



background paper



NSW Parliamentary Research Service

Free votes in the New South Wales Parliament

Background Paper No 10/2014

by Gareth Griffith

ACKNOWLEDGEMENT

The author would like to thank Stephen Frappell from the Legislative Council and Leslie Gonye from the Legislative Assembly for their comments on a draft of this paper. Thanks, too, to Greig Tillotson for his comments and advice; and to the Reference Section of the Parliamentary Library, Krista Meulengracht in particular, for their assistance in compiling the table of Free Votes in the NSW Parliament, 1981 to 2013, that appears at Appendix A.

ISSN 1325-4456

ISBN 978 0 7313 1922 0

August 2014

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Free votes in the New South Wales Parliament

by

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SUMMARY

The focus of this paper is on free or conscience votes in the NSW Parliament between 1981 and 2013. As such, its purpose is to add to the small but growing body of literature in this field.

A full list of free votes between 1981 and 2013 is set out at Appendix A, which includes all those votes identified occurring in one or both Houses and permitted by one or more of the major parties.

Free votes open up a broad range of issues relevant to parliamentary politics. They differ from other votes in Parliament in terms of the type of issues concerned, involving as they do some of “the most divisive issues of the day”, often attracting “intense lobbying”. In Australia, in particular, where party control is enforced over individual MPs to an unusual extent, where all other votes are “subject to an implicit three-line whip”, free votes can offer rare insights into their personal values and thinking and may even present opportunities for inter-party allegiances, albeit short-lived. [1]

The terms “free vote” and “conscience vote” are often used interchangeably, as indeed they are at certain points in this paper. However, the term “free vote” is preferred for the reason that it is less pejorative than “conscience vote”, which suggests that members do not vote according to their conscience as a rule. [2]

Free votes occur when political parties decide that their members are free to vote as they choose on a particular matter, rather than along party lines.[2]

The research undertaken for this paper has traced the first free votes in modern times to the decriminalisation of homosexuality in the early 1980s. As discussed in the literature, the identification of free votes is by no means straightforward. They are not identified as such in Hansard, nor are they identified either in the Assembly’s *Votes and Proceedings* or in the Council’s *Journal*. It is also the case that some free votes have been allowed on a matter for one major party but not for others, or for the Coalition parties but not the ALP. Further, most free votes are on Bills, often Private Members’ Bills, but in NSW other issues have also been dealt with in this way, notably votes on the removal of a judge or magistrate under s 53 of the *Constitution Act 1902*. [2]

The approach adopted in this paper is largely quantitative in nature, focusing on the voting patterns across parties and gender, for example; however, it also attempts to present a more qualitative perspective on the subject by reference to what individual MPs said in the Hansard debates. A general point is that, while the question of “how” individual members voted on conscience issues can be decided clearly enough, understanding “why” they voted a particular way on a specific issue is a far less exact science.[2]

Studies of free votes in comparable Westminster Parliaments have suggested a number of key findings, not all of which are necessarily consistent. The broad conclusion of most studies is that party is “the most important factor in predicting voting behaviour during bills involving conscience issues”. Based on a review of the literature, Lindsey commented in his 2011 study *Conscience*

Voting in New Zealand: “Sometimes, it is the only factor that counts. This has also been found to apply in federal systems at both the state and provincial level”. This finding echoes that of a 2011 Canadian study which concluded:

Like virtually every other empirical study of free voting, even when confidence is relaxed and MPs are free to vote their consciences, most MPs still vote along party lines.

In her 2013 comparative study of free votes in the Australian, Canadian, New Zealand and UK Parliaments, specifically on the issues of abortion, euthanasia and same-sex unions, Plumb offered a variation on this theme. Using the Rice Index she found that, “although party is a good predictor of voting behaviour on the three issues”, in all jurisdictions differences in levels of intra-party unity could be found across the ideological spectrum, with “centre-right” parties being the least cohesive, followed by centrist parties and with “centre-left” parties tending to show the greatest level of cohesion on the issues studied.[3]

Following a broadly chronological order, some comment is made on all 33 free votes that have been identified from 1981 to 2013. In some cases, notably where free votes were allowed for all major parties and where at least one vote was taken on division at the Second or Third Reading stages in the Legislative Assembly, the analysis is more detailed. The first of these “case studies” refers to the landmark debate on the decriminalisation of homosexuality from the early 1980s; others relate to the issues of human cloning and research involving human embryos, same-sex adoption, the Sydney medically supervised injecting room, surrogacy law and, from 2013, the status of the unborn child under the criminal law. Primarily in the context of these case studies, the analysis of free votes in the NSW Parliament attempts to address these questions:

- Were the voting patterns along party lines for both Houses?
- What, if any, was the perceived influence of party leaders?
- What were the voting patterns based on gender?
- In NSW is it possible to determine voting patterns based on religious affiliation?
- If so, is religion a factor influencing some if not all free votes for certain members?
- At what stage in the parliamentary term were free votes held?[4]

Findings – Government and Private Members’ Bills: Free votes have been recorded in this paper on 14 Government Bills, all of them Labor Government measures, with all of them passing into law. This can be contrasted with the 12 free votes recorded on Private Members’ Bills, three of which were passed into law, with eight others defeated and with the fate of one remaining to be determined (Zoe’s Law Bill 2013 (No 2)).[19.1]

Findings - party leader and residual party loyalty: In NSW, the voting patterns indicate that party loyalty was the decisive influence in certain cases, notably for Labor on the issue of Sydney’s Drug Injecting Centre, upon which the Party presented a united front; on other issues, concerned with same-sex adoption and surrogacy, cloning and human embryo research, as well as Zoe’s law, there was considerable diversity of opinion within the Party, which was

...
allowed to be expressed through the mechanism of the free vote. The same was true of the decriminalisation of homosexuality in the 1980s, where a significant number of Labor members voted against the Bill.

Admittedly, the evidence at this stage is relatively sparse for comparable Parliaments, but tentatively at least, it can be suggested that the level of intra-party unity on the “centre-left” tends to be relatively low on certain issues in NSW; as low as 0.2 in the Assembly on same-sex adoption, with 40% of Labor members voting against the Private Member’s Bill. However, the level of unity tends to be higher where Labor Government Bills are under consideration, although even on some of these occasions around one in four or one in five Labor members voted against the measure.

Across all parties, it is probably right to say that Premier Wran’s 1984 Private Member’s Bill decriminalising homosexuality was the one clear occasion where the party leader appears to have exercised a discernible influence on the vote. Less clear is the influence of Barry O’Farrell on the Same-sex Marriage Bill 2013, although with this Private Member’s Bill being defeated by a close margin of two votes that influence may have proved decisive.

Consistent with the comparative finding that “centre-right” parties tend to be the least cohesive, a high level of voting diversity is found in the NSW Liberal Party, on most if not all issues considered in this paper. Of the main case studies presented in the paper, the greatest degree of unity recorded was on Zoe’s Law Bill (No 2), at which time the Liberals were in Government. In that case, the Party leader, Barry O’Farrell, voted with the majority of his party colleagues on behalf of the Bill, although that is not to make a case for the influence of party leadership on voting behaviour. Liberal Party voting on key free votes is summarised below.

The National Party’s voting patterns have been recorded and tend towards a similar pattern to Labor’s, except that the weight of votes falls more on the socially conservative side of the political divide. On some issues there was unanimity, but not on all, with a diversity of opinion expressed, for example, in respect to surrogacy, cloning and human embryo research, less so on same-sex adoption and Zoe’s Law.

Of the minor parties, the largest numerically in this State are the NSW Greens, which up until 2011 only had representation in the Legislative Council; the 2011 election brought their numbers up to five in the Upper House. Consistent with voting patterns observed in other jurisdictions, on all free votes canvassed in this paper the NSW Greens voted in unison in the Upper House. The same applies to the Christian Democrats, under the leadership of the Reverend Fred Nile, as it does to the Shooters and Fishers Party.[19.2]

Findings – gender: The voting patterns recorded in this paper indicate that, on certain issues at least, a discernible gender difference existed, notably in respect to most same-sex equality and reproduction and human life issues, including Zoe’s Law Bill (No 2). This gender difference tended to be more clearly expressed in the Upper House, which may suggest that, without a geographical constituency to represent, some female Council members, on the

conservative side of politics in particular, may have felt less constrained when exercising a free vote. But that is purely speculative.[19.4]

Findings - religion: There are clearly times when voting on free votes has been influenced by personal religious belief. This is obviously the case in respect to the Christian Democrats in the Upper House, but also for other members in both Houses with strongly held religious views. One might say that this is the very point of a free vote; that members are called upon to deliberate and decide on difficult moral and social issues guided by a range of factors and influences, not least personal convictions of a moral and/or religious nature. It is what gives free votes their special quality, taking members outside the machinery of party politics and standing them squarely on their own moral ground.[19.5]

Findings – parliamentary terms: The most interesting free votes discussed in this paper from the perspective of their timing in parliamentary terms are those from 1984 and 2010. Wran’s Private Member’s Bill was brought in at the very start of a new Parliament, basically to clear the decks of a divisive issue that had been the subject of three contentious Bills in the previous Parliament. Conversely, the three Labor Government Bills from 2010 upon which all major parties allowed a free vote were introduced at the very end of a Parliament and, perhaps more tellingly, towards the predicted end of a long period of Labor power beginning in 1995.[19.6]

Findings – free votes and parliamentary democracy: It is clear that “conscience issues” provide members with an opportunity to step outside their party roles, thereby tending to lend to parliamentary debate more personal colour and intellectual interest than is usual. With free votes there is more occasion and inclination to listen to the views of others, to acknowledge and even accommodate arguments which a member may not agree with at first.

Important as that perspective on free votes may be, the argument can also be made that they should not be looked upon as panaceas for whatever ills are perceived to beset parliamentary democracy. The predictability of voting created by the party system is fundamental to a functioning political system founded on the principle of responsible government; the advantages that attend that system as a rule deserve proper appreciation. Free votes are exceptions to the rule, agreed to primarily for party political convenience. Viewed in that light they can be seen as something of a “safety valve”, permitting contentious issues to be dealt with without fracturing party discipline, worthy and interesting in themselves, but also an adjunct to the party political system they operate within.[19.7]

1 INTRODUCTION

The focus of this paper is on free or conscience votes in the NSW Parliament between 1981 and 2013. As such, its purpose is to add to the small but growing body of literature in this field, which includes papers on conscience votes in the Federal¹ and Western Australian Parliaments,² as well as in the Australian Capital Territory's Legislative Assembly;³ there is also a study of the influence of the churches on two conscience votes federally and on one in NSW,⁴ plus a review of one conscience vote from 2007 and two others from 2010.⁵ A feature of the study of free votes is that it raises issues and questions across many different levels of inquiry, from technical considerations about how to identify conscience votes to more theoretical questions about the role such votes should play in representative democracy and the contribution they might make to reducing what is perceived to be widespread voter alienation from the democratic system.⁶

A common theme in the literature is that, for some, free votes show Parliament and parliamentarians at their best, freed of party discipline to express their personal views on contentious social and moral issues. A countervailing theme is that conscience votes remain locked into the system of party politics, in particular that such votes are "about parties being unable, or unwilling, to involve themselves in potentially electorally damaging issues";⁷ according to

¹ D McKeown and R Lundie, *Free votes in Australian and some overseas Parliament*, Current Issues Brief 1/2002-03, Commonwealth Parliamentary Library; D McKeown and R Lundie, Conscience votes in the Federal Parliament since 1996 (Autumn 2008) 23(1) *Australasian Parliamentary Review* 172; D McKeown and R Lundie, *Conscience votes during the Howard Government 1996-2007*, Research Paper 20/2008-09, Commonwealth Parliamentary Library; J Warhurst, "Conscience voting in the Australian Federal Parliament" (2008) 54(4) *Australian Journal of Politics and History* 579; K Ross, SM Dodds and RA Ankeny, "A matter of conscience? The democratic significance of conscience votes in legislating bioethics in Australia" (2009) 44(2) *Australian Journal of Social Issues* 121; A Plumb, "Research note: a comparison of free vote patterns in Westminster-style parliaments" (2013) 51 (2) *Commonwealth & Comparative Politics* 254.

² J Seal-Pollard, *Conscience voting and the Western Australian Parliament: a research paper*, ANZACATT paper undated.

³ P Balint and C Moir, "Understanding conscience vote decisions: the case of the ACT" (Autumn 2013) 28(1) *Australasian Parliamentary Review* 43.

⁴ C Donaghey and K Galloway, "Analysing conscience votes in Parliament: do churches influence the law?" (2011) *James Cook University Law Review* 84. Discussed are two federal Bills for which there were conscience votes and one NSW Bill – the Human Cloning and Other Prohibited Practices Amendment Bill 2007, which was in fact a form of mirror legislation with its 2006 federal counterpart.

⁵ A Plumb, "Free votes in the NSW Parliament", [Legislative Studies](#), March 2014. Plumb also discusses the Human Cloning and Other Prohibited Practices Amendment Bill 2007, plus the Adoption Amendment (Same-Sex Couples) Bill 2010 and the Drug Misuse and Other Prohibited Practices Amendment (Medically Supervised Injection Centre) Bill 2010.

⁶ For an Australian commentary see M Chou, "Democracy's not for me: the Lowy Institute polls on Gen Y and democracy" (December 2013) 48 *Australian Journal of Political Science* 485.

⁷ D Lindsey, "A brief history of conscience voting in New Zealand" (Autumn 2008) 23(1) *Australasian Parliamentary Review* 144 at 170.

John Warhurst, “parties allow conscience votes largely because of a desire to avoid damaging splits”, recognising that “some issues invoke deeply held, often religious beliefs that cross party lines and have the potential to fracture party discipline”.⁸ Another line of inquiry suggests that, when a free vote is permitted, for individual MPs voting tends to be influenced by four key variables, namely, party, ideology, gender and religion;⁹ further, free votes are said to allow “a greater degree of insight into the impact of factors such as gender and religious affiliation on members’ voting patterns, as well as the continued influence of party leader behaviour and residual party loyalty”.¹⁰

It is the case therefore that free votes open up a broad range of issues relevant to parliamentary politics. They differ from other votes in Parliament in terms of the type of issues concerned,¹¹ involving as they do some of “the most divisive issues of the day”, often attracting “intense lobbying”.¹² In Australia, in particular, where party control is enforced over individual MPs to an unusual extent, where all other votes are “subject to an implicit three-line whip”,¹³ free votes can offer rare insights into their personal values and thinking and may even present opportunities for inter-party allegiances, albeit short-lived. Writing in a New Zealand context, David McGee observed:

Conscience matters can be fractious, stimulating, moving and confusing by turns. But they remain a necessary safety valve to handle those issues which cannot appropriately be treated as party matters.¹⁴

It is the case that free votes, although still quite rare in federal and State Parliaments in Australia, have been used more frequently over the past decade or so.¹⁵ This paper discusses this trend as it applies to the NSW Parliament, as well as the types of issues upon which free votes have been permitted in this State and the resulting voting patterns in terms of party, gender and, to a limited extent, religious affiliations. It begins by discussing what is meant by a “free

⁸ J Warhurst, “Conscience voting in the Australian Federal Parliament” (2008) 54(4) *Australian Journal of Politics and History* 579 at 582. Warhurst quotes Dean Jaensch as saying “A conscience vote, then, is not a case of a party offering freedom for its members – it is a case of parties protecting themselves”: D Jaensch, *Getting Our Houses in Order*, Penguin, 1986, p 45.

⁹ A Plumb, “Research note: a comparison of free vote patterns in Westminster-style parliaments” (2013) 51(2) *Commonwealth & Comparative Politics* 254 at 264.

¹⁰ J Seal-Pollard, *Conscience voting and the Western Australian Parliament: a research paper*, ANZACATT paper undated, p 1.

¹¹ J Seal-Pollard, *Conscience voting and the Western Australian Parliament: a research paper*, p 2.

¹² J Warhurst, “Conscience voting in the Australian Federal Parliament” (2008) 54(4) *Australian Journal of Politics and History* 579 at 581.

¹³ D McKeown and R Lundie, *Free votes in Australian and some overseas Parliament*, Current Issues Brief 1/2002-03, p 12. The term derives from the Westminster Parliament when the Whip informs members they must vote in a way their party requires on a particular issue.

¹⁴ D McGee, *Parliamentary Practice in New Zealand*, 3rd edition, Office of the Clerk of the House of Representatives 2005, p 100.

¹⁵ D McKeown and R Lundie, *Conscience votes during the Howard Government 1996-2007*, Research Paper 20/2008-09, p 20.

vote” in an historical context and by presenting an overview of findings from comparable jurisdictions. It should be emphasised that this paper is by nature of an early (but not first) work on free votes in the NSW Parliament.

2 TERMINOLOGY, HISTORY AND METHODS

The terms “free vote” and “conscience vote” are often used interchangeably, as indeed they are at certain points in this paper. However, the term “free vote” is preferred for the reason that it is less pejorative than “conscience vote”, which suggests that members do not vote according to their conscience as a rule.

In *NSW Legislative Council Practice* it is said that “free votes” occur when political parties decide that their members are free to vote as they choose on a particular matter, rather than along party lines. There are no standing rules or orders relating to free votes”.¹⁶ Grove’s *NSW Legislative Assembly Practice, Procedure and Privilege* contrasts “free” or “conscience votes” with those occasions where, in defiance of party discipline, a member has “crossed the floor”.¹⁷ Of free votes, it states:

In modern times, when members vote in divisions in the House they tend to vote along party lines. However, on occasion members are able to have a free or conscience vote, particularly when matters of moral or religious character arise which may be contrary to, or not relevant to, party platform. Determination of which matters are considered as a conscience vote is a matter for the various political parties and are not covered by any procedure or standing order of the House.¹⁸

There is a view that Parliaments were once, in a golden age of legislatures, prior to the rise of parties and the discipline they impose, a free-thinking, deliberative forum in which MPs represented the public good through the exercise of their own judgement on matters of public policy.¹⁹ In that idealised legislature all votes were “free” or conscience votes, guided only by the judgement of the individual member. Whether such a state of affairs ever existed in fact is a matter for debate which need not be decided here. What can be said in relation to the NSW Parliament is that free votes, as these are understood in a contemporary context, where MPs are freed from the constraints of party discipline on specific occasions, are a relatively recent phenomenon. The 19th century NSW Parliament was dominated by factions, often organised around personalities and later on the basis of the free trade

¹⁶ L Lovelock and J Evans, *NSW Legislative Council Practice*, The Federation Press, 2008, p 293.

¹⁷ In this context the phrase “crossing the floor” refers to a member voting against their party in a division on a particular issue, as opposed to those occasions when a member switches party allegiance.

¹⁸ RD Grove ed, *NSW Legislative Assembly Practice, Procedure and Privilege*, NSW Legislative Assembly 2007, p 161.

¹⁹ KC Wheare calls this a “myth of a golden age of legislatures” – *Legislatures*, Oxford University Press 1963, p 232; see further RAW Rhodes, J Wanna and P Weller, *Comparing Westminster*, Oxford University Press 2009, chapter 7.

versus protection debate, where allegiances were loosely made and readily set aside. A feature of this period was high turn-over in governments, as one faction or another found it hard to retain the confidence of the Lower House.

Only with the formation and entry into Parliament in the 1890s of the highly disciplined Australian Labor Party did this situation change, with the Legislative Assembly voting patterns reflecting a more rigid party system in the 20th century. In theory, free votes as these are understood today could have featured in the Assembly in the first 80 years or so of the 20th century, but as a matter of practice that does not seem to have been the case. In part, one might put this down to the uncompromising, no-quarter given politics of the “Bear Pit”, where intra-party discipline and inter-party conflict were the unbending rules of political life. It might also be the case that the kind of issues that have recently given rise to free votes – anti-abortion, euthanasia, gay rights and the like – were not a feature of the political agenda before the 1960s, when ideological shifts and the dramatic changes in social conventions caused all manner of subjects, previously concealed or unrecognised, to emerge from the shadows.

Different again is the history of the Legislative Council. Appointed between 1856 and 1934 and then indirectly elected up until 1978, governments were never made and unmade in the Upper House, which meant that the need to vote with one’s party was not so imperative. This did not prevent Labor from seeking to enforce rigid party discipline; but the same could not be said, at least with the same certainty, of the United Australian Party and then the Liberal Party which insisted that Upper House members were free to vote as they wished. Theoretically, therefore, for the Liberal side of politics up to the 1960s at least all votes were conscience votes, although in practice the tendency to vote along party lines was the norm.²⁰ Since the Council has been directly elected, subject to the occasional exception,²¹ the same party discipline has applied across the political spectrum in the Upper as in the Lower House in NSW.

The research undertaken for this paper has traced the first free votes in modern times to the decriminalisation of homosexuality in the early 1980s. As discussed in the literature,²² the identification of free votes is by no means straightforward. They are not identified as such in Hansard, nor are they identified either in the Assembly’s *Votes and Proceedings* or in the Council’s *Journal*. It is also the case that some free votes have been allowed on a matter for one major party but not for others, or for the Coalition parties but not the ALP. Further, most free

²⁰ D Clune and G Griffith, *Decision and Deliberation*, The Federation Press 2006, p 399.

²¹ See for example Ted Pickering crossed the floor to vote with Labor on the Anti-Discrimination (Homosexual Vilification) Bill 1993: D Clune and G Griffith, *Decision and Deliberation*, The Federation Press 2006, p 604. On 7 November 1997 Franca Arena resigned from the Labor Party after earlier crossing the floor to vote with the Liberal Opposition in favour of widening the Wood Commission’s jurisdiction to include all paedophilia related activity. On 20 October 2010, Amanda Fazio was suspended from the Labor Party when she crossed the floor to vote with the NSW Greens on a Bill dealing with the distribution of X-rated pornography.

²² See for example DG Lindsey, *Conscience voting in New Zealand*, PhD University of Auckland 2011, Chapter 1; J Seal-Pollard, *Conscience voting and the Western Australian Parliament: a research paper*, p 5.

votes are on Bills, often Private Members' Bills, but in NSW other issues have also been dealt with in this way, notably votes on the removal of a judge or magistrate under s 53 of the *Constitution Act 1902*.

In identifying free votes, this research has relied in part on the Parliamentary Library's database on voting patterns in the two Houses, which dates back to 1986, as well as searches under keywords ("conscience vote" and "free vote") of the digitised Hansard, from 1988 onwards. The earlier Hansard record was checked in hard copy, but only as far back as 1981 when the decriminalisation of homosexuality was known to have been subject to a number of free votes. As a further note on research methodology, the approach adopted in this paper is largely quantitative in nature, focusing on the voting patterns across parties and gender, for example; however, it also attempts to present a more qualitative perspective on the subject by reference to what individual MPs said in the Hansard debates. A general point is that, while the question of "how" individual members voted on conscience issues can be decided clearly enough, understanding "why" they voted a particular way on a specific issue is a far less exact science.

For the major votes, the level of intra-party unity (IPU) has been expressed using the Rice Index, where a score of 1.0 indicates total party unity, while a score of 0 indicates that the party was equally divided.²³ This method of calculation has been applied across other Parliaments and is therefore one measure by which intra-party unity on conscience issues might be measured comparatively. Note, however, that at the sub-national level the numbers voting for any particular party can be very small; this applies across the board in the Upper House in NSW which currently has a total membership of 42; in the Assembly, prior to 2011 in particular, it tends to apply more to the Coalition parties, often starting from a low base and with their numbers divided between the Liberals and Nationals on free votes.

²³ The scores are calculated by subtracting the minority percentage of votes from the majority percentage and dividing this figure by 100.

3 LITERATURE REVIEW OF KEY RESEARCH FINDINGS

Studies of free votes in comparable Westminster Parliaments have suggested a number of key findings, not all of which are necessarily consistent. These are set out below and include those findings from two studies of conscience votes in the NSW Parliament. The starting point for much of this analysis is the Westminster Parliament, the first jurisdiction to be discussed here.

United Kingdom

- The empirical evidence confirms that free votes are overwhelmingly party votes, with party the only consistent factor influencing the way MPs voted.
- Other factors that may have influenced individual votes in certain cases were: religion (Roman Catholic MPs were more likely to vote in favour of restrictions on abortion and embryo research and were less likely to support euthanasia); and gender (women were less likely than men to vote in favour of restrictions on abortion). Age and education also had a limited effect. “But these were sporadic influences; for the most part party dominates”.
- Conscience issues are not “non-party issues”; they do not “cut across party lines”; they are more likely to cut *down* party lines rather than *across* them”.
- On many conscience issues the parliamentary parties could quite easily adopt a position. One advantage of free votes is that they save parties from having to adopt positions on controversial issues.
- On the other hand, by encouraging broad debate, free votes are good for Parliament, making it seem more vital and relevant; they may even be beneficial for the wider polity.
- Despite their limitations, free votes are the last practical vestige of Edmund Burke’s argument that MPs are elected as representatives, not as delegates, that is, they were chosen for their ability to think independently and to form their own judgements.²⁴

New Zealand

- A high degree of party cohesion exists for even the most contentious free votes.²⁵
- The subjects upon which free votes have been allowed have expanded in recent years to include, for example, animal welfare, employment relations, electoral reform, the public display of gang insignia and even taxation.
- More common in recent years are free votes on Bills sponsored by the

²⁴ P Cowley ed, *Conscience and Parliament*, Frank Cass 1998 – notably the chapter by C Pattie, R Johnston and M Stuart, “Voting without party?” and the “Conclusion” by P Cowley.

²⁵ D Lindsey, “A brief history of conscience voting in New Zealand” (Autumn 2008) 23(1) *Australasian Parliamentary Review* 144 at 147.

government. The result is that the assumption that free votes are basically synonymous with private members' bills is no longer valid; nor can it be assumed that free votes are destined to fail.

- Conscience voting has evolved into a parliamentary mechanism with a momentum of its own; once a matter becomes recognised as a conscience issue, it will remain so for the foreseeable future. To that extent, parties “no longer have a free hand in which issues are whipped and which are not”.²⁶

Canada – Federal Parliament

- Free voting patterns were found in a 1998 study to become increasingly similar to party voting as the conscience legislation moves through Parliament. By the Third Reading, free votes were largely indistinguishable from party votes.²⁷
- A 2011 study of voting on same-sex marriage legislation confirmed that most MPs still vote along party lines during free votes, thus confirming that “political parties are fundamentally groups of like-minded individuals with largely shared policy preferences”.
- Somewhat against the trend of previous studies, it was also found that the characteristics of constituencies was a significant predictor of how an MP would vote, notably in relation to those MPs representing Francophone communities who were “significantly more likely to vote in favour of the same-sex marriage law than their otherwise similarly situated colleagues”. It was concluded that “MPs paid at least some heed to the nature of their constituencies. While party, cabinet status and (to a lesser extent) personal factors continued to influence the vote, so too did constituency pressures”.²⁸

Australia - Commonwealth Parliament

- The dynamics of free voting are complicated and can depend on the specific issues under debate in any particular instance, which calls for a case by case analysis.
- Party influences remain during free votes, with those ideological ties that bind members of the same party persisting in the absence of formal party discipline. For example the coalition parties are notably more socially conservative than the Labor Party.
- Religion and gender are variables that cut across the major parties and link members on both sides of the Parliament.

²⁶ DG Lindsey, *Conscience voting in New Zealand*, PhD University of Auckland 2011, Chapter 10.

²⁷ LM Overby, R Tatalovich and DT Studlar, “Party and free votes in Canada: abortion in the House of Commons” (1998) 4 *Party Politics* 381. This study related to 1990 proposed federal legislation on abortion.

²⁸ LM Overby, C Raymond and Z Taydas, “Free votes, MPs, and Constituents: the case of same-sex marriage in Canada” (2011) 41(4) *American Review of Canadian Studies* 465 at 474.

- In Australia the evidence necessary to confirm the suggestion of British scholarship that there is a correlation between religion and free voting is difficult to obtain.²⁹
- The measurement of religious influence is extremely difficult.³⁰
- The voting record of women members suggests that, for the most part, they are less socially conservative as a group.³¹
- Women are more inclined than male parliamentarians to take a position that reflects majority public opinion in response to contentious policy questions, regardless of party affiliation.³²
- Gender may be a significant factor on some issues (eg, anti-abortion) but not necessarily on others (eg. euthanasia).
- The number of free votes has increased since the mid-1990s, as more complex issues have emerged, including therapeutic cloning.³³

Western Australian Parliament

- A number of political parties tended to vote along de facto party lines, demonstrating the power of residual party loyalty.
- The exception was the Liberal Party which generally displayed a significant diversity of voting behaviour, making it difficult to draw conclusions about gender as a factor influencing voting on conscience issues.
- Difficulties involved in obtaining relevant data made it impossible to analyse the impact of religious belief on free voting.³⁴

Australian Capital Territory

- Consistent with predictive theories of conscience voting, recent results of free votes show clear party trends. However, these trends do not explain what actually influenced MPs to vote along party lines, which may include such “direct” influences as the fear of repercussions of voting

²⁹ J Warhurst, “Conscience voting in the Australian Federal Parliament”.

³⁰ C Donaghey and K Galloway, “Analysing conscience votes in Parliament: do churches influence the law?” (2011) *James Cook University Law Review* 84. This finding applied to both the federal and NSW Parliaments, with the paper concluding that its methodology had not revealed “clearly an institutional Church influence on contemporary Australian law making” (at 112).

³¹ J Warhurst, “Conscience voting in the Australian Federal Parliament”.

³² K Ross, SM Dodds and RA Ankeny, “A matter of conscience? The democratic significance of conscience votes in legislating bioethics in Australia” (2009) 44(2) *Australian Journal of Social Issues* 121 at 132-134. But note that this finding was reached after an initial claim that, in respect to two Bills (RU486 Bill 2005 and the Research Involving Human Embryos Bill 2002) the voting patterns of women MPs “were not aligned with public views as such, but were more radical and thus offset the more conservative votes of their male counterparts in a manner that led to an outcome better representing public opinion overall”.

³³ D McKeown and R Lundie, Conscience votes in the Federal Parliament since 1996 (Autumn 2008) 23(1) *Australasian Parliamentary Review* 172 at 188.

³⁴ J Seal-Pollard, *Conscience voting and the Western Australian Parliament: a research paper*, p 21.

against the typical party views or the views of the party leader.

- In explaining why MPs voted in a particular way the influence of the “personal” should be taken more seriously. By this is meant close personal experience that has a clear and causal connection to the particular conscience issue (eg, the influence of the manner in which a friend or relative died when voting on a euthanasia related issue).
- While some conscience issues (eg, abortion) exemplify sex/gender based differences in voting, sex/gender does not appear to hold up as an influence on conscience voting overall.
- There is little evidence to suggest that religious affiliation, in particular Catholic affiliation, influences conscience voting in a socially conservative manner.
- The characteristics of constituents are a weak influencing factor in conscience voting.³⁵

New South Wales

- Specifically in relation to the Human Cloning and Other Prohibited Practices Amendment Bill 2007, and based on a textual analysis of the reported Hansard debates, Donaghey and Galloway considered the influence of Christian Churches on voting patterns. A peculiar feature of this case study was that Cardinal Pell had intervened in the public debate, declaring that “every Catholic politician who voted for the Bill should think twice and examine his or her conscience before next receiving Communion”. The upshot of the research was to emphasise that “measurement of religious influence is extremely difficult” and that the “methodology of this paper does not reveal clearly an institutional Church influence on contemporary Australian law-making”.³⁶
- The more recent analysis of Plumb focused on the issues of adoption rights for gay couples, cloning and the status of the Sydney drug injecting room³⁷ and sought to test party, sex, religion and social ideology as predictors of voting patterns. The article purported to have found that party membership was a weaker predictor of voting patterns than in the Commonwealth Parliament, the ACT Legislative Assembly or the UK House of Commons. However, the figures presented in Table 1 to the article do not appear to be correct (see later discussion), thus calling into

³⁵ P Balint and C Moir, “Understanding conscience vote decisions: the case of the ACT” (Autumn 2013) 28(1) *Australasian Parliamentary Review* 43. This paper distinguishes between “predictive” studies of conscience votes which are mainly quantitative in nature, focusing on counting how MPs voted in divisions and the like, and this study which tries to explain why they voted in that way, taking a more quantitative in approach, based on interview with members and looking for personal explanations of voting in the Hansard debates.

³⁶ C Donaghey and K Galloway, “Analysing conscience votes in Parliament: do churches influence the law?” (2011) *James Cook University Law Review* 84 at 112.

³⁷ A Plumb, “Free votes in the NSW Parliament”, [Legislative Studies](#), March 2014. Human Cloning and Other Prohibited Practices Amendment Bill 2007; the Adoption Amendment (Same-Sex Couples) Bill 2010; and the Drug Misuse and Other Prohibited Practices Amendment (Medically Supervised Injection Centre) Bill 2010.

question the paper's findings.³⁸

- Plumb also purported to find that “religion played a larger role in voting in the New South Wales Parliament than in the Australian Parliament or the ACT Legislative Assembly due to the concentration of Roman Catholics in the State, in particular in the ALP”. Exactly how this finding was reached is not entirely clear.³⁹
- Plumb further considered the link between constituency characteristics and voting patterns. It is noted that “the 2011 Census was consulted to identify whether MPs representing constituencies with an above average percentage of religious persons (27.5 per cent across NSW) were more likely to oppose reform to the adoption and cloning laws”.⁴⁰ Plumb went on to say that “It is clear that this might have been the case, with nine of 13 ALP MPs in this group representing a constituency that was composed of an above average number of practicing members of a religion group than the state average”. By “religious persons” and “religion group” Plumb appeared only to refer to Roman Catholics. The average percentage of persons of Christian religion in NSW was 64% in 2011, plus another 9.1% of persons of non-Christian religion. 34.6% of persons in the Lakemba electorate belonged to the Islamic faith, whereas 20.7% of persons in the Vaucluse electorate were Jewish. Such statistics would indicate that, if any meaningful empirical findings are to be arrived at, any discussion of the influence of constituency characteristics by reference to religion would need to address the cultural diversity of NSW more comprehensively than suggested by Plumb.

The broad conclusion of most studies is that party is “the most important factor in predicting voting behaviour during bills involving conscience issues”. Based on a review of the literature, Lindsey commented in his 2011 study *Conscience Voting in New Zealand*: “Sometimes, it is the only factor that counts. This has also been found to apply in federal systems at both the state and provincial level”.⁴¹ This finding echoes that of a 2011 Canadian study which concluded:

Like virtually every other empirical study of free voting, even when confidence is relaxed and MPs are free to vote their consciences, most MPs still vote along party lines.⁴²

³⁸ The total number of votes on the “cloning” Bill of 2007 is recorded as 65, this in a Lower House of 93 members; the total for the “Sydney Medically Supervised Injection Centre” Bill of 2010 is recorded as 67; the only credible total figure is for the “Same-sex Adoption” Bill of 2010, where a total vote of 89 is recorded.

³⁹ A Plumb, “Free votes in the NSW Parliament”, [Legislative Studies](#), March 2014. Plumb notes that “Information about MPs religion was sought from online sources, triangulated with other sources, such as the parliamentary debates and reports and from the literature, then incorporated in the dataset” (p 5) Later it is noted that “information about the religion of MPs was difficult to obtain” (p 9).

⁴⁰ A Plumb, “Free votes in the NSW Parliament”, [Legislative Studies](#), March 2014, p 9.

⁴¹ DG Lindsey, *Conscience voting in New Zealand*, PhD University of Auckland 2011, p 42.

⁴² LM Overby, C Raymond and Z Taydas, “Free votes, MPs, and Constituents: the case of same-sex marriage in Canada” (2011) 41(4) *American Review of Canadian Studies* 465 at 470.

In her 2013 comparative study of free votes in the Australian, Canadian, New Zealand and UK Parliaments, specifically on the issues of abortion, euthanasia and same-sex unions, Plumb offered a variation on this theme. Using the Rice Index she found that, “although party is a good predictor of voting behaviour on the three issues”, in all jurisdictions differences in levels of intra-party unity could be found across the ideological spectrum, with “centre-right” parties being the least cohesive, followed by centrist parties and with “centre-left” parties tending to show the greatest level of cohesion on the issues studied.⁴³

4 OVERVIEW OF FREE VOTES IN NEW SOUTH WALES

A full list of free votes between 1981 and 2013 is set out at Appendix A, which includes all those votes identified as occurring in one or both Houses and permitted by one or more of the major parties.

With some local variations, including a Bill to prevent the physical punishment of children and those on the removal of a judge or magistrate under s 53 of the *Constitution Act 1902*, free votes in the NSW Parliament reflect the general pattern of social and morally contentious issues found in other jurisdictions. It would seem that matters relevant to gay and lesbian rights are almost routinely referred to free votes, as are votes relating to the medically supervised injecting centre; abortion and the legal status of the unborn child would also seem to belong to this category. But note that not all parties seem to have allowed a free vote in all these cases; for example, of the four free votes identified from 2010, it is not clear that a free vote was allowed to Labor members on the Relationships Register Bill 2010.

With that qualification in mind, the broad subjects and the dates at which free votes were introduced into Parliament can be grouped under the following headings:

- Gay and lesbian rights (1981(x2), 1982, 1984, 1999, 2000, 2003, 2008, 2010 (x2) 2012, 2013(x2)))
- Abortion (1986, 1991)
- Daylight saving (1995)
- Euthanasia (2001, 2013)
- Surrogacy (2010)
- Drug law reform (2002, 2003, 2007, 2010)
- Embryo research/human cloning (2003 (x2), 2007)
- Physical punishment of children (2000)
- Criminal law and the unborn child (2005, 2013)

⁴³ A Plumb, “Research note: a comparison of free vote patterns in Westminster-style parliaments” (2013) 51(2) *Commonwealth & Comparative Politics* 254 at 263-264. Plumb also found a “high level of non-votes and abstentions” in these centre-left parties which suggested that they “are not as cohesive as they first appear”, leading to the further suggestion that religion may be the key factor here, particularly in [the] British Labour Party and the Australian Labour [sic] Party, with the Catholic sections of those parties exercising their conscience vote to oppose measures to liberalise”.

- House prayers (2003)
- Conduct of judges/magistrates (1998, 2011 (x2))

Of the 33 free votes identified in Appendix A, 16 were introduced in the Legislative Council and 17 in the Legislative Assembly; 26 of the free votes related to Bills, of which 14 were Government Bills and 12 were Private Members' Bills. These figures can be broken down further in terms of party, as follows:

Types of Free Votes in the NSW Parliament, 1981-2013

	Labor	Liberals	Nationals	Other	Total
Private Member's Bills	6*	1	-	5**	12
Government Bills	14	-	-	-	14
Other motions	1	2	-	4***	7

* including the Crimes (Amendment) Bill 1984 introduced by Neville Wran.

** 2 introduced by the NSW Greens; 1 by the Christian Democratic Party (Fred Nile Group); 1 by Better Future for Our Children Party; and 1 by Clover Moore in the Assembly

*** 2 introduced by the NSW Greens; 1 by the Christian Democratic Party (Fred Nile Group); and 1 by Alex Greenwich in the Assembly

With conscience votes allowed on no fewer than 14 Government Bills⁴⁴ during the Labor years in power from 1995 to 2011, this would seem to confirm the New Zealand finding that such votes cannot be presumed to be the sole or even principal domain of Private Member's Bills. But note by reference to Appendix A that, of the 14 Government Bills, in only 7 cases is it clear that Government members (Labor) were allowed a conscience vote.

Following a broadly chronological order, some comment is made on all 33 free votes that have been identified from 1981 to 2013.⁴⁵ In some cases, notably where free votes were allowed for all major parties and where at least one vote was taken on division at the Second or Third Reading stages in the Legislative Assembly, the analysis is more detailed. The first of these "case studies" refers to the landmark debate on the decriminalisation of homosexuality from the early 1980s; others relate to the issues of human cloning and research involving human embryos, same-sex adoption, the Sydney medically supervised injecting room, surrogacy law and, from 2013, the status of the unborn child under the criminal law. Primarily in the context of these case studies, the following analysis of free votes in the NSW Parliament attempts to address these questions:

⁴⁴ This figure includes the Human Cloning and Other Prohibited Practices Bill 2003 upon which, as discussed later in this paper, all major parties allowed a free vote but which was decided on the voices, without going to division. Note, too, that of the 14 Government Bills introduced by Labor, three of these – the cognate Human Cloning and Other Prohibited Practices Bill 2003 and the Research Involving Human Embryos (New South Wales) Bill 2003 and the Human Cloning and other Prohibited Practices Amendment Bill 2007 – were enacted as components of national schemes of uniform legislation.

⁴⁵ The 2003 motion to amend the prayers at the start of each sitting day in the Legislative Council is only noted in the section "Findings in summary".

- were the voting patterns along party lines for both Houses?
- what, if any, was the perceived influence of party leaders?
- what were the voting patterns based on gender?
- in NSW is it possible to determine voting patterns based on religious affiliation?
- if so, is religion a factor influencing some if not all free votes for certain members?
- at what stage in the parliamentary term were free votes held?

5 DECRIMINALISING HOMOSEXUALITY

At the start of a new Parliament in May 1984 Premier Wran made the bold and unusual move of introducing a Private Member's Bill to provide for the decriminalisation of homosexual acts between consenting adults over 18 years of age. The previous Parliament had in fact debated broadly the same issue in respect to three separate Private Members' Bills, all of them introduced by members of the ruling Labor Party, two in the Legislative Assembly, one in the Legislative Council. Taken together, these Bills can be seen as the watershed moments in the relationship between the law and homosexuality in NSW.

5.1 The 1981 and 1982 Bills: The three previous Private Members' Bills were as follows:

- the Crimes (Sexual Offences) Amendment Bill 1981, introduced on 11 November 1981 by WG Petersen,⁴⁶ the member for Illawarra, was said to be the first Private Member's Bill to have reached the Second Reading stage in the Assembly for 24 years. The Bill as introduced would have provided for equality before the criminal law for homosexual and heterosexual sexual acts, with the age of consent set at 16 years. With all three major parties granting a conscience vote, on 2 December 1981 the Bill was defeated on its Second Reading, 28 votes to 67.⁴⁷ Of the 69 Labor members elected at the "Wranslide" election of September 1981, 26 voted with the Ayes, including Premier Wran, along with 2 Independents (Hatton and Mack). All Coalition members (28 in total) voted with the Noes, which meant that at least 39 ALP members also voted with the Noes.
- On 2 December, immediately following the defeat of the Petersen Bill, the Crimes (Adult Sexual Behaviour) Amendment Bill 1981 was introduced by the member for Cronulla, Michael Egan.⁴⁸ This was a compromise Bill designed solely to decriminalise consenting homosexual acts in private between adults. As a compromise, it was opposed by many of the strongest supporters of the Petersen Bill (including WG Petersen) and was defeated on its Second Reading, 65 votes to 28.⁴⁹

⁴⁶ *NSWPD*, 11 November 1981, p 443.

⁴⁷ *NSWPD*, 2 December 1981, p 1374.

⁴⁸ *NSWPD*, 2 December 1981, p 1376.

⁴⁹ *NSWPD*, 2 December 1981, p 1393.

Two Independents (Hatton and Mack) joined the Noes, while a number of Labor members reversed positions; 5 Liberal members supported the Bill (Peter Collins, Nick Greiner, Terry Metherell, Tim Moore and Rosemary Foote). Foote was only one of two women members at the time in the Assembly, the other being Labor's Janice Crosio who also voted for the Egan Bill.

- the Crimes (Homosexual Behaviour) Amendment Bill was introduced in the Legislative Council, on 18 February 1982 by Labor's Barry Unsworth.⁵⁰ The Bill's purpose was limited, specifically to "decriminalise homosexual behaviour between consenting adults in private".⁵¹ It passed the Second Reading stage, 25 votes to 15:⁵² 20 Labor members voting "Yes" along with 5 Liberals; the vote against split between 5 Liberals, 5 Nationals, 3 Labor, 1 Call to Australia and 1 Australian Democrats. The female vote was split 5 to 1 in favour of the Bill, but note that the one vote against was that of the Australian Democrat, Liz Kirkby, who objected to the measure on the ground that it was too conservative. Of the 5 women voting for the Bill, 4 were Labor and 1 Liberal (Virginia Chadwick). With amendments, the Bill then passed its Third Reading on 16 March 1982, 26 votes to 13, with broadly the same split in votes along party and gender lines (but with no Labor members in the "No" camp).⁵³

In the Assembly, the Bill was introduced by Deputy Premier Laurie Ferguson, where it passed its Second Reading, 49 votes to 44,⁵⁴ but after further amendment was defeated at the Third Reading stage, 47 votes to 42.⁵⁵ In a House in which Labor held 69 of the 99 seats, in both these votes significant numbers of ALP members voted against the Bill.

Legislative Assembly: Third Reading vote

Party	Yes	Party	No	IPU (intra-party unity)
Labor	38 (62%)	Labor	23 (38%)	0.15
Liberal	2 (15%)	Liberal	11 (85%)	0.7
Nationals	0 (0%)	Nationals	13 (100%)	1.0
Independent	2	Independents	0	
Total	42 (47%)	Total	47 (53%)	

In effect, with the Labor Government commanding such a large majority in the 1981-84 Parliament, these Bills could only fail if significant numbers of Labor members did not follow a party script but voted rather on an individual basis, against the party leader who voted "Yes" in respect to all three Bills. With so few women in the Assembly, gender voting patterns cannot be commented on; in

⁵⁰ *NSWPD*, 18 February 1982, p 2081.

⁵¹ *NSWPD*, 18 February 1982, p 2080

⁵² *NSWPD*, 18 February 1982, p 2165.

⁵³ *NSWPD*, 16 March 1982, p 2565. Barry Unsworth was to become Premier in July 1986 after Wran's resignation; Unsworth's "influence" over his fellow MLCs may have been a factor in the high level of unity among Labor members.

⁵⁴ *NSWPD*, 31 March 1982, p 3095.

⁵⁵ *NSWPD*, 31 March 1982, p 3109.

the Council, on the other hand, the women members voted for change, except for one who thought the change proposed did not go far enough.

5.2 Wran's 1984 Bill: These three Bills form a background to Wran's Private Member's Bill, introduced on 10 May 1984, a matter of days after Parliament resumed following the March 1984 general election. This had resulted in a reduced majority for Labor but still a solid win, with 58 Labor members in the Assembly compared to 22 Liberals, 15 Nationals and 4 Independents (including the former National Party member, Bruce Duncan).⁵⁶ As for the "Wran model", the standing of the once dominant leader and master politician of his day had started to wane, not least because of corruption allegations that had led to the Street Royal Commission.⁵⁷ Nonetheless, Wran remained a formidable figure, one not to be crossed within his own ranks, a factor which must be acknowledged in respect to the 1984 Private Member's Bill. As well as abolishing the crime of buggery, the Bill prohibited homosexual acts by a male with a male under the age of 18.

5.3 Voting in the Legislative Assembly: At the Second Reading stage, the 1984 Bill received a substantial majority, 62 votes to 35, with the following party split in votes:

Legislative Assembly: Second Reading voting on the 1984 Bill⁵⁸

Party	Yes	No	IPU (intra-party unity)
ALP	47 (81%)	11 (19%)	0.62
Liberal	13 (65%)	7 (35%)	0.3
National	0 (0%)	15 (100%)	1.0
Independent	2	2	
Total	62 (64%)	35 (36%)	

Of the 47 Labor members voting "Yes" in 1984, 7 had voted to defeat the Unsworth Bill on its Third Reading in the Assembly in March 1982,⁵⁹ 3 of those 7 members were Cabinet Ministers in 1984 (Akister, Cox and Deputy Premier Ron Mulock). Indeed, all members of the Wran Ministry voted for the 1984 Bill, which might suggest that formal or informal pressure had been applied in that direction. This was a claim made by some opponents of the 1984 Bill during the course of the Second Reading debate, with Kevin Rozzoli stating that a *Sydney Morning Herald* report had suggested that "the Premier exerted considerable pressure on his fellow Ministers to give him block support for the passage of this legislation". He went on to comment:

⁵⁶ Duncan had resigned in 1982 when the National Party dropped "Country" from its title. The Independent Frank Arkell won the seat of Wollongong in 1984, joining Hatton and Mack on the cross-benches.

⁵⁷ E Chaples, H Nelson and K Turner eds, *The Wran Model*, Oxford University Press 1985, Chapter 20.

⁵⁸ The Third Reading passed, 63 votes to 34 (one Liberal members, M Kerr, switching his vote to "Yes")

⁵⁹ JE Akister, JJ Aquilina, PF Cox, R Mulock, JH Murray, ST Neilly, and P Whelan.

It may be said by the Ministers concerned that they have decided on their own conscience to support the bill in its entirety, but looking at the history of voting on this type of legislation in this Parliament, I doubt whether that is the case.⁶⁰

The assertion was hotly contested by PF Cox, member for Auburn and Minister for Mineral Resources and Energy, who acknowledged that he had voted against the three previous Bills but strenuously denied that the Premier Wran had influenced his change of mind.⁶¹ It should be noted in this respect that the Bill passed with an amendment, moved by the Liberal member for Hurstville (GA Yeomans), inserting an offence relating to soliciting, inciting or procuring a male under 18 to engage in homosexual acts. The amendment was agreed to, 52 votes to 42, the Premier voting against, and 3 Cabinet members in support (Cox, Mulock and KJ Stewart). Whatever the truth of the matter, the fact is that the 1984 Bill was an unusual Private Member's Bill, one that had the full imprimatur of the party leader, something which must be borne in mind in any analysis of it. The substantial "No" vote on the Labor side would suggest that, outside the Cabinet at least, a core of socially conservative members recorded a vote free of party influence.

On the numbers, voting among Liberal ranks followed party lines least of all, with an approximate two-third (Yes) to one-third (No) split in voting. Conversely, all 15 National Party members voted "No". The Nationals seem to have treated all 4 proposals from 1981-84 as free votes; however, there was also agreement in the party room that all members were of one mind on the issue and would vote accordingly. In relation to the 1984 Bill, Leon Punch said that "Despite having the opportunity of a free vote according to their conscience, all members of the National Party in both Houses will show their contempt for the bill by voting against it":⁶²

Remarkably, from a House of 99 members, in 1984 there were still only the same two women members in the Assembly, Labor's Janice Crosio and Rosemary Foot of the Liberal Party, both of whom voted for the 1984 Bill. Any analysis of gender as a factor influencing voting in the Assembly must therefore be put on hold.

As for religion, it is as difficult to ascertain a clear picture in NSW as in other Australian jurisdictions. There is little doubt that religion was a factor for many members, with some now on the "Yes" side having to wrestle with the intersection of law and morality, in the form of church teachings, those of the Catholic Church in particular; Deputy Premier Ron Mulock was a case in point.

⁶⁰ *NSWPD*, 15 May 1984, p 726; see also p 749 (J Schipp)

⁶¹ *NSWPD*, 15 May 1984, p 750. The claim was accepted by the next speaker, Dr Terry Metherell (p 752). Deputy Premier Mulock said that he had supported the concept that homosexual acts by consenting male adults in private should be decriminalised, but that he had opposed other "objectionable features" of the previous 3 Bills: *NSWPD*, 15 May 1984, p 705.

⁶² *NSWPD*, 15 May 1984, p 703; in relation to the Legislative Council see *NSWPD*, 17 May 1984, p 971 (RB Rowlands Smith).

It would seem reasonable to conclude that, for the 1981 and 1982 Bills, religion was a more predictive factor in voting, less so for the 1984 Bill when the Labor vote was substantially in favour of reform.

One issue in the literature is whether constituency characteristics are a significant predictor of how an MP will vote. With all 15 National Party members, plus Bruce Duncan, the former National, voting “No”, there is a case to be made that rural and regional NSW was very largely opposed to the 1984 Bill, a view that found expression on the floor of the Assembly. It is also the case that, of the 7 Liberals voting “No”, one member represented a regional constituency (JJ Schipp, Wagga Wagga), 4 others constituencies on the North and North West fringes of Sydney (JA Clough, Eastwod; N Pickard, Hornsby; K Rozzoli, Hawkesbury; FDC Caterson, The Hills), some of which could be said to have significant Christian communities.⁶³ Most if not all these members made reference to the prevailing views of their constituents and also to the views expressed in petitions to the Parliament.⁶⁴ On the “Yes” side were the bulk of members for Sydney constituencies, including the member for the quintessential inner-city seat of Bligh (M Yabsley), who described his constituency as “a rich tapestry of life with an exciting and constantly changing texture”.⁶⁵

Debate on the Bill ended just before 3 am on 15 May 1984, after a thorough airing of the issues. The Premier had said that he was “not seeking the imperatives of perfection with this bill, but rather the establishment of a principle”. The matter was now for the Legislative Council to decide, in a House elected on a State-wide basis and where geographical constituency factors therefore do not apply; which is not to say that Upper House members are not identified with regions in a looser sense or that they do not represent constituencies of interest.⁶⁶

5.4 Voting in the Legislative Council: As with the Unsworth Bill of 1982 the passage of the 1984 Wran Bill through the Council was relatively straightforward. In a House of 45 members (including a Labor Party President), at the Second Reading stage, 26 voted “Yes” to 14 “No”; at the Third Reading there were 22 “Yes” votes to 13 “no” votes. Voting by party on the Bill can be broken down as follows:

⁶³ The 2 outliers were M Kerr (Cronulla) and P Zammit (Burwood), with Kerr switching to the “Yes” vote at the Third Reading stage.

⁶⁴ *NSWPD*, 15 May 1984, p 733 (N Pickard).

⁶⁵ *NSWPD*, 15 May 1984, p 709.

⁶⁶ *NSWPD*, 15 May 1984, p 775.

Legislative Council second and third reading voting on the 1984 Bill

Party	2 nd Reading Yes	2 nd Reading No	IPU intra- party unity	3 rd Reading Yes	3 rd Reading No	IPU intra- party unity
Labor	21 (95%)	1 (5%)	0.9	19 (100%)	0 (0%)	1.0
Liberal	4 (40%)	6 (60%)	0.2	2 (20%)	6 (80%)	0.6
National	0 (0%)	6 (100%)	1.0	0 (0%)	6 (100%)	1.0
Australian Democrats	1	0		1	0	
Call to Australia	0	1		0	1	
Total	26 (65%)	14 (35%)		22 (63%)	13 (27%)	

Clearly, Labor members voted along party lines, including some who are known to have had strong Catholic beliefs (for example, BH Vaughan); the one Labor dissenter at the Second Reading stage (C Healey) switched to the “Yes” side at the Third Reading stage.⁶⁷ It is probable that Labor’s small majority in the Upper House, with 24 members from a total of 45, would have influenced this high level of intra-party unity. A similar level of unity applies to the Nationals who again voted as a bloc against the Bill. Less predictable along party lines were the Liberal members, almost evenly divided on the Second Reading and with a preponderance of “No” votes on the Third Reading (with one “Yes” voter switching to “No” (J Hannaford); one “Yes” voter not voting at the Third Reading stage (M Willis).

On the issue of gender, 7 women members voted “Yes” at the Bill’s Second Reading (5 Labor, one Liberal and one Australian Democrat) compared to 2 voting “No” (the Liberal Party’s Beryl Evans and the National Party’s Judith Jakins). The same voting pattern was repeated at the Third Reading stage. On this occasion the women members appear to have voted along similar lines to their male colleagues, especially among Labor ranks, with the result that little or nothing can be made of gender as predictive of voting.

5.6 Comment: The key finding therefore in respect to the 1984 Bill is that, with the exception of Liberal Party members, party membership was by far the most reliable predictor of voting outcomes. In the case of Labor members, comparison of voting patterns between this and earlier Bills suggests that the extent of party unity was almost certainly influenced by the fact that the 1984 Bill bore the personal imprimatur of the party leader; that factor also appears to have played a significant part in defusing the scope of Labor Party opposition to the Bill on the ground of religious belief. The comparison with the 1981 Petersen Bill, where 39 Labor members voted “No”, is particularly stark; and only slightly less so in respect to the 1982 Bill when 38 Labor members voted “Yes” against 23 voting “No”; for this 1982 Bill an intra-party unity score of 0.15 was recorded, whereas the 1984 Bill scored 0.62, an indication of higher intra-party unity in the last case.

⁶⁷ Healey had also switched from “No” to the “Yes” side at the Third Reading on the Unsworth Crimes (Homosexual Behaviour) Amendment Bill 1982.

A factor to bear in mind is that none of the four Bills were identical in nature and therefore members were not voting on exactly the same grounds from one occasion to another. It is also the case that some members may have genuinely changed their minds on the issue as the public debate developed, with others only voting on it for the first time following the 1984 election.

What this case study seems to confirm more generally is that the question of “how” individual members voted on conscience issues is more easily analysed than “why” they voted in a particular way.

6 ABORTION

The issue of abortion, its status and treatment under the criminal law, has not been directly voted upon in a free vote the Legislative Assembly. In the Council, however, the issue was voted on, in 1988 in the context of a motion moved by the Call to Australia Party’s Marie Bignold, and later in relation to a 1991 Private Member’s Bill introduced by the Reverend Fred Nile.

Bignold’s abortion motion condemning the widespread practice of abortion and its public funding, and calling for the enforcement of the criminal law was agreed to, 21 votes to 20, President Johnson casting his vote for the “Ayes”.

Legislative Council: Voting on the Bignold abortion motion⁶⁸

Party	Yes	No	IPU (intra-party unity)
Labor	5 (26%)	14 (74%)	0.48
Liberal	8 (73%)	3 (27%)	0.46
Nationals	5 (83%)	1 (17%)	0.66
Call to Australia	3	0	
Aus Democrats	0	2	
Total	21 (51%)	20 (49%)	

Clearly the abortion issue divided opinion down party lines and equally clearly voting was influenced by religious belief, although this is not entirely explained by the Catholic/non-Catholic divide. The gender divide tended to place female members on the more socially “liberal” side of the debate; 5 women voted “Yes” and 8 “No” (62% of all women voting), compared to 16 male members voting “Yes” and 12 “No” (43% of all men voting).

As explained in the Second Reading speech, the purpose of Fred Nile’s Procurement of Miscarriage Limitation Bill 1995 was to restrict abortions to public hospitals and to prohibit abortions in abortion clinics or private hospitals. It was defeated in the Council at the Second Reading stage, 29 votes to 7.

⁶⁸ *NSWPD*, 2 June 1988, p 1336.

Legislative Council: 2nd Reading vote⁶⁹

Party	Yes	No	IPU (intra-party unity)
Labor	4 (27%)	11 (73%)	0.46
Liberal	0 (0%)	12 (100%)	1.0
Nationals	1 (20%)	4 (80%)	0.6
Call to Australia	2	0	
Aus Democrats	0	2	
Total	7 (19%)	29 (81%)	

The major difference in this vote relates to the Liberal Party, with a united front shown against the Bill. In terms of gender, the female vote was tilted even heavier towards the “liberal” side; 1 female member voted “Yes” (Elaine Nile) and 12 “No” (92% of all women voting), compared to 6 men voting “Yes” and 17 “No” (74% of all men voting).

7 EXTENDING DAYLIGHT SAVING

As the then Leader of the Opposition, Peter Collins acknowledged the extension of daylight saving to the last Sunday in March of each year, consistent with the position in Victoria, South Australia and Tasmania, was a relatively minor change yet one upon which Coalition members were divided, town against country.⁷⁰ For that reason, Coalition members were allowed a free vote on the Standard Time Bill 1995; the Bill passed, 52 votes to 25, in the Assembly and on the voices in the Council. In the event, as shown in the table below, only Liberal members were divided on the issue, with several members representing mainly urban electorates towards the fringes of Sydney voting “No” (for example, Marie Ficarra, Georges River, Chris Downy, Sutherland, Kevin Rozzoli, Hawkesbury and Wayne Merton, Baulkham Hills) alongside their rural colleagues (for example, Russell Smith, Murray and Albie Schultz, Burrinjuck).

Legislative Assembly: 2nd Reading vote⁷¹

Party	Yes	No	IPU (intra-party unity)
Labor	45 (100%)	0 (0%)	1.0
Liberal	6 (43%)	8 (57%)	0.14
Nationals	0 (0%)	16 (100%)	1
Independents	1	1	
Total	52 (68%)	25 (32%)	

⁶⁹ *NSWPD*, 20 November 1995, p 5008.

⁷⁰ *NSWPD*, 7 June 1995, p 847.

⁷¹ *NSWPD*, 7 June 1995, p 851.

8 THE CONDUCT OF JUDGES AND MAGISTRATES

Under section 53 of the NSW *Constitution Act 1902* a judicial officer can only be removed from office on an address from both Houses of Parliament in the same session, seeking removal on the ground of “proved misbehaviour or incapacity”. Moves to activate this provision have been made on three occasions, once in 1998 and twice in 2011. On all three occasions a free vote was allowed to members of the major parties. With the motion for removal defeated in all cases in the Council, the matter did not proceed for deliberation to the Assembly.

The issue arose first in 1998 in relation to the conduct of Justice Vince Bruce, the details of which need not be rehearsed here. On 25 June 1998, the relevant motion was moved in the Council by Labor’s Attorney General, Jeff Shaw, fully cognisant, of course, of the constitutional significance of the task before the House. Perhaps of all the issues dealt with in this paper, the free vote on the conduct of a judicial officer is the most open ended, in the sense that members are not likely to come to it with any obvious pre-conceived beliefs, interests, loyalties or party or other affiliations. They are well and truly on their own, guided by their appreciation of the matter at hand and perhaps more open to influence by their peers in the process of deliberation than on other occasions. At any rate, Jeff Shaw laid the out the ground for debate very carefully, emphasising that it was “not a political process”, saying “We act today as a Parliament, not as members of political parties and not for political ends”.⁷² Both the debate and the vote that followed, in which the motion was defeated, 16 votes to 24, reflect that sense of open deliberation and decision. Voting on the motion shows that party membership was not a significant factor.

Legislative Council: vote on motion⁷³

Party	Yes	No	IPU (intra-party unity)
Labor	7 (41%)	10 (59%)	0.18
Liberal	6 (60%)	4 (40%)	0.2
National	2 (33%)	4 (67%)	0.34
CDP	0	2	
Other	1	4	
Total	16 (40%)	24 (60%)	0.2

In 2011 the conduct of two magistrates, Jennifer Betts and Brian Maloney, came before the Council, with both magistrates appearing before the Bar of the House to address members on the report of the Conduct Division of the Judicial Commission.⁷⁴ In the case of Magistrate Betts, the motion for removal was defeated on the voices,⁷⁵ whereas in the case of Magistrate Maloney proceedings were more protracted and the motion for removal was defeated after lengthy debate, 15 votes to 22. The genuinely non-partisan nature of the debate is expressed in the voting of the Labor and Liberal members, their

⁷² *NSWPD*, 25 June 1998, p 6525.

⁷³ *NSWPD*, 25 June 1998, p 6587.

⁷⁴ *NSWPD*, 15 June 2011, p 2305 (Magistrate Betts); 21 June 2011, 2897 (Magistrate Maloney).

⁷⁵ *NSWPD*, 16 June 2011, p 2496.

numbers almost evenly divided.

Legislative Council: vote on motion⁷⁶

Party	Yes	No	IPU (intra-party unity)
Labor	5 (42%)	7 (58%)	0.16
Liberal	4 (44%)	5 (56%)	0.12
National	6 (86%)	1 (14%)	0.72
NSW Greens	0	5	1.0
CDP	0	2	1.0
Shooters/Fishers	0	2	1.0
Total	15 (41%)	22 (59%)	

9 HOMOSEXUALITY AND THE AGE OF CONSENT 1999 AND 2003

9.1 The Crimes Amendment (Sexual Offences) Bill 1999: As matters stood under the 1984 legislation the age of consent for heterosexual intercourse was 16 years, while the age of consent for male homosexual intercourse was 18. In 1997 Labor's Jan Burnswoods introduced a Private Member's Bill in the Legislative Council which would "equalise the age of consent for sexual intercourse".⁷⁷ An identical Bill was re-introduced in October 1999, by which time membership of the Council had become extremely complex, with no fewer than 13 cross-bench members in a House of 42.

In any event, after lengthy debate over a number of sitting days in which Labor and Liberal members were allowed a free vote, the Burnswoods Bill was narrowly defeated at the Second Reading stage, 19 votes to 20.

Legislative Council: 2nd Reading vote⁷⁸

Party	Yes	No	IPU (intra-party unity)
Labor	8 (53%)	7 (47%)	0.06
Liberal	4 (50%)	4 (50%)	0.00
Nationals	0 (0%)	4 (100%)	1.0
Greens	2	0	
CDP ⁷⁹	0	2	
Other	5	3	
Total	19 (49%)	20 (51%)	

Both Labor and Liberal members, those able to exercise a free vote, were more or less equally divided. On the gender front, 6 female members voted for the Bill and 2 against (25% of all women voting), compared to 13 men voting "Yes" and 18 "No" (58% of all men voting). Of the 6 women voting "Yes", there were 3 Labor, 1 Liberal, 1 NSW Greens and 1 Independent (the former Liberal Helen Sham-Ho).

⁷⁶ NSWPD, 13 October 2011, p 6177.

⁷⁷ NSWPD, 21 October 1999, p 1723.

⁷⁸ NSWPD, 18 November 1999, p 3215.

⁷⁹ Christian Democratic Party (formerly Call to Australia).

9.2 The Crimes Amendment (Sexual Offences) Bill 2003: In 2003 the Carr Labor Government returned to the issue, with Attorney General Bob Debus introducing a Bill into the Legislative Assembly on 7 May 2003 which also proposed tougher penalties in respect to child sex offences generally. Labor and the Liberal Party allowed a conscience vote; the National Party did not, although two of its members crossed the floor in the Assembly; the National Party leader Andrew Stoner described the proposal to lower the age of consent as “left-wing social engineering” and said that his Party would be reflecting the “views of the regional, rural and coastal communities it represents”.⁸⁰ Following debate on 20 and 21 May, the Bill passed the Second Reading stage, 54 votes to 32.

Legislative Assembly: 2nd Reading vote⁸¹

Party	Yes	No	IPU (intra-party unity)
Labor	41 (82%)	9 (18%)	0.64
Liberal	9 (43%)	12 (57%)	0.14
Nationals	2 (20%)	8 (80%)	0.6
Independents	2	3	
Total	54 (63%)	32 (37%)	

In the Council the Bill was debated on 22 and 27 May and passed at the Second Reading stage, 23 votes to 16.

Legislative Council: 2nd Reading vote⁸²

Party	Yes	No	IPU (intra-party unity)
Labor	11 (73%)	4 (27%)	0.46
Liberal	6 (67%)	3 (33%)	0.34
Nationals	0 (0%)	4 (100%)	1.0
NSW Greens	3	0	
CDP	0	2	
Other	3	3	
Total	23 (59%)	16 (41%)	

In terms of party, a core of Labor members voted “No” against their party leader, Bob Carr, while those Liberal members voting “No” also voted against the party leader, John Brogden. The tables in this section indicate a similar voting pattern across the two Houses, the major exception being that in the Assembly two National Party members (Rob Oakeshott and RW Turner) crossed the floor and voted for the Bill. Those voting against the Bill in the Assembly are not easily categorised along religious or ideological lines; among the “Noes” were a number of members on the socially conservative side (for example, Labor’s Paul Gibson and Chris Hartcher from the Liberals), but with them a number of more socially “liberal” members, such as Barry O’Farrell and Peter Debnam, two future Liberal leaders.

In respect to gender, female members voted overwhelmingly for the Bill, 19

⁸⁰ *NSWPD*, 20 May 2003, pp 744-747.

⁸¹ *NSWPD*, 21 May 2003, p 904.

⁸² *NSWPD*, 27 May 2003, p 1138.

voting “Yes” and 3 “No” (14% of all women voting), compared to 35 men voting “Yes” and 29 voting “No” (45% of all men voting). A similar pattern was evident in the Upper House, with 10 female members voting “Yes” and 2 “No” (17% of all women voting), compared to 13 men voting for and 14 against the Bill (52% of all men voting).

10 PHYSICAL PUNISHMENT OF CHILDREN

The Crimes Amendment (Child Protection-Physical Mistreatment) Bill 2001 sought to limit the use of physical force against a child by defining the circumstances in which the defence of lawful correction could be raised as a defence in any criminal proceedings relating to the use of physical force against a child. Originally introduced in May 2000 in the Upper House by Alan Corbett of the micro-party A Better Future for Our Children, following a referral to the Standing Committee on Law and Justice the Bill was proceeded with in 2002, debated over several days and passed at the Second Reading stage, 31 votes to 9. Only the Liberal Party allowed a free vote, as reflected in the voting with 6 Liberals voting “Yes” and 3 “No” (along with 4 Nationals and the Reverend and Mrs Nile). All Labor Party members voted for the proposal (14 in total), along with 2 Greens and 9 others in a House of 13 cross-benchers. The Labor Government had effectively adopted the Bill, which was heavily amended in committee in the Council and subsequently passed without division in the Assembly.

11 RESEARCH INVOLVING HUMAN EMBRYOS AND HUMAN CLONING, 2003 AND 2007

11.1 *The Research Involving Human Embryos (NSW) 2003 Bill:* In May 2003, then Minister for Science and Medical Research, Frank Sartor, introduced two cognate Bills, the Human Cloning and other Prohibited Practices Bill and the Research Involving Human Embryos (NSW) Bill. Both Bills were part of a larger national scheme of reforms agreed to at COAG and embodied federally in the initial Research Involving Human Embryos and Prohibition of Human Cloning Bill 2002, in respect to which the major parties had allowed a conscience vote.⁸³ This federal Bill was later split in two thereby allowing MPs the opportunity to vote against human cloning but in favour of embryo research, an arrangement that was later followed in NSW.⁸⁴

In the event, the NSW Bill prohibiting human cloning proved uncontroversial and, although dealt with as a cognate Bill was in fact voted on separately to the Research Involving Human Embryos (NSW) Bill, passing through all stages in both Houses on the voices. On the other hand, the voting at the second reading

⁸³ Whereas the Research Involving Human Embryos (NSW) Bill effectively mirrored the relevant aspects of its federal counterpart, the NSW Human Cloning and other Prohibited Practices Bill included a number of offences that were required to apply specifically at the State level.

⁸⁴ K Ross, SM Dodds and RA Ankeny, “A matter of conscience? The democratic significance of conscience votes in legislating bioethics in Australia” (2009) 44(2) *Australian Journal of Social Issues* 121 at 127.

stage on the Research Involving Human Embryos (NSW) Bill was as follows:⁸⁵

Legislative Assembly: 2nd reading vote⁸⁶

Party	Yes	No	IPU (intra-party unity)
Labor	42 (81%)	10 (19%)	0.62
Liberal	14 (70%)	6 (30%)	0.4
Nationals	9 (82%)	2 (18%)	0.64
Other	3	3	
Total	68 (76%)	21 (24%)	

Legislative Council: 2nd reading vote⁸⁷

Party	Yes	No	IPU (intra-party unity)
Labor	14 (100%)	0 (0%)	1.0
Liberal	7 (70%)	3 (30%)	0.4
Nationals	2 (100%)	0 (0%)	1.0
Greens	3	0	
Other	3	3	
Total	29 (83%)	6 (17%)	

On a gender breakdown, in the Assembly 16 of 22 women MPs voted “Yes”, with the remaining 6 voting “No” (27% of all women voting). The male vote was 52 “Yes” and 15 “No” (22% of all men voting). On that basis alone, setting aside any qualitative considerations, these figures would seem to contradict the finding on the equivalent federal Bill, to the effect that “What is undisputable in this case...is that conscience votes on issues relating to reproduction and human life reveal a gender schism and women’s parliamentary presence enhances representation”.⁸⁸ That argument is better served by the Council vote, where all 11 women members voted “Yes” (5 Labor; 3 Liberal; 1 Nationals; 2 NSW Greens).

The 6 male Council members voting “No” could all be said to have “religious” reasons for doing so, with 4 of them subscribing to Catholicism,⁸⁹ in addition, the Reverends Fred Nile and Gordon Moyes are both of the Protestant faith. The same would seem to apply for a number of members voting “No” in the Assembly, although their arguments were not always couched in religious terms.⁹⁰ For example, on the Labor side, in the case of Kristina Keneally, an acknowledged Catholic, her arguments against the Bill were couched more in scientific than religious terms, although she did say that the Bill “marks the

⁸⁵ The Third Reading in both Houses passed on the voices: *NSWPD*, 18 June 2008, p 1694; 26 June 2003, p 2224.

⁸⁶ *NSWPD*, 18 June 2003, p 1693.

⁸⁷ *NSWPD*, 26 June 2003, p 2186.

⁸⁸ K Ross, SM Dodds and RA Ankeny, “A matter of conscience? The democratic significance of conscience votes in legislating bioethics in Australia” (2009) 44(2) *Australian Journal of Social Issues* 121 at 128.

⁸⁹ D Clarke, C Lynn, Dr Wong and M Gallacher.

⁹⁰ For example, Grant McBride, Kristina Keneally, Virginia Judge and Barbara Perry (ALP) and Chris Hartcher (Lib).

beginning of purely instrumental uses of human life”.⁹¹ Virginia Judge argued that “embryonic stem cell research is unethical because it involves the wilful destruction of created embryos that have an inherent dignity”, but in presenting that case she emphasised that “This debate is not about religion versus science but good science versus bad science”.⁹² Marianne Saliba, as the mother of four children, “not one of whom is biologically mine”, spoke from personal experience against a Bill she believed to be “morally wrong”.⁹³ However, even if the influence of religion is acknowledged, constructing a coherent and predictive “religious” narrative from this vote remains problematic, either in terms of the individual MP’s belief system, with many other members with acknowledged religious allegiances voting “Yes”, or in respect to any constituency influence bearing in mind the complexities involved.⁹⁴ Perhaps the most that can be said is that the influence of religion is not determined by allegiance per se but, rather, by the nature and active depth of that allegiance.

A feature of the second reading speech was its express reference to the “Premier’s strong commitment” to the Bill. However, as in the case of the Crimes Amendment Bill 1984, it did not prevent nearly one in four Labor members in the Assembly from voting “No”. In the Council, on the other hand, all 14 Labor members voted “Yes”, irrespective of religious or other considerations, again an echo of the voting patterns seen in 1984. The Liberals on the other hand, consistent with the earlier findings, in both Houses had the lowest IPU score of any major party. With that exception, party affiliation remained a significant predictor of voting outcomes.

11.2 The Human Cloning and other Prohibited Practices Amendment Bill 2007: As explained by the second reading speech of 30 May 2007, this Bill was again part of a package of national reforms, continuing the prohibition on human cloning for reproduction but enabling “research to be undertaken under licence and in an ethically appropriate way that includes appropriate safeguards...”.⁹⁵ As noted, the Bill is notable for the reason that Cardinal Pell chose this occasion to issue a veiled warning to Catholic members, comments that were referred to at many points in the parliamentary debate; this eventually resulted in an inquiry by the Upper House Privileges Committee into whether the comments constituted contempt of Parliament.⁹⁶

⁹¹ NSWPD, 17 June 2003, p 1629.

⁹² NSWPD, 17 June 2003, p 1623.

⁹³ NSWPD, 17 June 2003, p 1628.

⁹⁴ In relation to members with a Catholic background, members can be found on both sides of the vote: for example, Paul McLeay and Morris Iemma (ALP) and Barry O’Farrell (Lib) voting “Yes”.

⁹⁵ NSWPD, 30 May 2007, pp 465-468.

⁹⁶ Legislative Council Privileges Committee, *Comments by Cardinal Pell concerning the Human Cloning and Other Prohibited Practices Amendment Bill 2007*, Report 38, September 2007. The Committee found that Archbishop Pell’s comments did not amount to an improper interference with the ability of the Legislative Council or its members to perform their functions and therefore did not constitute contempt of Parliament.

The Bill passed through all stages in the Assembly on 7 June following a detailed and vigorous debate, informed by what Verity Firth, the Minister with carriage of the Bill, described as “compassion, thoughtfulness and heartfelt belief”,⁹⁷ showing the Assembly at its deliberative best.

Legislative Assembly: Agreement in Principle vote⁹⁸

Party	Yes	No	IPU (intra-party unity)
Labor	38 (75%)	13 (25%)	0.5
Liberal	13 (59%)	9 (41%)	0.18
Nationals	9 (69%)	4 (31%)	0.38
Independent	5	0	
Total	65 (71%)	26 (29%)	

Following its passage through the Legislative Assembly, the Bill was introduced into the Legislative Council on 19 June 2007. The second reading debate on the Bill took place on 19, 20 and 26 June 2007. At the conclusion of that debate the second reading of the Bill was carried on division by 27 votes to 13. The third reading was carried on division by 26 votes to 13.

Legislative Council: 2nd Reading vote⁹⁹

Party	Yes	No	IPU (intra-party unity)
Labor	14 (82%)	3 (18%)	0.64
Liberal	4 (40%)	6 (60%)	0.2
Nationals	3 (60%)	2 (40%)	0.2
Greens	4	0	
Other	2	2	
Total	27 (68%)	13 (32%)	

Looking at the Assembly vote, there was a sizeable “No” vote amongst Labor members, 25% in total; but again the most pronounced division in voting was amongst the Liberals, followed on this occasion by the Nationals. A similar pattern was evident in the Council. On these figures, party affiliation could not be seen as a reliable predictor of voting outcomes.

As with the 2003 Bill, it is reasonable to assume that the nature and depth of religious affiliation influenced the “No” vote in both Houses, although it tended to be expressed in spite of rather than in support of Cardinal Pell’s comments.¹⁰⁰ Indeed, it would be wrong to assume that the religious influence was limited to Catholic members.¹⁰¹ More broadly, the Hansard debates would seem to confirm the findings of Donaghey and Galloway that the Christian Churches did not exercise significant institutional influence on voting patterns.

On the gender front, the votes indicate that female members tend to vote in

⁹⁷ *NSWPD*, 7 June 2007, p 1035.

⁹⁸ *NSWPD*, 7 June 2007, p 1038. This was equivalent to the Second Reading.

⁹⁹ *NSWPD*, 26 June 2007, p 1683.

¹⁰⁰ *NSWPD*, 6 June 2007, p 864 (K Keneally); but see also more express religious arguments at 5 June 2003 p 784 (C Hartcher).

¹⁰¹ For example, Katrina Hodgkinson referred to her Anglican background: *NSWPD*, 6 June 2007, p 865; and less explicitly see also Mike Baird, 6 June 2007, p 954.

support of issues relating to reproduction and human life, although in saying that the complexities of the issue must be acknowledged. In the Council, 12 women members voted “Yes” to one “No” (8% of all women voting); in the Assembly, 19 women members voted “Yes” and 6 “No” (24% of all women voting), compared to 20 male members voting “No” (43% of all men voting).

Above all, these votes confirm that conscience votes in the NSW Parliament can generate a relatively high level of “free” voting, where a significant number of members do not follow a party line. This is true across both Houses for the Liberal Party, but is more pronounced in the Assembly for Labor.

12 SAME-SEX EQUALITY AND COALITION FREE VOTES

In the new millennium the cause of same-sex equality was furthered through a number of measures, starting with the Superannuation Legislation Amendment (Same Sex Partners) Bill 2000, its purpose being to remove discriminatory aspects of superannuation arrangements for NSW public sector employees who were in domestic relationships involving same-sex partners.¹⁰² On this occasion, as in later votes on the Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008 and the Relationships Register Bill 2010, only the Coalition parties allowed a free vote.

These three measures can be discussed in summary. The Superannuation Legislation Amendment (Same Sex Partners) Bill 2000 was a Government Bill introduced in the Legislative Assembly by the Deputy Premier, Dr Refshauge. With all Labor members voting in favour, it passed through all stages relatively easily, by 59 votes to 19 at the Second Reading stage. The “Noes” comprised of 11 National members (including Rob Oakeshott and Katrina Hodgkinson, the only woman opposing the Bill in the Assembly); 6 Liberals were also opposed, as were 2 Independents representing regional constituencies (Richard Torbay and Tony Windsor).¹⁰³ A similar story applied in the Upper House, with the Bill passing the Second Reading stage by 27 votes to 8 (the “Noes” comprising 3 Nationals, the Reverend and Mrs Nile, one Liberal and 2 micro-party members).¹⁰⁴

The Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008 was first introduced in the Legislative Council. As explained in the Second Reading speech, the Bill amended certain parenting presumptions to the benefit of same-sex lesbian couples. The Attorney General stated:

The amendments will mean that where a woman who is in a de facto relationship within the meaning of the Property (Relationships) Act 1984 with another woman and has undergone a fertilisation procedure as a result of which she becomes pregnant, the woman who becomes pregnant is presumed to be the mother of any child born as a result of the pregnancy, even if she did not

¹⁰² *NSWPD*, 1 November 2000, p 9566.

¹⁰³ *NSWPD*, 22 November 2000, p 10567.

¹⁰⁴ *NSWPD*, 1 December 2000, p 11456.

provide the ovum used in the procedure, and the other woman is presumed to be a parent of any child born as a result of the pregnancy, including where she provided the ovum used in the fertilisation procedure, provided she consented to the procedure.¹⁰⁵

In the event, the Bill passed through the Upper House on the voices, following the heavy defeat of an amendment moved the Reverend Fred Nile to refer the Bill to the Standing Committee on Law and Justice, 7 votes to 34.¹⁰⁶ In the Assembly, the Bill passed the Second Reading stage by a comfortable margin, 64 votes to 11 (comprising 7 Liberals, 2 Nationals and 2 country Independents – Peter Draper, Tamworth and Dawn Fardell, Dubbo).¹⁰⁷ Fardell was one of only two women against the Bill, the other being Katrina Hodgkinson. All party leaders voted for the Bill.

Another Bill passed with comfortable majorities in both Houses was the Relationships Register Bill 2010, the purpose of which was to provide for the legal recognition of persons in a relationship, regardless of their sex.¹⁰⁸ In the Assembly, the Bill was agreed to in principle, 62 votes to 9 (the “Noes” comprising 6 Liberals and 3 Nationals, including the Leader Andrew Stoner and Katrina Hodgkinson, the only women voting against the Bill).

In a House of 93 members, no fewer than 21 did not register a vote; the absentees included 9 National Party members; of those Nationals who voted, only one, RW Turner, voted in support of the Bill.

Perhaps the most telling fact of all is that Labor did not allow a free vote on any of these Bills. It suggests that, for whatever reason, a display of party unity was judged to be of paramount importance on each of these issues. As discussed below, a different view was taken on at least two other issues in 2010.

13 SAME-SEX ADOPTION 2010

A tendency of governments to introduce controversial legislation of the sort that gives rise to free votes, towards the end of a term of Parliament, has been noted in the literature. In the second half of 2010, as the 54th Parliament drew to an end and with it an era of Labor power stretching back to 1995, three free votes were allowed on major Bills dealing with “conscience issues”, namely same-sex adoption, Sydney’s medically supervised injecting centre and surrogacy law. Each of these measures is considered separately.

The Adoption Amendment (Same Sex Couples) Bill 2010 (No 2) had a long gestation, including an Upper House committee inquiry on the subject in 2009.¹⁰⁹ Introducing the Private Member’s Bill into the Assembly, Clover Moore

¹⁰⁵ *NSWPD*, 7 May 2008, p 7083.

¹⁰⁶ *NSWPD*, 3 June 2008, p 7894.

¹⁰⁷ *NSWPD*, 4 June 2008, p 8221.

¹⁰⁸ *NSWPD*, 23 April 2010, p 22240.

¹⁰⁹ Legislative Council Standing Committee on Law and Justice, *Adoption by same-sex couples*,

said that the Bill:

embodies an amendment to the bill I introduced on 24 June 2010 by exempting faith-based adoption agencies from provisions in the Anti-Discrimination Act 1977 when providing adoption services. This will make it not unlawful for faith-based adoption agencies to refuse adoption services to same-sex couples.

Speaking in the Second Reading debate in support of the Bill, subject to an amendment deleting the faith-based exemption and replacing it with a general exemption from the Anti-Discrimination Act,¹¹⁰ then Leader of the Opposition in NSW, Barry O'Farrell, said:

I have high regard for conscience votes on issues like this where personal beliefs, political philosophy and community mores intersect. It is important that all members of Parliament think long and hard before casting their votes. Another benefit of these types of votes is the fact that debates like this are also generally conducted with a maximum of reason and tolerance.¹¹¹

So it proved in this case, with members making thoughtful speeches and with the Premier, Kristina Keneally, assuring the House that "As leader I have not sought to engineer a result". She also said:

This bill is not ordinary business. It goes to core beliefs about how families form and how children are raised. It requires us to consider views that will either be in conflict or in congruence with our values and beliefs, which are formed by our personal experiences and therefore deeply held. For many of us it raises issues of faith.¹¹²

In the event the Bill was agreed to in principle, 46 votes to 44, on 2 September 2010 and passed through all remaining stages the same day, 45 votes to 43. The agreement in principle vote is set out in more detail below.

Legislative Assembly: Agreement in Principle vote

Party	Yes	No	IPU (intra-party unity)
Labor	29 (60%)	19 (40%)	0.2
Liberal	11 (46%)	13 (54%)	0.08
Nationals	2 (15%)	11 (85%)	0.7
Independent	4	1	
Total	46 (51%)	44 (49%)	

In the Council, the Bill passed its Second Reading on 8 September 2010, 22 votes to 15, and its Third Reading the same day and by the same margin.

Report 39, July 2009.

¹¹⁰ The amendment as moved by Frank Sartor was agreed to: *NSWPD*, 2 September 2010, p 25190.

¹¹¹ *NSWPD*, 2 September 2010, p 25138.

¹¹² *NSWPD*, 1 September 2010, p 25051.

Legislative Council: 2nd Reading vote

Party	Yes	No	IPU (intra-party unity)
Labor	12 (71%)	5 (29%)	0.42
Liberal	5 (50%)	5 (50%)	0.0
Nationals	3 (60%)	2 (40%)	0.2
Greens	2	0	
Other	0	3	
Total	22 (59%)	15 (41%)	

A notable feature of these votes is the extent of party disunity, in particular within the Liberals across both Houses, which confirms the general trend, but also to a high level within Labor in the Assembly. This is an issue that clearly divided members down party lines as much, if not more, than across them.

As for gender, women were predominantly in the “Yes” camp, thereby representing what might be described as the socially liberal side of politics; in the Assembly 15 women voted for the Bill, 8 against (35% of all women voting), compared to 31 men voting for and 36 against (54% of all men voting). Again, this trend was even more pronounced in the Upper House where 8 women voted “Yes” to one voting “No” (11% of all women voting), compared to 14 men voting for and 14 against (50% of all men voting).

Explaining precisely why members voted one way or another is difficult and probably best approached via a range of factors. The fact that the Nationals voted predominantly against the measure in the Assembly might suggest that similar constituency influences were at work in the more socially conservative regional areas as in 1984. But accepting that was the case, it needs to be said that on this occasion complex countervailing arguments were in play, with the issue discussed as much in terms of the rights of children as of same-sex couples seeking to adopt. The fact that such powerful countervailing arguments, practical and philosophical, were present here makes it especially hard to reduce voting patterns to religious or other ideological tendencies, or indeed to any generalised explanation. Of the eight female members on the “No” side in 2010, four of these had voted against¹¹³ and the same number for the cloning Bill in 2007.¹¹⁴ This in turn suggests the extent to which free votes need to be considered on their own terms.

¹¹³ Marie Andrews, Noreen Hay, Virginia Judge and Barbara Perry.

¹¹⁴ Cherie Burton, Angela D’Amore, Katrina Hodgkinson and Lylea McMahon.

14 THE SURROGACY BILL 2010

Introduced in the Legislative Council on 21 October 2010, it was explained in the Second Reading speech that, among other things, the Surrogacy Bill 2010 would provide a framework for the Supreme Court to grant orders that would transfer full legal parentage of children from their birth parent, or birth parents, to the intended parents under a surrogacy arrangement. These parentage orders were intended to serve the best interests of the children concerned and would be open to same-sex and de facto couples. Advertising in relation to commercial surrogacy was to remain an offence.¹¹⁵ This was another issue with a lengthy history, including a 2009 report by the Council's Standing Committee on Law and Justice.¹¹⁶ The Bill was debated on 27 October and passed without amendment, 24 votes to 9 at the Second Reading stage and without division on its Third Reading.

Legislative Council: 2nd Reading vote

Party	Yes	No	IPU (intra-party unity)
Labor	11 (73%)	4 (27%)	0.46
Liberal	4 (57%)	3 (43%)	0.14
Nationals	5 (100%)	0 (0%)	1.0
Greens	4	0	
Other	0	2	
Total	24 (73%)	9 (27%)	

The Bill was introduced into the Assembly on 28 October 2010 at which time the Minister responsible, Linda Burney, commented:

It is interesting to note that recently there have been two conscience votes on legislation—this will be the third—which suggests to me a very strong reformist agenda. The first conscience vote was on legislation dealing with same-sex adoption and the second, just this week, was on legislation dealing with the medically supervised injecting room in Kings Cross. The bill we now have in front of us deals with surrogacy, and demonstrates the vibrancy of the many complex issues that members of Parliament deal with. To be given the opportunity to have a conscience vote on these issues is a very great privilege, one that is taken very seriously by members in this place.¹¹⁷

Debated on 28 October and then 10 November 2010, the Bill was agreed to in principle that same day, 54 votes to 31, and after amendment¹¹⁸ finally passed through all its final stages, 53 votes to 27.¹¹⁹

¹¹⁵ NSWPD, 21 October 2010, p 26544.

¹¹⁶ Legislative Council Standing Committee on Law and Justice, *Legislation on altruistic surrogacy in NSW*, May 2009.

¹¹⁷ NSWPD, 28 October 2010, p 27120.

¹¹⁸ The amendments extended to prohibition against commercial surrogacy to jurisdictions outside NSW and adding new restrictions for intending parents between the ages of 18 and 25: NSWPD, 10 November 2010, pp 27598-27601.

¹¹⁹ Note that, compared to the earlier agreement in principle stage, at the final passing of the Bill 2 Nationals (Kevin Humphries and Don Page) and one Labor member (Tony Stewart) did not vote; also one Nationals members switched to the "yes" side (Katrina Hodgkinson).

Legislative Assembly: 3rd Reading vote¹²⁰

Party	Yes	No	IPU (intra-party unity)
Labor	36 (78%)	10 (22%)	0.56
Liberal	11 (48%)	12 (52%)	0.04
Nationals	3 (50%)	3 (50%)	0.0
Independents	3	2	
Total	53 (66%)	27 (34%)	

The pattern of marked intra-party division is again confirmed across both Houses. So too is the gender imbalance in voting, with a greater proportion of female than male members voting for the Bill; 18 for and 4 against in the Assembly (18% of all women voting), compared to 35 men voting for and 23 against (40% of all men voting); 10 women voting for the Bill and 1 against in the Council (9% of all women voting), compared to 14 men voting for and 8 against (36% of all men voting). The one female member voting against all 3 Bills from 2007 and 2010 (on cloning, same-sex adoption and surrogacy) in the Council was Marie Ficarra; with Marie Andrews, Virginia Judge and Barbara Perry voting “No” on the same Bills in the Assembly.

15 THE SYDNEY DRUG INJECTING CENTRE 2002-2010

The Sydney Drug Injecting Centre was established in 1999 on a trial basis, with extensions granted in 2002, 2003 and 2007. The purpose of the Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010 was to remove the Centre’s trial status and to establish it on an ongoing basis.

In respect to the extensions granted in 2002, 2003 and 2007, these were subject to free votes for the Liberal Party in all cases; for the Nationals in 2002 and 2003;¹²¹ and for Labor in 2007 only, although this seems uncertain with at least one Opposition speaker stating in 2007 that he was “disappointed” that Government members did not have a free vote on the Bill.¹²² In any event, for the Drug Summit Legislative Response Amendment (Trial Period Extension) Bills of 2002, 2003 and 2007, in the Assembly all Labor members voted “Yes”;¹²³ one National Party member voted for the Bill in 2002 and 2003 (Rob Oakeshott on both occasions) and none in 2007 (Oakeshott was by then an Independent). Effectively, therefore, the only Party with a reasonable divergence of opinion was the Liberal Party; in 2002 4 members voted for the trial extension (13 voting against), with 3 members voting “Yes” in 2003 (13 voting against) compared to 5 in 2007 (18 voting against).

¹²⁰ The terminology had changed in the Assembly, but the more familiar term of “Third Reading” is used here.

¹²¹ In 2003 this was confirmed by the National Party leader, Andrew Stoner, who confirmed that even with a free vote all members opposed the Bill. In fact, one National Party member voted for the Bill: *NSWPD*, 17 September 2007, p 3442. For 2007 see: *NSWPD*, 19 June 2007, p 1241. Mr Stoner said that the Nationals would “oppose the bill as a party”, noting that in doing so they were representing the view of “country people”.

¹²² *NSWPD*, 20 June 2007, p 1419 (Greg Smith). Earlier the Nationals leader, Andrew Stoner, indicated that Labor had allowed a free vote (*NSWPD*, 19 June 2007, p 1241).

¹²³ *NSWPD*, 5 June 2002, p 2609; 17 September 2003, p 3461; and 20 June 2007, p 1430.

A similar voting pattern was evident in 2010. Formally, as indicated by Linda Burney, the vote on the Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010 was a free vote for all parties. In substance, however, this was not readily apparent for the Labor Party, either on the voting record or in the debate on the Bill, with members voting and speaking resoundingly in its favour in both Houses. The same can be said of the Nationals, in that case with all members opposing the proposal.

In effect, therefore, the free vote only applied meaningfully for Liberal members. Speaking against the measure, then Opposition Leader Barry O'Farrell argued that the Bill was politically motivated, saying:

Why is this legislation being introduced now? We know that under previous legislation the medically supervised injecting centre trial was not due to finish until next year. We know also that under previous legislation the evaluation report was not due until next year. In an attempt to cobble together some sort of coalition to get her across the line at the next election, Kristina Keneally, again, is prepared to play politics with something that should be above politics—that is, the scourge of drug addiction and the way government tackles drug addiction.¹²⁴

Voting on the Bill in both Houses was as follows:

Legislative Assembly: Agreement in Principle vote

Party	Yes	No	IPU (intra-party unity)
Labor	48 (100%)	0 (0%)	1.0
Liberal	6 (26%)	17 (74%)	0.48
Nationals	0 (0%)	11 (100%)	1.0
Independents	3	1	
Total	57 (66%)	29 (34%)	

Legislative Council: Third Reading vote

Party	Yes	No	IPU (intra-party unity)
Labor	16 (100%)	0 (0%)	1.0
Liberal	2 (22%)	7 (78%)	0.56
Nationals	0 (0%)	5 (100%)	1.0
Greens	4	0	
Other	0	3	
Total	22 (59%)	15 (41%)	

Except to say that for Labor and the Nationals, party was the sole predictive factor influencing voting, very little can be made of the voting patterns on the Bill. For the Liberal Party, the “Yes” vote was 24% in 2002, 19% in 2003, 22% in 2007 and 26% in 2010. Opinion was divided, therefore, but not on any clear gender, religious or ideological lines.

¹²⁴ NSWPD, 21 October 2010, p 26554.

16 THE CRIMINAL LAW AND THE UNBORN CHILD 2013

The Crimes Amendment (Zoe's Law) Bill 2013 (No 2) is another Bill with a long history in NSW.¹²⁵ This includes the passing of the Crimes Amendment (Grievous Bodily Harm) Bill 2005 the purpose of which, as explained in the Second Reading speech, was to amend:

the Crimes Act 1900 to ensure that offences under that Act relating to the infliction of grievous bodily harm extend to the destruction by a person of the foetus of a pregnant woman. The very tragic case involving the death of Renee Shields' unborn child, Byron, highlighted a deficiency in the law in relation to the charging of offenders.¹²⁶

The 2005 Bill did not overturn the "born alive rule", as this operates under the criminal law; the grievous bodily harm at issue was to the mother. In the event, only the Liberal Party allowed a free vote and then only on an amendment moved in the Council by the Reverend Fred Nile, the effect of which would have been to replace the words "the foetus of a pregnant woman" with "child in utero". The amendment was defeated, 17 votes to 22, with all National Party members voting for and all Labor members against; on the Liberal side 8 members voted for and 2 against the amendment.¹²⁷

The Crimes Amendment (Zoe's Law) Bill 2013 (No 2) was introduced in the Legislative Assembly on 29 August 2014 by Chris Spence, a Liberal MP. It was a revised version of a Private Member's Bill introduced by the Reverend Fred Nile earlier in the same year in the Upper House. As explained in the Second Reading speech for Zoe's Law Bill (No 2), its main object was:

to amend the Crimes Act 1900 to recognise the existence of the foetus of a pregnant woman that is of at least 20 weeks gestation so that proceedings for certain offences relating to grievous bodily harm may be brought against an offender who causes the unlawful destruction of or harm to any such foetus as proceedings for grievous bodily harm to the foetus rather than proceedings for grievous bodily harm to the pregnant woman.¹²⁸

Viewed from a certain perspective, this was a classic free vote on a conscience issue, debated at length and leaving members to wrestle with complex moral and legal problems. On another view, expressed in the debate,¹²⁹ the decision to make it a non-party vote was a wrong decision. A major concern was that the Bill would effect a conceptual change to the criminal law, providing that where a foetus has reached 20 weeks' gestation (or has a body mass of 400 grams when the length of the gestation cannot be proven) it is an "unborn child" and

¹²⁵ For an account of the Bill and previous developments see: L Blayden, *Crimes Amendment (Zoe's Law) Bill 2013*, E-brief 8/2013 and L Blayden, *Crimes Amendment (Zoe's Law) Bill 2013 (No 2)*, E-brief 9/2013.

¹²⁶ *NSWPD*, 2/3/2005, p 14454.

¹²⁷ *NSWPD*, 4 May 2005, p 15493.

¹²⁸ *NSWPD*, 29 August 2013, p 23024.

¹²⁹ *NSWPD*, 29 August 2013, p 23024.

“taken to be a living person despite any rule of law to the contrary. In doing so, women’s groups argued that the Bill was the thin of the wedge, having “symbolic implications that can be used in the ongoing anti-choice campaign to criminalise terminations”.¹³⁰

The Bill passed through the Assembly, subject to an amendment the key conceptual feature of which was that it provided, for the avoidance of doubt, that nothing in the Bill would create “a criminal offence in respect of an unborn child in circumstances which, prior to the commencement of the *Crimes Amendment (Zoe’s Law) Act 2013*, did not constitute a criminal offence in respect of the mother of that unborn child”. To date, the Bill has only passed through the Legislative Assembly, by 57 votes to 31 at the Second Reading stage and by 63 votes to 26 at the Third Reading.

Legislative Assembly: 3rd Reading vote¹³¹

Party	Yes	No	IPU (intra-party unity)
Labor	8 (40%)	12 (60%)	0.2
Liberal	40 (83%)	8 (17%)	0.66
Nationals	15 (83%)	3 (17%)	0.66
Other	0	3	
Total	63 (71%)	26 (29%)	

In terms of voting numbers, the first point to make is that, unlike the previous Parliaments discussed in the paper, following the 2011 State election the Assembly was dominated by the Coalition forces (winning 69 seats to Labor’s 20 in a House of 93 members). Along party lines, marking another reversal of fortune, this was one occasion when party allegiance was a better predictor of voting for Liberal members than for Labor.

Secondly, with women’s groups arguing that the Bill was really about “rolling back a woman’s right to choose and about making terminations criminal”,¹³² to some extent the socially “liberal” side of politics may be said to have gravitated more towards “No” than “Yes”. With that in mind, the gender divide placed female members firmly on the “No” side of the argument, with 9 voting for and 10 against (53% of all women voting), compared to 54 men voting for and 16 against (23% of all men voting). But taking that line of argument any further, to show that those voting “Yes” tended to be less ideologically “liberal” on social issues or more influenced by religious belief would be difficult, bearing in mind the very wide ranging group of members voting “Yes”.

17 EUTHANASIA

17.1 The Rights of the Terminally Ill Bill 2001: Like the abortion issue, the question of euthanasia has not been the subject of a direct vote in the Assembly. In the Council, on the other hand, it was voted on in 2002 and again in 2013, on both occasions in respect to Private Member’s Bills sponsored by

¹³⁰ NSWPD, 19 September 2013, p 23817 (Paul Lynch, Shadow Attorney General)

¹³¹ NSWPD, 21 November 2013, p 26219.

¹³² NSWPD, 19 September 2013, p 23817 (Paul Lynch, Shadow Attorney General)

the NSW Greens. The first of these Bills, sponsored by Ian Cohen, was introduced in November 2001 and, after lapsing owing to prorogation, was restored to the business paper on 26 February 2002, thoroughly debated over a number of sitting days, and eventually defeated at the Second Reading stage, 9 votes to 26.¹³³ Comment and analysis can be limited to noting that the 9 members voting for the Bill comprised 4 Labor members, 1 Liberal, 2 NSW Greens, and 2 others.

17.2 The Rights of the Terminally Ill Bill 2013: The 2013 Bill, sponsored by Cate Faehrmann, met a similar fate, defeated at the Second Reading stage, 13 votes to 23. Voting for the Bill were 8 Labor members and all 5 NSW Greens. All Liberals and Nationals, plus 4 other cross-bench members voted “No”; they were joined by 5 Labor members. The only party therefore that could be said to be divided on the issue was Labor, in 2002 as in 2013; the euthanasia issue was one that attracted support from a number of members on the “left” of the Party. On the gender front, 6 women voted for the measure, 7 against.

18 SAME-SEX MARRIAGE

Same-sex marriage is an issue which has attracted considerable debate in recent years, not least in the Legislative Council. On 24 May 2012, NSW Greens member Cate Faehrmann moved that this House:

- (a) supports marriage equality, and
- (b) calls on the Parliament of the Commonwealth of Australia to amend the Commonwealth Marriage Act 1961 to provide for marriage equality.

The motion was debated over two sitting days, at which time several amendments were moved. Only one of these was agreed to, an amendment by the National Party’s Trevor Khan which, among other things, called for an amendment to the Marriage Act of 1961 to ensure that religious institutions are not forced to solemnise marriages they do not wish to. As amended, the motion was agreed to by 22 votes to 16.

Legislative Council: Vote on motion¹³⁴

Party	Yes	No	IPU (intra-party unity)
Labor	10 (83%)	2 (17%)	0.66
Liberal	4 (36%)	7 (64%)	0.28
Nationals	3 (50%)	3 (50%)	0.00
NSW Greens	5	0	
CDP	0	2	
Other	0	2	
Total	22 (58%)	16 (42%)	

All three major parties were divided on the issue, the Nationals splitting evenly and with the “No” vote bolstered by a majority of Liberal members, a number of whom can be seen to have voted more or less consistently across the

¹³³ NSWPD, 21 March 2002, p 936

¹³⁴ NSWPD, 31 May 2012, p 12366.

conscience issues discussed in this paper and who can be said to have done so, in part at least, for religious reasons.¹³⁵ Around a third of all women voting opposed the motion (4 from a total of 12), whereas 46% of all men voting opposed (12 from a total of 26).

The debate continued, with all major parties allowing a free vote in May 2013 on a motion in support of equality by the Independent Alex Greenwich. This was moved in the Assembly and passed, in an amended form, without a division.¹³⁶

In October 2013, following a committee inquiry into same-sex marriage laws in NSW,¹³⁷ Labor's Penny Sharpe introduced the Same-Sex Marriage Bill 2013 "on behalf", it was said, "of the NSW Cross Party Marriage Equality Working Group".¹³⁸ After lengthy debate over two sitting days, the Bill was defeated at the Second Reading stage, 19 votes to 21.

Legislative Council: 2nd reading vote¹³⁹

Party	Yes	No	IPU (intra-party unity)
Labor	10 (71%)	4 (29%)	0.42
Liberal	2 (20%)	8 (80%)	0.6
Nationals	2 (29%)	5 (71%)	0.42
NSW Greens	5	0	
CDP	0	2	
Other	0	2	
Total	19 (48)	21 (52%)	

On this occasion, the Premier Barry O'Farrell had made it known that, while he supported same-sex marriage in principle, he would not support the Bill, preferring instead a national approach to the issue. The preponderance of Liberal members voting against the Bill may have owed something to that "leadership" factor, although for several of the Liberal members their "No" vote on this Bill was consistent with their voting on other conscience issues. As for gender, again a third of women members voted against the Bill (4 from a total of 12), compared to 61% of male members opposing the Bill (17 from a total of 28). The one truly consistent feature of the vote was that all cross-benchers sided with their own parties, 5 NSW Greens, 2 Christian Democrat and 2 Shooters and Fishers.

¹³⁵ David Clarke, Mike Gallacher, Charlie Lynn and Marie Ficarra.

¹³⁶ *NSWPD*, 23 May 2013, p 20812.

¹³⁷ Legislative Council, Standing Committee on Social Issues, *Same sex marriage in NSW*, Report 47, July 2013.

¹³⁸ *NSWPD*, 31 October 2013, p 25161.

¹³⁹ *NSWPD*, 14 November 2013, p 25697.

19 FINDINGS IN SUMMARY

19.1 Government and Private Members' Bills: Free votes have been recorded in this paper on 14 Government Bills, all of them Labor Government measures, with all of them passing into law. This can be contrasted with the 12 free votes recorded on Private Members' Bills, three of which were passed into law, with eight others defeated and with the fate of one remaining to be determined (Zoe's Law Bill 2013 (No 2)). Any conclusions we may draw from this are complicated by the fact that, of the 14 Government Bills, the party of government only allowed a free vote on six or possibly seven occasions. It could be argued that in all these cases, at least in relation to the Assembly where the Government had a comfortable majority, that it could rely on a relatively high degree of party cohesion and that, practically speaking, there was little if any realistic prospect of defeat;¹⁴⁰ however, the argument is not so clear cut in the Council where no Government has enjoyed a majority since 1988. Labor Party voting on the seven Bills in question is set out in the table below.

Bill	% of Labor members voting "Yes/No" in Leg Assembly	IUP (intra-party unity)	% of Labor members voting "Yes/No" in Leg Council	IUP (intra-party unity)
Crimes Amendment (Sexual Offences) Bill 2003	82/18	0.64	73/27	0.46
Research Involving Human Embryos (NSW) Bill 2003	81/19	0.62	100/0	1.0
Human Cloning and Other Prohibited Practices Bill 2003	No division		No division	
Human Cloning and Other Prohibited Practices Bill 2007	75/25	0.5	82/18	0.64
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007	100/0	1.0	100/0	1.0
Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) 2010	100/0	1.0	100/0	1.0
Surrogacy Bill 2010	78/22	0.56	73/27	0.46

19.2 Influence of party leader and residual party loyalty: The influence of party leaders and residual party loyalty during free votes has been noted in the literature. So, too, has the significant diversity of voting behaviour displayed by the Liberal Party, in particular in Western Australia, along with the comparative finding that "centre-right" parties tend to be less cohesive than their "centrist" and "centre-left" counterparts.

In NSW, the voting patterns indicate that party loyalty was the decisive influence in certain cases, notably for Labor on the issue of Sydney's Drug Injecting

¹⁴⁰ DG Lindsey, *Conscience voting in New Zealand*, PhD University of Auckland 2011, p 190. See the discussion on "The Government and conscience votes".

Centre, upon which the Party presented a united front; on other issues, concerned with same-sex adoption and surrogacy, cloning and human embryo research, as well as Zoe's law, there was considerable diversity of opinion within the Party, which was allowed to be expressed through the mechanism of the free vote. The same was true of the decriminalisation of homosexuality in the 1980s, where a significant number of Labor members voted against the Bill.

Admittedly, the evidence at this stage is relatively sparse for comparable Parliaments, but tentatively at least, it can be suggested that the level of intra-party unity on the "centre-left" tends to be relatively low on certain issues in NSW; as low as 0.2 in the Assembly on same-sex adoption, with 40% of Labor members voting against the Private Member's Bill. However, as set out in the table above, the level of unity tends to be higher where Labor Government Bills are under consideration, although even on some of these occasions around one in four or one in five Labor members voted against the measure.

Across all parties, it is probably right to say that Premier Wran's 1984 Private Member's Bill decriminalising homosexuality was the one clear occasion where the party leader appears to have exercised a discernible influence on the vote. Less clear is the influence of Barry O'Farrell on the Same-sex Marriage Bill 2013, although with the Bill being defeated by a close margin of two votes that influence may have proved decisive.

Consistent with the comparative finding that "centre-right" parties tend to be the least cohesive, a high level of voting diversity is found in the NSW Liberal Party, on most if not all issues considered in this paper. Of the main case studies presented in the paper, the greatest degree of unity recorded was on Zoe's Law Bill (No 2), at which time the Liberals were in Government. In that case, the Party leader, Barry O'Farrell, voted with the majority of his party colleagues on behalf of the Bill, although that is not to make a case for the influence of party leadership on voting behaviour. Liberal Party voting on key free votes is summarised below.

Bill	% of Liberal members voting "Yes/No" in Leg Assembly	IUP (intra-party unity) in Leg	% of Liberal members voting "Yes" in Leg Council	IUP (intra-party unity)
Human Cloning and Other Prohibited Practices Bill 2007	59/41	0.18	40/60	0.2
Adoption Amendment (Same-sex Couples) Bill 2010 (No 2)	46/54	0.08	50/50	0.0
Surrogacy Bill 2010	48/52	0.04	57/43	0.14
Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010	26/74	0.48	22/78	0.56
Crimes Amendment (Zoe's Law) Bill 2013 (No 2)	83/17	0.66	N/A	N/A

The National Party's voting patterns have been recorded and tend towards a similar pattern to Labor's, except that the weight of votes falls more on the

socially conservative side of the political divide. On some issues there was unanimity, but not on all, with a diversity of opinion expressed, for example, in respect to surrogacy, cloning and human embryo research, less so on same-sex adoption and Zoe's Law.

Bill	% of National members voting "Yes/No" in Leg Assembly	IUP (intra-party unity)	% of National members voting "Yes" in Leg Council	IUP (intra-party unity)	
Human Cloning and Other Prohibited Practices Bill 2007	69/31	0.38	60/40	0.2	
Adoption Amendment (Same-sex Couples) Bill 2010 (No 2)	15/85	0.7	60/40	0.2	
Surrogacy Bill 2010	50/50	0.0	0/100	1.0	
Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010	0/100	1.0	0/100	0.00	
Crimes Amendment (Zoe's Law) Bill 2013 (No 2)	83/17	0.66	N/A	N/A	/

Of the minor parties, the largest numerically in this State are the NSW Greens, which up until 2011 only had representation in the Legislative Council; the 2011 election brought their numbers up to five in the Upper House. Consistent with voting patterns observed in other jurisdictions, on all free votes canvassed in this paper the NSW Greens voted in unison in the Upper House. The same applies to the Christian Democrats, under the leadership of the Reverend Fred Nile, as it does to the Shooters and Fishers Party.

19.3 Constituency representation and voting: A limited comment is that the National Party, in falling on the more socially conservative side of several arguments, consistently sought to represent the "country" perspective in NSW, which was seen to be noticeably different, at odds even, with that of suburban Sydney.

A broader comment is that the complexity and quickly evolving nature of many Sydney electorates is not to be underestimated; any analysis of contemporary constituency influence on voting patterns would have to address the issue on that socially dynamic basis.

19.4 Gender and voting: The voting patterns recorded in this paper indicate that, on certain issues at least, a discernible gender difference existed, notably in respect to most same-sex equality and reproduction issues, including Zoe's Law Bill (No 2). This gender difference tended to be more clearly expressed in the Upper House, which may suggest that, without a geographical constituency to represent, some female Council members, on the conservative side of politics in particular, may have felt less constrained when exercising a free vote. But that is purely speculative.

It would not seem to apply, for example, in the case of the 2003 human embryo research Bill, supported by all female members of the Council, but opposed by

6 women in the Assembly, not on constituency grounds but as a result it seems of deeply held religious belief or personal experience. 24% of women in the Assembly also voted against the 2007 human cloning Bill, fewer than the 43% of male MPs, but still a significant expression of “conscience” that cut down and across party lines.

19.5 Religion and voting: There was a time in NSW when most Catholic members of Parliament would almost certainly have belonged to the Labor Party. As late as the 1980s, when the first of the Bills analysed in this paper were voted on, this would have been largely, but not entirely, the case. The same does not apply today, especially in regard to the growing number of Catholic Liberal members of Parliament. More generally, it may be the case that while the influence of religious belief is less pervasive than in the recent past, its impact remains deeply felt and perhaps more openly acknowledged than in those times when the Parliament displayed to the world a decidedly secular front.¹⁴¹

Of course the religious make-up of NSW is very different today to what it was 50 years ago, more multi-faith but also more avowedly non-faith in nature, with the NSW Parliament reflecting those changes. The one occasion when a free vote was allowed on a question of direct relevance to religion was in 2003, on a NSW Greens motion to amend the Christian prayer which starts each sitting of the Upper House. This was defeated 30 votes to 9 (3 NSW Greens, 3 Labor and 1 Australian Democrat), but note that only Labor allowed a free vote on the issue.¹⁴²

At any rate, in terms of free votes there are clearly times when voting has been influenced by personal religious belief. This is obviously the case in respect to the Christian Democrats in the Upper House, but also for other members in both Houses with strongly held religious views. One might say that this is the very point of a free vote; that members are called upon to deliberate and decide on difficult moral and social issues guided by a range of factors and influences, not least personal convictions of a moral and/or religious nature. It is what gives free votes their special quality, taking members outside the machinery of party politics and standing them squarely on their own moral ground.

19.6 Parliamentary terms and free votes: The most interesting free votes discussed in this paper from the perspective of their timing in parliamentary terms are those from 1984 and 2010. Wran’s Private Member’s Bill to decriminalise homosexuality in 1984 was brought in at the very start of a new Parliament, basically to clear the decks of a divisive issue that had been the subject of three contentious Bills in the previous Parliament. Conversely, the three Labor Government Bills from 2010 upon which all major parties allowed a free vote were introduced at the very end of a Parliament and, perhaps more tellingly, towards the predicted end of a long period of Labor power beginning in

¹⁴¹ An example of a contemporary expression of religious belief was the [parliamentary Christian fellowship luncheon held in 2009](#).

¹⁴² NSWPD, 16 September 2003, p 3285.

1995. They had about them a feeling of “if not now, when?” With Labor polling so badly at that stage, there was nothing to lose and, with it, the understanding that any reversal of these decisions would require a Coalition government to reopen issues of a difficult and contentious nature.

19.7 Free votes and parliamentary democracy: As noted, this paper does not purport to be the last word on free votes in the NSW Parliament; far from it. The analysis undertaken here leaves many questions unanswered and many issues still to be raised. It does not, for example, present a detailed answer to the question why parties grant a conscience vote, which can vary from wishing to accommodate the personal views of members in order to prevent them from crossing the floor, to seeking to take the high moral ground on an issue. Should conscience votes only be granted where a party does not have a policy on the issue in question?¹⁴³ There are many controversial issues, but only very few seem to attract a free vote, often to do with reproductive or end of life issues, or where sexuality is a key factor. Climate change, on the other hand, a policy on which there is an undoubted array of opinions in the major parties, lies outside the free vote spectrum, as do such issues as mandatory sentencing, privatisation and censorship. Another line of inquiry might relate to the undercurrents of influence that operate in a political party, covertly or overtly expressed, in terms of perceptions of career trajectories or otherwise. All of which underlines the point that free votes need to be considered as part of the wider political landscape.

One issue canvassed in the introductory comments to this paper referred to the part free votes might play in the re-invigoration of parliamentary debate, as a model for a more open, interesting and vigorous deliberation which is less formulaic and partisan in character. With free votes there is more occasion and inclination to listen to the views of others, to acknowledge and even accommodate arguments which a member may not agree with at first. What is clear is that “conscience issues” provide members with an opportunity to step outside their party roles, thereby tending to lend to parliamentary debate more personal colour and intellectual interest than is usual. Arising from this, there is perhaps a tendency in the media to look upon free votes as an alternative model of parliamentary democracy free of party restraint, one in which MPs regain that view of representation associated with Edmund Burke, where voting is guided by individual judgement and not by constituency or any other influence.

Important as that perspective on free votes may be, the argument can also be made that they should not be looked upon as panaceas for whatever ills are perceived to beset parliamentary democracy. The predictability of voting created by the party system is fundamental to a functioning political system founded on the principle of responsible government; the advantages that attend that system as a rule deserve proper appreciation. Free votes are exceptions to

¹⁴³ DG Lindsey, *Conscience voting in New Zealand*, PhD University of Auckland 2011, Chapter 8.

the rule, agreed to primarily for party political convenience. Viewed in that light they can be seen as something of a “safety valve”, permitting contentious issues to be dealt with without fracturing party discipline, worthy and interesting in themselves, but also an adjunct to the party political system they operate within.

20 CONCLUSION

This paper has canvassed to some extent or other all 33 free votes that have been identified between 1981 and 2013. The focus has been on those case studies where all major parties allowed a free vote on a legislative proposal that was voted upon at least once in the Legislative Assembly. In adopting this approach the paper has sought to elucidate both the uniqueness of each vote taken and also to identify any patterns or trends in voting across a range of different factors. The case studies indicate the extent to which each free vote needs to be analysed on its own terms, in the context of the particular subject at issue and the politics surrounding it; they also indicate the limits that can apply to more generalised explanations, especially where these seek to address not only the quantitative question “how” members voted but also the qualitative question of “why” members voted in a particular way.

APPENDIX A: Free votes in the NSW Parliament, 1981-2013

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
11/11/81	Crimes (Sexual Offences) Amendment Bill 1981	Private Member's Bill Legislative Assembly Wilfred Petersen (ALP)	Labor Liberal National	2/12/1981 Legislative Assembly 2 nd Reading	28	67
2/12/81	Crimes (Adult Sexual Behaviour) Amendment Bill 1981	Private Member's Bill Legislative Assembly Michael Egan (ALP)	Labor Liberal	2/12/1981 Legislative Assembly 2 nd Reading	28	65
18/02/82	Crimes (Homosexual Behaviour) Amendment Bill 1982	Private Member's Bill Legislative Council Barry Unsworth (ALP)	Labor Liberal	18/2/1982 Legislative Council 2 nd Reading	25	15
				16/3/1982 3 rd Reading	26	13
				31/3/1982 Legislative Assembly 2 nd Reading 3 rd Reading	49 42	44 47
10/5/84	Crimes (Amendment) Bill 1984 (Decriminalisation of homosexuality)	Private Member's Bill Legislative Assembly	Labor Liberal	15/5/1984 Legislative Assembly 2 nd Reading	62	35

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
		Neville Wran (ALP)	National	3 rd Reading	62	34
				16/5/1984 Legislative Council 2 nd Reading	26	15
				17/5/1984 3 rd Reading	26	14
				22/5/1984 LA agrees with LC Amendment	66	22
30/10/1986	Motion on Abortion (That this House condemns the widespread practice of abortion and its public funding; and calls for the law to be enforced.)	Other Legislative Council Marie Bignold (Call to Australia)	Labor Liberal National	2/6/1988 Agreed (President Johnson voting with the Ayes)	21	20
22/8/91	Procurement of Miscarriage Limitation Bill 1991 (To restrict abortions to public hospitals and to prohibit abortions in abortion clinics or private hospitals.)	Private Member's Bill Legislative Council Rev Fred Nile (Call To Australia)	Labor Liberal National	20/11/1991 Legislative Council 2 nd Reading	7	29
24/5/95	Standard Time Amendment Bill 1995 (Extending daylight saving to the last	Government Bill Legislative Assembly	Liberal National	7/6/1995 Legislative Assembly 2 nd Reading	52	25

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
	Sunday in March of each year, consistent with Victoria, South Australia and Tasmania.)	Paul Whelan (ALP)		8/6/1995 Legislative Council Passed/no division		
25/6/98	Motion on the conduct of Justice Vince Bruce	Other Legislative Council Jeff Shaw (ALP)	Labor Liberal National	25/6/1998 Legislative Council Motion negated	16	24
21/10/99	Crimes Amendment (Sexual Offences) Bill 1999 (Equalising the age of consent for sexual intercourse)	Private Member's Bill Legislative Council Jan Burnswoods (ALP)	Labor Liberal	18/11/1999 Legislative Council 2 nd Reading	19	20
1/11/00	Superannuation Legislation Amendment (Same Sex Partners) Bill 2000 (Removing discriminatory aspects of superannuation arrangements for NSW public sector employees in relationships involving same-sex partners.)	Government Bill Legislative Assembly Andrew Refshauge (ALP)	Liberal National	22/11/2000 Legislative Assembly 2 nd Reading	59	19
				1/12/2000 Legislative Council 2 nd Reading	27	8
5/5/00	Crimes Amendment (Child Protection-Physical Mistreatment) Bill 2001 (Defined the circumstances in which the defence of lawful correction could be	Private Member's Bill Legislative Council Alan Corbett (A Better Future for Our	Liberal	31/5/01 Legislative Council 2 nd Reading Amended in committee	31	9

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
	raised as a defence in any criminal proceedings relating to the use of physical force against a child.	Children Party)		28/11/01 Legislative Assembly Debated and passed		
29/11/01	Rights of the Terminally Ill Bill 2001 (Allow a terminally ill patient with no hope of recovery, in various strictly controlled circumstances, the right to seek the assistance of a medical practitioner to help end his or her life.)	Private Member's Bill Legislative Council Ian Cohen (NSW Greens)	Labor Liberal National	21/3/2002 Legislative Council 2 nd Reading	9	26
8/5/2002	Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2002	Government Bill Legislative Assembly Paul Whelan (on behalf of John Aquilina) (ALP)	Liberal National	5/6/2002 Legislative Assembly 2 nd Reading	60	28
				6/6/2002 Legislative Council 2 nd Reading	22	9
7/5/03	Crimes Amendment (Sexual Offences) Bill 2003 (Equalising the age of consent for sexual intercourse and introducing tougher penalties for child sex offences generally.)	Government Bill Legislative Assembly Bob Debus (ALP)	Labor Liberal	21/5/2003 Legislative Assembly 2 nd Reading	54	32
				27/5/2003 Legislative Council Passed without division		
21/5/03	Research Involving Human Embryos (NSW) Bill 2003 (To adopt in NSW a uniform Australian	Government Bill Legislative Assembly	Labor Liberal	18/6/2003 Legislative Assembly 2 nd Reading	68	21

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
	approach to the regulation of activities that involve the use of certain human embryos created by assisted reproductive technology.)	Frank Sartor (ALP)	National	27/5/2003 Legislative Council 2 nd Reading	23	16
21/5/03	Human Cloning and Other Prohibited Practices Bill 2003	Note: a cognate Bill with the Research Involving Human Embryos (NSW) Bill 2003	Labor Liberal National	Passed all stages in both Houses concurrently with cognate Bill and without division.		
2/9/03	Sessional Orders – Prayers (Amending the sessional order relating to the Christian nature of the prayer)	Other Legislative Council Lee Rhiannon (NSW Greens)	Labor	16/9/2003 Legislative Council Motion negatived	7	30
5/9/03	Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2003	Government Bill Legislative Assembly Neville Newell on behalf of Reba Meagher (ALP)	Liberal National	17/9/2003 Legislative Assembly 2 nd Reading 14/10/2003 Legislative Council 2 nd Reading	56 23	27 14
2/3/05	Crimes Amendment (Grievous Bodily Harm) Bill 2005 (Ensure that offences relating to the	Government Bill Legislative Assembly	Liberal Free vote on amendment only	22/3/05 Legislative Assembly Passed all stages without division		

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
	infliction of grievous bodily harm extend to the destruction of the foetus of a pregnant woman (other than in the course of a medical procedure).	Bob Debus (ALP)		4/5/2005 Legislative Council 2 nd Reading without division Amendment	17	22
30/5/07	Human Cloning and Other Prohibited Practices Amendment Bill 2007 (Prohibition on human cloning for reproduction continued but enabling certain research under licence.)	Government Bill Legislative Assembly Verity Firth (ALP)	Labor Liberal National	7/6/2007 Legislative Assembly Agree in Principle 26/6/2007 Legislative Council 2 nd Reading 3 rd Reading	65 27 26	26 13 13
7/6/2007	Drug Summit Legislative Response Amendment (Trial Period Extension) Bill	Government Bill Legislative Assembly Reba Meagher (ALP)	Labor? Liberal	20/6/2007 Legislative Assembly Agree in Principle 27/6/2007 Legislative Council 2 nd Reading	54 22	32 17
7/5/08	Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008 (Presumption that woman in lesbian relationship is mother of child born as a result of fertilisation procedure.)	Government Bill Legislative Council John Hatzistergos (ALP)	Liberal National	3/6/2008 Legislative Council Passed without division 4/6/2008 Legislative Assembly Agree in Principle		
					64	11

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
23/4/10	Relationships Register Bill 2010 (Provide for legal recognition of persons in a relationship, regardless of their sex.)	Government Bill	Liberal	11/5/2010 Legislative Assembly Agree in Principle	62	9
		Legislative Assembly Barry Collier on behalf of Carmel Tebbutt (ALP)	National	12/5/2010 Legislative Council 2 nd Reading	32	5
1/9/2010	Adoption Amendment (Same Sex Couples) Bill 2010 (No 2)	Private Member's Bill	Labor	2/9/2010 Legislative Assembly Agree in Principle	46	44
		Legislative Assemblu	Liberal	Passed	45	43
		Clover Moore (Independent)	National	8/9/2010 Legislative Council 2 nd Reading 3 rd Reading	22 22	15 15
23/9/10	Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010 (Removing the Centre's trial status and establishing it on an ongoing basis.)	Government Bill	Liberal	21/10/2010 Legislative Assembly Agree in Principle	57	29
		Legislative Assembly Carmel Tebbutt (ALP)	National	26/10/2010 Legislative Council 2 nd Reading	22	15
21/10/2010	Surrogacy Bill 2010 (Allowing for parenting orders that would be open to same sex and de-facto couples.)	Government Bill	Labor	27/10/2010 Legislative Council 2 nd Reading	24	9
		Legislative Council John Hatzistergos (ALP)	Liberal National	10/11/2010 Legislative Assembly Agree in Principle Passed	54 53	31 27

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
16/6/11	Conduct of Magistrate Jennifer Betts	Other Legislative Council Michael Gallacher (Lib)	Labor Liberal National	16/6/2011 Legislative Council Motion negated without division		
22/6/11	Conduct of Brian Maloney	Other Legislative Council Michael Gallacher (Lib)	Labor Liberal National	13/10/2011 Legislative Council Motion negated	15	22
24/5/2012	Motion on Marriage Equality	Other Legislative Council Cate Faehrmann (NSW Greens)	Labor Liberal National	31/5/2012 Legislative Council Motion amended and agreed to	22	16
2/5/13	Rights of the Terminally Ill Bill 2013	Private Member's Bill Legislative Council Cate Faehrmann (NSW Greens)	Labor Liberal National	23/5/2013 Legislative Council 2 nd Reading	13	23
29/8/2013	Crimes Amendment (Zoe's Law) Bill 2013 (No 2) (Proceedings can be brought for grievous bodily harm to a foetus, rather than as harm to the pregnant woman.)	Private Member's Bill Legislative Assembly Chris Spence (Liberal)	Labor Liberal National	21/11/2013 Legislative Assembly 2 nd Reading 3 rd Reading	57 63	31 26
31/10/13	Same-sex Marriage Bill 2013	Private Member's Bill	Labor	14/11/2013		

Date introduced	Name of Bill/motion	Type of Bill/Other House Member introducing/ Moving	Major parties with a free vote	Result		
				Date/House	Ayes	Noes
		Legislative Council Penny Sharpe (ALP)	Liberal National	Legislative Council 2 nd Reading	19	21
23/5/13	Support for Equality	Other Legislative Assembly Alex Greenwich (Independent)	Labor Liberal National	23/5/2013 Legislative Assembly Motion agreed to as amended without division		