

## ATTITUDES TO ABORTION: AUSTRALIA AND QUEENSLAND IN THE TWENTY-FIRST CENTURY

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*A young couple in Queensland face charges of procuring the woman's abortion with the drugs RU486 and Misoprostol. The case provoked widespread doubts about the legality of abortion in Queensland, especially medical abortion. State politicians, even those claiming to be pro-choice, are reluctant to decriminalise abortion saying that such a move would cost votes or might lead to an even more restrictive position than that which now prevails. In fact more than half the electorate in Australia and in Queensland support freedom of choice, and a further third support the availability of abortion in special circumstances. Candidates for election to the federal parliament are even more liberal. Such opposition as there is is concentrated among a few religious groups and among people aged 75 and over. As far as attitudes are concerned, Queensland is no different from the rest of Australia. A May 2009 Auspoll found that 79 per cent of Queenslanders supported decriminalisation.*

### TEGAN LEACH AND SERGIE BRENNAN

On 20 March 2009 police searched a house shared by 19-year-old Tegan Simone Leach and her partner, 21-year-old Sergie Brennan, at Mt Sheridan, a suburb of Cairns in northern Queensland. This was part of a routine series of calls on more than 200 dwellings to interview possible informants or witnesses in a murder investigation. There is no suggestion that Leach or Brennan had any connection to the alleged murder but, in the course of the search, the police found empty packets of RU486 (also known as Mifepristone), Misoprostol, painkillers, and instructions written in Ukrainian. Misoprostol is a drug commonly used with RU486 to induce a miscarriage.<sup>1</sup> The police decided that Leach had used the drugs to bring about the miscarriage of a 60-day-old foetus in December 2008. They did not initially say how they reached this conclusion<sup>2</sup> but at the committal hearing on 3 September it emerged that Leach had told them. She was charged with procuring her own miscarriage and Brennan was charged with supplying drugs to procure an abortion and, on 11 September 2009, they were committed to stand trial.<sup>3</sup>

The drugs had been smuggled into Australia from the Ukraine by Brennan's sister;<sup>4</sup> however the charges did not involve smuggling, they concerned illegal abortion. The media not only published the names of the accused, they gave out their address. Subsequently Brennan's car was smashed and their home firebombed. The couple then moved to a new address equipped with security cameras and guard dogs.<sup>5</sup>

Leach is believed to be the first woman to be charged with procuring her own abortion in nearly 50 years,<sup>6</sup> but medical practitioners report that both RU486 and Misoprostol are widely available on the black market and that they often treat patients who have taken them.<sup>7</sup>

### THE LAW IN QUEENSLAND

The World Health Organization reports that unsafe abortion is a leading cause of maternal mortality and morbidity, and its incidence is closely linked to the availability of legal abortion, whether surgical or medical. Thus the legal status of abortion has a direct effect on women's health.<sup>8</sup>

The situation in Australia is confused because abortion laws vary from state to state.<sup>9</sup> The relevant statutes in Queensland were drafted in 1899 and are the oldest

in the country. Section 224 of the Queensland Criminal Code (QCC) states that it is a crime to administer 'any poison or noxious thing' or use 'any other means what ever' to procure the miscarriage of a woman. The maximum penalty is 14 years imprisonment. Section 225 states that if the woman herself attempts to procure her own miscarriage she is 'guilty of a crime, and is liable to imprisonment for 7 years' and section 226 states that it is illegal to assist in a surgical procedure or in administering a 'noxious thing' to 'unlawfully' procure a miscarriage. The maximum penalty here is three years imprisonment.<sup>10</sup> Leach has been charged under section 225 and Brennan under section 226.

In fact surgical abortions are now frequently performed in Queensland, possibly 14,000 to 15,000 a year.<sup>11</sup> These operations are presumed to be legal, a presumption based on common law precedent, deriving from the case of *R v Bayliss* heard in 1986. Section 282 of the QCC states that a person is not criminally liable for performing 'a surgical operation upon any person for the patient's benefit, or upon an unborn child for the preservation of the mother's life'. This was the defence used in *R v Bayliss*, a defence accepted by the presiding judge, Justice McGuire. His decision was appealed in the Queensland supreme court but the judgment was upheld, an outcome that meant that the situation in Queensland was then similar to that of New South Wales and Victoria. In both these states the common law had already modified the effects of statute law. The McGuire decision meant that women in Queensland who could find a private clinic and a sympathetic doctor were able to obtain surgical abortions in a context that was generally believed to be legal.<sup>12</sup>

In Victoria that situation changed in 2008 when the state parliament passed the Abortion Law Reform Bill. This repealed the statutory and common law offences of

abortion and substituted a new section 65 of Victorian Crimes Act which, in effect, only outlawed abortion if performed by an 'unqualified person'. Medical practitioners, nurses and pharmacists are all listed as qualified persons, a development which permits a broader range of health professionals to be involved with medical as opposed to surgical abortions. The new Act allows abortion by a registered medical practitioner on a woman who is not more than 24 weeks pregnant.<sup>13</sup>

### **MEDICAL ABORTION**

The drug known as RU486 or Mifepristone, together with Misoprostol, leads to complete abortion in 93 to 98 per cent of cases.<sup>14</sup> RU486 was developed in the 1980s but has proved controversial. Until 2006 it could not be legally imported into Australia without the written permission of the Minister for Health, who then had to lay this permission before Parliament within five sitting days.<sup>15</sup> As no applications were made to the Minister this, in effect, amounted to a de facto ban on the importation of the drug.<sup>16</sup> In February 2006, as a result of a private member's bill, the federal parliament passed an amendment to the Therapeutic Goods Administration (TGA) Act 1996 (Cth).<sup>17</sup> This meant that the Minister no longer had to give his personal approval; the TGA could give it on its own account. A Morgan poll taken at the time showed majority approval for RU486 being made available to Australian women: 62 per cent supported this, 31 per cent did not, and seven per cent couldn't say. But the question said nothing about medical supervision and could have been understood as referring to self-induced abortions.<sup>18</sup>

Despite the new amendment, approval for doctors to import and prescribe the drug has been given out parsimoniously; in 2006, for example, the TGA gave permission to two doctors in Queensland, including Caroline de Costa, an obstetrician and

gynaecologist living in Cairns. The application process is difficult. In May 2008 Crispin Hull wrote that because of this, and because of difficulties in sourcing supplies, RU486 still remained in effect a prohibited import.<sup>19</sup> As of August 2009, only 61 practitioners had been licensed to import the drug.<sup>20</sup> Thus the legislative change of 2006 did not lead to any widespread increase in the availability of the drug. (Misoprostol was already available as a treatment for gastric ulceration and thus can be used for abortion with RU486 off-label.)<sup>21</sup>

While medical opinion favours RU486 used with Misoprostol, another drug, Methotrexate (a cancer drug) is also used. Because both Misoprostol and Methotrexate are already available, hospitals have been able to use them for medical abortion without having to apply to the TGA.<sup>22</sup> While most abortions in Queensland, and elsewhere in Australia, are surgical and are performed in private clinics in the first 12 weeks of pregnancy, hospitals are more likely to handle the minority of late-term abortions; these are usually carried out because of late diagnosis of serious foetal abnormalities.<sup>23</sup> In such cases, medical methods are more suitable than surgical ones.<sup>24</sup> But medical methods are also appropriate for first-trimester abortions, and may indeed be safer than surgical ones in some circumstances.

Nevertheless the advent of effective medical methods of abortion has created potential difficulties for practitioners in Queensland. This is because the 1986 McGuire judgement referred only to surgical operations; it was possible that medical abortions were still illegal regardless of the qualifications of the practitioner or the mother's circumstances. Thus the Leach and Brennan case has created uncertainty about the legality of abortion in Queensland, especially medical abortion. As of early September 2009 most hospitals and private practitioners in Queensland had

stopped offering medical abortions<sup>25</sup> and were referring patients to hospitals across the border in New South Wales.<sup>26</sup> The legal uncertainties were compounded by practitioners' fears that their medical indemnity insurance might no longer be valid.<sup>27</sup>

The Leach and Brennan case has therefore provoked a new sense of urgency for the reform of Queensland's criminal code and politicians have been under pressure to introduce changes. On 3 September the Queensland parliament passed an amendment to section 282 giving doctors the same protection for medical abortions as they already had for surgical ones. The opposition assented to this change in response to assurances from the Labor premier, Anna Bligh, that the change would do nothing to make abortion more available. It remains to be seen whether the change will be sufficient to allay the legal uncertainties created by the Leach/Brennan case. Doctors were asking for full decriminalisation<sup>28</sup> as had happened in Victoria but, in Bligh's view, it was not appropriate to move towards this because 'opinions in parliament, as in the wider community, were mixed'.<sup>29</sup>

Current debates do make it clear that the voices transmitted by the media on abortion are mixed, but are voters (and parliamentarians) equally divided on the question, or does one set of views have more adherents than another?

## **WHAT DO AUSTRALIANS THINK ABOUT ABORTION?**

Liberalisation in attitudes to abortion has been occurring since the early 1970s: in 1972 a McNair Anderson poll found that only 19 per cent thought abortion should be legal 'In all circumstances, that is "abortion on demand"', while in 1996 a Newspoll found that 50 per cent would allow abortion 'to any women on demand in any circumstances'.<sup>30</sup> This suggests a considerable shift in public opinion during the last quarter of the twentieth century.

The Australian Election Studies (AES) have been conducted after every election since 1987. These consist of questionnaires mailed out to a large random sample of voters drawn from the electoral roll and have consistently asked this question: ‘Which of these statements comes closest to how you feel about abortion in Australia? Women should be able to obtain an abortion readily when they want one; Abortion should be allowed only in special circumstances; Abortion should not be allowed under any circumstances’. This series allows us to look at changes in attitudes measured by the same question and asked in the same way on eight occasions over a twenty-one-year period, with the most recent survey having been conducted after the federal election held on 24 November 2007.

Table 1 confirms the findings of the 1996 Newspoll and shows that, currently, over half the electorate support unfettered freedom of choice and that 89 per cent would allow abortion in some circumstances. This pattern of responses has remained relatively stable since 1993.

Table 2 examines the 2007 responses in more detail. It shows that while a majority of men and women under 75 hold

a pro-choice attitude, women, especially those of child-bearing age, are rather more liberal than are men. However the 75-plus age groups of both sexes are less liberal, with the difference between this age group and the total being particularly marked for older men. Nonetheless the restrictive position—‘Abortion should not be allowed under any circumstances’—has minimal support in any of the categories shown.

Table 3 shows that there is little difference in attitude by location. Respondents living in Brisbane (and in Western Australia) are more liberal than the sample as a whole but the difference is not statistically significant. Analysis by whether the respondent lives in an inner-metropolitan area as opposed to an outer-metropolitan area did show a slightly more liberal attitude among inner-city dwellers, especially in Melbourne (data not shown here), but the numbers were not large enough to allow a meaningful comparison across all of the major cities and in no cases were the differences statistically significant.

Table 3 makes it clear that voters in Queensland, whether they live in Brisbane or elsewhere in that state, are no more opposed to abortion than are people in any other location. Table 9 below shows the

**Table 1: Attitudes to abortion, voters, 1987 to 2007, per cent**

	1987	1990	1993	1996	1998	2001	2004	2007
Women should be able to obtain an abortion readily when they want one	38	50	55	53	49	56	53	57
Abortion should be allowed only in special circumstances	54	39	34	37	39	32	34	33
Abortion should not be allowed under any circumstances	6	6	5	5	4	4	4	4
Don't know/missing	2	5	6	5	8	8	10	7
Total	100	100	100	100	100	100	100	100
Total N	1830	2037	3023	1797	1897	2010	1769	1873

Sources: AES, voters' studies, 1987 to 2007, see appendix for details.

Note: Percentages may not add to 100 due to rounding.

data for Queensland as a whole, with 59 per cent supporting freedom to choose, a slightly higher total than that for Australia as a whole. Thus the recent case against Leach and Brennan does not flow from any particu-

larly negative attitude of Queenslanders to abortion; on the contrary voters in Brisbane are among the most liberal in the country and non-metropolitan Queenslanders are similar to other Australian voters.

**Table 2: Attitudes to abortion, voters by age and sex, 2007, per cent**

	Males			Females			Total
	18 to 44	45 to 74	75 plus	18 to 44	45 to 74	75 plus	
Women should be able to obtain an abortion readily when they want one	61	56	**38	63	59	*41	57
Abortion should be allowed only in special circumstances	25	33	*49	29	33	*49	33
Abortion should not be allowed under any circumstances	4	3	5	4	4	4	4
Don't know	8	6	8	3	4	5	5
Missing	1	1	0	1	1	1	1
Total	100	100	100	100	100	100	100
Total N	236	477	92	325	537	80	1873

Source: 2007 AES voters' study, see appendix for details.

Notes: Respondents missing on age or gender are included in the total (n=126)

\* Difference between the subgroup and the total is significant at the .05 level

\*\* Difference between the subgroup and total is significant at the .01 level.

**Table 3: Attitudes to abortion, voters by location, 2007, per cent**

	Sydney	Rest of NSW	Melbourne	Rest of Victoria	Brisbane	Rest of Qld	SA	WA	Total
Women should be able to obtain an abortion readily when they want one	54	54	58	61	63	56	49	63	57
Abortion should be allowed only in special circumstances	34	37	30	27	29	36	36	27	33
Abortion should not be allowed under any circumstances	6	*1	4	5	1	3	7	3	4
Don't know	6	6	5	6	6	4	7	5	5
Missing	0	1	3	1	1	1	1	1	1
Total	100	100	100	100	100	100	100	100	100
Total N	326	280	315	165	150	209	142	164	1873

Source: See Table 2.

Notes: Total includes 18 missing on location and 104 living in either Tasmania, the Australian Capital Territory or the Northern Territory. NSW is New South Wales, Vic is Victoria, Qld is Queensland, SA is South Australia, WA is Western Australia.

\* Difference between the subgroup and the total is significant at the .05 level.

Though people aged 75 and over are more sceptical than are younger people, neither sex nor location make much difference to voters' attitudes. But religion is a different matter.

Table 4 shows that, as might be expected, Catholics are less pro-choice than are most other voters but, even so, 45 per cent of Catholics do support a woman's right to choose without any further qualification. Twenty three per cent of the sample have no religion and this group is the most liberal of all. But the group simply labelled 'other' is the least happy with the pro-choice option. They are a small group (just under 10 per cent of the sample) and the file does not identify them further. However earlier analysis of the 2003 Australian Survey of Social Attitudes (AuSSA), which drew on a larger sample, showed that Baptists and members of Pentecostal churches were the least prepared to tolerate a pro-choice position.<sup>31</sup> Analysis of the 2005 AuSSA data shows that this pattern still holds; the

Pentecostals and Baptists, while few in number, are much more opposed to freedom of choice than are Catholics.<sup>32</sup>

So far the analysis suggests that people aged 75 and over and some religious groups stand out from the general trend of widespread acceptance of reproductive choice. But abortion laws, and law reform, are political matters. Do voters differ in their attitudes by political preference?

Table 5 shows that, while the two main voting blocks of Liberal and Labor supporters do show some difference on the question of abortion (with the Liberal voters being slightly less pro-choice), the difference is not statistically significant and, in both cases, a clear majority support freedom to choose. The big differences are with people who voted for the National Party, who are less pro-choice than the sample as a whole, and with Greens voters who are very much more pro-choice. Only 4.2 per cent of the respondents to the 2007 AES reported voting for the National Party, as

**Table 4: Attitudes to abortion, voters by religion, 2007, per cent**

	Catholic	Church of England	Uniting/ Methodist	Orthodox	Presbyterian	Other	No religion	Total
Women should be able to obtain an abortion readily when they want one	**45	60	57	47	53	**37	**78	57
Abortion should be allowed only in special circumstances	*41	32	33	35	42	*43	**16	33
Abortion should not be allowed under any circumstances	7	*1	2	5	3	*10	*1	4
Don't know	6	6	6	14	1	7	3	5
Missing	1	1	2	0	0	2	1	1
Total	100	100	100	100	100	100	100	100
Total N	495	432	161	43	86	187	427	1873

Source: See Table 2.

Notes: Respondents who did not answer the question on religion (n=42) are included in the total.

\* Difference between the subgroup and the total is significant at the .05 level.

\*\* Difference between the subgroup and total is significant at the .01 level.

opposed to 5.49 per cent of voters who actually give their first preference to the Nationals in 2007. However the proportion of Queenslanders who cast their first preference vote for the Nationals was rather

higher, at 10.07 per cent.<sup>33</sup> Nonetheless, as we have seen, a greater tendency to vote National in Queensland does not translate into a higher level of opposition to abortion in that state.

**Table 5: Attitudes to abortion, voters by vote in the House of Representatives, 2007, per cent**

	Liberal	National	Labor	Greens	Total
Women should be able to obtain an abortion readily when they want one	54	*42	60	**74	57
Abortion should be allowed only in special circumstances	37	45	30	*20	33
Abortion should not be allowed under any circumstances	3	4	4	1	4
Don't know	5	5	5	3	5
Missing	1	4	2	1	1
Total	100	100	100	100	100
Total N	679	78	799	143	1873

Source: See Table 2

Notes: Respondents who did not answer the question on voting or voted informal or did not vote (n=109) and those who voted for minor parties not shown here (n=65) are included in the total.

\* Difference between the subgroup and total is significant at the .05 level.

\*\* Difference between the subgroup and the total is significant at the .01 level.

**Table 6: Attitudes to abortion, candidates in federal elections, 1987 to 2007**

Question in 2007: 'Women should be free to decide on matters of abortion—'

	1987	1990	1993	1996	2001	2004	2007
Strongly agree & agree	36	53	57	62	59	70	68
Neither agree nor disagree	54	38	36	32	31	12	10
Disagree & strongly disagree	6	5	3	2	3	18	19
Missing	3	3	4	4	7	1	3
Total	100	100	100	100	100	100	100
Total N	612	429	415	439	477	535	472

Sources: AES candidates' studies, see appendix.

Note: The question from 1987 to 2001 was the same as the question asked of voters. In 2004 it was 'A woman should have the right to choose whether she has an abortion—strongly agree, agree, neither agree nor disagree, disagree, strongly disagree' and in 2007 it was 'Women should be free to decide on matters of abortion—strongly agree, agree, neither agree nor disagree, disagree, strongly disagree'. While the wording is not exactly the same it sufficiently similar to allow a valid comparison between 2004 and 2007. The 1987 to 2001 responses 'Women should be able to obtain an abortion readily when they want one' are cited here under strongly agree & agree, 'Abortion should be allowed only in special circumstances' under neither agree nor disagree, and 'Abortion should not be allowed under any circumstances' under disagree & strongly disagree. There was no candidates' survey in 1998.

If a majority of voters are pro-choice, what of the candidates who run for office in federal elections? After every election since 1987 (with the exception of 1998) candidates have also been asked to respond to a questionnaire. This has always included a question on attitudes to abortion. Up until 2001 the question had the same wording as the one asked of voters but in 2004 and 2007 the wording was changed. In 2004 candidates were asked: ‘A woman should have the right to choose whether she has an abortion—strongly agree, agree, neither agree nor disagree, disagree, strongly disagree’. In 2007 they were asked: ‘Women should be free to decide on matters of abortion—strongly agree, agree, neither agree nor disagree, disagree, strongly disagree’.

Table 6 uses the 2007 question for purposes of organisation. Candidates who, from 1987 to 2001, chose the response ‘Women should be able to obtain an abortion readily when they want one’ are classed as strongly agreeing or agreeing with the ideas expressed in the 2007 question, those who chose ‘Abortion should be allowed only in special circumstances’ are classed as neither agreeing nor disagreeing, and those

who chose ‘Abortion should not be allowed under any circumstances’ are classed as disagreeing or strongly disagreeing. While the 2004 question says ‘should have the right to chose’ where the 2007 question says ‘should be free to decide’ the questions are sufficiently similar to be directly comparable. This arrangement of the responses permits a rough outline of changes in candidates’ attitudes over the years. It also allows a rough comparison of their attitudes with those of voters.

Table 6 shows a similar shift in responses over time to that shown for voters in Table 1. Indeed in 1987 the responses of candidates were almost identical to those of the voters. But just as voters became more liberal over time, so too did candidates with the difference being that, in 2004 and 2007, they were considerably more pro-choice than the voters. (We should, however, bear in mind that questions asked of candidates in 2004 and 2007 were not same as the one asked of voters.)

Table 7 shows that, among all the parties, half or more of the candidates agreed that women should be free to decide on matters of abortion, with the striking exception

**Table 7: Attitudes to abortion, candidates by party, 2007, per cent**

Question: ‘Women should be free to decide on matters of abortion—’

	Liberal	National	Labor	Democrats	Greens	Family First	Total
Strongly agree & agree	58	50	85	89	93	13	68
Neither agree nor disagree	18	17	5	7	3	16	10
Disagree & strongly disagree	23	33	6	0	2	69	19
Missing	2	0	5	4	2	1	3
Total	100	100	100	100	100	100	100
Total N	66	12	86	54	117	68	470

Source: See Table 6.

Note: Candidates for Pauline Hanson’s One Nation party (n=28), the Citizens Electoral Lobby (n=37) and those who did not state their party (n=2) are included in the total. Tests of significance are not appropriate as all candidates were surveyed.



of candidates standing for the Family First Party. Even the National Party candidates included fifty per cent who supported freedom of choice. Allowing for the differences in the questions asked of candidates and voters one could say that the opinions of Liberal and National party candidates were similar to those of the people who voted for them, if not slightly more pro-choice.

In the 2001 and 2004 candidates' surveys the results for Liberal and National party candidates were combined. This makes direct comparisons between 2007 and 2001 and 2004 difficult. But the position of the candidates from the two more conservative parties seems to have moved sharply towards the pro-choice position since 2001. In 2001 only 30 per cent of Liberal/National candidates thought that women who wanted an abortion should be able to obtain one readily, a position that was much more restrictive than that of the of the people who voted for them.<sup>34</sup> In 2004, 56 per cent of Liberal/National party candidates agreed or strongly agreed that a woman 'should have the right to choose whether she has an abortion'. But while the 2007 data show relatively high support for freedom of choice among Liberal and National party candidates, they also show higher proportions who disagree or strongly disagree with freedom to chose (23 per cent and 33 per cent respectively). These proportions are much higher than among the people who vote for these parties or among candidates as a whole, but the anti-choice candidates are still very much a minority within their own parties, especially among the Liberals.

It is also clear from Table 7 that Labor candidates take a very liberal position, as do those standing for the Greens. In both cases their attitudes are more liberal than those of the people who vote for them.

With the exception of people standing for Family First, it is not possible to discern a strong anti-abortion position among the

men and women who present themselves as candidates for election to the federal parliament. The puzzle of why politicians are reluctant to move on abortion law reform cannot lie with their heartfelt positions, because the proportions opposed to choice are small (19 per cent in 2007). It also cannot lie in any fear of offending substantial voting blocks as, with few exceptions, a majority of voters believe a woman should be free to choose.

Perhaps the stumbling block to reform in a situation such as has now occurred in Queensland lies with the influence of special interest groups. Small groups may be especially mobilised around the anti-choice position and thus might in some fashion prevent the election of candidates who support reform.

So do candidates who win elections take a more restrictive approach to abortion than do those who lose? This is possible. Table 7 shows high levels of support for choice among Greens candidates. Many people stood as candidates for that party but only three were actually elected in 2007. Table 8 sets out attitudes to abortion among candidates in the 2007 federal election by whether the candidate won or lost. It shows this for Australia as a whole and for those standing for election in Queensland.

Table 8 shows that most candidates favoured a pro-choice stance, and that those who won were more likely to be pro-choice than were those who lost. This was especially true of the candidates from Queensland who responded to the AES survey and who won. Overall, 50 per cent of candidates returned the AES questionnaire (see details in the appendix) but the notes to Table 8 show that a rather smaller percentage of those who won did so. However, there is no reason to believe that the question on abortion influenced the response rate; it was only one sub-question on page 13 of a twenty-page questionnaire. It is more likely that the size of the questionnaire was a deterrent to busy

parliamentarians than that any particular question put them off.

**ABORTION POLITICS IN QUEENSLAND**

In March 2009 a state election was held in Queensland. This was won by the Labor Party, led by Anna Bligh. Bligh had taken over as premier from Peter Beattie in September 2007 and this was the first election she had faced as premier and leader of her party. Anti-choice advocates had been anxious that pro-choice candidates might introduce abortion law reforms similar to the 2008 Victorian reforms and the Australian Christian Lobby did try to quiz the candidates on their attitudes.<sup>35</sup> Bligh herself is known to be pro-choice<sup>36</sup> but, while her party lost 10 seats, she nonetheless scored a convincing win: 50 seats out of a total of 89.<sup>37</sup> However if any promises were made on abortion law reform before the election it is hard to discover what they were.<sup>38</sup>

Before the election the then leader of the state’s Liberal National Party, Lawrence Springborg, ruled out any change to the law on abortion if his party won office. In

response to the questionnaire organised by the Australian Christian Lobby, Labor eventually said that changes to abortion law were not on its agenda but that it was possible that a private member’s bill might be put forward on the topic and that, if this were to happen, it would be subject to a conscience vote.<sup>39</sup> Decriminalisation is indeed part of the Queensland Labor Party’s platform, a part that was reaffirmed at the Party’s post-election conference in June 2009,<sup>40</sup> but Bligh says that she will not introduce any reform bill though, if someone were to put forward a private member’s bill, she would allow a free vote. But she very much doubts that such a bill would pass as the present makeup of the Queensland parliament is now less pro-choice than it had been before the election.<sup>41</sup>

As of early September 2009 the situation in Queensland was at an impasse. Hospitals were not performing medical abortions and the few private practitioners who were able to provide this service had ceased to do so.<sup>42</sup> As we have seen, parliament reformed section 282 of the QCC on 3 September so that the section no longer specified surgi-

**Table 8: Attitudes to abortion, candidates by whether they won or lost, Australia and Queensland, 2007, per cent**

Question: ‘Women should be free to decide on matters of abortion—’

	Australia		Queensland	
	Won	Lost	Won	Lost
Strongly agree & agree	77	66	85	61
Neither agree nor disagree	9	11	8	10
Disagree & strongly disagree	12	20	8	27
Missing	3	3	0	1
Total	100	100	100	100
Total N	77	391	13	77

Source: See Table 6.

Note: The figures exclude two candidates missing on whether they won or lost.

Overall 180 candidates were successful in 2007; the subset of 77 who responded to the AES represents 44 per cent of this total. Thirty-five were successful in Queensland; the subset responding to the AES represents 37 per cent of these.

cal abortion but it was unclear whether this change would be sufficient. Doctors had already made it clear that they wanted abortion to be decriminalised so that they could care for their patients without fear of prosecution.<sup>43</sup>

In May 2009, after the state election and after Leach and Brennan had been charged, an Auspoll, commissioned by Children by Choice, was taken of 1016 voters in Queensland. The poll was conducted online with results segmented and weighted to be representative of Queensland’s population by gender, age and location. It found that 79 per cent of voters favoured decriminalisation while 21 per cent did not.<sup>44</sup> The sampling method used in this poll is not as robust as is the random sampling used in both the AES and AuSSA studies. Table 9 sets out the results from these studies for Queensland since 2001, together with the 2009 Auspoll

results. The data suggest that the 2009 Auspoll results are in line with what one would expect a more conventional sampling method to produce. The question was:

A Queensland woman has been charged this year for an abortion offence, and faces time in jail. Which is closest to your view?  
The law should be changed so abortion is no longer a crime. Abortion should remain a criminal offence.

The AES questions in Table 9 show that, just as is the case in Australia as a whole, over half the electorate in Queensland favour a completely unrestricted approach, with a further third approving of abortion in special circumstances. When the question is phrased in terms of a woman’s right to choose, at least three quarters agree that a woman should have that right. Thus the 2009 Auspoll finding that 79 per cent support decriminalisation is very plausible.

**Table 9: Attitudes to abortion in Queensland, 2001 to 2009, per cent**

	AES question <sup>a</sup>				AuSSA question <sup>b</sup>		Auspoll question <sup>c</sup>	
	2001	2004	2007		2003	2005	2009	2009
Women should be able to obtain an abortion readily when they want one	53	52	59	Strongly agree & agree	79	76	The law should be changed	79
Abortion should be allowed only in special circumstances	35	36	33	Neither agree nor disagree	6	11	—	—
Abortion should not be allowed under any circumstances	3	4	3	Disagree & strongly disagree	11	10	... remain a criminal offence	21
Don't know	6	7	5	Can't choose	2	2	—	—
Missing	2	2	1	Missing	1	1	—	—
Total	100	100	100	Total	100.0	100.0		100
Total N	358	337	359	Total N	710	725		1016

Notes: <sup>a</sup> The AES question was: ‘Which of these statements comes closest to how you feel about abortion in Australia? Women should be able to obtain an abortion readily when they want one; Abortion should be allowed only in special circumstances; Abortion should not be allowed under any circumstances’.

<sup>b</sup> The AuSSA question was: ‘A woman should have the right to choose whether or not she has an abortion: Strongly agree, agree, neither agree nor disagree, disagree, strongly disagree, can't choose’.

<sup>c</sup> The Auspoll question was: ‘In Queensland abortion is still on the law books as a serious crime for which a woman can be jailed for up to seven years. A Queensland woman has been charged this year for an abortion offence and faces time in jail. Which is closest to your view? The law should be changed so abortion is no longer a crime. Abortion should remain a criminal offence’.

## ATTITUDES TO LATE-TERM ABORTION

While the pattern of recent survey data on attitudes to abortion is overwhelmingly pro-choice this does not mean that Australians treat the matter lightly. For example, in April 2004 the Queensland Right-to-Life association commissioned Market Facts to conduct a phone survey of 300 voters in Queensland. This found that 42 per cent supported abortion without any qualification but that 62 per cent believed it involved the taking of a human life. The study also found high levels of opposition to late-term abortion (after 20 weeks gestation); 71 per cent thought it should be banned in Queensland.<sup>45</sup>

This does not accord with the findings of a December 2004 Newspoll of 1200 Australians aged 18 plus. Like the AES studies, the Newspoll survey found that 50 per cent would allow abortion 'under any circumstances', 39 per cent 'only if it is proven the pregnancy will cause psychological or medical harm to the mother', and seven per cent would not allow it in any circumstances. The survey then moved on to ask about attitudes to late-term abortion (after 20 weeks). Twenty per cent would not allow it 'in any circumstances', 61 per cent would allow it if it were 'proven the pregnancy will cause psychological or medical harm to the mother' and 15 per cent would allow it under any circumstances.<sup>46</sup>

The Newspoll findings show that people have more reservations about late-term abortions than they do about abortion in general. But the findings do not support the idea put forward by the Market Facts' research that 71 per cent are sufficiently distressed by the prospect to want all late-term abortions banned. Differences in the way the questions were worded may account for the discrepancy (see notes 45 and 46). It is also relevant that neither survey mentioned a key reason for late-term abortions: the late discovery of serious foetal abnormalities.<sup>47</sup>

But the 2004 Newspoll provides further evidence of widespread support for freedom of choice when no reference is made to the duration of the pregnancy.

## CONCLUSION

The Leach and Brennan case has provoked a crisis in abortion services and politics in Queensland. The law has now been altered to make section 228 of the QCC include medical as well as surgical abortions, but the public and their doctors have been left with a renewed fear of prosecution that the 1986 McGuire decision had once allayed. Despite Bligh's position, will there be a movement for comprehensive law reform? One government MP has told journalists that:

Liberalising abortion laws is not a vote winner, it's actually a vote loser and everyone on both sides of politics knows that. It's why nobody is speaking up. Even those of us who support it, don't really know what would happen on the floor of Parliament ... it's too big a risk to take when you don't have a guaranteed outcome.<sup>48</sup>

Perhaps he or she has access to survey data that is not in the public arena and which provides a different picture, but the data analysed here suggest that he or she is wrong. Australians in general and Queenslanders in particular take a liberal approach to abortion. A clear majority support freedom of choice and almost all support access to abortion in special circumstances. There are indeed small, and active, centres of opposition to freedom of choice, largely based on religious preferences. But in a democracy the individual votes of those who belong to such centres of opposition carry no more weight than the individual votes of the liberal majority.

## Acknowledgement

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## **Appendix: the Australian Election Studies (AES), 1987 to 2007, and the Australian Surveys of Social Attitudes (AuSSA), 2003 and 2005**

All respondents to the AuSSA and AES voters' studies are voters drawn from the electoral rolls. Respondents to the AES Candidates' studies are candidates for election to the federal parliament. All of the data files were obtained from the Australian Social Science Data Archives (ASSDA) at the Australian National University (ANU); <<http://assda.anu.edu.au>>. The authors of these files are not responsible for my interpretation of their work.

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### **AES Voters (Australian Election Studies)**

1987: I. McAllister and A. Mughan, ASSDA, ANU, 1987	N = 1825, response rate 62.8% (based on 2905 mailouts that were in scope)
1990: I. McAllister, R. Jones, E. Papadakis, D. Gow, ASSDA, ANU, 1990	N = 2037, response rate 58.5% (based on 3482 mailouts that were in scope)
1993: R. Jones et al., ASSDA, ANU, 1993	N = 3023, response rate 62.8% (based on 4813 mailouts that were in scope)
1996: R. Jones, I. McAllister, D. Gow, Australian Election Study, ASSDA, ANU, 1996	N = 1795, response rate 61.8% (based on 2905 mailouts that were in scope)
1998: C. Bean et al., ASSDA, ANU, 1998	N = 1897, response rate 57.7% (based on 3289 mailouts that were in scope)
2001: C. Bean, D. Gow and I. McAllister, ASSDA, ANU, 2002	N = 2010, response rate 55.4% (based on 3631 mailouts that were in scope)
2004: C. Bean et al., ASSDA, ANU, 2005	N = 1769, response rate 44.5% (based on 3975 mailouts that were in scope)
2007: C. Bean et al., ASSDA, ANU, 2008.	N = 1873, response rate 40.2% (based on 4663 mailouts that were in scope)

### **AES Candidates (Australian Candidates' Studies)**

1987: I. McAllister et al., ASSDA, ANU, 1990	N = 612, response rate 70.5% (based on 868 mailouts)
1990: D. Gow et al., ASSDA, ANU, 1990	N = 429, response rate 68.0% (based on 631 mailouts)
1993: I. McAllister, R. Jones, D. Denmark and D. Gow, ASSDA, ANU, 1994	N = 415, response rate 70.0% (based on 593 mailouts)
1996: R. Jones, I. McAllister and D. Gow, ASSDA, ANU, 1996	N = 439, response rate 66.5% (based on 660 mailouts that were in scope)
2001: R. Gibson et al., ASSDA, ANU, 2002	N = 477, response rate 57.8% (based on 825 mailouts that were in scope)
2004: R. Gibson et al., ASSDA, ANU, 2005	N = 535, response rate 53.6% (based on 998 mailouts that were in scope)
2007: I. McAllister et al., (restricted version) ASSDA, ANU, 2008	N = 472, response rate 50.1% (based on 942 mailouts that were in scope)

### **AuSSA (Australian Surveys of Social Attitudes)**

2003: R. Gibson et al., ASSDA, ANU, 2004	N = 4270, response rate 43.7% (based on 9777 mailouts that were in scope)
2005: S. Wilson et al., ASSDA, ANU, 2006	N = 3902, response rate 42.7% (based on 9146 mailouts that were in scope)

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## References

- <sup>1</sup> Mifepristone is an anti-gestagen that causes labour-like uterine contractions by blocking the body's use of progesterone. Misoprostal is a synthetic prostaglandin that induces uterine contractions; it softens the cervix and helps the uterus to contract. (A prostaglandin performs hormone-like actions such as controlling blood pressure or smooth muscle contraction.) Sources: MedlinePlus, Medical dictionary <[www.nlm.nih.gov/medlineplus/plusdictionary.html](http://www.nlm.nih.gov/medlineplus/plusdictionary.html)>; 'Abortion pill—RU486 (mifepristone)' <[www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Abortion\\_pill\\_RU486\\_\(mifepristone\)](http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Abortion_pill_RU486_(mifepristone))> accessed 8 September 2009
- <sup>2</sup> M. Zlotkowski, 'It's a miscarriage of justice—Abortion pill campaigner calls for changes to law', *The Cairns Post*, 17 April 2009, p. 5; J. Walker and V. Hyde, 'Murder hunt led to abortion pair', *The Australian*, 5 August 2009, p. 10; the charge is specified in S. Parnell and S. Elks, 'Urgent talks to stem debate on abortion law', *The Australian*, 3 September 2009, p. 5.
- <sup>3</sup> P. Michael, 'Woman made no secret of plans for termination', *The Courier-Mail*, 4 September 2009, p. 5; P. Michael and J. Miles, 'Couple to trial', *The Courier-Mail*, 12 September 2009, p. 15
- <sup>4</sup> Zlotkowski, 17 April 2009, op. cit.
- <sup>5</sup> J. Walker and V. Hyde, 'Abortion accused speaks out—Firebombing "was pretty bad, but we're coping now"', *The Australian*, 8 August 2009, p. 2; J. Walker, 'Caught in abortion crossfire', *The Australian*, 8 August 2009, p. 25
- <sup>6</sup> P. Michael, 'Tegan Simone Leach charged with aborting fetus herself', *The Courier-Mail*, 21 April 2009 <<http://www.news.com.au/story/0,23599,25361091-421,00.html>>
- <sup>7</sup> J. Walker, 'Exposed: black-market abortion drugs being used in terminations', *The Australian*, 4 August 2009, p. 3
- <sup>8</sup> Unsafe abortion is 'characterized by the inadequacy of the provider's skills and the use of hazardous techniques and unsanitary procedures'. Every year 'there are 65 000 to 70 000 deaths and close to five million women with temporary or permanent disability due to unsafe abortion'. *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2003*, fifth edition, WHO, Geneva, 2007, pp. 1, 5
- <sup>9</sup> See N. Cica, 'Abortion Law in Australia', Research Paper 1, Parliamentary Library of Australia, Canberra, 1998. Unfortunately this is now a little out of date. See also the brief overview prepared by Elizabeth Kennedy in 2007, the corporate counsel for the Royal Women's Hospital, Melbourne. This is up-to-date except for the exclusion of the 2008 Victorian reforms. E. Kennedy, 'Abortion law in Australia', *O&G Magazine*, vol. 9, no. 4, Summer 2007, pp. 36–37.
- <sup>10</sup> H. Douglas, 'Abortion reform: A state crime or a woman's right to choose?', *Criminal Law Journal*, vol. 33, no. 2, 2009, pp. 74-75
- <sup>11</sup> Ted Weaver, president of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, quoted in N. Bitá and A. Fraser, 'Doctors hit out at "hypocrisy"—Bligh refuses to budge on abortion law', *The Australian*, 26 August 2009, p. 2
- <sup>12</sup> Douglas, 2009, op. cit., pp. 76-78
- <sup>13</sup> It also legalises late-term abortion in certain circumstances and obliges doctors who are conscientiously opposed to abortion to refer a woman on to another practitioner who is not opposed. Douglas, 2009, op. cit., pp. 84-85
- <sup>14</sup> C. M. de Costa, 'Medical abortion for Australian women: it's time', *Medical Journal of Australia*, vol. 183, no. 7, 2005, pp. 378-380
- <sup>15</sup> Information and Research Service, 'RU486 for Australia?' Research Note 28 November 2005, no. 19, Parliament of Australia, Department of Parliamentary Services, Canberra, 2005, p. 2
- <sup>16</sup> *ibid.*
- <sup>17</sup> C. M. de Costa, D. B. Russell, N. R. de Costa, M. Carrette and H. M. McNamee, 'Early medical abortion in Cairns, Queensland: July 2006–April 2007', *Medical Journal of Australia*, vol. 187, no. 3, 2007, p. 171
- <sup>18</sup> The question was: 'Now thinking about the "Abortion Pill". There is currently a proposal to introduce the drug RU486, also know as the "Abortion Pill", into Australia. Do you think the "Abortion Pill" should be made available to Australia women, or not?' Roy Morgan Research, Finding No. 3978, 11 February 2006.
- <sup>19</sup> C. Hull, 'Pro-life policy on RU486 condemns tumour sufferers to die', *Canberra Times*, 31 May 2008, p. B09
- <sup>20</sup> J. Walker and V. Hyde, 'Abortion accused speaks out—Firebombing "was pretty bad, but we're coping now"', *The Australian*, 8 August 2009, p. 2
- <sup>21</sup> Douglas, 2009, op. cit., pp. 79-80
- <sup>22</sup> See C. De Costa, 'Decriminalising abortion—what now for the other states?' *Crikey*, 27 October 2008
- <sup>23</sup> Sources quoted in J. Walker, 'Ruling to shift abortions interstate', *The Australian*, 21 August 2009, pp. 1, 2; de Coasta quoted in N. Bitá, 'Insurer warns doctors on abortions', *The Australian*, 28 August 2009, p. 3; 99 per cent of abortions are said to take place within the first 13 weeks of pregnancy, A. Dunn, 'The shifting ethics of abortion', *The Age*, 6 November 2004, p. 6.
- <sup>24</sup> See de Costa, 2005, op. cit.

- <sup>25</sup> See C. Harvey, 'A debate we have to have', *Sunday Telegraph*, 6 September 2009, p. 27.
- <sup>26</sup> C. de Costa, 'Exodus in search of safe abortion', *The Australian* (Health section), 12 September 2009, p. 13
- <sup>27</sup> Bitá, 'Insurer warns doctors on abortions', 2009, op. cit.
- <sup>28</sup> See Ted Weaver, President Royal Australian and New Zealand College of Obstetricians and Gynaecologists, quoted in J. Walker and S. Parnell, 'Cross-border action as state acts', *The Australian*, 2 September 2009, p. 3.
- <sup>29</sup> S. Parnell, 'LNP joins Bligh on criminal code', *The Australian*, September 4 2009, p. 3. Bligh also fears that any attempt at widespread reform might be commandeered by anti-choice MPs and used to further restrict access to abortion. See Bligh quoted in J. Walker and S. Parnell, 'Threats made to Bligh's children', *The Australian*, September 5 2009, p. 7.
- <sup>30</sup> See K. Betts, 'Attitudes to abortion in Australia: 1972 to 2003', *People and Place*, vol. 12, no. 4, 2004, p. 23.
- <sup>31</sup> See Table 2 in *ibid.*, p. 24. The grouping shown there included Lutherans as well as Pentecostals and Baptists. In fact the Lutherans were only slightly more opposed to abortion than the sample as a whole; it was the Pentecostals and the Baptists who made the difference.
- <sup>32</sup> The question was: 'A woman should have the right to choose whether or not she has an abortion. Strongly agree, agree, neither agree nor disagree, disagree, strongly disagree'. In 2005, 41 per cent of Pentecostals chose 'disagree or strongly disagree', as did 35 per cent of Baptists, compared to 17 per cent of Catholics and 10 per cent of the sample as a whole. These differences by religion were all significant at the .01 level. See appendix for survey details.
- <sup>33</sup> See Australian Election Commission, *Federal Elections 2007* <[www.aec.gov.au](http://www.aec.gov.au)>
- <sup>34</sup> See Table 5 in Betts, 2004, op. cit., p. 26.
- <sup>35</sup> See AAP, 'Anger over ALP silence on issues of faith', *The Australian*, 10 March 2009, p. 6.
- <sup>36</sup> R. Viellaris, 'Abortion on agenda', *The Courier-Mail*, 29 October 2007, p. 3
- <sup>37</sup> See *2009 Queensland Election: Anthony Green's Election Guide* <<http://www.abc.net.au/elections/qld/2009/>> accessed 2 September 2009
- <sup>38</sup> James Wallace, managing director of the Australian Christian Lobby, claims that before the election Bligh promised not to pursue reforms to widen women's access to abortion, quoted in J. Walker, 'Bligh widens abortion law as doctors revolt', *The Australian*, 22 August 2009, p. 3. On the other hand Family First announced that it would not direct any of its preferences to Labor in the 25 seats that it was contesting because of 'Anna Bligh's push to decriminalize abortion'. Family First claimed that Bligh had had 'numerous opportunities to rule out the decriminalization of abortion and has repeatedly failed to do so; saying consistently that a conscience vote would be allowed IF the issue was raised by a Private Members Bill', Media Release: Family First Queensland, 'Family First Party Preferencing—2009 Election', AAP MediaNet Press Releases, 15 March 2009.
- <sup>39</sup> N. Bitá, 'Both sides vow no change on abortion', *The Australian*, 12 March 2009, p. 7
- <sup>40</sup> See A. Fraser and S. Parnell, 'Bligh flouts state ALP policy to pursue abortion-drug charge', *The Australian*, 12 June 2009, p. 7.
- <sup>41</sup> In October 2007 one Queensland Labor insider told the *Courier-Mail* that 'almost two-thirds of caucus would support the decriminalisation of abortion'. See R. Viellaris, 'Abortion on agenda', *The Courier-Mail*, 29 October 2007, p. 3. For Bligh's post-election position see J. Walker, 'Premier faces call to act on abortion', *The Australian*, 18 August 2009, p. 5.
- <sup>42</sup> See de Costa, 'Exodus in search of safe abortion', 2009, op. cit.
- <sup>43</sup> Ted Weaver quoted in Walker and Parnell, 'Cross-border action as state acts', 2009, op. cit.
- <sup>44</sup> *Queensland Voters' Views on Abortion: Report Prepared for Children by Choice*, May 2009, Auspoll, Sydney, 2009
- <sup>45</sup> The Market Facts question was: 'Partial birth abortion is a method of late-term abortion after 20 weeks of pregnancy which was recently banned in the United States. It involves the abortionist inducing early labour after the age of viability, the earliest age at which the unborn child can survive outside the womb. Do you believe that partial birth abortion should be banned in Queensland? Yes, no, don't know'. Market Facts, *Abortion in Queensland: A Research Study on Residents' Response*, commissioned by Queensland Right to Life, April 2004, Market Facts (Qld.) Pty. Ltd., Birkdale, Queensland, 2004
- <sup>46</sup> The Newspoll question was: 'Which of the following options regarding late-term abortion (after 20 weeks) are you most in favour of? Not allowed under any circumstances; Only allowed if it is proven the pregnancy will cause psychological or medical harm to the mother; Allowed under any circumstances'. News poll published in P. Karvelas, 'Majority stays pro-choice', *The Australian*, 29 December 2004, p. 2
- <sup>47</sup> Medical experts say that these abortions are particularly distressing for parents as they usually involve a wanted baby. Jeremy Oats, chief medical officer at the Melbourne Royal Women's Hospital, quoted in A. Dunn, 'The shifting ethics of abortion', *The Age*, 6 November 2004, p. 6
- <sup>48</sup> Quoted in R. Odgers and J. Miles, 'Abortion services suspended—Clinics move to shield doctors', *The Courier-Mail*, 29 August 2009, p. 38