%	Disapprove
12%	Undecided

COALITION FOR LEGAL ABORTION: PUBLIC OPINION ABOUT ABORTION LAW REFORM - 1998

“The decision to have an abortion should be made between a woman and her doctor”

86% Yes

“The law should be changed to allow the decision to have an abortion to be made privately between a woman and her doctor”

87% Yes

"My vote will be affected by the way my local member of parliament voted on the abortion issue"

38% (of those who agreed with law reform) Yes
5% (of those who disagreed with law reform) Yes

27% of sample said they were swinging voters.
89% of swinging voters were in favour of abortion law reform
2.5% of swinging voters were against law reformed and claimed their vote in the next election would be affected by the way their local member voted on the issue

WESTPOLL - 1998

65% Support abortion without conditions
11% Support a woman having an abortion under circumstance of social or economic hardship
21% Support abortion only if the physical and mental health of the mother is in danger
3% Oppose abortion under any circumstance

The following are some recent polls taken to discern the view of abortion held by medical professionals. They demonstrate extremely high support amongst the medical profession for the legalisation of abortion and repeal of abortion from the criminal code. Support is particularly strong regarding first trimester terminations.

MOYLE ET AL SURVEY OF 64 GYNAECOLOGISTS – 1990

100% Thought that abortion should be legally available in WA
83% Believed the relevant sections of the Criminal code should be repealed.
70% Believed that there should be specific regulations relating to the performing of abortions, with the majority favouring a gestational limit on permissible abortions

BARRIE ET AL SURVEY OF 150 GENERAL PRACTITIONERS – 1991

90% Believed abortion should be made legal

79% Are dissatisfied with abortion being in the Criminal Code

84% Believed abortion should be available upon request up to a certain period of gestation

PROFESSOR JULIAN SAVELESCU, DR B WARNER ETHICS PROGRAM, MURDOCH CHILDREN'S RESEARCH INSTITUTE AND THE UNIVERSITY OF MELBOURNE - 1999

"Support termination at 13 weeks when the foetus has dwarfism?"

78% (of obstetricians) Yes

"Support termination at 24 weeks when foetus has dwarfism?"

14% (of obstetricians) Yes

70% (of clinical geneticists and obstetricians specialising in ultrasound) Yes

Historical Background to Australian Law and Policy Around Abortion

The "Conscience" Vote

The Liberal party in Australia has no policy on abortion. Since 1984 the Australian Labor Party (ALP) has allowed members to ignore whatever decision are taken in State or Federal ALP forums on the issue in order to vote according to their consciences. The origins of the "conscience vote" in the Labor party stretches back to split in the party in some Australian States in the 1950s. Catholic party members who combined a commitment to social justice for the underprivileged with conservative sexual and family morality left the Labor party to form the Democratic Labor Party. Those that remained formed a right-wing core that centred on New South Wales. The strength of the DLP in Victoria and NSW and the power of the right-wing core within the Labor party itself led to the ALP adopting a position nationally of "conscience" on issues of sexual morality in the 1970s. By the 1980s, this right-wing core achieved a stranglehold over power in the party, which culminated in the 1984 constitutional commitment to a conscience vote on the abortion issue.

The Australian Democrats and the Australian Greens also have the right to vote according to their consciences. While searches of both parties' websites reveal no policy on the issue, the Greens site posts numerous "pro-choice" Democratic Socialist Party treatises on the issue. Natasha Stott-Despoja, the young female deputy leader of the Democrats, is an outspoken supporter of women's reproductive freedom. However, during the Osborne debate in the ACT, Greens Senator for Tasmania Bob Brown, a vocal pro-choice supporter, wrote a letter to the *Canberra Times* questioning the commitment of the national Democrats 'hierarchy' to the pro-choice position, and implying that all Greens MPs are pro-choice.

Emily's List

In 1996, the Australian political network Emily's List was formed to increase the parliamentary representation of pro-choice, pro-childcare, pro-gender equity women in Parliament. The hope is that the List will lead to more parliamentarians voting in favour of a pro-choice agenda when and if the issue arises in parliament. However, while there are currently several pro-choice women in the Labor party shadow cabinet, several one them have opined that even if the List achieves greater representation of pro-choice Labor women in the party, the conscience vote on the issue is unlikely to be abolished. This is because too many people have joined the party since the mid-1980s (when it was enacted) on the understanding that they had a "free" vote on the abortion issue. As well, some senior Labor women believe that both leadership and "numbers" are required to achieve political change on List issues.

The Amending Of The TGA To Deny Women Access To Medical Abortion

The need for more committed pro-choice MPs in the Federal Parliament became clear when in 1996 both the Liberal and the Labor party voted with anti-choice Catholic Senator Brian Harradine to amend the Therapeutic Goods Act (TGA). Harradine held the balance of power in the Senate, and both parties' votes on this matter were exchanged for his vote on other issues. The amendment meant that mifepristone (then known as RU486) was removed from the standard regulation of experimental drugs, imported with the approval of a bureaucrat in

the Department of Health. Instead, the Health Minister was now required to table each approval he gave to the drug's importation in Parliament. The amendment, which effectively denies Australian women access to mifepristone into the foreseeable future, was adopted with the dual support of anti-choice advocates and radical Australian feminist activists like Renate Klein. Together, these forces asserted that the drug posed such serious risks to women's health that – for their own good – Australian women must be denied the freedom to make their own informed decision about whether they use it.

In an interview for this report, Carmen Laurence argued that the Labor party's collusion with the Liberal party and Harradine on RU486 did not represent a policy "back-flip" but rather a failure of "vigilance." She claimed Harradine had tried to trade his vote to the Labor party in exchange for this sort of collusion when she was Health Minister, but she had rejected the offer. However, after Labor lost government in 1996, Labor pro-choice women weren't vigilant enough to guard against Harradine's tactics and "didn't make enough of a fuss about" the deal when it was made, although had they done so, this might not have changed anything. Another State MP tells the story differently. Having just entered Parliament, she was appalled when she heard of the Labor party's agreement to "deal" with Harradine on this issue and rang up a pro-choice Labor MP and expressed herself on the matter. The MP essentially told her she was "in dreamland" and to "pull her head in." Such deals, she was informed, were simply part and parcel of political life.

"Not-the-NHMRC" Information Paper on Termination of Pregnancy in Australia

At the same time as Australian women were effectively being denied access to medical abortion, the National Health Medical Research Council tabled, rather than endorsed, the report and recommendations of its own expert panel on Termination of Pregnancy in Australia. After considerable debate within the NHMRC about the report and the discovery of several errors, the report was eventually published in 1996 without the NHMRC logo as an "information paper." However, shortly after it was withdrawn from circulation and an independent panel appointed to make recommendations about its future. In 1998 the panel

concluded it was sound, and recommended re-release. So far no action has been taken. One senior bureaucrat involved in the report from its inception believes its fate was a consequence of a change of leadership in the NHMRC from the time the report was commissioned to when it was completed.

Rejection of Pro-Choice Nomination to Chair of the NHMRC

In 1997, Senator Brian Harradine was instrumental in torpedoing the nominee of the Liberal Health Minister Michael Wooldridge for the Chair of the National Health and Medical Research Council, Professor John Funder. Harradine opposed Dr Funder because Funder had chaired the panel that reviewed the Australian trial of mifepristone and had recommended the drug's release. As well, Harradine mistakenly believed that Funder had used NHMRC monies to do "embryo experimentation". Despite the overwhelming support of Funder's nomination by the scientific and medical community, the Liberal party cabinet asked Wooldridge to submit alternative nominations. The more conservative Professor Richard Larkins eventually obtained the post.

Model Criminal Code

In September 1998, Chapter 5 of the Model Criminal Code dealing with "Non-fatal offences against the person" was released. The Committee authoring the draft code made no recommendation to the Ministers for abortion legislation because the issue was "ultimately one for political decision." However, contradictorily, the Committee does propose a regimen that allows "free access to abortion on demand up to the point of fetal viability and abortion thereafter only to save the life or prevent serious harm to the pregnant woman or in cases of severe foetal abnormality." The Model received little attention in the media, although one report cited pro-choice objections to the model on the grounds that it would make abortion more difficult to access in common law jurisdictions like New South Wales, Victoria and Queensland. [Model Criminal Code Officers of the Standing Committee of Attorneys General, 1998 #106]

“Ellen” Case Settled Out Of Court

Also in September 1998, a Victorian woman received an undisclosed amount to settle her suit against the Royal Women’s Hospital. The woman, known only as “Ellen,” claimed that prior to a termination she had in 1990, she had not been informed that abortion could cause her psychological harm. Newspaper reports of the case claimed that, to the contrary, the information books she received from the hospital mentioned the risk of “feeling flat or depressed” for a few days but claimed “there was no evidence to suggest that women who have termination suffer from any long-term psychological effects.” In announcing the settlement, a hospital spokesman said the hospital stood by this later statement. [Bolt, 1998 #63] Anti-choice forces claim that another case of a woman suing various medical professionals for a failure to adequately inform her the psychological after-effects of abortion, “Cynthia’s” case, also recently settled out of the Sydney District Court. Another Sydney case also recently settled, with anti-choice activists claiming that numerous other cases are in the hands of lawyers. It is the view of one abortion clinic director that the pattern of hospitals settling such cases out of court is likely to continue. This is because the women who bring these cases are nearly always indigent and hence medical insurers push hospitals to settle because they fear they will be unable to recover the hefty costs of extended litigation even if the hospital is vindicated in court.

“Abortion in Focus” Conference

In November 1999 the Abortion Providers’ Federation of Australasia (APFA), in conjunction with the International Society of Abortion Doctors and Planned Parenthood of Australia, organised the “Abortion in Focus” conference. Three abortion service providers (Dr Suzanne Poppema, then President of the National Abortion Federation, Dr George Tiller and Dr Warren Hern) were either denied visas and/or forced to sign statements upon entering the country that they would not “incite discord” or “advocate any activities” which would be in breach of Australian law”. Among other things, the statement claims that criminal law in Australia on abortion “prohibits an abortion which would not be therapeutic” and in that “in practice, an abortion would very rarely, if ever, be... [performed] during the last trimester of

pregnancy". Dr Hern was detained at Sydney airport for two hours while officials sought to coerce him into signing the statement. He refused, but was eventually passed through immigration. In November 1999, Kelly filed a freedom of information request with the department of Immigration and Multicultural Affairs to discover the cause of the visa difficulties and harassment at Sydney airport experienced by conference participants. Her request has never been answered. However, in November 2000, Susanna Poppema attempted to return to Australia to visit her son who was studying in Sydney. Again, Dr Poppema was denied a visa. When it was finally issued, the immigration officer in Singapore confirmed that Canberra was continuing to label Dr Poppema a "controversial" visitor. She has been told she will remain so until she agrees not to talk about abortion while in Australia.

Anti-choice activists Melinda Tankard Reist and Nicola Pantos registered for the conference, Pantos using a false name. Pantos' ruse was discovered after she boasted about it in a cab on the way to conference. When the driver reported what he'd heard to his next fare, a legitimate conference participant, she notified conference organiser Susan Kelly, who ejected Pantos from the conference grounds. After the discovery that Tankard Reist and Renate Klein had just attended an anti-choice rally at the local community hall, Kelly ejected the two women as "security risks.

Timeline: ACT

June 1992	Termination of Pregnancy Act (1978) repealed. The Act had been introduced in the late 1970s. Its requirement that all pregnancy terminations take place in public hospitals severely restricted the availability of legal terminations in the ACT, and led to approximately 90% of women travelling interstate for services
August 1993	1993/1994 ACT budget allocates \$100,000 dollars to refurbish Civic Health Centre to enable the Family Planning Association to set up the Reproductive Healthcare Services (RHS) clinic and perform abortions on the site
11 April 1994	As one of Labor MP Wayne Berry's last acts as Health Minister, he secures a peppercorn lease for RHS
1994	Reproductive Health Services (RHS) clinic opens in Canberra
29 April 1998	ACT Pro-choice hold a meeting attended by 50 people. Now opposition spokesperson for industrial relations, Wayne Berry says he will introduce a repeal bill when he feels confident the numbers exist to see it passed but will not proceed if there is any risk that restrictions will prevail
21 May 1998	<p>Act Amendment (Abortion) Act 1998 Bill passed in Western Australia. The Act is assented to on May 26, 1998. It is hailed as the most liberal abortion law in Australia, and a victory for the pro-choice movement</p> <p>Inspired by events in WA, Wayne Berry circulates letter to assembly members inquiring about their position on a bill to repeal the provisions of the Crimes Act which relate to abortion. The letter includes a copy of the proposed decriminalisation bill and a speech Berry made in 1994 when he had last introduced the bill</p>
30 May 1998	<p>Independent anti-choice MP Paul Osborne responds to Berry's move in a piece in the <i>Canberra Times</i> in which he claims that he "had not sought to divide the community by forcing his views on others." However, with Berry having thrown "the first punch," he was now "considering [his] options"</p> <p>Osborne attends a meeting with ACT anti-choice forces and discusses the possibility of a Catholic legislator introducing anti-choice legislation of the type he eventually introduces into the legislature</p>
26 August 1998	Osborne introduces draconian anti-choice bill that seeks to amend the Criminal Code to further restrict access to abortion. The bill also has numerous Wayne Berry's motion to delay debate on the bill until at least 8 December is defeated
29 August 1998	ACT health minister and independent Michael Moore claims he will oppose the Osborne bill and calls on people to attend a pro-choice rally outside the Legislative Assembly. Figures from Moore's department show that only 10 to 15 women a year could have abortions in the ACT under the bill's medical/psychiatric conditions

This contrasts with the more than 2000 women who have used Canberra's Reproductive Health Services (RHS) clinic every year since it began operation

- 1 Sept 1998 Canberra's city square is filled with between 2000-3000 protesters. Speakers included Dr Clare Willington, a GP for eighteen years and part-time medical assessor at the RHS, Dr Linda Wellberry from the ACT Division of General Practice (DGP), Sandra Mackenzie, executive director of Family Planning ACT, Professor David Ellwood, head of Women and Children's Services at the Canberra Hospital, long-time pro-choice activist Ann Wentworth, independent member Michael Moore and Chief Minister Kate Carnell. Labor MPs pledge that because the bill was introduced in an "undemocratic" way, they will vote as a bloc against it. . Greens MLA Kerrie Tucker is excluded from the official platform despite her strong pro-choice position and repeated requests to speak
- 2 Sept 1998 Wayne Berry put a motion to parliament asking Osborne to withdraw his bill. It remains unclear whether the ALP's pledge to vote on block against the bill refers only to Berry's motion, or will extend to the vote on the bill itself. Labor lost the motion when Moore, Tucker and Carnell did not support it despite their assurances to Berry and to the rally that they were opposed to the bill and would seek its defeat.
- 5 Sept 1998 Gail Instance and Paul Brazier from Human Life condemn Osborne's bill, which would allow abortion in some cases, as unacceptable on religious and moral grounds. ACT Right to Life and Bishop Power defend Osborne's action, the latter accusing Human Life International as being "out of step with other anti-abortion groups." Margaret Tighe of Right to Life Australia sides with Human Life International several days later
- 23 Sept 1998 Despite the cold and heavy rain, 400 to 500 people attend a pro-choice rally in Garema Place. Speakers include Dr Anne Hosking, a long-time female obstetrician in the ACT and Dr Stan Doumani, president of the ACT Division of General Practice. Doumani announces that one third of their 100 plus membership had contacted the Division in a fax back pole with 98% of male GPs and 100% of women opposed to the bill. He slams the bill as discriminating against already disadvantaged women, and placing the government in his consulting rooms
- 27 Oct 1998 300 people pack reception room at the ACT Legislative Assembly to protest against Osborne bill. The lunchtime public meeting featured former Sex Discrimination Commissioner Quentin Bryce, Dorothy Broom from the National Centre for Epidemiology and Population Health and Joan Kirner, former premier of Victoria and convener of Emily's List, a group promoting the election of women on a pro-choice, pro-equity and pro-child-care platform
- 17 Nov 1998 "Day of Faxtion." ACT Pro-Choice urges supporters to fax their members and urge them to vote against the Osborne Bill
- 18 Nov 1998 Assembly sits to debate Osborne bill. Osborne requests a suspension of standing orders to allow him to substitute, without notice, his new Health Regulation (Maternal Health Information) Bill for the original bill. The new bill is largely a consolidation of Liberal MP Gary Humphries' tabled amendments to the original bill, and focuses primarily on the information-giving provisions that were in the original. Numerous MPs express outrage over these tactics, and

	Berry hints at the government's need to pander to Osborne because his vote is needed for the upcoming sale of the public utility ACTEW
19 Nov 1998	Rosemary Follett, the Discrimination Commissioner at the ACT Human Right Office, send a three page letter to Minister for Justice and Community Safety Barry Humphries outlining aspects of the original Osborne bill that appear inconsistent with the Discrimination Act 1991
25 Nov 1998	Berry fails in another attempt to delay the bill . The vote for the bill to proceed to the in-principle stage succeeds with 10 members (Carnell, the five liberal party men, Osborne, Rugendyke and Hargreaves) voting in favour and 7 members (Greens Kerrie Tucker, Independent Michael Moore and Labor's Wayne Berry, Simon Corbell, Bill Wood, Jon Stanhope and Ted Quinlan) voting against
26 Nov 1998	<p>Health Regulation (Maternal Health Information) Act 1998 passed with vote of 11/6. The final vote on the bill is Carnell, Cornwell, Hargreaves, Hird, Humphries, Kaine, Moore, Osborne, Rugendyke, Smyth, Stefaniak in favour with Berry, Corbell, Quinlan, Stanhope, Tucker, Wood opposed</p> <p>Paragraph 14 of the act specifies the appointment of an Advisory Panel to approve information materials to be given to women considering an abortion. Section 14 (4) allows the Panel to "approve materials which present pictures of drawings and descriptions of the anatomical and physiological characteristics of at regular intervals." Debate in the ACT moves to the nature of the information women need in order to give an "informed consent" to the procedure</p>
27 Nov 1998	ACT Pro-Choice "Rally to Save the Clinic" in Garema Place
28 Nov 1998	Dorothy Broom and Wayne Smith publish an editorial the <i>Canberra Times</i> contending that there is no "valid, reliable and robust" evidence links induced abortion and breast cancer. The two academics are responding to claims that such a link does exist made by Joel Brind, an American Professor of human biology, who is speaking in Canberra and around Australia on a tour sponsored by Human Life International and the Endeavour Forum. Anti-choice Brind will travel to Perth in 1999 to launch a booklet produced by the so-called "Doctors' Legal Safeguards Group" designed to frighten doctors into refusing to refer for abortion
Jan-March 1999	American anti-choice activist Paul Swope's article "Abortion: a Failure to Communicate" is reprinted in the newsletter of the ACT Right to Life Association. The message of the article is that in order to dissuade women from having terminations, anti-choice activists need strategies that accommodate the way pregnant women see the dilemma posed by unplanned pregnancy. Swope addresses a meeting of ACT Right to Life in 2000
May 1999	ACT Department of Health and Community Care (ACTDHCC) produce booklet entitled "Considering an Abortion? – What are Your Options – What Are Your Risks?" The booklet includes medical information approved by the Independent Advisory Panel but, in line with the panel's unanimous view that the presentation of fetal pictures is "irrelevant" and in some cases could be "counterproductive" does not have foetal pictures. In a conference speech, Sandy McKenzie, executive director of Family Planing ACT,

	says that her organisation and community practitioners “consider the May version of the booklet to be a professional and accessible resource for clients”
8 June 1999	Health Minister Moore sends a letter to all members of the assembly, at the prompting of anti-choice MPs unhappy with the Panel’s decision to exclude foetal pictures. He notes that the possibility that “pictorial material intended by the Assembly could be added by administrative action”
10 June 1999	ACT Family Planning writes to doctors through the ACT Division of General Practice informing them that the organisation sees the Health Regulation (Maternal Health Information) Act 1998 as having some “positive” aspects. These include that RHS “has been approved as a facility under the Act” and that ACTDHCC have, through their production of the information book for clients, “acknowledged the existence of RHS and the importance of informed client choice in relation to termination of pregnancy.” In addition, the Act defines “the circumstances under which an abortion is legal in the ACT.” The letter also says that ACT Family Planning considers the material in the May 1999 pamphlet to be “balanced and acceptable”
11 June 1999	Health Regulation (Maternal Health Information) Act 1998 comes into effect in the ACT
23 August 1999	Legislative Assembly sits to consider regulations that will overrule the Panel’s advice, and require women to view foetal pictures when considering an abortion
2 Sept 1999	Berry moves to disallow Maternal Health Information Regulations 1999 (Subordinate Law 1999 No 15) but fails when Carnell votes for the inclusion of the pictures and the bill passes 9 votes to 8. Paragraph 4 of the regulation refers to “material in the Schedule,” with the Schedule entitled “Material to be included in the pamphlet, Foetal Development” showing three photographs of fetuses at 6, 11 and 12 weeks. The beginning statement says that “Development begins on the day of fertilisation, which is usually two weeks after the start of the last menstrual period” and the three photographs are accompanied by 7 developmental descriptions of the foetus at 2, 6, 8, 10, 12, 14 and 16 weeks gestation
4 Sept 1999	Doctors raise concerns about the accuracy and consistency of the foetal pictures and government-produced information to appear in “Considering an Abortion?” booklet
12 October 1999	Scrutiny of Bills Committee, chaired by Osborne, raises legal doubts about the power of the assembly to make the regulations
October 1999	Revised version of booklet, “Considering an Abortion? – What are Your Options? – What are Your Risks?” released by ACTDHCC
21 October 1999	Wayne Berry moves to force politicians to operate within the clearly defined intentions of the Health Regulations (Maternal Health Information) Act by amending the Maternal Health Information Regulations 1999 act. His amendment fails 8 votes to 9. Voting for are Berry, Corbell, Hargreaves, Moore, Quinlan, Stanhope, Tucker, Wood and against are Carnell, Cornwell, Hird, Humphries, Kaine, Osborne, Rugendyke, Smyth, Stefaniak

December 1999	ACT Division of General Practice reminds its members that it opposed the insertion of the foetal pictures into the booklet. ACTDGP tells its members that based on legal advice obtained by Family Planning ACT, "there appears to be no obligation" to distribute the new version of the pamphlet with the foetal pictures. FPACT also notes it has refused requests to provide its mailing list to assist in the distribution of the October pamphlets
11 December 1999	ACT Government Solicitor provides written advice to Family Planning ACT that the regulations "impose no obligations upon the medical practitioner who is consulted by a woman who is considering an abortion. The regulations only impose an obligation onto the Minister to ensure as far as practicable copies of the current pamphlet are made available for use under section 8 to the Act"
13 December 1999	Family Planning ACT informs ACT and Regional Doctors, Women's Health Services, Women's Refuges and the Women's Legal Centre that the RHS does "not intend to impose compulsory foetal pictures on our clients." Following their legal advice, FPACT will only provide clients with the May version of the information pamphlet. They will "advise clients that they may obtain a copy of the amended booklet [with the foetal pictures] through the ACTDHCC"
5 January 2000	Family Planning ACT writes again to doctors and "reiterates its commitment" not to impose compulsory foetal pictures on clients and not to distribute the October version of the booklet
3 February 2000	Paul Osborne writes to Minister for Health Michael Moore and seeks his assurance that he will "consider the actions of the Family Planning Association" in not using nor intending to use the October version of the booklet, nor returning the May version to the Department. He asks Moore to "ensure the compliance" of all approved abortion providers to "their statutory and Departmental obligations" and ensure that all GPs in Canberra are also made aware of these "obligations"
28 February 2000	Department of Health and Community Care writes to ACT Family Planning requesting a response to Osborne's letter to Moore by March 3, 2000
6 March 2000	Family Planning ACT write to DHCC saying they have nothing further to add to the clear position they stated in their letter to GPs of 5 January 2000

Timeline: WA

1969	The Abortion Law Reform Association (ALRA) is established. The name is later changed to the Abortion Law Repeal Association and then again to the Association for the Legal Right to Abortion
1970	WA Liberal member Dr Hislop, with ALRA's support, introduces an abortion law reform bill which is amended and passed by the Legislative Council but later defeated in the assembly
1971	Roy Cloughton introduces an abortion law reform bill that is defeated in the Legislative Council
1974	Emboldened by the 1969 Menhennit and Levine judgements, Denise White of ALRA (WA) establishes the Abortion Information Service to refer women to abortion service providers. Later that year police raided the homes of counsellors and doctors surgeries, but no prosecution ever commenced
1989	Cheryl Davenport advocates a woman's "right to choose" in her maiden speech to the WA parliament
1990	The Report of the Chief Justice's Taskforce on Gender Bias in WA recommends repeal of sections of Criminal Code concerning abortion
November 1996	Dr Victor Chan, an abortion provide at Nanyara Clinic (one of two private clinics in WA), allows a Maori women to take her aborted fetus home for a ritual burial in accordance with her customs. Another of the woman's children's tells his teacher that his mother has a baby in the fridge. The teacher informs the principle who decides to contact the police. The police, led by Detective Armstrong, decide to investigate
May 1997	For the first time since 1890, conservative forces lose their upper house majority. Although 17 Liberal/National MPs sit in the house (against 17 members from Labor, the Greens and the Democrats) the Liberal upper house president can only exercise a vote in the event of a tie
November 1997	Detective Peacock of the Belmont police takes over the case
3 February 1998	Dr Chan informs ALRA that Detective Peacock intends to charge Chan with procuring an abortion under S199 of the Criminal Code. The woman will not be charged but her fetus will be kept as evidence of the "crime." The publicity surrounding the case and the retention by the police of the fetus has distressed the woman, a mother of three on a supporting pension after her husband's desertion. ALRA keeps Labor MP Cheryl Davenport, who in turn contacts Labor MP Diana Warnock and Greens MP Jim McGinty, appraised of events as they unfold
5 February 1998	Gloria Sutherland, President of the WA Branch of the Public Health Association, offers to obtain and distribute their document "The Regulation of Abortion in Australia: Public Health Perspectives." The Assistant Commissioner for Crime refuses to comment on the case to ALRA other than to say that if Peacock has evidence for a criminal

charge he is obligated to proceed. ALRA faxes all Liberal politicians asking them to indicate support or opposition to law changes. Pro-choice forces meet for the first time. It is agreed that ALRA will “buffer” Dr Chan from media at the police station and in court, that media contacts need to be coordinated and that Geoff Brodie, President of the Abortion Providers Federation of Australia, is contacted

Led by Federal Labor MP and former WA premier Carmen Laurence, fourteen female parliamentarians send a letter to the Director of Public Prosecutions John McKechnie, the Commissioner of Police, the Attorney General and the Minister for Health. The letter “registers” their “vehement objection to the possible prosecution of a medical practitioner” under S199

- 6 February 1998 Drs Harry Cohen and Brian Roberman try to get indemnity at King Edward. ALRA writes a letter to Commissioner for Health, Alan Bansamer, who had previously told them that a lack of private abortion providers would lead to chaos in the public health system. Family Planning Australia collects names and contact of supporters and advises them to contact Dr Chan to offer support, contact their MP and attend upcoming meetings and rallies. ALRA plans for the campaign, deciding to create a new organisation with a new name, with a well-known young woman up-front to attract funds. The Coalition for Legal Abortion is formed shortly thereafter although the young female figurehead never emerges
- The *West Australian* publishes Natalia Norris’s story. Norris, a “young successful, educated and Catholic” lawyer became pregnant at 21 while travelling with her boyfriend in London after the pill failed her through illness. She had an abortion, cried for three weeks, had counselling and now believes she made the right decision and is strongly in favour of women’s right to safe abortion
- 6 February 1998 Director of Public Prosecutions John McKechnie says that abortion is legal only if the woman’s life is threatened
- 7 February 1998 AMA advises Western Australian doctors to refuse to perform abortions
- 10 February 1998 Dr Chan and his anaesthetist Hoh Peng Lee are charged. Davenport announces in the press that she plans to introduce a Private Member’s Bill to “restore the WA situation to what it was prior to the charges being laid.”
- 10 February 1998 Vanessa Hicks, a Catholic mother of three, goes on radio to discuss her decision to end a pregnancy that doctors believed could end her life. A full story about her life and decision will appear in the May edition of *The Australian Magazine*.
- 10 February 1998 WA Attorney General Peter Foss states that he believes the Levine ruling is the applicable Australian legal interpretation of WA Criminal Code S 259 in relation to S199, 200 & 201
- 11 February 1998 The *West Australian* newspaper editorialises that abortion law reform is overdue, and that the law needs to reflect social practice
- 13 February 1998 WA Attorney General, Liberal MP Peter Foss declares that meetings with the Commissioner of Police and the DPP suggest the case will

	not be further prosecuted and that WA doctors could provide abortion services as before with impunity
14 February 1998	Members of 14 different Church groups issue a public statement against abortion that lists the “reality” of and “dangers” associated with abortion
15 February 1998	Led by pro-choice stalwart and long-time abortion provider Harry Cohen, KEMH staff refuse to perform abortions in all but the most life-threatening cases. Within 48 hours of this announcement, two women are admitted to the hospital with confirmed septic abortions after failed attempts to end their own pregnancies
16 February 1998	AMA meets with premier Richard Court to urge abortion law reform
17 February 1998	Drs Chan and Lee appear before chief Magistrate Con Zempilas. 200 pro-choice supporters mass outside Central Law Courts in support
19 February 1998	DPP McKechnie responds to the female parliamentarians 5 Feb letter. He writes that S199 and S259 are those required for prosecutions regarding abortion and accuses them of “hypocritical cant.” It is they, he says, who have been and are now in the position to change the law if they believe it “no longer commands general community support” A meeting convened at the AMA of 23 health industry leaders and peak organisations calls on the WA Parliament to “reform the law to decriminalise abortion when performed with appropriate medical safeguards by a registered medical practitioner.” The Health Industry Group (HIG) warns that abortion services will be indefinitely withdrawn within 6 to 8 weeks unless and until abortion is decriminalised. The HIG continues to operate as a separate lobby group throughout the law reform process
20 February 1998	The Coalition for Legal Abortion is formed. The group is made up of representatives from the Public Health Association, Family Planning Australia, the Women’s Electoral Lobby, ALRA, the Women’s Legal Service (proper name?), Medical Women (proper name?), Christian and community groups (which?). Judy Straton, Associate Professor of Public Health and The University of Western Australia, becomes the spokesperson of the group. Although ALRA is a member of the coalition it, along with the Christian Coalition for Choice and the Health Industry Group, continue separate lobbying and organising efforts
21 February 1998	A WESTpoll shows over 82% of West Australians believe abortion should be legal
24 February 1998	A meeting of Labor MPs in Bunbury gives Cheryl Davenport in-principle support for a repeal bill
25 February 1998	Dr Chan reports a 50% drop in numbers at Nanyara Clinic, and speculates clients are going to Zera instead
6 March 1998	ALRA launches its “Repeal the Laws – Campaign for Choice” campaign
9 March 1998	Davenport announces she will introduce a Repeal Bill into the upper house

10 March 1998	<p>The Foss “tick a box” bill (which proposes a new section 201A of the Criminal Code) introduced in lower house of WA parliament. Davenport bill to repeal SS199 – 201 introduced in upper house</p> <p>Despite a downpour, 1000 attend the Rally for Repeal chaired by Coalition’s Stephanie Mayman. Speakers include Dr Judy Straton, Dr Jocelynn A. Scutt (a feminist barrister) Marion Millin from the Christian Coalition for Choice and MP Cheryl Davenport</p>
12 March 1998	Anti-choice premier Richard Court publicly backs abortion if the mother’s physical or mental health is in danger
14-18 March	Pro-choice supporter and national treasure Hazel Hawke picnics with campaign supporters, does media interviews and attends parliament
16 March 1998	The Pope issues a statement expressing grave concern about attempts to provide freer access to abortion in WA
18 March 1998	<p>Presiding officer disallows anti-choice parliamentarian Phil Pental to have advisers Professor Greg Craven and anti-corruption commissioner Terry O’Connor, QC present in the Chamber in the same manner as was allowed for Ministers. Pental’s responding motion of dissent is similarly disallowed</p> <p>Major speech by Hazel Hawke at public “Repeal the Laws - Campaign for Choice” breakfast. Over 100 supporters attend</p> <p>After a flood of protest calls, 96FM pulls the plug on anti-choice radio ad featuring “the heartbeat of an unborn baby.”</p> <p>400 attend an anti-choice protest meeting addressed by Catholic Archbishop Barry Hickey, John Gilmour, QC and Dr Sarah Oh. Oh is a 36-week pregnant mother and GP of Asian origin who refused to terminate her fetus at 18 weeks after discovering he would be born with a degenerative and ultimately fatal disease</p>
19 March 1998	Foss bill passes second reading in lower house 49 votes to 3 and debate around amendments begin. Davenport agrees with upper house leader Norman Moore to her bill being “split” in the Committee stage, enabling debate and votes to be conducted clause by clause. Davenport agrees to some of the government’s bill provisions as well as the appearance in the Health Act of new provisions regarding abortion in exchange for immediate passage of the bill, finalisation by 31 March and assurances that women will not be prosecuted for abortion offences. The Davenport bill passes second reading in upper house 21 to 11
23 March 1998	Full page anti-choice “Do you know the FACTS” ad appears in the <i>West Australian</i> . The ad advertises a public meeting with former abortion service provider and now anti-choice activist Dr Beverley McMillan, imported from the US by the anti-choice movement. McMillan does numerous radio spots while in WA
26 March 1998	McMillan speaks to 1000, mainly older Christian churchgoers, at a Coalition for the Defence of Human Life rally
28 March 1998	Archbishop Barry Hickey’s request that all Catholic parents allow their high school age children to attend an anti-choice rally. Dissent within the anti-choice movement erupts over the decision of some Perth Catholic schools to ban students from attending

30 March	<p>Coalition for the Defence of Human Life's Richard Egan faxes a two-page list entitled "One Day's Killing at One Abortion Mill" to every media outlet. The list details 24 real abortions recently conducted at the Midlands abortion clinic. Although Egan had the original documents, he claims to have changed the women's names to "respect their privacy." However, the woman's real ages, their exact stage of pregnancy and referring doctors are released to the media and the police</p> <p>Full-page anti-choice ads appear in the <i>West Australian</i> blaming the Court government for the "legalised killing of a class of Western Australians." The ads feature a photo of the Premier and his family. Court is furious and publicly criticises such tactics</p>
31 March 1998	<p>Debate resumes in both houses</p> <p>Coalition for Legal Abortion produces and distributes resource material for abortion debate.</p> <p>Anti-choice rally outside parliament, with a reported 2000 attending. Those present estimate 500 people only</p>
2 April 1998	<p>The Davenport bill is passed at the third reading stage in the upper house on a vote of 22 to 12. Negotiations between Moore, Foss, Davenport and McGinty lead to the amending of the Davenport Bill such that the Foss justifying conditions for a legal abortion appear in the Health Act. The upper house proceeds directly to a vote on option four of the Foss bill, which is carried 23 votes to 10</p> <p>The lower house overwhelmingly passes the Foss bill's option one (physical and mental health of the mother). Option two (the woman's future physical and mental health) is passed 41 to 12 and option three (serious personal, family and social consequences) passes 29 to 25. Option four (the woman gives her informed consent) squeaks through after an all night sitting by 28 votes to 26. By a vote of 31 to 19 the bill is given a third reading and moves to the upper house</p>
3 April 1998	<p>The <i>West Australian</i> runs a misleading front-page headline "Abortion on Demand," despite the fact that nothing has yet been passed through both houses and so no new law exists</p>
4 April 1998	<p>March and rally of 200 pro-choice supporters. Speakers include Marian Millin, Greens MP Giz Watson, Ana Kailis from the Democratic Socialists, two high school students Jane & Katie, Trisha Reimers from the Uni of WA, Cait Calcutt from ALRA and Cheryl Davenport</p>
April 8 1998	<p>Foss bill is ruled out of order by upper house President George Cash. The Davenport bill begins its passage through the lower house. Leader of the House Colin Barnett proposes a third bill, but Cabinet rules this prospect out several days later. In her second reading speech, Labor MP and long-time pro-choice advocate Diana Warnock attempts to soothe the ruffled feathers of lower house MPs by proposing a new section 199 in the Criminal Code which makes the performance of an abortion by an unregistered medical practitioner punishable with five years jail. As well, the word "economic" is removed from the justifications for abortion provision and the lower house's definition of "informed consent" is included. The bill is given a second reading 31 votes to 25</p>

	<p>Anti-choice Pandal protests about the presence of parliamentary council on the floor of the house advising Warnock and asks for permission to have similar support. The protest is rejected on the grounds that such support is only available to members who have stewardship of a bill, not those seeking to amend it</p>
April 1998	<p>Straton writes to all members of parliament in her role as Coalition spokeswoman to express the Coalition's "grave concern" that the parliament's decision (expressed through passage of the Foss and Davenport bills through the lower and upper houses, respectively) is being "undermined by the outrage expressed by a tiny minority and their consequent intense lobbying of members, with inaccurate and misleading 'data'." She requests that MPs resist "systematic attempts to water down and undermine the basic principles of the legislation and the delaying tactics employed by the anti-choice politicians" and "strongly hold the line in ensuring that abortion is a matter between a woman and her doctor"</p>
28 April 1998	<p>Lower house reassembles. Over the next three days anti-choice MPs succeed in putting a \$50,000 penalty for unlawful abortion back in the Criminal Code (the vote is 27 to 27 with the pro-choice Chairman of Committees voting in favour as required by convention). However, anti-choice MPs fail in their attempt to similarly penalise doctors for doing abortions on the grounds of the foetus's sex. The bill is approved 32 to 22</p>
29 April 1998	<p>In an attempt to capitalise on the Coalition for Legal Abortion's successful resource material, ALRA releases its own briefing guide for MPs. It is designed to address expected last minutes attempts by anti-choice MPs to amend the Davenport bill but because many MPs view ALRA as one of the two "sides" of the issue their guide is less effective</p>
May 2 1998	<p>Davenport vows to reject the amendments that return abortion to the Criminal Code. She tell the government to either resubmit the amendments or she will allow the Bill to go to a conference of managers</p> <p>Specialist obstretricians and gynecologists join KEMH staff and Midland's Zera clinic in refusing to provide services until legal changes are finalised. The Family Planning Association calls on the State Government to pay the cost of flying disadvantaged women interstate for abortions</p>
May 4 1998	<p>The HIG sends an urgent fax to all state politicians advising them that "most practitioners involved with all aspects of abortion have withdrawn their services" because of delays in law reform and the return of abortion to the Crimes Act in the upper house bill. HIG argues that both events expose doctors working in the area to an unacceptable level of risk</p> <p>Deputy Prime Minister Tim Fischer calls for the outlawing of "abortion on demand"</p>
6 May 1998	<p>ALRA runs a half page ad in the <i>West Australian</i> titled "Access to legal, safe abortion? Women are still waiting." The ad lists the names of the parliamentarians who voted for and against returning abortion to the Criminal Code</p>

7 May 1998	Legislative assembly passes third reading of amended Davenport bill by 32 to 22
9 May 1998	KEMH doctors partially break their ban on abortion services to abort a severely damaged fetus. However, doctors reaffirm their commitment to performing abortions only in cases of severe fetal disability until the Davenport Bill becomes law
18 May 1998	Pro-choice advocate Dr Scott Blackwell loses the AMA presidency to anti-choice Rosanna Capolingua-Host
21 May 1998	Acts Amendment (Abortion) Bill passes through Upper House 24 votes to 9
26 May 1998	Acts Amendment (Abortion) Bill is assented to and become law
August 1999	Anti-choice activist American activist Joel Brind launches the first edition of "Abortion, Information and the Law" in Perth. Published by the "Doctors' Legal Safeguards Group," the booklet seeks to counteract what it claims is the "inadequate" information issued to doctors by the West Australian department of health. The aim is to convince doctors that there are "compelling medical reasons for treating abortion as a social, non-therapeutic, potentially harmful procedure with which conscientious doctors would choose not to involved themselves"

Pro-Choice Activism and Strategy in the ACT and WA: Similarities and Differences

Ground Zero: The Situation Existing Before The Process Of Change Began

ACT

The ACT is a good place for activists of any stripe to attempt legislative change because the outcomes of such attempts are easier to predict and manage.

- The ACT government consists of only one house, the legislative assembly. There is no upper “house of review” as in most other states and territories, with the exception of Queensland and the Northern Territory
- Adding to the volatility of the legislative environment in the ACT is the fact that to maintain their seat, members in single electorate seats need more than 50% of the vote, while many members can be unseated by as little as a 5% swing

In 1998, the balance of power was held by two conservative independents and pro-choice groups had disintegrated or were inactive.

- Liberal Kate Carnell was Chief Minister of a minority government. Michael Moore, a progressive Independent, had been brought into government as Health Minister. The balance of power was held by two independents One was Paul Osborne, a retired footballer, an anti-choice Catholic and father of four. The other was Dave Rugendyke. Pro-choice advocates usually referred to them as the “two clods.”
- In May 1998, inspired by pro-choice achievements in WA, Labor MP Wayne Berry wrote to all members of the Assembly inquiring about their position regarding a repeal bill. The response was negative: he didn’t have the numbers. Thus, at the time the Osborne legislation was introduced, pro-choice forces were aware that anti-choice politicians were in the majority in the Assembly and that Osborne partially held the balance of power
- Pro-choice activism had reached its peak in the ACT in the first six months of 1992 during the ultimately successful attempt to repeal the Termination of Pregnancy Act (1978). Activists saw the repeal and the consequent establishment of the RHS clinic as a victory, and many saw the battle for women’s reproductive freedom as largely won. As a consequence, groups that had been active in the ACT during the repeal battle had largely disintegrated and/or become inactive.

WA

Prior to the legal change, most WA women had enjoyed safe abortions up to 15 weeks gestation at two private Perth clinics. Long-time activist group ALRA had been planning a repeal campaign when the “baby in the fridge” crisis erupted.

- Ninety-six (96%) percent of terminations performed in WA were before the 12th week of pregnancy, with the clinics providing services up to the 15th week. Abortions beyond this time were available at the KEMH, but only if the woman or fetus had a severe medical condition or the fetus had a severe genetic abnormality
- ALRA, then the Abortion Law Reform Society, was founded in the late 1960s in the wake of the failed attempt by Liberal politician Gordon Hislop to reform abortion laws. It was established around the same time as other Abortion Law Reform Associations were forming around the country. The group's formation predated the women's movement, and was initially driven by liberal humanist type reformers influenced by the abortion law reform process undertaken in the United Kingdom that had resulted in the UK Abortion Act (1967). However since 1972, group activists have considered their aims regarding abortion to be consistent with those of the feminist movement and themselves as both abortion activists and feminists. However, ALRA WA continued to play an important role in reproductive politics after the emergence of women's liberation, consistently welcoming men as members
- ALRA had a clear law reform agenda, rejecting the common practice in political and abortion activist circles of separating the legality and access issues and weighing the benefits of achieving one against the possible risks to the other. They kept meeting even when people said, "this is too hard we're not getting anywhere, why are we doing this." They always responded when there was an anti-choice letter in paper and had social occasions where we would share what was going on. They kept links to other sympathetic and/or pro-choice groups active, which honed their political skill, kept their ears to the ground and their faces within the parliamentary circle
- The group had been actively researching of the past successful strategies employed by other pro-choice organisations around the world. They discussed strategies they could begin implementing immediately as well as those they would adopt when a campaign began. They had planned a repeal campaign for September 1997 when the baby in the fridge issue arose
- Years earlier, the group had openly argued about and then resolved, to most active members' satisfaction tensions around language and strategy to be used during campaigning. The working out of such issues prior to the 1998 campaign may have contributed to what all ALRA committee members describe as positive and harmonious relations between Committee members during the campaign. They chose to:
 - Reject rights-based arguments for abortion and phrases like "pro-abortion," "women's right to choose"
 - Describe abortion as a health issue and a decision about motherhood
 - Identify themselves as "pro-choice" and avoid terms like "abortion on demand"

The Process of Change

ACT

The ACT campaign can be broken down into three distinct stages. These stages will be referred to in the following discussion of the change process:

Stage 1: (August 26th to November 17th 1998)

The first stage dates from the introduction of Osborne's original bill in August to his substitution of a second bill for the original in the Assembly in November

Stage 2: (November 18th to June 8th 1999)

The second stage dates from just after the substitution until early June, when pro-choice activists become aware that the government was considering legislation to override the Advisory Panel's recommendations against foetal pictures

Stage 3: (June 9 1999 to present)

The third stage dates from early June when activists turned their attention to stopping the passage of such legislation and - when that failed - to practical management of the legislation in a manner least likely to impede women's access, invade their privacy or undermine their autonomy

WA

The WA campaign can be thought of in two stages:

Stage 1: (3 February to 2 April 1998)

The first stage dates from the charging of the two abortion service providers, Chan and Lee, to the passage in early April of the Davenport bill through the upper house and the Foss bill through the lower house

Stage 2: (8 April to 21 May 1998)

The second stage dates from the out of order ruling made on the Foss bill to the passage of the Acts Amendment Abortion Bill on 21 May 1998

PREPAREDNESS AND PROVOCATION

ACT

The pro-choice movement was caught off guard by Osborne's decision to introduce an anti-choice bill into the Legislative Assembly.

➤ This was because:

- He contravened legislative convention by introducing it without notice
- A belief amongst many activists that the repeal of the Termination of Pregnancy Act in 1992 legislation and consequent establishment of the clinic were pro-choice victories that could not be undone.

In retrospect, however, numerous activists believed they should have been expecting an anti-choice "backlash" of some sort.

➤ This was because

- The cyclical nature of the abortion battle

- Recent legislative change in Western Australia. Interestingly, those who saw events in WA as a qualified win felt anti-choice activists had been spurred into trying to “even the score.” Those who saw WA as a pro-choice loss felt anti-choice activists had been spurred by their desire to continue their winning momentum in another state or territory
- Osborne had made his intention *to do something* clear over one month earlier. He was quoted in the *Canberra Times* as claiming that he made no undertaking not “to divide the community by forcing his views on others” other than “not to throw the first punch.” He claimed Berry’s letter constituted that “first punch” and consequently all bets were off. As well, Osborne had met with ACT anti-choice forces to discuss the possibility of a “Catholic legislator” introducing an anti-choice bill into Parliament. However, Wayne Berry rejects anti-choice claims of being provoked and says his post-WA attempt to “find out where people stand” is routine and justified behaviour for a politician

WA

The situation in WA prior to the baby-in-the-fridge crisis was an auspicious one for pro-choice law reform.

- In May 1997 conservative forces had lost their upper house majority for the first time in over 100 years
- Long-time ALRA members and pro-choice parliamentarians Cheryl Davenport and Diana Warnock were planning to retire at the next election.
- While not known by many activists, the long-serving Director of Public Prosecutions John McKechnie was also preparing for retirement.
- Davenport had grown disillusioned about the possibility of achieving repeal but wanted to do something “worthwhile as a politician” before she retired

In September 1997, while the police investigated the “baby in the fridge” incident, Davenport discussed with ALRA the possibility of introducing a reform bill amending the Criminal Code.

- The amendment would involve the insertion of an additional section, 201A, which essentially sought to “clarify” the law by defining legal abortion in the same way as was done in both the Menhennit and Levine rulings
- The women’s legal service, ALRA and a number of trusted pro-choice politicians agreed to Davenport proceeding with the draft
- Davenport prepared the amendment as the “Criminal Code Amendment Bill 1998,” the appearance of which was somewhat changed to the draft discussed initially
- Davenport brought the bill to the Left Labor caucus, of which she is a member, in December 1997. She was advised not to bring it before the Christmas break for fear of it being leaked by an anti-choice Labor MP to the anti-choice movement, which would then have time to prepare itself for battle when parliament re-commenced
- Davenport defers the proposed until the first caucus meeting of 1998. However, prior to this meeting, Drs Chan and Lee are charged

ALRA's feelings about Davenport's reform bill are mixed and become more so after Drs Chan and Lee are charged.

- Some members were angry about Davenport's draft. One felt betrayed that "after nine years of saying she would try for repeal" all that had been proposed was "to add a clause to the Criminal Code." Another recalls that while at first, she "liked" the proposal, she later became unsure. Another seemed more willing to accept that "Cheryl reckoned she had done numbers and this was best she could do"
- Some members felt it a mistake to begin the process of reform from a compromised position because they knew compromises would have to be made to get it passed
- Some believed public shock and indignation about the arrest of the doctors and the violation of the aborting women's privacy gave the repeal option some chance
- Unhappiness about the reform bill, coupled with longstanding tensions between Davenport and some ALRA members, came to a head when some ALRA members encouraged Greens Senator Giz Watson to put forward a repeal bill. Some thought it would push Davenport into doing such a bill herself. Others had grown disillusioned with and suspicious of Davenport and wanted to find another politician willing to take "their issue the way they wanted it"

Davenport decides to pursue repeal.

- Watson discussed the possibility of her putting forward a repeal bill with Davenport. Davenport becomes worried about losing her opportunity to attempt, and possibly even be successful in achieving repeal. She also fears the failure of a repeal bill sponsored by Watson, a politician who is less experienced, politically savvy and well-connected than herself.
- The baby in the fridge crisis moves into full-gear. The Liberal government rejects Davenports attempt to get a co-sponsor for her bill, and she receives the DPP's frosty rebuke to the letter she signed with other Labour women requesting he cease his prosecution of the case (see Timeline). The press has given significant coverage had to several botched self-attempted abortions and a WESTpoll had been published showing significant community support for legalised abortion
- Somewhere between 10 February and 9 March Davenport decides to pursue repeal

ALRA mobilises, pleased the issue is finally on the agenda.

- When criminal investigation of the doctors began, pro-choice forces went on low-level alert: low-level because since 1974 no police investigations had ever led to charges
- When charges were laid, pro-choice forces swung into action. ALRA wrote to the DPP seeking information about/questioning his motives in pursuing the case
- It was clear that the anti-choice movement was not aware that something was afoot until the media began reporting on the issue, a fact that several took as proof that the DPP – contrary to the speculation of some on the pro-choice side – was not anti-choice. If he was, went the reasoning, he would have leaked news of the investigation to the anti-choice side
- Unlike the female Labor politicians who had written to the DPP, ALRA members were not completely unhappy that the DPP had forced the issue by enforcing an unpopular law. Happy to take the risk to achieve law reform, they felt the DPP's actions had achieved what they had long struggled to do; place the issue firmly on the political agenda

ORGANISING

ACT

A loose and informal coalition of ACT pro-choice forces began meeting weekly soon after Osborne presented his original bill.

- Representatives from Wayne Berry's office, grass roots feminist activists from the democratic socialist leaning group Pro-Choice, the Women's Electoral Lobby (WEL), the Australian Reproductive Health Alliance, the Women's Legal Centre, the Women's Centre for Health Matters and Family Planning ACT attend
- Michael Moore, health minister in the Carnell government, had a strong pro-choice voting record. He sent an adviser to these meetings until he stopped or was told not to (this remains unclear) in the early parts of stage 2 of the campaign
- Although perceived to be "on-side," representatives from the medical profession did not attend these meetings. Instead, they liaised regularly with Sandy Mackenzie of FPACT who attended as FPACT's representative
- All members were involved in lobbying Assembly politicians as well as organising rallies and press conferences and other "actions"
- One activist reports that there was no discussion in the group about how the issues would be framed for politicians and the media. Instead, several "trusted" people were designated as media contacts in an attempt to "control the agenda." However, people outside this group did also speak to this media, specifically Lara Pullen (Pro-choice) and Erica Lewis (WEL), mostly in response to specific media requests. One activist believed the media itself largely dictated who they spoke to, and mostly rang FPACT for comment

WA

In WA, activists coalesced under two new banners: the Coalition for Legal Abortion ("the Coalition") and the Health Industry Group ("HIG").

The Coalition

- Included the Public Health Association (PHA), Family Planning Australia (FPWA), WEL, ALRA, Women Lawyers, Centre for Sexual Health (CSH) and representatives from the Trades and Labor Council. Importantly, Scott Blackwell, President of the AMA, also sits on the Coalition as a member of the HIG
- Dr Judy Straton from the Department of Public Health at the University of Western Australia becomes the group's chief spokeswoman as well as the key liaison person between the Coalition and the HIG. Stephanie Mayman from the Deputy Trades and Labor Council also speaks to the media
- The Coalition, steered by Straton, Mayman, Gloria Sutherland (PHA), Judi St Clair (FPWA), Jan Machin (CSH) and ALRA's Margot Boetcher, put most of their effort to organising a large public rally to demonstrate support for repeal. In addition, they monitored debate in parliament, wrote to politicians, conducted a poll of voters in anti-two anti-choice seats, kept in daily contact with the media, lobbied politicians and wrote and disseminated the "Resource Material for Politicians." The booklet was widely used and provided information to MPs about proposed anti-choice amendments, legal opinions, public opinion polls, position of peak groups and distinguished individuals and facts about abortion provision and counselling. Different colour paper was used for different pages of

the guide, allowing activists to see from the gallery when and what section MPs were using during debate

- Straton was also the main person briefing, consulting with and supporting the key politicians steering the bill through the Parliament: Cheryl Davenport and Diana Warnock. She also, in the final days before the bills passage, wrote responses to anti-choice amendments and lobbied politicians not to support them
- Several activist groups decide to join the Coalition but also to independent continue lobbying efforts. This pleases some members of the new and longstanding organisations
- The idea of forming a new organisation with a new name and a young woman to front it (this last bit dropped off the agenda relatively quickly) was a brainchild of ALRA. It was one of the ideas they'd picked up on their researching of successful pro-choice campaigns and had begun discussing by the 6th of February
- However, when the Coalition for Legal Abortion formed, ALRA made a decision to send Margot Boetcher to meetings to represent them, and to continue as a separate organisation. One ALRA member described their motivations for wanting to remain separate as a desire to ensure they were not "infiltrated by Labor women" and their "agenda diluted." Some in the Coalition are also happy that ALRA remains separate because, according to one, this allows them to pursue a more realistic approach to achieving legislative reform and to escape ALRA's sense of "ownership" of the abortion issue
- The Christian Coalition also lobbied individually, although their President, Uniting Church Minister Marion Millin spoke at several Coalition events

The Health Industry Group (or HIG)

- Included the Australia Medical Association (AMA), the Royal Australian College of General Practitioners (RACGP), the Royal Australian College of Obstetricians and Gynaecologists (RACOG), the Royal Australian and New Zealand College of Psychiatrists (RANZCP), the Australian Faculty of Public Health Medicine of the Royal Australasian College of Physicians (AFPHM), the Public Health Association (PHA), the Family Planning Association (FPA) and the Health Consumers Council
- On behalf of the group, the AMA's Dr Scott Blackwell, Dr Harry Cohen from the King Edward Memorial Hospital (KEMH), Professor of Public Health C.D'Arcy J Holman, Dr Maurice Ferri and Dr Judy Straton wrote to politicians, issued press releases and did media interviews
- The HIG also organised, announced and kept the public abreast of the medical profession's stated intention – in the end largely fulfilled - to refuse to provide terminations in the absence of legislative clarification of the law
- According to Blackwell, the HIG was formed in part to take the heat off the AMA, which had begun the group but was divided on the issue and so didn't see it through to the end

KNOWING WHO'S ON SIDE

ACT

Prior to and during stage 1, the pro-choice team saw both Michael Moore and Kate Carnell as "on side." This assessment was mistaken, and possibly costly.

- Moore and Carnell were believed to be pro-choice because:
 - They had both voted in 1992 to repeal the Termination of Pregnancy Act;
 - They had both spoke at the first and largest pro-choice rally – held on September 1 - just after the introduction of Osborne’s original bill. In their speeches, both declared themselves to be pro-choice and committed to opposing the bill.
 - Moore had supported the legislation necessary to establish the RHS clinic.
 - Carnell consistently described herself as “pro-choice”
 - Carnell was seen by some activists as “supportive” of the RHS Clinic because she attended the clinics 25th anniversary celebration, made herself accessible to service providers to talk about the service and been sympathetic towards the search for a site for the clinic
- Moore’s solid pro-choice history meant it took pro-choice forces to recognise that in 1998, Moore’s political ambitions rather than his ideals were exerting the strongest force on his behaviour towards Osborne’s legislative attempts. Essentially, Moore was willing to do whatever it took to ensure that he survived as health minister in a Carnell government. To ensure both these outcomes he needed to do two things:
 - Keep Carnell – infamous for an elephantine political memory and a vindictive streak - on side by voting with her in favour of the legislation and;
 - Ensure the “two clods” were happy enough with the fate of the Osborne’s legislation to neither demand from Carnell his ministerial scalp nor to refuse to vote in favour of the sale of ACTEW
- There was some evidence suggesting Carnell’s pro-choice support was soft. Since 1994, Berry’s office had a copy of a questionnaire Carnell had filled in for the ACT Right to Life Association in 1992. In it, Carnell had answered “yes” to the questions “would you oppose any moved to liberalise the present abortion laws of the ACT” and “would you oppose the provision of any additional facilities (government or private) for abortions in the ACT”
- In addition, since Carnell’s 1992 vote in favour of repealing the Termination of Pregnancy Act, she had since opposed every pro-choice piece of legislation introduced into the Assembly.

Pro-choice forces decided to oppose the original bill, but were undermined by Moore’s backdoor negotiations with Humphries.

- Pro-choice forces did not know was that Moore was compromising their oppositional strategy by negotiating amendments to the bill with anti-choice MP Humphries: amendments that essentially comprised the substituted bill presented to the Assembly, again without warning, on November 18th
- Opposition to the original Osborne bill would likely have met with success because of its extremism, the discomfort MPs had with the way it was introduced and the inept way it was written. Had Moore facilitated the original bill, Berry feels confident it would not have passed through the Assembly and the matter would have been finished
- Only after Osborne had successfully substituted the second bill for his original version in the Assembly did pro-choice forces began to suspect that Moore was undermining their strategy by negotiating with Humphries

- As well, Moore successfully exploited the understandable concern of the RHS clinic staff about the service's future to divide pro-choice forces, and undermine their strategy for defeating the bill. The success of the original bill would have spelled the end for the clinic. Given how hard pro-choice forces had worked to establish a service for ACT women, and clinic management's concern about their own jobs and those of their staff, this was an outcome feared by all
- He did this by approaching Family Planning ACT and successfully convinced them that they would be better off to discuss amendments to the bill with him that would ensure the clinic's future viability, than take what he said was the real risk the original bill would pass
- Unbeknownst to the informal pro-choice coalition, Family Planning ACT negotiated with Moore throughout the process of legislative change. Until Stage 3 of the change process, FPACT deemed the outcomes of such negotiations as acceptable, believing they had some positives for abortion service providers in the territory
- However, once Moore's role in facilitating the legislation that overrode the Advisory Panel's recommendations regarding foetal pictures, FPACT revised its belief that Moore was "pro-choice" and trying to "get them the best deal possible." They began instead to see Moore as having made a lot of unacceptable compromises and "selling them out"

Advocates suggested a number of reasons why Moore and FPACT decided to negotiate secretly.

- Some pro-choice activists believed it was because both Moore and Mackenzie lacked negotiating skills. This meant they "blinked" and began negotiating too early: Mackenzie with Moore and Moore with Humphries
- Others believed Mackenzie had a different agenda to the rest of the loose pro-choice coalition. They wanted to kill a law while she wanted to keep the clinic open. When Mackenzie decided – independently and early on – that she could not stop the law, she worked behind the scenes to ensure she could live with the law she got. One advocate opined that this outcome was proof of the truth of the old saying that "where you sit is where you stand." Mackenzie's ultimate commitment, in other words, was to the clinic

The medical profession was on side, but primarily concerned about the aspects of the bill that impinged on their professional privileges.

- Medical professionals in the ACT particularly objected to the information provision found in all the initial and substituted version of the Osborne bill because they violated the sacred ground of the doctor-patient relationship
- There is evidence that ACT doctors (in line with doctors in other states and territories in Australia) resent being asked to "gatekeep" women's first trimester abortion decisions. The "informed consent" provisions increased the gate-keeping requirements for medical professionals. During the campaign and in their campaign and lobbying materials, the profession openly rejected their gate-keeping role and affirmed women's autonomy in early termination decisions
- However, medical discourse and strategy focused primarily on the professional interests of medical professionals and were not always consistent with pro-choice discourse and strategy
- The profession's support for repeal was largely grounded in their desire to protect themselves from the day-to-day difficulties surrounding participation in an illegal activity, as well as from the threat of prosecution. The profession supported caveats on repeal when it suited their professional interests. Hence, unlike pro-choice activists, the medical

profession supported the retention of abortion in the Crimes act if performed by an unregistered provider because this provision protects the medical monopoly of provision

- The profession opposed mandatory counselling but not, as did pro-choice activists, because of a desire to protect and affirm female autonomy and decision-making capacities. Instead, they opposed it because it constituted an intrusion into the doctor/patient relationship and in circumstances where unlawful abortion remained a crime. This was because counselling provisions would “expose doctors to unacceptable risks of prosecution” because of the risk that “a woman who is unhappy with her decision could, with the support and encouragement of Right-to-Life groups, start criminal proceedings against the doctor on the grounds of inadequate counselling”
- Most members of the medical profession, particularly nurses, were also happy to restrict or criminalise the termination of advanced pregnancies. The resistance of many Australian doctors and nurses to involvement in late-term terminations, particularly those done for “psycho-social” reasons, has a long-history in Australia. It has led in the past to a shutdown in services in South Australia as a consequence of nursing staff refusing to assist in late terminations, and to the refusal of doctors to use the D & E and D & X methods. Despite the fact that these methods both lower mortality rates and the distress of the aborting woman, all Australian women continue to be forced to terminate late pregnancies using instillation methods that force the woman to labour and “give birth” to their dead fetus

WA

Activists were pleased the medical profession was “on side” during the crisis, and satisfied with their lobbying efforts. However, there were mixed feelings about the profession’s decision to withdraw services until the law was clarified.

- Some believed it was the withdrawal of services - not their campaigning or women’s needs for law reform – that ultimately led to a positive change in the law. The government knew that there would be crisis in the hospital system if the two abortion clinics closed, and that West Australians would not tolerate the inevitable death or serious damage to a woman from a botched illegal abortion. The enormity of WA, and its geographic isolation made these fears particularly potent
- While all activists agreed service withdrawal was a strategy likely to work, they disagreed on the moral acceptability of this strategy. Some believed it unacceptable because it would lead women to hurt themselves trying to self-abort. In addition, some activists worried that a service shutdown would require them to begin finding funds and making arrangements for women to fly interstate, dragging them away from the business of changing the law

The restriction on women’s access to post-twenty week terminations and the two-doctor requirement to circumvent it were among the most contentious requirements of the new bill for its critics.

- Straton and Davenport joined forces with Judi St Clair and Dr Harry Edwards to defeat an amendment that would have limited post-16 week abortions. However, they accepted there would be restrictions on post-20 week abortions because the medical profession strongly supported retaining their gate-keeping role on termination requests from women at later stages of pregnancy.
- The two-doctor compromise suited the medical profession’s specifications precisely. It took the “wind out of the sails” of those claiming the bill allowed abortion up to birth, and

provided doctors with the means to deny or enable women to access terminations based on their assessment of the woman's "deservingness"

- ALRA opposed the initial compromise position - which banned all post-twenty week abortions and lacked the two-doctor compromise that wound up in the final bill. However, they were also less than happy with the two-doctor compromise. Tensions about the two-doctor compromise subsequently arose between WA pro-choice advocates and some grass-roots activists in other states

ANTI-CHOICE/PRO-CHOICE LEGISLATIVE STRATEGY AND THE PRO-CHOICE/ANTI-CHOICE RESPONSE

ACT

The substituted bill caught pro-choice forces off guard and undermined pro-choice strategy.

- Osborne's substitution of his amended "information provision" bill for the original bill (which would almost certainly have been defeated that day) was a defiance of parliamentary procedure. This was because it was introduced without notice, and was substantially different in content to the first bill, even having a different name
- Appeals to the Speaker, who was rumoured to be anti-choice and accused throughout the debate of one-sided rulings in favour of anti-choice forces, failed
- The original bill sought to restrict women's access to terminations by enacting legislation that made the conditions under which a lawful abortion could be obtained in the ACT more restrictive than those articulated in the Levine ruling (under which service provision in the ACT was thought to be governed). Its draconian elements were familiar anti-choice attacks on the conditions under which lawful terminations could be procured in the ACT. Had it been enacted, only 10 to 15 abortions would have been considered legal in the ACT each year and these would have been done in the hospital. RHS would have had to close down because for a number of reasons, including a lack of demand for its services, with the loss of numerous jobs
- The substituted bill's focus on information provision rather than access was an unfamiliar and unexpected anti-choice strategy that may have caught pro-choice activists off-guard for two reasons
 - The high-level of pro-choice concern about and investment in the RHS. The commitment many activists felt to the clinic was a consequence of the priority some activists placed on ACT women having local access to services, the past role some had played in the clinic's establishment and the clinic's provision of some of the activists' livelihoods;
 - The "draconian" elements of the first bill confirmed rather than challenged pro-choice beliefs about anti-choice "extremism."
- Pro-choice activists focused their initial attack on the more draconian provisions of the bill that sought to directly constrain women's access, paying little attention to the information-giving provisions. The only exception to this was the medical profession, which immediately noticed and raised objections to these provisions because of their encroachment on the sacred ground of the doctor-patient relationship
- Osborne's substitution strategy benefited the anti-choice movement in several ways:

- Distracted pro-choice attention from the information-giving provisions of the original bill. In an unpublished interview given after the bill's passage, Osborne describes the substitution of the initial bill with the second one containing only the information-giving provisions as one of the anti-choice movement's "finest moments in strategy." In a later interview, he told of his joy when the pro-choice movement took the bait offered by the first bill "hook, line and sinker";
- May have made it easier for politicians to ignore the commitments they had made and/or the sentiments expressed at the pro-choice rally of September 1. The numbers attending that rally were enormous given the ACT's tiny population. But because the rally had been assembled to oppose the original bill and politicians (including Carnell and Moore) had voiced their opposition to the restrictive access provisions that were later deleted from the substituted bill, they may have believed themselves uncommitted on the information-giving provisions in the second version. Thus, the substitution may have given Carnell greater license, despite her public proclamations at the rally, to vote in favour of the substituted bill proceeding in principle and for the bill to become law, and for Moore to vote the bill into law. Indeed, several pro-choice advocates believe that many that attended the rally may still be unaware that Carnell and Moore voted the Osborne's bill into law and in favour of the "foetal pictures" regulation;
- Deprived the pro-choice camp of the more draconian option of allowing the original Osborne bill to pass through the assembly in its entirety. Had this happened, the clinic would have closed and nearly all women would have been denied access to terminations locally. The stage would then have been set for an election in which abortion access was a central issue;
- Deprived pro-choice activists of an alternative legal strategy. Had the original bill passed, would have been to have opposed it in the Human Rights and Equal Opportunity Commission on the grounds that aspects of it were inconsistent with the Discrimination Act 1991. It may also have been possible for women's groups to argue against the bill on the grounds it violated Section 109 of the Australian Constitution, the Federal Sex Discrimination Act 1984 and/or international treaties to which Australia is a signatory, like CEDAW. Had it the original bill become law, there might also have been an opportunity for pro-choice forces to bring a negligence action (along the lines of the *CES v Superclinics*) to outline the legal responsibilities of doctors in the abortion context

Post-Abortion Strategy (PAS) aims, discourse and tactics were not well understood.

- The information provision focus of the substituted bill sought to impede and alter women's termination decisions in two ways:
 - By giving women information designed and intended to deter them from consenting to a termination and;
 - By deterring medical staff from referring for or providing terminations by making the information-giving process unduly complicated, and by falsely intimating that women can and will successfully sue medical practitioners who fail to undertake the information-giving process with them to the woman's satisfaction
- Although unfamiliar to pro-choice activists, "post-abortion" discourses and tactics (of which Osborne's information provision bill was a recognisable part) were in evidence in the ACT, other states as well as Federally as early as 1994, with the publication of an anti-choice collection that included several "post-abortion" type essays
- In 1996 Federal anti-choice politicians, citing "concerns" about women's capacities to give informed consent to the use of mifepristone, had managed to put legislative requirements in place to effectively deny Australian women access to it into the conceivable future

- Moreover, in the early parts of 1998, anti-choice parliamentarians in WA had cited - among other things - “concerns” about women’s vulnerability to exploitation and to coerced decision-making as grounds to roll back the achievements promised in the original version of the Davenport bill

WA

Pro-choice forces were on the legislative offensive in the first stage of the parliamentary process.

- After Foss failed in his attempts to restore medical confidence by asserting that the Davidson test still applied, and the Labor women MPs were unsuccessful in getting the DPP to cease his prosecution of Chan and Lee, parliamentarians realised they had to take responsibility for the issue
- Davenport chose to risk repeal because
 - The DPP’s decision to enforce the law had led the medical profession to restrict/deny women’s access to safe terminations until legal certainty was provided. Prior to this restriction, she and other pro-choice advocates had feared that pursuing legislative change could land women – legally, access-wise or both – with a worse situation than the one they had begun with;
 - Public outcry around the issue had led to a sense in the electorate that something had to be done, and politicians feared that they would be accountable should they fail to clarify the situation.
- Pro-choice forces believed the only advantage they got from being on the legislative offence was that – in the first stage - they were not battling to defeat anti-choice legislation
- Government uncertainty about how to play the issue meant that Attorney-General Foss initially promised Davenport assistance in drafting her bill (on which Liberal MPs would be given a conscience vote). However, Coalition MPs refused to accept his recommendation and decided to proceed with their own bill. One of many differing accounts of these negotiations suggest that Davenport would have allowed her bill to have been presented in stages (allowing members “to identify the level of support for freeing the availability of abortion”) in exchange for government co-sponsorship.
- However, the government decided to sponsor their own staged bill that retained abortion in the Criminal Code because some liberal members of the government thought it would be good election politics to sponsor a bill. This may have been the case because the Leader of the House, Colin Barnett, was strongly behind both the retention of abortion in the Criminal Code and the staged approach. Barnett believed both would allow the final outcome to avoid “extreme views of ‘abortion on demand’ or ‘right to life,’” and instead reflect a more “middle road” outcome.
- Davenport decided not to support the government’s bill for reasons that may have included:
 - Her anger at the government’s “unexpected reversal...of policy”
 - The pressure she was under from the Coalition and other minor party MPs – not to mention activist groups - to pursue repeal

- However, going it alone meant that Davenport's bill was disadvantaged by a lack of government support.

Party politics and rivalries, personal ambitions, religion and family influences seemed to be largely dictating the course of events in parliament.

- The government's fear of missing out on any electoral advantage led them to renege on its commitment to support the Davenport bill and to decide instead to present its own bill
- Competition between Liberal MPs to get the succession nod from Court and fear of losing their pre-selection undercut pro-choice support in the Liberal party, leading some members to follow Court in voting for amendments to the Davenport bill they might otherwise not have supported support
- Pro-choice wives and daughters swayed some MPs to the pro-choice view. Some MPs were persuaded by their religion or their electorate (what Davenport called "becoming anti-choice by electoral count")

Pro-choice activism had either a neutral or positive impact on politicians. Negative anti-choice agitation, however, contributed to a pro-choice outcome.

- Consistent with Boetcher's assessment of one of the jobs of activists – not to cause a distraction but to support internal agitators – MPs did not mention ALRA as a force that influenced votes one way or another
- Several activists noted that politicians made significant use of the Coalition's "Resource Material"
- The WA anti-choice movement created a distraction that made things difficult for anti-choice advocates working on the inside
- The turning point of the campaign in favour of the pro-choice side was when the Coalition for Human Life's Richard Egan decided to break into an abortion clinic and release confidential information about women having terminations. This information included the ages of the women and the gestational ages of their fetuses, each of which was given a name by the anti-choice agitators.
- The break-in occurred on the eve of the resumption of debate in the lower house. Many anti-choice MPs believed that the banner headlines that resulted ensured that all four options of the Foss Bill were to pass its second reading, and the bill transmitted to the upper house. In the upper house, the Davenport bill passed and was transmitted to the lower house.
- This was the high point of the campaign for the pro-choice movement: two bills passed by two house of parliament, each of which allowed abortion if a woman gave her "informed consent." "Abortion on Demand" screamed the headlines in the *West Australian*. But it wasn't. And wasn't to be.

Anti-Choice Legislative Strategy and The Pro-Choice Response

ACT

FPACT strongly objected to the Osborne bill requirement that women be compelled to view fetal pictures.

- FPACT had raised virtually no objections to the bill's requirement that the woman be provided with an estimate of the "gestational age of the fetus." They saw this requirement as "silly" because RHS only terminated pregnancies of 7 to 13 weeks gestational length
- FPACT had raised mild objections during negotiations about the bill's demand that "approved facilities" submit quarterly reports detailing the number of abortions performed, reasons for their performance, ages of the women concerned, gestational "ages of the foetuses" and the number of women having repeat terminations. They were concerned that anti-choice forces could use such reports as evidence in criminal proceedings. However, FPACT ultimately decided they could "live with" this aspect of the bill. This was because the clinic felt it had significant control over the amount of information that such reports would contain
- FPACT strongly objected to forcing women to view foetal pictures. They believed they had achieved a significant victory in their negotiations with Health Minister Moore when the bill was amended to allow the Health Minister to appoint an Advisory Panel to decide the content of disclosures during the information-giving process. The hope was that the seven-member Panel, the composition of which was determined in the legislation, would ensure that women received balanced and appropriate information designed to facilitate their decision-making, rather than deter them from choosing and abortion
- The Panel consisted of three Catholic Hospital Board nominees. Nonetheless, it advised against the inclusion of foetal pictures. Consequently, the May version of the ACTDHCC information booklet neither contained foetal pictures nor canvassed unsubstantiated anti-choice claims of a link between induced abortion and breast cancer.
- Few anticipated Osborne's determination to force women to view foetal pictures, not the government's willingness to revisit the issue in the Assembly in order to override the Panel's decision. Health Minister Moore facilitated another anti-choice outcome when he wrote to all Assembly members on 8 June 1999 noting that the "...decision of the advisory panel not to approve pictorial materials can be perceived as being at odds with the intentions of the Assembly." He claimed the Panel's decision puts him "in a difficult position" because despite his "well-known personal views," he had "always taken the view that as responsible minister I must execute the legislation in good faith and make the new regime work successfully."
- He said that while the Panel could not and should not be directed to alter its information, it was "certainly possible that pictorial material intended by the Assembly could be added by administrative action." Despite having facilitated the foetal picture regulation, Moore voted against it. Carnell votes in favour and it passes 9 votes to 8

FPACT and the Division of General Practice refuse to comply with the regulation.

- Both service provider organisations said they would only continue providing services within the "unacceptable and insulting restrictions" imposed by the new law if the ACTDHCC information booklet was a "professional and accessible resource for clients"
- The sizes and weights of the foetuses in the required pictures are proven inaccurate. They are adjusted and an amendment to the Schedule accompanying the Regulation to the Act is gazetted
- ACTDHCC reissues the information booklet in October. The October version contains the corrected foetal pictures but they are not identified – as required in the law - as approved information. In addition, FPACT, the only pro-choice agency, has been moved to the back of the list of helping agencies behind several anti-choice services. As well, references

have been added to both the legal constraints on abortion availability in the ACT and the “wide-ranging” legal responsibilities of doctors to provide women with “all possible information” about the procedure

- Following legal advice received by Family Planning ACT, GPs and other service providers refuse to distribute the October booklet, and instead continue to give clients the May version

In retrospect, FPACT’s strategic decision to negotiate with Moore early in the process appears to have been mistaken.

- The precise content of negotiations between service providers and Moore are unknown. The most likely scenario is that having told service providers to live with some of their minor concerns about the legislation, Moore sought an outcome acceptable to service providers by deferring the decision about foetal pictures to the medical Advisory Panel. Service providers had either expressed a willingness to trust in and abide by the decision of their peers on the Advisory Panel as to the contents of the informed consent disclosures and/or have expected the Panel to return a negative verdict on the pictures
- Service providers saw Moore as “pro-choice” and therefore on their side. This trust and/or the unquestioned (and understandable) assumption that the government could be trusted to uphold its end of the bargain and to abide by the legislative requirement that the Panel be the final arbiter of informed consent disclosures had informed their decision to “play ball” with the government.
- In the event, FPACT’s decision to negotiate with Moore divided pro-choice forces, weakening their “total resistance” strategy and delivering little
- The sense of betrayal felt by FPACT and the medical establishment may explain the willingness of medical professionals and other service providers to frustrate the law’s implementation

The anti-choice movement made a tactical error in pursuing a regulation rather than an amendment to the Act to compel the inclusion of foetal pictures.

- The RHS decides to inform women that a copy of the October version is available from ACTDHCC. As well, they have placed an insert in the May booklet informing women that foetal pictures are available at the service should they wish to view them
- However, legal advice received after this practice was adopted suggested that the regulation does not require service providers to make women aware of the October booklet or of the availability of foetal pictures. It only imposes an obligation onto the Minister to ensure as far as practicable copies of the current pamphlet are made available for use under section 8 of the Act. This minimal requirement is a consequence of the relative weakness of the regulation in comparison to the Act itself. Hence while the anti-choice movement is pleased with the Act, the reality is that it is insufficiently powerful to compel service providers to force women to see the pictures.

WA

The Foss bill is ruled out of order in the upper house and pro-choice politicians go on the defensive.

- The upper house ruling leaves only the Davenport bill, which must still pass through the lower house

- Colin Barnett was one of the Liberals arguing that passage of a Government bill had elector advantages. Prior to the ruling, he had argued that the Davenport bill was unlikely to pass through the lower house. After the ruling, he was indignant that while Foss's bill had been designed not to conflict with Davenport's, upper house amendments had led it to conflict and to the "out of order" ruling. He believed the Davenport Bill was not "the appropriate way to go on this issue." As a consequence he only reluctantly supported debating time for it and considered introducing a third bill that inserted the main provisions of the Foss Bill into the Davenport Bill. This latter tactic was defeated by pro-choice MPs on a 31 to 24 vote
- On 8 April, the same day the Foss bill is ruled out of order in the upper house, Warnock proposes a number of amendments to the Davenport Bill to which Davenport has agreed in order to facilitate reasonably smooth passage of her bill through the lower house. These included the creation of a new section 199 in the Criminal Code providing a penalty of five-year's imprisonment when an abortion is performed by a person not a registered medical practitioner, the removal of the word "economic" from the justifications for abortion and the inclusion of the Assembly's definition of "informed consent". The ruling against the Foss bill put Davenport under further pressure to smooth the ruffled feathers of those in the lower house who resented losing "their bill" by making the only bill remaining, the Davenport bill, more Foss-like
- Davenport continues to negotiate compromises she believes essential to ensure the bill's passage through the lower house. Straton assists her to defeat the worst of the amendments being proposed by anti-choice politicians. In particular, Davenport agrees:
 - To split her bill in the Committee Stage (enabling it to be voted on by section) if it is passed in the second reading in the lower house;
 - To the four justifications aspect of the Foss bill to be included, in exchange for the permanent removal of aborting women from the Criminal Code;
 - To the transfer of the penalty for an unjustified abortion back into the Criminal Code;
 - To the provision that under 16s must notify a parent of their intention to seek an abortion;
 - To the information provision clause that defines informed consent as that freely given by a woman where she had been properly and adequately informed of the risk of abortion and pregnancy, offered the opportunity of referral for counselling on these matters and informed about the availability of counselling after she had terminated or given birth

Pro-choice activists were able to reflect, at times with regret, on their losses.

- The return of unjustified abortion to the Criminal Code was arguably the most distressing loss for Davenport, Straton and ALRA activists. The vote was extremely close, 27 to 27, with the pro-choice speaker forced because of convention to cast the tie-breaking vote in favour
- One ALRA activist regretted that they had taken a key MP at his word when he said he was on side, and that they did not need to speak with him. He was in all likelihood lobbied by anti-choice forces, became confused, and when the crucial vote in Parliament was taken on getting the unjustified abortion provision out of the Criminal Code, voted against repeal. If he hadn't, the speaker would never have needed to break the tie in the affirmative and a limited repeal bill would have been won
- One informant speculated that ALRA's unwillingness to share information with the Coalition about the polling they had done, since the 1980s, of politicians' views on

abortion may have led to other such losses because Coalition lobbyists were unsure who to target

Pro-choice activists were able to reflect, at times with regret, about the campaign as a whole and its final outcome.

- In the final weeks before the Bill's passage, anti-choice forces began working around the clock, trolling US status books for possible amendments to undermine the informed consent justification. Straton would arrive at Parliament House each morning to confront a new list of proposed anti-choice amendments. She would write out arguments against the amendments that Judi Edwards would type and circulate. Straton reflects that it may have helped if pro-choice forces had anticipated possible amendments and had responses to them prepared: a possibility because such regulations were not novel, but recycled from previous US or Australian campaigns
- Diana Warnock was upset and exhausted by the battle to get the bill through the lower house. She found herself on the receiving end of anti-choice vitriol both in and out of the chamber. For instance, one member informed her she had no right to an opinion on the issue because she was childless. Warnock often felt unsupported during the long debate. She would have liked:
 - More pro-choice supporters to write letters to the papers;
 - More pro-choice supporters to write letters to pro- and anti-choice parliamentarians;
 - More activists on the ground so that an alert and skilled pro-choice presence could have been maintained – as was the anti-choice one – around the clock;
 - A “couple of QCs” available around the clock to scan legislation and assist her to respond more quickly to conservative amendments – particularly in the wee hours of the morning when anti-choice forces sought to pass them. Straton also mentions the problem around the clock sessions posed for pro-choice activists when she opines that pro-choice forces may have defeated the information-giving provision – or at least have modified it so “counselling” was better defined – had the amendment not come up in the middle of the night
- Several pro-choice activists were highly critical of the legislative outcome in WA, particularly those concerning parental consent and restricting post 20-week abortions. Davenport firmly rejects any suggestion that she got a worse outcome than was necessary. Both she and Warnock argue that neither activists nor researchers could imagine or hope to understand “the pressure-cooker atmosphere” surrounding the parliamentary debate and what pro-choice politicians were “up against”. Davenport contends that her bill could – and would – have been defeated at the third reading stage without every single one of the compromises made. She notes that many of the amendments that were negotiated in the Committee stage in both houses were designed to keep “soft” pro-choice votes on side
- Davenport also felt unable to risk rejection of her severely amended bill when it emerged from the lower house. This is because amending the bill again would have triggered a “conference of managers,” a parliamentary mechanism designed to resolve the problem posed by the upper house refusing to accept lower house amendments to a bill it has already passed. Davenport feared such a conference because:
 - At least one of the three MPs participating in the conference might be anti-choice, making it unlikely the necessary unanimous agreement on the fate of the bill would be achieved. This would mean the bill would lapse, with uncertain prospects for a third bill;

- She would be seen as irresponsible because until such a conference concludes, the business of parliament grinds to a halt
- Evidence suggests that neither Davenport nor Straton entered negotiations around the bill with and/or remained faithful to clear “bottom line” positions. Davenport says she did have one: that aborting women had to be free from the threat of prosecution, and that all mention of abortion had to be removed from the Crimes act. However, given that this latter criteria was not obtained, and that prior to the crisis Davenport was prepared to put forward an amendment that only added to the Crimes Act, it is unclear how non-negotiable this latter “bottom line” really was. Straton claimed that she and Davenport didn’t have a bottom line position because they didn’t have “that sort of power”
- Davenport’s behaviour also appeared to be shaped by a desire that is likely to be widespread among parliamentarians. This was the desire to be viewed by colleagues as an experienced political operator or “player”: someone who understood that politics is the art of the possible and could be relied upon to make the necessary compromises to achieve an outcome. As well, Davenport was driven by a strong need to achieve some sort of legislative outcome prior to her retirement

Grass-roots activist strategies: Pro-choice and Anti-Choice

“INSIDE” VERSUS “OUTSIDE” AGITATION

ACT

Pro-choice activists engaged in complementary inside and outside agitation strategies.

- One activist describes the back and forth between outside agitators during the third stage of the campaign:

After the original bill was withdrawn the anti-choice argument was that the new bill was about providing women with information...Their argument was "what did we have to fear from women being informed?" Our response was that we wanted women to be informed - not misinformed...We got a bit about the coercive nature of the abortionist we countered by presenting a woman who'd been denied an abortion because she seemed to be ambivalent). They raised post-abortion stress (we countered with the statistics both on incidence of mental illness post-abortion obtained and post-abortion denied) and the link between abortion and breast cancer. This was the best. They held a seminar with Joel Brind as the speaker. We organised Dr Charles Guest (President of the Australasian Epidemiology Association) to be in the audience. Dr Brind got to the end of his talk, there were a few questions, then Charles said, "You do realise associative epidemiology has been widely discredited? And that statistically from the evidence you've presented there is no link?" Brind replied "I see - and who are you?" Charles said, "I'm Dr Charles Guest, President of the Australasian Epidemiology Association. Who are you?"

- Inside agitators lobbied politicians directly. These activists stressed the importance for such efforts of presenting oneself as a credible source of information by dressing conservatively and making conservative non-emotive arguments in a calm, rational, methodical – even academic – manner. One activist believed that following these guidelines made she and FPAACT appear to be a more credible source of information

while the “Pro-Choice mob” were seen to be more dubious. Another activist with experience as an adviser to a Federal politician says that doctors and other professionals are effective lobbyists because they are more mainstream and “like” politicians. The more a group is seen as a bunch of “ratbag activists” or “feminists” – unlike the politicians and divorced from the mainstream – the more they are dismissed. This activist also found it useful to emphasise similarities between herself and the politician she was lobbying. For example, if she was talking to a right-wing Catholic MP, she said she was Catholic, and that it was a difficult issue for her, and suggested some writings by other Catholics who are pro-choice

- The contrast between different activists may have benefited pro-choice forces. One activist noted that the “green hair thing” of the more “radical” activists – by which she seemed to be referring to both the look and agitation style of these activists – helped to clearly establish her as a “moderate” and therefore more credible source of information.
- While both these activists believed that private meetings to lobby politicians were among the most important strategies at their disposal to achieve a pro-choice outcome, they recognised the need to perform such lobbying dressed as “respectable professional women” *in the context* of more “radical” grass-roots agitation
- However, ProChoice activist Lara Pullen believed that the inside agitation strategy was mistaken in the 1998 ACT campaign because most politicians knew where pro-choice activists stood, and the strategy put activists in the position of supplicants – asking politicians for things rather than demanding things from them. This exposed activists and those they represented to ridicule by power-lording politicians. She suggests that successful negotiations with politicians require trust and trusting politicians is a risky business

WA

ALRA finds it difficult to agitate from the inside.

- ALRA quickly realises that politicians do not view them as a credible source of information, but one of the two “sides” of the issue. The choosing of a new name for activists involved in a reform campaign may be designed, at least in part, to avoid this problem
- Pro-choice MPs cited their appreciation for ALRA’s decision to wear purple ribbons in the parliamentary gallery. They said they found it reassuring to look up and to know that someone “on their side”
- Several activists expressed frustration that the politicians were not “using” them enough and as effectively as the anti-choice politicians were using their grass-roots supporters. In specific, ALRA felt they were overlooked as lobbyists of wavering politicians and to provide visible support in the parliament to bolster the confidence of pro-choice MPs. Diana Warnock specifically cited this lack of visible support and presence as something that increased her sense of being under siege
- Several ALRA activists strongly emphasised the importance of activists gaining access to the speaker’s gallery, from which excellent access to politicians could be gained

ALRA’s difficulties agitating from the inside may have been a consequence of:

- A lack of inside knowledge of how parliamentary lobbying worked. ALRA activists simply hadn’t realised that the anti-choice activists – having been proposed by their politicians – were in the gallery exerting influence, and hadn’t known that all that had to be done for them to gain access was to be proposed by a parliamentarian. Once

this was recognised (some time in April) they asked Diana Warnock to propose them, which she did, and they began their insider lobbying efforts;

- Politicians saw ALRA as one “side” of the issue. This meant that when they sought to reassert control over the internal debate by following the Coalition and putting out their own resource document – or briefing guide – for MPs, their efforts were largely unsuccessful;
- Tensions between the Davenport/Straton team and ALRA that may have led to ALRA being cut out of possible opportunities for inside agitation. For instance, one activist said that media releases from Davenport’s office did not routinely go the ALRA campaign office. Such tensions were due to:

“personality clashes” with some ALRA activists and Davenport/Straton’s perception that some ALRA members believed they “owned” the abortion issue;

Straton’s/Davenport’s irritation about ALRA’s decision to “parachute in” Jocelynn Scutt (see Timeline). Scutt spoke to the press and attended a “secret meeting” ALR had organised with her with a politician. At both, she discussed her own separate version of possible legislation to resolve the WA crisis. Straton claims that happened just at the time that negotiations around the Davenport and Foss bills and their introduction into Parliament was underway, and that some anti-choice MPs “latched on to” some aspect of Jocelynn’s proposed bill. We thought, “with friends like this...”;

Straton’s/Davenport’s perception that ALRA’s resistance to any restrictions on gestational limits and refusal to compromise on repeal meant they were too out of touch with the political realities of the situation to be trusted with such a responsibility. The Coalition, on the other hand, accepted that repeal was not “politically feasible,” a view experience had led Straton to share.

ALRA was successful at important outside agitation strategies.

- ALRA’s outside agitation strategies were successful because:
 - Their public health message was the same as - and so supported - the public health message being put by internal activists;
 - They were not forced to compromise the other message that mattered to them - women’s decision-making around motherhood. This message, unlike the women’s right message, had the advantage of not distracting from the public health message used by those working internally;
- ALRA did exert some influence on the internal agitation strategies through their representation in the Coalition. However, ALRA’s leader Margot Boetcher did not feel inside agitation was the main part of ALRA’s brief or where their power lay. Their role was to work from the outside to influence public opinion and to ensure they did so in a way that did not distract – but rather supported - from those with real power working on the inside
- It was argued by those critical of the outcome in WA that the job of ALRA and other grass-roots activists is to provide outside – and thus uncompromised – agitation. Outside agitation is about refusing to adopt a “bottom-line” negotiating position in order to preserve the ideals that give such activists their energy. In this way, outside activist groups serve as “tent-pegs”: those who remind negotiators and the public of the ideal and the commitment of supporters to achieving it and in so doing put a break on the type and number of compromises those “doing the deal” will make. The importance of such outside

agitators retaining such non-negotiable positions is suggested by this apocryphal story told by one such critic - long-time grass-roots activist Marg Kirkby:

At the conclusion of a conference organised by...ARNA...in...November 1993, the then (ALP) Queensland Minister for Family Services and Aboriginal and Islander Affairs, the Hon. Anne Warner, was making closing comments. She went on to ask the conference what would be an acceptable "bottom line" in negotiating change to the law on abortion in Queensland. Following a discussion, the conference participants passed the following motion almost unanimously: That this national ARNA conference...recognises that the repeal of all abortion laws, that is the removal of abortion laws from the Criminal Code and Crimes Acts, with no additional legislation under any other act, is a necessary precondition for the guarantee of women's abortion rights. Accordingly, this conference calls on all Australian governments to repeal all abortion laws

THE EXPERIENCE OF PRO-CHOICE FORCES

ACT

Activists' experience and knowledge of the ACT political landscape and around the issue of abortion did not necessarily benefit pro-choice activists or strategy.

- Beaton believed her lack of previous experience campaigning on the issue in the ACT may have increased her effectiveness because unlike those with more knowledge, she didn't expect the fight to be easy. Academic Gina Anderson also believes that activists without specific knowledge about the abortion issue (generic feminists rather than abortion rights activists) were extremely effective during the campaign. She qualifies this observation with the belief that it was important that at least one – in this case Pullen – did know their way around the issue
- FPACT's Mackenzie felt that "being in the industry forever" made her a credible source of information, as well as ensuring her access to politicians, although she felt that the politics of the situation made it difficult to influence the way politicians voted. However, other activists argued that the fact that Mackenzie was such a known quantity may have worked against a pro-choice outcome. Among other things, this was because one of the things Moore took advantage of in his divide-and-rule strategy was Mackenzie's known dislike of conflict and being in the public eye. He capitalised on his knowledge that she was not someone who wanted to play hardball in public, but would be drawn to a negotiated backroom outcome
- Wayne Berry's longstanding involvement and commitment to the pro-choice cause may have also had some disadvantages for pro-choice strategy, although these were far outweighed by the advantages his experience conferred. His long involvement in the pro-choice cause meant his foes had a strong desire to pay him back for his commitment and his victories. However, Berry's vast parliamentary experience enabled him to see and to know how to use all the tactics available to impede the bill's progress (see ACT Timeline for details).

WA

The longer pro-choice advocates had been involved with the issue, the more willing they were to compromise.

- Many of the activists in ALRA and the Coalition, and MPs Davenport and Warnock had been active in the pro-choice movement for many years

- Long-time involvement in the movement as activists or politicians seemed to correlate with increased clarity about the compromises that would be necessary, and an increased willingness to make those compromises in order – after so many years of hard work – to achieve some sort of outcome. It is unclear whether such “realistic views” assist or hinder advocates in achieving pro-choice outcomes

Discourse and Tactics: Pro-choice and Anti-Choice Strategies

ACT

Pro-choice advocates did not discuss how the issue would be framed, relying on longstanding discursive strategies.

- There was an unspoken consensus about how the issue should be framed in public actions (like rally advertisements, protest actions and letters/opinion pieces in the newspaper). The following slogans appeared in the advertisements of various public meetings and rallies and in speeches and leaflets distributed during the campaign:
 - “Keep Reproductive Healthcare Services Open!”
 - “Reject Osborne’s anti-abortion bill”
 - “Support a woman’s right to choose!”
 - Support “women’s rights and the right of every child to be a wanted child.”
 - “A woman’s body - A woman’s choice!”
 - “Women have the right to choose!”
 - “Keep Abortion Safe & Legal”
 - “Keep the ACT Clinic Open”
 - “Not the Church, Not the State, Women will decide our fate”
 - “Women [should be allowed to] choose – for whatever reason – not to become slaves to their reproductive capacity”
- Rights/Choice discourse was interwoven with a public health discourse that focused on the dire consequences of abortion denied. To this was added a sprinkling of feminist anti-male/anti-patriarchal language:
 - Universal Political Rights: In a piece in the *Canberra Times*, Jenny Earle from the Women’s Legal Centre characterised abortion as universal political right. Earle argued that Osborne’s original legislation infringed on women’s human rights as guaranteed in a number of international covenants to which Australia is a party;
 - Public Health Discourse: A woman’s performance group collected donations of coathangers and then assembled them into a large sculpture at an early pro-choice rally. Badges were distributed with the coathanger image. Diane Proctor, from the Australian Reproductive Health Alliance. Dorothy Broom and numerous letter-writers to the *Canberra Times* spoke of the public health consequences of abortion denied;
 - Anti-male/anti-patriarchal discourses: Activists and newspaper letter and opinion piece writers argued that abortion was a woman’s issue and men - particularly middle-aged ones in the Assembly – should butt out. Rally speeches referred to the Bill as “enormous arrogance on behalf of a small group of self-opinionated men” while flyers urged supporters to “keep male ball games out of the Assembly”

A number of activists were critical of pro-choice discourse used in the ACT campaign.

- Beaton was among the few activists who avoided “rights talk” and pursued the abortion as a health issue line in her representations to Assembly members. She sees the anti-choice movement as having been more successful in making discursive shifts that are more in tune with the issues and value of today. In contrast, the pro-choice movement has:

kind of gotten stuck in the 1970ss “biology is destiny” [arguments]...The heavy emphasis on a woman’s right to choose – while I think it worked really well earlier – doesn’t sit quite as comfortably in a world that has a better idea that you can’t necessarily be that individualistic, you can’t necessarily say, “well, this is my right and this is what I’m going to do,” if it adversely impacts on other people [As quoted in \Anderson, 2000 #17, 75-6].

- Beaton reports being largely unsuccessful in trying to convince other ACT activists to use public health discourses. Older ones, having had success with rights-talk before were reluctant to abandon it, while the radical agitators refused to entertain any practical moderation of the rights argument because they saw it as giving the anti-choice side a win
- Public health discourses were also only of limited effectiveness. Discourse experts have questioned the effectiveness of the coat hanger argument as a “summarising image” for a broader non-committed audience. As well, the image was problematic in the ACT where women had been denied abortion services for many years, and had responded not with coat hangers, but by travelling to New South Wales. This meant, said one activist, that everyone knew that “women probably weren’t going to die”

Anti-Choice Discourse and Strategy

- Anti-choice advocates used standard RTL arguments about the rights of fetuses. As well, new discourses appeared used by “feminist for life” type advocates who contended that fetuses had universal political rights and that pro-choice rights/choice discourse was out-of-date. PAS discourses dominated the campaign:
 - Universal political rights: Several known anti-choice activists (Rita Josephs and Babette Francis) wrote letters to the *Canberra Times* that inverted the rights claims of the pro-choice movement, particularly the legal rights discourse articulated by Jenny Earle and The Women’s Legal Resource Centre. They presented “feminists for life” type arguments that appealed to “scientific evidence” and international covenants to argue that fetuses have rights to life and universal political rights;
 - Out of date: Josephs also took a direct shot at the “out-of-date” nature of the rights-based rhetoric of the pro-choice movement;
 - PAS discourses and tactics: The ACT anti-choice movement refused to explicitly identify itself as an anti-choice organisation with anti-choice aims. This refusal extended to letter-writers to the editor, opinion-piece writers, and speech-writers. For instance, Rita Josephs defined herself as a “Canberra-based writer on family issues” in her opinion pieces in the *Canberra Times* despite being one of the contributors to the Canberra “pro-life essays” book. This dissociative tactic was seen around the country during this period and since. In 1998, an anti-choice treatise designed to encourage doctors from doing or referring for abortions was launched by American academic Joel Brind for the neutral sounding Doctors’ Legal Safeguards Group. Despite the fact that Brind’s tour was sponsored by Human Life International,

journalists swallowed whole the assertions by the booklet's authors that they are neither "pro-choice" nor "pro-life" but instead as a "credible" source of medical and legal information." Reporters also failed to question the claims of anti-choice activists Melinda Tankard Reist who insisted during interviews conducted around the publication of her book *Giving Sorrow Words* that she was on neither side of the issue. Anti-choice refusal to identify as anti-choice is a deliberate tactic designed to bolster the credibility of anti-choice activists by countering public perceptions of the anti-choice movement as being comprised of one-eyed fanatics and provide anti-choice activists with more solo media space (as "neutral" commentators, their views do not have to be balanced by pro-choice ones),

The anti-choice movement employed the Post-Abortion Strategy (PAS) to great effect.

- Disclosure was the major discursive focus of the second and third stages of the campaigns and the anti-choice movement went on the offensive with PAS discourses. While PAS discourses accommodate claims about the risk abortion poses to women's mental health ("post abortion grief") and future fertility, in the ACT the majority of the claims were about a need for women to be informed about a claimed link between induced abortion and breast cancer and about fetal development through the viewing of fetal pictures
- The anti-choice movement used the media to make the majority of these claims, although Osborne's first reading speech alludes to both the infertility and breast cancer claim in its reference to the "inadequate information" women receive about "a very serious" medical procedure. In the newspapers and public debates, pro and anti-choice authorities debated the quality and validity of the evidence the anti-choice movement cited to support a link between breast cancer and induced abortion
- PAS argues that the disclosures made to women seeking terminations are inadequate, and that women's lack of relevant information about abortion and the predatory and financial motives of the "abortion industry" coerce them into having abortions they "really" don't want
- The PAS argument is about denying women's decision-making authority over unplanned pregnancy for their own good. It borrows in both tone and content from radical Australian feminist discourse about infertility treatment and mifepristone (then RU486) to blame abortion service providers and feminists, rather than women, for the decision-making inadequacies that lead women to "undergo" an abortion. The PAS tactic of avoiding judging and blaming women is a significant departure from anti-choice discourse in the 1970s and 1980s when selfishness was seen to be the cause of women's "immoral" decisions to abort
- PAS kills three anti-choice birds with one stone:
 - It suggests to women considering an abortion that the confidence they feel about the rectitude of their decision is misplaced and that they are vulnerable to later regret and emotional upheaval;
 - It suggests to depressed or angry women who have had an abortion that it caused their feelings, and that their pain can be healed" through seeking legal redress against the abortion service providers;
 - The victimised finger pointing "Woman Hurt by Abortion" suggests to medical professionals the negative consequences of "getting it wrong" when it comes to advising women about abortion. The PAS "Doctors' Legal Safeguards Group" booklet informs medical professionals that to protect themselves legally, they must either disclose everything the anti-choice movement claims women must see/hear before deciding to abort (currently breast cancer "risks," foetal pictures, "post-abortion stress" risks) or avoid any involvement in abortion altogether

- To make this argument, the anti-choice movement relies on the judgement in the landmark Australian informed consent case *Rogers v. Whitaker*, which they consistently mischaracterise - either deliberately or ignorantly. The judgement is important because it moved the disclosure standard from the professional practice standard (meaning that the standards for adequate disclosure is determined by the traditional practices of similar health professionals) to the subjective standard (meaning that health care professionals must disclose any information a particular patient needs and desires, insofar as the professional could reasonably be expected to know or even to discover what those needs and desires are). In the case, the woman undergoing the surgery on her bad eye repeatedly expressed anxiety about losing the sight in her remaining eye, thus clearly indicating to the doctor that in order for her to give informed consent to the procedure, she must be made aware of the small risk the procedure posed to her remaining sight. The Doctors' Legal Safeguards Group erroneously claims that the case demonstrates that doctors are at risk of being successfully sued for failing to disclose any risk, no matter how small or uncertain, flowing from a medical procedure

Pro-choice discourse had changed little since the 1970s. The pro-choice response to the new anti-choice PAS strategy was disjointed and put together on the run.

- The pro-choice response to PAS was ad-hoc, defensive, literal and severed from a larger "integrated" feminist analysis. At times, it was ineffective and even incoherent. For example, a flyer for a rally in December 1998 called for readers to "reject anti-abortion 'information' packages" but offered no arguments as to why they were "anti-abortion" and not really "information"
- One activist found the unfamiliar anti-choice breast cancer strategy so "distressing" that it was only after the campaign was over was she able to calmly reflect on the best ways for the pro-choice movement to respond to such anti-choice claims. She now believes it may have been more effective if she had coupled her academic dissection of anti-choice statistical claims about the breast cancer/abortion link with her personal distress as a breast cancer sufferer in having her tragedy used as a means for pro-choice ends. The latter tact would have questioned the integrity of anti-choice claims to really care about women and their risk of breast cancer and in so doing responded to the power of the claim which seeks to bolster - at the expense of the pro-choice movement - anti-choice credentials as women's defenders
- Once the crisis occasioned by the Osborne bill began, there was no time to analyse new anti-choice discourse and strategy and to develop responses consistent with past and evolving feminist analyses of reproductive politics. This sort of work, both in the ACT and elsewhere, must be done prior to a crises or afterwards
- This is not to suggest that the responses pro-choice forces made to anti-choice strategy were uniformly or even predominantly unsuccessful. As Beaton notes above, her impression was that the presence of the President of the Epidemiological Association at Joel Brind's public meeting gave the pro-choice movement game set and match on the breast cancer issue
- However, Broom's comments seem to support Rosalind Petchesky's beliefs about the limited usefulness of literal responses to emotive anti-choice claims. When the anti-choice film *The Silent Scream* was released, pro-choice feminists began responding to the film's emotive claims about the "baby-likeness" of the fetus by attacking the film's factual credibility. However, Petchesky argued that such literal rebuttals were "...not very useful in helping us to understand the ideological power the film has despite its visual distortions and verbal fraud." [Petchesky, 1987 #187] Arguments about the reliability of data connecting induced abortion and breast cancer are unlikely to exercise most in the wider public. In contrast, anti-choice suggestions that doctors and feminists are trying to deny women adequate information on which to make an autonomous decision is likely to have emotional bite: particularly with the educated feminist-inclined women of childbearing age at which it is targeted.

- Broom's plan to use first-person questioning of the anti-choice movement's use of the pain of others to serve their ends – be they aborting women suffering grief, breast cancer victims or Holocaust survivors – may be a useful way to address the ideological power of PAS claims. The issue of whether the anti-choice movement really cares about women or only their fetuses is one on which the anti-choice movement is extremely vulnerable
- In the past, pro-choice movements throughout Australia, the US and elsewhere have been able to count on the anti-choice movement to alienate the media, public and politicians with their purple prose and at least one over-the-line stunt. The ACT pro-choice movement failed to make the expected – perhaps even relied upon – tactical mistake that exposed their true colours and consequently alienated the media, the politicians and the public. Even the dissent in their ranks may have worked to their advantage, making Osborne seem more “moderate” and sincere in his approach than the Pope and Human Life International, both of which viewed the Osborne bill as doctrinally impermissible. Their use of PAS was both subtle and restrained. It bolstered the standing of the anti-choice movement as defenders of women while exploiting longstanding discomfort among politicians and the general public about the quality of women's decision-making around unplanned pregnancy.
- Contentions that women have abortions to “look good in bikinis” - as a WA politician had phrased it – or for other “selfish” reasons (or even in lieu of contraception) are longstanding and widespread and were in evidence in the ACT during the Osborne debate. The work of Jo Wainer, Lyndall Ryan, Judith Dwyer, Rebecca Albury and Leslie Cannold provide a starting point for an integrated and effective pro-choice address of anti-choice PAS arguments by pro-actively asserting that – to quote Wainer – “Good women have abortions, for good reasons.” [Wainer, 1985 #299] To best respond to the PAS strategy, perhaps this summation could be slightly expanded to read: “good women make good decisions to have abortions, for good reasons.”
- It is possible that the use of pro-choice discourses that affirm women's moral agency rather than focus on their rights to choose would more effectively address the undermining of women's moral agency found in both the longstanding anti-choice “right to life” strategy and the new PAS strategy. In particular, an affirmation of women's moral agency may undermine the appeal to politicians and the electorate of anti-choice legislative options like those that require women to receive state-controlled information disclosure and mandate a “cooling off” period before the abortion can be carried out.
- The adoption by pro-choice advocates of discourse that affirms women's autonomy and agency may not have changed the anti-choice outcome in the ACT this time because of the numbers in the legislative assembly and the political agenda of the Chief Minister. However, public views about abortion are shaped during such campaigns and a reshaping of public and political views of women's decision-making capacities may positively influence the outcomes of pro-choice advocacy in the future

WA

The HIG, the Coalition, ALRA and pro-choice politicians steering the legislation were firmly wedded to a public health discourse and one that promoted women's moral agency.

- Public Health
 - Straton believed that public health arguments are more likely to achieve pro-choice outcomes because they are harder to argue against. In addition, they work to continue the existing linkage in the public mind between safe abortion and legal abortion

- Davenport dedicated the second half of her second-reading speech to public health arguments for repeal. She provided concrete evidence of how the geographic isolation of WA meant women faced a considerable threat of dying or being injured from unsafe abortions. Included in her list of recommended references to members was the Public Health Association's "The Regulation of Abortion in Australia" and the Not-the-NHMRC "Information Paper on Termination of Pregnancy"
- ALRA took the issue of discourse and strategy so seriously they hired media consultants to assist them to refine and to present their case. All members agreed this was one of the best decisions they made. The consultants were themselves well connected in the small town of Perth, one a former political media adviser and the other a former journalist with friends still in the industry. They were also enthusiastically pro-choice and worked for reduced rates. They provided specific advice on how ALRA activists ought to present their case and themselves to best effect
- The media consultants suggested and organised the postcard campaign (where thousands of postcards calling for repeal were hung on washing lines outside parliament house), the large campaign poster and regular media releases and interviews for activists. ALRA followed their advice not to invoke the coat hanger imagery to demonstrate the dangers of illegal abortion, despite the realities of these dangers in WA. Their reasoning for this advice was largely similar to that provided by discourse analysis expert Condit (see above): that the imagery is out of date and unfamiliar to young women and its distressing nature distracts from attempts to portray the pro-choice argument as the "voice of reason." Younger ALRA activists supported the consultants' view that younger women would not understand what the coat hanger meant
- The safe/legal link appeared in ALRA press releases and the PHA booklet, which ALRA went to great lengths to obtain and distribute. Coalition documents also stressed the link between "safe legal abortions" and "dangerous illegal abortions"
- Davenport made public health arguments in the Parliament. She also noted the importance of not making the law "an ass" by bringing the legal situation in line with longstanding and accepted access arrangements
- HIG was also concerned about the legality of the procedure and argued for decriminalisation of medically performed abortions. However, their focus was the lack of legal clarity, and the consequent difficulties for medical professionals in getting indemnified

➤ Women as Moral Agents

- Davenport, the Coalition and ALRA characterised abortion as a difficult and complex decision that women undertake responsibly and with due seriousness
- Davenport noted at the beginning of her second reading speech that "for each woman [abortion will be] one of the hardest choices she will make in her life [and] she will not [make] her decision frivolously. She will have considered many factors before presenting for an abortion." Included in her recommended reading to members were a number of texts that make similar arguments like Leslie Cannold's *The Abortion Myth* and White and Davis's *Stories of Our Lives: Women's experiences of abortion*
- In a letter to MPs, the Coalition rejects the media's blithe use of the phrase "abortion on demand" to describe "the complex and difficult decision-making process engaged in by a woman faced with an unwanted pregnancy." ALRA also puts a stress on the private and difficult nature of abortion decision-making, focusing on these difficulties not just as they affect women but also couples and families

Medical discourse and tactics had similarities and differences with women-centred pro-choice discourse and tactics.

- The medical profession was largely on side with the push for repeal although some of their motives and hence arguments differed from those used by pro-choice activists
- Perhaps because all activists accepted that the battle to legitimise non-medical abortion had been lost, no complaint was made about the HIG's continuous insistence that all constraints on abortion access be removed except those restricting provision to medical professionals. This is despite the fact that the HIG's claims for such restrictions are presented without argument [for arguments in favour of non-medical abortion provision, see \Baird, 1996 #47]
- Boetcher notes that she has never been able to get a politician to take seriously the idea of having no restrictions on abortion. Straton and Davenport's vast lobbying experience had led them to the same conclusion. Boetcher notes that arguments against removing all restrictions cluster around the need to protect women from unscrupulous practitioners
- There is a direct parallel between the medical claim that "vulnerable women" need legal protection from laws and people who might hurt them when it comes to abortion, and newer anti-choice arguments against mifepristone and around the newer PAS strategy. Thus, while pro-choice activists are likely to need to be and to be in coalition with the medical profession on the abortion issue again, they may want to avoid collaborating in such discourse and to discourage the medical profession from using it

Pro-choice advocates also used polling and first-person accounts of recent abortion experiences to make the case for repeal.

- The HIG and the Coalition undertook traditional respected lobbying practices like letter writing but also conducted a poll in the electorate of several anti-choice campaigners that demonstrated the depth of pro-choice feeling in the electorate. The poll was widely distributed
- The Women Lawyers group that was part of the Coalition had a number of young female lawyers come forward to tell their personal experience of abortion.
- The story of Vanessa Hicks, a young Catholic mother forced to abort a pregnancy for health reasons early in the crisis, was the feature story in the widely read *The Australian Magazine*. [Laurie, 1998 #54] All on the pro-choice side saw these first-person stories as extremely effective, although Warnock was of the view that more of this sort of first person narrative from young women was needed
- These stories of difficult decisions with non-pathological outcomes for modern-day women contrasted sharply with anti-choice PAS discourse that seeks to make the minority experience of women "hurt by abortion" the representative modern-day abortion experience

Anti-choice strategy in WA was more of the same.

- Most anti-choice advocates used the traditional right to life discourses to argue their case. They asserted the rights of fetuses and demonised women and service providers as murders
- Coalition for the Defence of Human Life's Richard Egan was a known quantity in Western Australia. He regularly dragged anti-choice placards along to every woman's event in the city. Dr Ted Watt was the other face of the anti-choice movement. Warnock described him as "very unattractive looking" and someone who was always yelling "Exterminator! Murder!"

- The Coalition for the Defence of Human Life used extreme US-style tactics like sending plastic foetal kits to every MP. They imported a recanting American abortion service provider that Boetcher believed went down badly because, as an American, her views and experiences were not seen as relevant to Australia or Australians
- The business as usual style tactics continued in television and radio ads that showed a fetus in the womb with the sound of a heartbeat which stopped. Anti-choice forces also took out radio ads on FM stations with the sound of an 'unborn baby's' heart beating and then suddenly not beating. 96FM pulled it after complaints from its listeners
- Every pro-choice activist recalled Egan's break-in to the Midlands clinic, citing it as a major "stuff-up." Boucher says that even people not involved in the campaign said of the break-in: "that was it." Boucher believes this mistake, reported on the front page of the *West Australian* with a large photo of the bloodied gloves he'd included in the stunt was a consequence of Egan becoming "increasingly desperate because we ran a good campaign"
- Boetcher's believed the sameness of Egan's stunts confirmed the correctness of the "extremist" label the media and the public had long placed on him and the anti-choice movement: "People now know the anti position and have labelled them and put them in a pigeonhole"

The anti-choice movement did have some strategic successes.

- Women Hurt by Abortion took out regular ads in the first 13 pages of the *West Australian*. They cited a series of "Abortion Facts" that suggested abortion placed women at physical and emotional risk
- Boucher believed the anti-choice movement's use of the Ohs - a story that got nation-wide coverage – was effective although Australian racism and the religious undercurrents in the Oh's arguments somewhat lessened the story's impact. Sarah Oh was an Asian doctor in the late stages of a pregnancy whose fetus was predicted to die shortly after birth. With the support of her husband, she had refused a termination. As a member of Doctors Against Abortion, she campaigned against legal reform in Western Australia
- There was a brief flurry of interest in the breast cancer "link," most likely when Brind was in town on his national Endeavour Forum hosted tour, but this died down quickly. No WA pro-choice advocate saw the breast cancer attack as significant, or particularly important. There were a number of possible reasons for this:
 - The pro-choice success in driving home the message that their major concern was women's health made it seem implausible that the pro-choice movement would disregard this concern when it came to assessing available studies on risks to aborting women of breast cancer;
 - The visible alliance between pro-choice forces and the top brass of the medical profession would have substantiated pro-choice claims to have the "right" studies on their side;
 - The pro-choice movement had consistently asserted a view of women as rational, competent decision-makers which undermined anti-choice PAS claim that women were vulnerable and in need of protection to safeguard their decision-making;
 - The breast cancer claim was part of the anti-choice PAS strategy in the ACT. In WA, it came and left with Joel Brind, and bore little relationship to the traditional foetal rights/abortion is murder campaign being orchestrated by Egan. With more dramatic events to report on being offered by Egan's camp to largely pro-choice journalists, the media may simply not have focused on it long enough for it to make an impact

- ALRA responded to the breast cancer claims in the same way as did ACT pro-choice forces: with the “my study is more credible than yours” tactic

The Media

ACT

The media was generally seen to be pro-choice and on the side of the pro-choice movement.

- There were exceptions to this rule however. For instance, a prominent ABC journalist working in the ACT for many years was anti-choice
- Advocates attempted to manage the media by:
 - Subtly steering around anti-choice journalists by giving the story to more sympathetic journalists (while avoiding making the steering around process too obvious as it antagonises journalists who hate being “picked off”);
 - Playing one newspaper off another (in places where two exist);
 - Socialising occasionally with journalists over a cup of coffee once a campaign starts just to “mull over the issues”;
 - Creating different angles for the media, with different activist groups staging a variety of “media” events. A media event included a letter of support from a national treasure or prominent person;
 - Ensuring main media spokespeople are credible mainstream women of a variety of ages;
 - Ensuring that any event run is crowded by, for instance, staging events in small rooms;
 - Attempting to create a sense of momentum (with polls, letters to the editors, articles) to make political waverers “wobbly”
- Beaton’s unhappiness with the political result in the ACT made her cynical about the impact the media can have on the debate, although she did note the importance of the media after the event to put a positive spin on the outcome

WA

The media was generally seen to be pro-choice and most of the coverage the pro-choice side received was positive.

- ALRA monitored and sought to intervene in the media. One activists was put in charge of monitoring newspapers, listening to Howard Sattler on 6PR, ABC radio in the afternoon and ringing in to talkback
- Howard Sattler, the traditional scourge of the left and an extremely well-listened to talk-back radio host, was pro-choice. He allowed anti-choice advocates on his show but was dismissive of their arguments

- Verity James, usually a darling of the left, allowed “Women Hurt by Abortion” onto the show because of what one pro-choice activist described as her “weak spot for other people’s distress”
- In the past, the business-as-usual strategy and tactics adopted by the anti-choice movement had made garnering media attention a chronic problem. This continued during the campaign
- Advocates attempted to manage the media by:
 - Writing letters and, in particular, calling talk-back. The latter emphasis was because despite the lack of science in the method, they believed politicians try and assess public opinion by what they read/see in the media and get “wobbly” if the wind doesn’t appear to be blowing their way. The government turns out transcripts of government members speaking on the radio, including what callers say;
 - Seeking to influence the *The Australian* which is read by opinion makers;
 - Reading the major dailies and *The Bulletin*

The Impact of Legislative Change on Access

ACT

- The RHS says the impact of the legislation on its operations has been moderate. This is a consequence of:
 - The active resistance of service providers (referring doctors and clinic staff) to implementing aspects of the legislation (see *Anti-choice legislative strategy and the pro-choice response: third stage* above);
 - The capacity of clinic staff to minimise its impact on women through their manner of implementation. In the quarterly reports the RHS now has to submit to the government under the regulation, only two reasons are given for women seeking terminations: for the “mother’s health” or for “other medical reasons.” In a footnote, the reason for this minimal amount of detail – less than required by the legislation - is explained as necessary to protect the identities of the women involved.
 - The biggest threat to ACT women’s access from the legislation is the prescribed 72-hour waiting period from the time the woman signs the “client declaration” and the termination is performed. However, the RHS clinic only does terminations twice a week, so prior to the legislation it was usual practice that women would come in to receive information and then return for the procedure.
- The waiting period (which requires that every woman make two separate trips to the clinic over several days) does pose problems for country women. Consequently, many now seek service across the New South Wales border in the town of Quimbean. This has meant an approximately 10% decline in client numbers for the RHS clinic. The Quimbean clinic has also sought to attract women by advertising itself as free from the restrictive legislative requirements under which RHS operates (no foetal pictures or waiting periods!).
- However, the RHS believes that other than women from rural areas affected by the waiting period, few ACT women are so disturbed by the new requirements that cross the border to avoid them. The RHS says this view is supported by their regular client surveys

in which most women respond negatively when asked if the waiting period and the client declaration pose a problem for them.

- In addition, the Quimbean doctor is a new doctor about which little is known, while the RHS has a long and trusted relationship with ACT women

WA

- Since the laws have passed, both access and information have improved, although more could be done. ALRA's Ruth Greble says:

[People gained] Information about abortion increased through the legislation debates. Since there was no information campaign by Government after the law passed I believe some people are still unsure. [Despite the parental notification clause] access for teenagers under 16 may have actually improved because of the spotlight that was on that part of the legislation during the debate. According to Dr Victor Chan of Nanyara, those who needed to use the clause allowing them to seek a magistrate's permission to by-pass informing one parent were using it within two weeks of the law passing. In December 1998 ALRA held a Special General Meeting at which Victor and the late Dr John Charters spoke. They both said that women were coming to the clinics after the law changes psychologically better prepared for abortion. Victor said it was because their doctors had to discuss things with them, whereas before doctors could get away without having to talk - just shovelling them off to the clinics with no dialogue. They also said that there were some new doctors doing abortions.

- Calcutt argues that access for women needing second trimester abortions has actually improved under the new legislative regime because prior to it, KEMH was the only service that would provide them, and then only for limited reasons. Women needing such services can now gain access under the informed consent provision, although it is unclear whether and to what extent this is currently happening
- Marie Stopes, which has just taken over one of the main clinics, was only providing terminations up to fourteen weeks immediately after passage of the legislation, but is now doing them up to 20 weeks
- In addition, there is now a process – albeit an extremely restrictive one, for women to obtain post-twenty week terminations that in the past they had to obtain interstate
- The Western Australian Government, with Judy Straton's assistance, has disseminated both counselling guidelines to practitioners and a balanced easy-to-read information booklet for women. These discuss the possible emotional consequences of abortion and of the risk of the procedure to fertility. No mention of breast cancer is made

Funding Realities and Priorities/Future Directions

ACT

The lack of funding was an issue for all pro-choice activists and activist organisations in the debate.

- Activists cited a lack of funding to present the pro-choice position in the media and/or to use direct mail or other media sources to make the electorate aware of the abortion issue and their representatives stand on it
- Fundraising took up time and energy that clearly could have been used more productively while funds often came out of pockets of individual activists. Some money was raised during the campaign, but most of it went to fund FPACT legal advice on the initial Osborne bill: advice that became useless after the second was substituted
- Beaton sums up the dire situation around funds succinctly: “ACT Pro-Choice took up a collection at the first rally. Otherwise any funding came from our own pockets”
- Several activists spoke about the importance during the next election in the territory – if funds were available – of making abortion an election issue and making direct contact with voters to ensure they are aware of their candidates’ stand and/or voting record on the issue. Most were careful to distinguish this strategy – which they saw as raising awareness and informing a predominantly pro-choice electorate of the voting record of all candidates - from the anti-choice strategy of ostentatiously “targeting” specific candidates and using efforts to unseat them as both “payback” for their past behaviour and to intimidate other politicians into heeding the demands of the anti-choice movement. Pullen, for instance, argues the electorate needs such information because of her belief that many ACT pro-choice supporters that attended the 1 September rally remain unaware of Moore and Carnell’s betrayal
- Berry believes that in order to avoid again mistaking sweet-talking politicians for pro-choice ones, the pro-choice movement needed to poll politicians with specific questions about their past record and future intentions on the issue and then inform the electorate of the results

WA

- Pro-choice forces were far outspent by the anti-choice movement which spent about 5 million dollars. However, ALRA had more funds than they did usually – and then do most anti-choice groups – to begin campaigning immediately. Boetcher describes how they got the money, and how they spent it:

[Former long-time activist] Megan died in 1991 and left us money – so we could go into action. We could put ads in papers and we could hire consultants. There was no argument about spending it. During campaign we spent \$50,000. We raised \$24,000 from the public, had \$15,000 from Megan and got the balance from an anonymous benefactor. We published flyers and if anyone rang us up we sent them flyers to distribute. We did press releases and had appeals. We paid for Hazel Hawke to come over.

- ALRA’s adoption of the reasonable approach to dealing with the media not only increased the appeal of their message and avoided creating a distraction to the work going on in parliament, it maximised the free media coverage they were able to obtain. Being credible with the media, in other words, got their comments heard publicly, making up for their inability to afford a lot of ads

Conclusion: Some Lessons Learned

- Activist groups should aim to meet regularly, even when the issue is not politically centre-stage. This will allow them to analyse and evaluate the political players and scene, anti-choice discourse and strategy and to formulate and agree on the language and strategies they will use when campaigning
- Forming coalitions with other pro-choice supporters and giving those coalitions fresh names for a campaign are proven strategies. Coalitions with the medical profession offer numerous strategic benefits. However, activists must remain aware of the differences that are likely to exist between feminist pro-choice values and goals and those of the medical profession. Mistaken assumptions about similarities in values and goals between seemingly like-minded groups provide 'divide and rule' opportunities to the opposition
- Grassroots activists must be wary of the assumptions they make about, and the trust they give to, politicians. Activists should not assume that politicians running with the abortion issue share their 'bottom lines'
- Activist groups should analyse and debate the meaning, effectiveness, acceptability and relevance of older and newer pro-choice discourses and strategies to the general Australian situation and the specific conditions in their state. Discourse and strategy effective in the past may not be effective when conditions or times have changed. In particular, Australian activists need to analyse newer anti-choice PAS strategy, and develop responsive discourse and tactics to combat it
- The large well-funded and well-organised US anti-choice movement supports the smaller Australian movement with financial and informational resources as well as personnel. Activists can anticipate some of the newer strategies used by the Australian movement by watching for changes in the US movement's strategies and pro-choice responses to these
- Both inside and outside agitation may be effective and can – when used in tandem – be mutually beneficial. Inside agitation tends to involve more compromise, but is also more likely to achieve an outcome. Outside agitation allows activists to remain committed to uncompromised ideals that can serve to remind those working from the inside of the necessary limits to compromise. Inside agitators may benefit from the perception of moderation and rationality that results from contrasts of their methods and positions with those on the outside
- The anti-choice movement has borrowed depictions of women as victims who lack moral agency – the capacity for independent decision making and autonomous and rational thought - from radical feminist anti-ART arguments and have manipulated the feminist concept of informed consent to serve their anti-feminist ends. This borrowing and manipulation is an attempt to appeal to feminist-oriented women and to undermine the effectiveness of feminist arguments and strategies. In constructing pro-choice strategy and tactics, activists must attempt to anticipate ways in which their arguments can be used against feminist ends. They need either to reclaim the notion of informed consent (by, for instance, refusing to use it to describe anti-choice legislation or its intent) or to construct a new phrase to replace it