

Abortion, Homosexuality and the Slippery Slope: Legislating ‘Moral’ Behaviour in South Australia

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A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy,
Discipline of History, Faculty of Humanities and Social Sciences, University of Adelaide.

August 2013

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Abstract

This thesis examines the circumstances that permitted South Australia's pioneering legalisation of abortion and male homosexual acts in 1969 and 1972. It asks how and why, at that time in South Australian history, the state's parliament was willing and able to relax controls over behaviours that were traditionally considered immoral. It charts the shift in discussion about abortion and homosexuality that was evident in the middle decades of the twentieth century, then analyses the debates about the reforms that occurred in parliament, amongst the churches, medical professionals, activists, the media and members of the public. It compares the arguments used by those who supported and opposed the reforms and demonstrates that although legalisation was achieved, the arguments of opponents, seeking to preserve the status quo, influenced the extent of the reforms and therefore the extent to which the state continued to control private behaviour.

I argue that the shift in conversation about abortion and homosexuality, characterised by the weakening of the taboo surrounding their public discussion and stimulated by a series of events between the 1930s and 1960s, was critical to the issues earning a place on the political reform agenda. I show that it was not the nature of the discussion that changed during this time, but rather the location of that discussion. Abortion and homosexuality continued to be considered 'immoral' and undesirable, and the politicians who passed the reforms did not suddenly accept the behaviours, but rather accepted the premise that, no matter how undesirable the activity, the law was no longer an appropriate mechanism with which to control private behaviour. Thus, discussion about the nature of abortion and homosexuality did not change substantially from the attitudes exhibited in earlier decades. What had changed was the site of the discussion: the topics were now able to be discussed openly in public and this demonstrated to parliamentarians that community support existed for the reforms.

This thesis also contributes to an understanding of the progressive political climate in South Australia during the late 1960s and early 1970s, a period obscured by the popular memory of the 'Dunstan Decade'. Parliamentary debates are a key location for analysis of

public discussion about abortion and homosexuality, as the arguments used by politicians reflected and perpetuated the limitations on what was considered appropriate or acceptable to say. In addition, a demographic study of the parliamentarians who supported and opposed the measures reveals much about the effect of the lengthy Playford government on the political activity that followed, and demonstrates the role of a free (conscience) vote on legislating ‘moral’ issues. The thesis is innovative in showing that the South Australian reforms were not simply part of a global shift in discussion about abortion and homosexuality, nor merely an example of local exceptionalism. Instead, the timing of the reforms led to the passage of distinctive legislation that balanced the progressive forces’ desire for liberalisation with conservatives’ fears about the prevalence of the two activities.

Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university without the prior approval of the University of Adelaide.

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Acknowledgements

I wish to thank Paul Sendziuk, for being, quite simply, an exemplary supervisor. His friendship has been an invaluable part of the last four years, and I am sincerely grateful for the time and enthusiasm he has invested in supporting my research and writing. In particular, I appreciate the trust he placed in my independence, typified by his willingness to spend far more time talking about last weekend's sporting results than interrogating me about my progress, but still responding speedily whenever I asked for guidance.

I am very grateful for the financial support of the Ian Wilson Liberal Research Scholarship, and the financial support and provision of a quiet working space and access to the facilities of the South Australian Parliament Research Library through their Supplementary Scholarship, funded jointly by the South Australian House of Assembly and overseen by Dr Coral Stanley.

Thanks especially to:

Susan Magarey, for very generously agreeing to read and provide valuable feedback on a full draft of the thesis at short notice.

The people who gave their time to be interviewed formally, and those who shared their expertise in related fields in order to broaden my understanding of the complexities of my topic: Barbara Baird, David Hilliard, Don Hopgood and Will Sergeant; Dino Hodge, for sharing parts of his research towards his own thesis on Dunstan and homophobia in South Australia; and my father, Greg Parker, for his help with the legal aspects of my research. Any errors relating to legal processes or interpretations, as indeed all errors, are my fault alone.

The staff at the South Australian Parliament Research Library, the Barr Smith Library, Special Collections at the Flinders University Library, the State Library of South Australia, the National Library of Australia and the Adelaide Theological Library, for

their assistance in accessing items – even the uncatalogued and ‘lost’ ones – in their collections.

The academic and professional staff in the School of History and Politics, particularly Clem Macintyre and Greta Larsen.

My family, friends and colleagues: most notably the past and present comrades of 519 - Josh, Mark, Alan, David, Nerina, Jim, Andrew and Brynley - and Elizabeth, Alexia, Rebecca, Shelley, Lisi, Laura, Louise and Valeska for their shared wisdom over tea and chocolate. I am particularly grateful to Erin Zimmerman, whose PhD path ran exactly parallel with mine, and without whom the last few months would have been unimaginably more difficult.

Finally, I thank my parents, Maureen and Greg, for their love, chauffeuring and for listening to me babble excitedly about my research over the last four years, and most importantly because they ensured that my childhood was filled with books, quiz nights and an insatiable curiosity about the world, the past, and why things are the way they are. By way of a thirtieth anniversary present: Mum and Dad, this is for you.

List of Abbreviations

ACT	Australian Capital Territory
ALRA	Abortion Law Reform Association
ALRASA	Abortion Law Reform Association of South Australia
<i>ALRN</i>	<i>Abortion Law Reform News</i>
AMA	Australian Medical Association
BBC	British Broadcasting Corporation
BMA	British Medical Association
<i>BMJ</i>	<i>British Medical Journal</i>
BSLSC	Barr Smith Library Special Collections
CAMP	Campaign Against Moral Persecution
CCL	Council for Civil Liberties
CSO	Community Standards Organisation
DLP	Democratic Labor Party
FOL	Festival of Light
GAA	Gay Activists Alliance
HA	House of Assembly
HLRS	Homosexual Law Reform Society
LC	Legislative Council
LCL	Liberal and Country League
LCP	Liberal/Country Parties
LM	Liberal Movement
MHA	Member of the House of Assembly
<i>MJA</i>	<i>Medical Journal of Australia</i>
MLC	Member of the Legislative Council
NCW	National Council of Women
NHMRC	National Health and Medical Research Council
NSW	New South Wales
SA	South Australia
<i>SAPD</i>	<i>South Australian Parliamentary Debates</i>
<i>SAPP</i>	<i>South Australian Parliamentary Papers</i>
SLSA	State Library of South Australia
TAB	Totalisator Agency Board
UK	United Kingdom
US, USA	United States of America
VD	Venereal Disease
<i>WAPD</i>	<i>Western Australian Parliamentary Debates</i>

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A Note on Terms

Throughout the thesis, I use the term ‘legalise’ to describe the reforms of both abortion and homosexual acts. This is the usual term to describe abortion law reform, but some of the literature prefers the term ‘decriminalise’ to describe the removal of homosexual offences from the statute books, arguing that to decriminalise is to remove an offence entirely, while to legalise is to retain an offence but prescribe circumstances in which it is legal. However, this is not a distinction consistently recognised by the legal profession. For that reason, and for reasons of brevity when discussing the two reforms together, I have chosen to use ‘legalise’ in both cases, or the more common legal term, to ‘make lawful’.

I use ‘abortion’ to mean the procedure of terminating a pregnancy by choice, rather than the strict medical sense in which abortion can also include what the lay-person would usually refer to as a miscarriage (i.e. when the body spontaneously ends a pregnancy).

The language used to describe homosexual men has changed significantly over time. For the most part I use the term ‘homosexual’. I use the term ‘men who have sex with men’ when discussion includes men who may not identify as homosexual, but who engage on occasion in homosexual acts, and ‘gay’ only when describing a person or group who self-identifies as such and uses the word (or similar) to describe themselves.

Introduction

Don Dunstan, premier of South Australia, stood on the balcony of Glenelg's Pier Hotel and waited for a tidal wave he knew would never arrive. It was the morning of 19 January 1976, and Dunstan and a crowd of thousands had gathered in the seaside Adelaide suburb to witness the freak wave predicted to hit the city on that day as God's punishment for the state's descent into sinfulness. Residents fled inland and a BBC crew waited with television cameras to beam the images of destruction halfway across the world. But the waters of Gulf St Vincent merely lapped against the sand.¹

The tidal wave episode encapsulates two competing forces in South Australia in the 1970s. The state had, in a short period of time, liberalised laws controlling liquor licensing, gambling, censorship, abortion and homosexuality. Some of these changes attracted attention from interstate because South Australia was the first state in Australia to enact them: male homosexual acts had been made lawful by the South Australian parliament only months before the tidal wave was predicted to strike, and abortion had been legalised in a similar pioneering move at the end of the previous decade. On the other side existed hostility and anxiety about these reforms, which were seen to constitute a sudden move towards the much-feared 'permissive society' and prompted the prediction of divine retribution in the form of a destructive wave.

The legalisation of these two 'immoral' practices is the focus of this thesis, which asks how and why, at that time in South Australian history, the state's parliament was willing to relax controls over behaviours related to sex that were traditionally considered immoral. It is not an examination of abortion law reform or homosexual law reform *per se*, but rather uses the two pioneering pieces of legislation to demonstrate the attitudes towards the separation of law and morality in South Australia at the time. Other reforms

¹ *Times*, 19 January 1976, pp.6, 13; 20 January 1976, p.7; *Advertiser*, 3 January 1976, p.5; 12 January 1976, p.1; 15 January 1976, p.5; 19 January 1976, p.3; 20 January 1976, pp.3, 5; Don Dunstan, *Felicia: The Political Memoirs of Don Dunstan*, Melbourne: Macmillan, 1981, pp.239-40.

were enacted in the same period that also involved the intersection of law and morality: for instance, censorship laws were also relaxed in South Australia before other states. However, as some aspects of censorship were relaxed by the Commonwealth Minister for Customs and Excise during the same period, South Australia did not act alone as it did on abortion and homosexual law reform. Additionally, prostitution is sometimes grouped together with abortion and homosexuality, but as no significant changes to the law regarding prostitution were effected in South Australia in the 1960s or 1970s, the comparison would not be fruitful. I have therefore confined my discussion to abortion and homosexuality because it is these two areas in which South Australia's parliament was the first in the country to effect reform, and within a narrow timeframe. It is therefore possible to isolate a distinctly South Australian path to and passage of these moral law reforms.

Abortion was legalised in South Australia in 1969 (the law took effect in January 1970), and male homosexual acts were legalised in two stages, in 1972 and 1975. Both were 'free' votes, or conscience votes, rather than governed by party policy. Both activities had been legalised in Britain in 1967, and the British legislation served as a basis for the South Australian laws. However, the path to reform was not as simple as following the precedent from Britain, as part of a sign of the changing mores in the era of social 'revolution'. This is most clearly illustrated by other Australian states' reluctance to reform the laws: Tasmania did not legalise homosexual acts until 1997, and as of 2013, the parliaments of New South Wales and Queensland have not passed laws to legalise abortion, instead relying on liberal judicial interpretations of statute laws that retain abortion as a crime.²

I examine the circumstances that led to widespread public discussion of the two 'moral' issues and the laws that governed them, and the political arguments that were advanced in support of and in opposition to the proposed reforms. It is the story of reformists fighting against centuries of traditional attitudes, enshrined in law, in order to empower individuals who had previously been marginalised. It is also the story of people fighting against the threatening tide of unacceptable liberalism, in order to maintain moral standards in their community. Both sides had considerable justification and support for

² See Helen Pringle, 'Is Abortion Illegal?', *Australian Journal of Political Science*, vol.32 no.1, 1997, pp.93-110; Kate Gleeson, 'The Other Abortion Myth – the Failure of the Common Law', *Journal of Bioethical Enquiry*, vol.6 no.1, 2009, pp.69-81.

their respective positions, and the success of the reformists was far from an inevitable sign of the times, though the global climate of activism and social change arguably contributed to the passage of the reforms.

I have deliberately framed my project to avoid making any judgements as to whether legalising these two behaviours was ‘right’ or ‘wrong’. The purpose of this research is not to argue for or against the reforms, but rather to explain why South Australian lawmakers believed that they were the right thing to do. When I refer to the ‘success’ of a reform, I am not making a moral judgement, but merely referring to the passage of the proposed law: a ‘success’ from the standpoint of the person who moved the change.

This thesis traces the evolution of public discussion about abortion and homosexuality. It examines how conversation about the two behaviours shifted from private to public, and gained a place on the political reform agenda. Australian criminologist Paul Wilson has argued that prior to their legalisation, abortion and male homosexual acts (along with prostitution) sat on the “criminal threshold”, and were examples of socially deviant behaviour that had been criminalised, while other behaviours such as adultery were deviant but not criminal. Writing in 1971, he defined the concept:

Behaviour on the criminal threshold is action which at the present time is considered by some or many people to be criminal and is legislatively labelled as such, yet which, it is felt, will in the future become “non-criminal” in the eyes of the law and possibly in the eyes of the public as well.³

Though his definition suffers from some degree of ambiguity (“it is felt” by whom, and on what legitimate basis?), I draw upon his conceptualisation and consider how abortion and male homosexual acts shifted across the criminal threshold in the eyes of the public and the lawmakers of South Australia. I argue that a second threshold is critical to understanding the shift from unlawful to lawful: the threshold between private and public discussion. Before laws governing ‘moral’ issues were seriously considered by parliamentarians, a shift needed to occur in the site and nature of conversation about those

³ Paul Wilson, *The Sexual Dilemma: Abortion, Homosexuality, Prostitution and the Criminal Threshold*, Brisbane: University of Queensland Press, 1971, p.6.

issues, moving them from a topic suitable only for discussion behind closed doors to matters that could be discussed openly. Only once public discussion became respectable could the acts themselves revert to truly private, being no longer the concern of the law.⁴ Most succinctly, private practice depended upon public discussion, and these moral issues could not cross the criminal threshold until the threshold from private to public discussion had also been crossed.

In order to identify the threshold between public and private conversation, it is helpful to characterise ‘public’ and ‘private’ as ends of a continuum, rather than as discrete spheres. At the truly private end of the spectrum is conversation (spoken or written) between individual citizens; private not only because the views conveyed in such discussions were not disseminated at the time, but also because they are lost to the historian. Situated one step up are conversations held within an organised group and private to all but members of that group with restricted entry requirements, such as meetings of medical professionals or people of a particular religious belief, particularly meetings of those within the formal organisational structure of a church. Discussions held in these spaces are difficult to access, and reports tend to be available only by means of the next step on the continuum: publications that acted as the pivot-point between private and public. These are mediated by the editor of the publication, and often provide only brief summaries of the group’s views on certain matters, distilling and simplifying the inevitable internal divisions that very likely occurred in the privacy of the closed meeting. Such publications were targeted at group members, and while publicly available, for instance in public libraries, realistically their reach would rarely have extended beyond members. Publications such as university newspapers and periodicals aimed at a limited readership of a certain ideology fall into the same category, as they were publicly available but did not generally have an extensive readership beyond their specific demographic. Political discussions also occupy a complex middle space: party-political machinations were intensely private, but communicated publicly in parliament and in interviews and statements to the media. Furthermore, although parliamentary discussions were public and were published and made available in Hansard, very few members of the public would have attended parliament or sought copies to read for themselves. Virtually

⁴ The extent to which this actually occurred is debatable, though the long-term effects of the reforms are beyond the scope of this thesis. Kate Gleeson has examined the extent to which “consenting adults in private” is a fallacy in ‘Consenting Adults in Private: In Search of the Sexual Subject’, unpublished PhD thesis, University of New South Wales, 2006.

all political discussion was only made truly public through the mass-media. This applies equally for smaller interest groups and churches: religious attitudes or the views of activists could become front page news, though always mediated by editorial decisions. It is the daily press, and television and radio coverage (virtually none of which has been preserved), which occupies the most ‘public’ end of the continuum.

My project does not, for the most part, seek to illuminate the experiences of the men and women involved in obtaining or providing abortions, or men who had sex with men. Therefore, the primary sources I draw upon are largely public sources and those that link private conversations with the public sphere. Those linking publications include those with smaller, specialised readerships such as the weekly newspapers or newsletters of religious denominations; medical journals and newsletters; and newsletters of organisations including the Humanist Society, the Council for Civil Liberties, the Abortion Law Reform Association, CAMP (Campaign Against Moral Persecution), and the Community Standards Organisation in its several incarnations. Most of these have been preserved erratically, and are held in a number of libraries, archives, and personal collections, often in incomplete sets that must be pieced together from different repositories. I also draw heavily on newspapers, particularly the Adelaide daily papers, which commanded a greater readership and arguably more respect than in the present day.⁵ The most important of these in the 1960s and 1970s was Adelaide’s only morning daily paper, the *Advertiser* (published Monday to Saturday). The other two key Adelaide papers were the daily afternoon newspaper, the *News* (also Monday to Saturday), and the Sunday paper, the *Sunday Mail*. The National Library of Australia’s Trove digitisation project is a valuable archive, but it currently runs only to the end of 1954 for the *Advertiser* (well before the period that comprises the bulk of my research), and has not yet digitised the *Sunday Mail* or the *News*. This is, in one way, a benefit, as the online resource makes it tempting to rely on the site’s keyword search function, which is highly imperfect and not an accurate representation of the total number of times a certain word occurs, nor the context in which it is used. I have instead combed editions of the papers on microfilm and preserved hard copies, searching for relevant articles and gleaning more context from surrounding articles on other world events than can be obtained from

⁵ In 1965, the *Current Affairs Bulletin* wrote of the Adelaide *Advertiser*: “There lingers about it ... the note of ponderous respectability, but also of ponderous responsibility” and asserted that it was less frivolous than its eastern states counterparts. See Derek Whitelock, *Adelaide: From Colony to Jubilee - A Sense of Difference*, Adelaide: Savvas, 1985, p.247.

reading isolated articles that happen to contain a certain keyword. For insights into political motivations and arguments, I have drawn heavily upon the published parliamentary debates available in volumes of Hansard. They are problematic in that they contain only the speeches (and occasional heckling from the floor), with no explanatory context concerning, for instance, who was absent from parliament and for what reasons. They are, however, the best available sources and close analysis of politicians' speeches and voting patterns is rarely undertaken but very revealing. Other public but rarely accessed sources I have utilised include crime statistics. Examination of individual court case records is beyond the scope of this project, but raw prosecution and conviction figures are available for abortion and homosexual offences. However, these statistics had never been collated and so I have extracted them, year-by-year, from over a century's worth of the state's statistical registers. They too can be problematic, as offences have changed names and been reported in different ways over the course of decades, but they remain a valuable indicator of the operation of laws against the two behaviours.

Much of the thesis concentrates on the public discussion presented in the daily newspapers, as these are the most complete set of extant sources that can be traced consistently throughout the twentieth century. The role of the media in public and political agenda setting should therefore be considered. Prior to the expansion in television as a primary source of news and current affairs coverage, which accelerated in Australia from the beginning of the 1970s, daily newspapers were the most important site of news and public issues that were accessed by a significant proportion of the population. The issues covered in the daily papers, and the manner in which they were presented, are therefore the strongest remaining indication of how certain matters were presented at a community-wide level. Much has been written on the role of the media in agenda-setting, though the focus tends to be on public opinion (as revealed by opinion polls) rather than the stage before that, public awareness, which is my chief concern. That is, I argue that members of the public have to be aware of the issue—it must be visible—before they can hold an opinion on the issue. Public visibility therefore leads to public opinion, which in turn can lead to political action. Indeed, Bernard C. Cohen's argument that the press is most successful "in telling its readers what to think *about*",⁶ rather than *what* to think, suggests that the media is particularly important in increasing the visibility of individual

⁶ Bernard C. Cohen, *The Press and Foreign Policy*, Princeton: Princeton University Press, 1963, p.13. Emphasis in original.

issues.⁷ Furthermore, although even the most concentrated periods of attention on abortion or homosexuality prior to the reforms did not cause a response extreme enough to be considered a panic, elements of Stanley Cohen's analysis of moral panics remain relevant. He identifies the role of the mass media in a moral panic as exposing "deviance and disaster" to the public, who then form opinions and act based on the nature of that exposure.⁸

Problems exist with using largely written and published sources, as they tend to emanate from well-educated and organised groups comprising largely middle-class professionals such as the Humanist Society and university student publications. It is difficult to ascertain the views of people with less privileged positions and with fewer outlets for disseminating their views. However, my project focuses on public conversations about these moral issues, and those people were isolated, even ostracised, from contributing to those conversations, though they likely consumed them. The public (media) discussions drove political understanding of community attitudes, except where politicians directly canvassed the views of their constituents. These reforms were, with some exceptions, driven by middle-class interest and activism, and are the mark of a society with the luxury of considering matters beyond basic economic survival. In this way, an understanding of the long period of socially conservative but economically sound Playford governments that preceded the era of these two reforms is important to establish why South Australia was willing to consider the issues when it did.

As my project focuses on recent history, I had initially intended to carry out a number of oral histories to add to the understanding of the passage of the reforms. In particular, I had hoped to speak with a number of politicians and examine more deeply their motivations for voting for or against the reforms. However, a great many members have died, and of those who remain, many are very elderly. After initial conversations with and invitations to several former politicians, I realised that the number I was going to be able to interview was so small that I would not have been able to draw any significant conclusions from my

⁷ See also Maxwell E. McCombs and Donald L. Shaw, 'The Agenda-Setting Function of Mass Media', *Public Opinion Quarterly*, vol.36 no.2, 1972, pp.176-87; Bryan D. Jones and Frank R. Baumgartner, 'Representation and Agenda Setting', *The Policy Studies Journal*, vol.32 no.1, 2004, pp.1-24; Fay Lomax Cook *et al.*, 'Media and Agenda Setting: Effects on the Public, Interest Group Leaders, Policy Makers and Policy', *Public Opinion Quarterly*, no.47, 1983, pp.16-35.

⁸ Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd edition, London: Basil Blackwell, 1987, p.30.

discussions with them. In particular, very few remain from the parliament of 1969 that voted on the abortion Bill, and those who are alive are at the youngest end of the parliamentary cohort, a demographic that was more likely to vote for the reforms. Such an uneven sample makes for a problematic methodology. Furthermore, after 40 years, I understand that it is not possible to expect former members to remember with clarity their exact motivations behind their votes – at least, no more than they placed on the public record via press statements or speeches to parliament during the course of the debates. The nature of memory is problematic: not only does it fade, but it combines and conflates and takes on thoughts and feelings of the intervening years.⁹ Abortion and homosexuality are two topics that are particularly susceptible to the fallibility of memory. They are issues that have continued to be in the public and political eye since the 1970s, and remain the subject of heated political discussion in the present day. More than that, they are issues on which the ‘politically correct’ position has shifted since the debates of the 1960s and 1970s. For instance, in the 1960s it was quite common for politicians to speak of the desirability of ‘curing’ the ‘perversion’ of homosexuality; sentiments expressed only by the most conservative politicians in twenty-first century debates about same-sex rights. This shift may leave former politicians (or indeed anybody) unwilling to admit to having subscribed to that belief in the past, and leaves memories liable to anachronisms. It is quite possible that without being aware that they are doing so, politicians may attribute their support for the reforms in the 1960s and 1970s to justifications that are more ‘modern’ or seen as more acceptable according to today’s mainstream understanding of the issues. Valuable study can be done on the way that these memories and justifications shift, but this thesis has its focus elsewhere.¹⁰ These factors, combined with the natural difficulty of any person remembering exactly what they were doing or what they thought 40 years ago, and the small sample size, meant that I have instead decided to rely on the justifications given contemporaneously with the reforms. I accept that statements read into Hansard or given to the local newspaper are not necessarily a full disclosure of all reasons for choosing how to vote, but this is a problem common to all sources. Incomplete as they might be, these justifications reveal the themes that

⁹ See Mark Peel, *The Lowest Rung: Voices of Australian Poverty*, Melbourne: Cambridge University Press, 2003, p.11; Alistair Thomson, ‘Memory and Remembering in Oral History’, in Donald A. Ritchie (ed.), *The Oxford Handbook of Oral History*, Oxford: Oxford University Press, 2011, pp.77-95; Patrick O’Farrell, ‘Oral History: Facts and Fiction’, *Quadrant*, vol.23 no.11, 1979, p.4.

¹⁰ See Alistair Thomson, ‘Anzac Memories: Putting Popular Memory Theory into Practice in Australia’, in Robert Perks and Alistair Thomson (eds), *The Oral History Reader: Second Edition*, London: Routledge, 2006, pp.244-54.

dominated public debate at the time. Which justifications were considered publicly acceptable, and which were most prevalent? Which were missing, and for what possible reasons? My thesis is an examination of public discussion and attitudes, and the sites where private discussion becomes public, but the private sphere requires a far more in-depth study of individual communities than can be achieved in this project. I do draw from time to time on earlier oral history interviews with several politicians, and as they can be problematic, I do not rely on them as authoritative sources of information or opinions. Several politicians were interviewed for an Honours thesis in the immediate aftermath of the abortion reform; I am more inclined to rely on these statements as they are virtually contemporaneous, and more akin to media interviews than oral histories.

There exists only a small body of research on abortion and homosexuality in South Australia, and little considers in any detail the parliamentary law reforms of the two activities. The three most specific considerations of the reforms all take the form of Honours theses, which are necessarily limited in scope. The reforms have been mentioned in passing by authors in some general histories of the state (though even such histories are scarce), but their omission or scant treatment in certain relevant works is concerning. For instance, the one female-oriented history of the state, Helen Jones's *In Her Own Name: A History of Women in South Australia from 1836*, spends just half a page discussing abortion law reform. The book represents itself as a "political and legal history" and so it is disappointing that abortion reform does not warrant greater examination. The sole book dedicated to the 'Dunstan Decade' contains merely one brief mention of the state's pioneering homosexual law reform, which is not discussed at all in chapters entitled 'Law Reform' and 'Equal Opportunities'.¹¹ It is omissions such as these that I aim to redress with my research.

This thesis begins with an examination of the practice of abortion and homosexuality in South Australia during the period that they were restricted by law, and demonstrates that the laws were not effective or strictly policed. I show that discussion of the activities was not only taboo according to social norms, but was also reinforced by laws that attempted to prevent publications from exposing such deviance. Most of the literature on abortion and male homosexual acts in Australia during this time examines only the experiences of

¹¹ Helen Jones, *In Her Own Name: A History of Women in South Australia from 1836*, 2nd edition, Adelaide: Wakefield Press, 1994; Andrew Parkin and Allan Patience (eds), *The Dunstan Decade: Social Democracy at the State Level*, Melbourne: Longman Cheshire, 1981.

the eastern states and although the situation in South Australia was not radically dissimilar, differences did exist that should not be overlooked by presenting the experience of only the more populous states as a national history. A number of historians have analysed aspects of homosexuality in other Australian states in the first half of the twentieth century,¹² but homosexuality in South Australia prior to the 1960s has been canvassed only in an article by John Lee, an Honours thesis by Chiah Mayne, and most recently by Dino Hodge in a PhD thesis and several articles.¹³ Detailed histories of the period are hampered by a lack of sources; Lee draws upon a small number of oral histories to reveal the experiences of homosexual men, and Mayne substantially relies upon Lee's work. I am unable to comment on Hodge's PhD thesis, as it has only recently been completed and remains under embargo,¹⁴ but he has written elsewhere on Adelaide's "flowering homosexual culture" in the decades before law reform. Hodge's article draws on the full versions of the interviews on which Lee based his article, and reveals the lengths homosexual men went to in order to hide their sexuality from public exposure and the law.¹⁵ In contrast to these very private histories, my research emphasises the way in which homosexuality was presented to the general public. This approach has been taken

¹² Lisa Featherstone, *Let's Talk About Sex: Histories of Sexuality in Australia from Federation to the Pill*, Newcastle-upon-Tyne: Cambridge Scholars Publishing, 2011; Clive Moore, *Sunshine and Rainbows: The Development of Gay and Lesbian Culture in Queensland*, Brisbane: University of Queensland Press, 2001; Graham Carbery, 'Some Melbourne Beats: A "Map" of a Subculture from the 1930s to the 1950s', in Robert Aldrich and Garry Wotherspoon (eds), *Gay Perspectives: Essays in Australian Gay Culture*, Sydney: Department of Economic History, University of Sydney, 1992, pp.131-45; Wayne Murdoch, "'Disgusting Doings" and "Putrid Practices": Reporting Homosexual Men's Living in the *Melbourne Truth* during the First World War', in Robert Aldrich and Garry Wotherspoon (eds), *Gay and Lesbian Perspectives IV: Studies in Australian Culture*, Sydney: Department of Economic History and Australian Centre for Lesbian and Gay Research, University of Sydney, 1998, pp.116-31; Adam Carr, 'Policing the "Abominable Crime" in Nineteenth Century Victoria', in David L. Phillips and Graham Willett (eds), *Australia's Homosexual Histories: Gay and Lesbian Perspectives V*, Sydney: Australian Centre for Lesbian and Gay Research & Australian Lesbian and Gay Archives, 2000, pp.27-40; Ruth Ford, "'Filthy, Obscene and Mad": Engendering "Homophobia" in Australia, 1940s-1960s', in Shirleene Robinson (ed.), *Homophobia: An Australian History*, Sydney: Federation Press, 2008, pp.86-112.

¹³ John Lee, 'Male Homosexual Identity and Subculture in Adelaide Before World War II', in Robert Aldrich and Garry Wotherspoon (eds), *Gay Perspectives: Essays in Australian Gay Culture*, Sydney: Department of Economic History, University of Sydney, 1992, pp.95-112; Chiah Mayne, 'The Nature of Male Homosexual Interactions in Adelaide Before 1945', unpublished BA(Hons) thesis, University of Adelaide, 2007; Dino Hodge, 'The Police, the Press and Homophobia in South Australia: 1941-1991', *Melbourne Historical Journal*, vol.39, 2011, pp.119-40; Dino Hodge, 'Adelaide's Flowering Homosexual Culture: 1939-1972', *Flinders Journal of History and Politics*, vol.27, 2011, pp.35-55.

¹⁴ See abstract for Dino Hodge, 'Pink, Red and Vermillion: Homophobia in the Life and Times of Don Dunstan', unpublished PhD thesis, University of Melbourne, 2012, available at <http://repository.unimelb.edu.au/10187/16786>, accessed 27 May 2013.

¹⁵ Hodge, 'Adelaide's Flowering Homosexual Culture', pp.49-52.

by Graham Willett who has examined public attitudes towards homosexuality, particularly in the 1950s and chiefly in the eastern states.¹⁶ However, histories of the move towards homosexual rights generally do not examine the period prior to the late 1940s,¹⁷ which I have explored in order to highlight the shift in public discussion that preceded law reform, and also to demonstrate the effectiveness (or otherwise) of the laws that were reconsidered by politicians in the early 1970s.

Studies of abortion in the first half of the twentieth century tend to focus on the experiences of women undergoing abortion, its availability and methods, as well as the manner in which they were treated after undergoing, or seeking to undergo, the procedure. These aspects are central to understanding the history of abortion, but they are not the focus of this thesis. As with my study of homosexuality in the pre-reform period, I chiefly examine the attempts to curtail public discussion of abortion and demonstrate the limited success of the laws against not only the procedure, but also public discussion of it. Once again, most historians have examined the situation in the eastern states; Judith Allen, Stefania Siedlecky and Diana Wyndham, Shurlee Swain and Renate Howe, Lyn Finch and Jon Stratton, Lisa Featherstone, and Frank Bongiorno have all canvassed the experience of women seeking abortions in their work, but focus largely on New South Wales and Victoria.¹⁸

The South Australian experience has been considered by two authors. Patricia Sumerling's Honours thesis and subsequent article highlight the ineffectiveness of the law in preventing women from seeking and obtaining abortions during the period from 1870 to 1910. Her work utilises a small number of case studies, and shows that although the police knew of abortionists operating in Adelaide, very few were successfully

¹⁶ Graham Willett, 'The Darkest Decade: Homophobia in 1950s Australia', *Australian Historical Studies*, no.109, 1997, pp.120-32.

¹⁷ For instance, Robert Reynolds, *From Camp to Queer: Remaking the Australian Homosexual*, Melbourne: Melbourne University Press, 2002, begins only in the 1960s.

¹⁸ Judith A. Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, Melbourne: Oxford University Press, 1990; Stefania Siedlecky and Diana Wyndham, *Populate and Perish: Australian Women's Fight for Birth Control*, Sydney: Allen & Unwin, 1990; Shurlee Swain and Renate Howe, *Single Mothers and Their Children: Disposal, Punishment and Survival in Australia*, Cambridge: Cambridge University Press, 1995, pp.36-47; Lyn Finch and Jon Stratton, 'The Australian Working Class and the Practice of Abortion 1880-1939', *Journal of Australian Studies*, vol.12 no.23, 1988, pp.45-64; Featherstone, *Let's Talk About Sex*; Frank Bongiorno, *The Sex Lives of Australians: A History*, Melbourne: Black Inc, 2012.

prosecuted.¹⁹ Barbara Baird's research comprises the most extensive body of literature about abortion in South Australia. Baird's PhD thesis considers representations of women who have undergone abortions, and abortionists, and how historical views of the procedure shape the contemporary experience of women seeking and obtaining abortions.²⁰ Baird takes a highly theoretical approach to discourse analysis, and she acknowledges the importance of law reform but "rather than focusing on the struggle for legal and accessible abortions, [she focuses] on the struggle over the constitution of the aborting woman ... [who] is constituted differently and specifically in different times and places by competing discourses".²¹ Baird's work therefore considers the construction of the woman, whereas my research concentrates on attitudes towards abortion as an activity in itself. Assumptions about the type of woman who sought an abortion, and debate about the circumstances in which a woman might lawfully obtain one, certainly inform attitudes towards the procedure, and therefore my largely empirical research runs in parallel with Baird's work and together reveal how the construction of the aborting woman and abortion that endured through the first half of the twentieth century went on to shape the debates about abortion law reform in South Australia in the 1960s. Additionally, Baird's thesis draws upon her 1990 collection of oral histories with people involved in illegal abortions in South Australia, *"I had one too..." An Oral History of Abortion in South Australia before 1970*, in which she clearly shows the effect that legalisation has had on the knowledge of abortion.²²

My research on discussion about abortion continues in Chapter 2, where I trace the increasing public visibility of abortion, and the possibility of abortion law reform, from the 1930s to the 1960s. A series of events caused abortion to become more visible in the public sphere, which in turn enabled the eventual public and political discussion that led to law reform in South Australia in 1969. None of these events was unique to that state—a British court ruling in 1938, female sexual morality on the home-front during World

¹⁹ Patricia Sumerling, 'Infanticide, Baby-Farming and Abortion in South Australia 1870-1910', unpublished BA(Hons) thesis, University of Adelaide, 1983; Patricia Sumerling, 'The Darker Side of Motherhood: Abortion and Infanticide in South Australia 1870-1910', *Journal of the Historical Society of South Australia*, vol.13, 1985, pp.111-27.

²⁰ Barbara Baird, "'Somebody Was Going to Disapprove Anyway': Re-thinking Histories of Abortion in South Australia, 1937-1990', unpublished PhD thesis, Flinders University of South Australia, 1998.

²¹ Baird, "'Somebody Was Going to Disapprove Anyway'", p.34.

²² Barbara Baird, *"I had one too..." An Oral History of Abortion in South Australia before 1970*, Adelaide: Women's Studies Unit, Flinders University of South Australia, 1990.

War II, foetal deformities caused by thalidomide, and British law reform in 1967—but each was publicised and discussed within South Australia and it is these discussions that I examine. The existing literature on wartime morality and thalidomide has its focus on matters other than abortion; for instance, much has been written about the effects of thalidomide on drug regulation and testing, but little about the impact of the drug on ending the silence surrounding abortion. Keith Hindell and Madeleine Simms, and Barbara Brookes, consider the issue very briefly in reference to abortion law reform in Britain.²³ However, I am the first to show that despite the small number of local cases of thalidomide deformity in Australia, the public attention and discussion of abortion had the same effect that has been observed in Britain where more ‘thalidomide babies’ were born.²⁴ There exists only one work, a PhD thesis by Karen Coleman, which systematically demonstrates the shift in discourse about abortion that occurred in the twentieth century.²⁵ Coleman traces the ways in which the discursive construction of abortion has changed in Australia (her focus is on the eastern states), with a particular emphasis on the construction of the female body that incorporates a wide-ranging discussion of abortion as birth control, as a choice issue, its relationship with femininity and the responsibility of motherhood, as part of surveillance of female bodies, and in its medical, legal and socially constructed contexts. These different framings are relevant to my research, particularly as they are articulated by members of parliament in speeches justifying their position on the reform. However, my chief concern is with the prevalence and sites of publicly visible conversations, and so Coleman’s focus, like Baird’s, runs parallel with and underpins my arguments. In particular, Coleman’s work clearly demonstrates that law reform itself was only one small aspect of the ways in which abortion was framed during the twentieth century and underscores the important point that my research must be considered in conjunction with other studies of abortion discourse. Coleman’s concern is to determine what abortion discourse tells us about the ways that women’s bodies have been perceived, whereas I concentrate on the impact of discussion on law reform. I show that the type of reform that was passed in South Australia very clearly reflected how abortion and

²³ Keith Hindell and Madeleine Simms, *Abortion Law Reformed*, London: Peter Owen, 1971; Barbara Brookes, *Abortion in England, 1900-1967*, London: Croom Helm, 1988.

²⁴ The research from this thesis on thalidomide and abortion in Australia has been published in expanded form in: Clare Parker, ‘From Immorality to Public Health: Thalidomide and the Debate for Legal Abortion in Australia’, *Social History of Medicine*, vol.25 no.4, 2012, pp.863-80.

²⁵ Karen Coleman, ‘Discourses on Sexuality: The Modern Abortion Debate’, unpublished PhD thesis, Macquarie University, 1991.

women's bodies were constructed by lawmakers, but this is not the central narrative of my thesis.

Two other PhD theses include some study of the ways in which abortion has been framed in public. Robyn Gregory's thesis on abortion in Victoria emphasises formal, semi-private sites of discourse involving 'experts', such as medical and legal professionals, rather than the community-wide attitudes that I reveal through analysis of the media treatment of the subject.²⁶ Gregory argues that the construction of abortion involved a complex interaction between medical and legal understandings of the issue,²⁷ and I demonstrate the way in which these 'expert' conceptualisations influenced public discussion about abortion, which I argue was essential to reform reaching the political agenda. In her PhD thesis, Baird has identified some of the key instances of public or semi-public discussion about abortion in South Australia, which she draws upon to consider "the dominant discourses through which the aborting body is produced and contested".²⁸ Baird confirms that she does "not construct a coherent and comprehensive narrative of ... public debate in SA",²⁹ which is where my contribution complements her research. Chapter 2 does not discuss *every* public mention of abortion in South Australia, but it clearly demonstrates the trajectory of increasingly open conversations about the issue. My emphasis is on who was contributing and the location of that contribution, in contrast to Baird's and Coleman's detailed discursive analyses of how the discussion was constructed.

Chapter 3 examines the passage of the reform Bill through the South Australian parliament in 1968-69, and the influence of medical professionals, churches, activists, the media and the public on the reform debates. It follows the style of analysis undertaken by Hindell and Simms in their detailed study of the British parliamentary reform of 1967, and many of our conclusions about the role of the media and the churches align. However, my argument regarding pro-reform activists is not as unequivocal as that of Hindell and Simms; the role of the Abortion Law Reform Association (ALRA) in South Australia was not as fundamental to reform as it was in Britain.

²⁶ Robyn V. Gregory, 'Corrupt Cops, Crooked Docs, Prevaricating Pollies and "Mad Radicals": A History of Abortion Law Reform in Victoria, 1954-1974', unpublished PhD thesis, RMIT University, 2005, pp.80-120.

²⁷ *Ibid.*, p.118.

²⁸ Baird, "Somebody Was Going to Disapprove Anyway", p.111.

²⁹ *Ibid.*

Studies of abortion law reform in other Australian states differ substantially from my approach. This is either because they are brief and do not undertake a detailed analysis of the mechanics of parliamentary reform,³⁰ or because they deal with jurisdictions where reform was achieved through the courts, rather than state parliament. In particular, Robyn Gregory and Gideon Haigh have charted the circumstances of the Menhennitt decision in the Supreme Court of Victoria in 1969, which spared that state's parliament from needing to debate reform.³¹ Some authors have considered the impact of certain interested groups in the community, with reference to South Australia: Karen Coleman has argued that the strength or weakness of the influence of the Catholic Church affected each state's attempts at reform, and Stefania Siedlecky and Diana Wyndham identify the problem faced by the Abortion Law Reform Association of South Australia, which was compelled to choose between taking a hardline stance (where abortion on request was their only accepted position), or accepting the more restrictive position more similar to the Bill that ultimately passed.³² Barbara Baird's PhD thesis considers the way in which aborting women were represented in the evidence given to the parliamentary Select Committee prior to debate on the Bill, which I also analyse, but she does not scrutinize the speeches of parliamentarians and, therefore, the basis on which reform was justified.³³

The one work devoted to the South Australian reform is an Honours thesis by Therese Nicholas.³⁴ Completed in 1970, the year in which the law took effect, the work cannot assess the reform in any historical context. Her approach belongs to the discipline of political science, rather than history, and for this reason she concentrates on assessing the role of activists through theories of group pressure, while largely neglecting analysis of the influential arguments and the nature of the discussion that permitted the Bill to pass, which is my key concern. Nicholas's ahistorical perspective acknowledges only the influence of the British *Abortion Act* of 1967, but does not consider the changes in society and public discussion that allowed the reform to develop and succeed. I critically examine

³⁰ See Siedlecky & Wyndham, *Populate and Perish*, pp.78-101; Allen, *Sex and Secrets*, pp.202-12.

³¹ Gregory, 'Corrupt Cops, Crooked Docs'; Gideon Haigh, *The Racket: How Abortion Became Legal in Australia*, Melbourne: Melbourne University Press, 2008.

³² Karen Coleman, 'The Politics of Abortion in Australia: Freedom, Church and State', *Feminist Review*, no.29, 1998, pp.83-4; Siedlecky & Wyndham, *Populate and Perish*, p.82.

³³ Baird, "'Somebody Was Going to Disapprove Anyway'", pp.128-33.

³⁴ Therese Nicholas, 'Abortion Law Reform in South Australia', unpublished BA(Hons) thesis, Flinders University of South Australia, 1970.

and expand upon Nicholas's unfeasibly broad conclusion that "the passage of the legislation can be attributed generally to the pressure of historical events and conditions, the shared social values and political culture of the members of the polity, and the subculture of members of Parliament",³⁵ and add to her research with an analysis of the demographics of the politicians who supported abortion reform in order to demonstrate how the composition of the South Australian parliament and the local party-political situation contributed to the nature of the legislation that was passed. An analysis of the passage of the reform has also been undertaken by Daniel Overduin and John Fleming in their book on social reforms of the 1970s. However, it is an ideological work grounded firmly in the religious beliefs of its authors (Overduin was a Lutheran pastor; Fleming an Anglican minister who later became a Catholic priest) and forcefully argues against legalisation of abortion and homosexual acts, which the authors contend will have (negative) "social and moral consequences".³⁶

The second part of this thesis examines the path to homosexual law reform, and the debates about legalisation, in the same manner as the chapters about abortion law reform. Chapter 4 traces the increasing public visibility of homosexuality from the late 1940s, through to the early stages of homosexual activism in Australia at the end of the 1960s. Attitudes towards homosexuality in Australia in the 1950s and 1960s have been examined by a number of authors, particularly Graham Willett who argues that the 1950s was "perhaps the darkest decade of the twentieth century" for homosexuals,³⁷ and saw a period of active repression of homosexuality, and discussion about it, that "prevented the emergence of a public homosexuality until well into the 1960s".³⁸ In his authoritative work on the history of gay and lesbian activism in Australia, *Living Out Loud*, Willett asks:

If discussion of homosexuality was carefully excluded from 1950s public life, and expressed itself only within a small, timid and

³⁵ *Ibid.*, pp.105-6.

³⁶ Daniel Overduin and John Fleming, *Wake Up, Lucky Country! A Reflection on Social Issues During the Past Decade*, Adelaide: Lutheran Publishing House, 1980, p.208.

³⁷ Willett, 'The Darkest Decade', p.132.

³⁸ *Ibid.*, p.121; see also Graham Willett, 'From "Vice" to "Homosexuality": Policing Perversion in the 1950s', in Shirleene Robinson (ed.), *Homophobia: An Australian History*, Sydney: Federation Press, 2008, pp.113-27.

largely underground camp scene, how did it come to be that by the late 1960s homosexuality was not only being talked about in public, but was widely seen as an issue that needed to be dealt with?³⁹

He argues that the attention given to homosexuality in Britain, new medical conceptualisations of homosexuality, and a “new, liberal current in Australian political life” were all influential.⁴⁰ Willett refers generally to the national situation, and indeed, there was little that occurred specifically in South Australia during the 1960s to suggest that reform would soon occur, apart from the electoral success of the Labor Party and the elevation of Don Dunstan as premier. Rather, the same events identified by Willett, such as considerations on attitudes towards by homosexuality by some churches, the establishment of the Homosexual Law Reform Society of the ACT, and the establishment of Campaign Against Moral Persecution (CAMP) in Sydney and the resulting press coverage in the national newspaper, form the background to the pioneering law reform in South Australia.⁴¹ In the 1960s, the path to homosexual rights was a national one, but from 1972 it became more closely associated with individual states.

Chapter 4 concludes with an analysis of the impact of the murder in May 1972 of Dr George Duncan on law reform in South Australia. The Duncan case has been examined chiefly by Tim Reeves in his Honours thesis and an article on the 1972 reform, which are the works most similar to my research.⁴² Reeves argues that although the murder of Duncan forced the topic of homosexuality into the open, and led to law reform, the Act that passed was so inadequate that it was a “tragedy that the death of George Duncan, which could have achieved so much, resulted in so very little”.⁴³ Paul Sendziuk and I

³⁹ Graham Willett, *Living Out Loud: A History of Gay and Lesbian Activism in Australia*, Sydney: Allen & Unwin, 2000, p.19.

⁴⁰ *Ibid.*, pp.19-21.

⁴¹ *Ibid.*, pp.19-30; Graham Willett, “‘We Blew Our Trumpets and...’: The ACT Homosexual Law Reform Society”, in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, pp.1-16.

⁴² Tim Reeves, ‘Poofters, Pansies and Perverts: 1972 Debate on Homosexuality in South Australia’, unpublished BA(Hons) thesis, University of Adelaide, 1992; Tim Reeves, ‘The 1972 Debate on Male Homosexuality in South Australia’, in Robert Aldrich (ed.), *Gay Perspectives II: More Essays in Australian Gay Culture*, Sydney: Department of Economic History with The Australian Centre for Gay and Lesbian Research, University of Sydney, 1994, pp.149-92.

⁴³ Reeves, ‘Poofters, Pansies and Perverts’, p.68.

have argued that this is a pessimistic interpretation of the 1972 reform which, while falling short of full legalisation, rapidly led to further reform in South Australia and was followed by other states.⁴⁴ I develop that argument further here, contending that public discussion was critical to homosexual law reform earning a place on the political agenda. As Duncan's death caused the nascent public discussion about homosexuality to escalate rapidly, and led to the first instance of Australian politicians seriously debating the merits of removing laws that criminalised men for private sexual activity, I suggest that the death of Dr Duncan actually resulted in a great deal. It is true that the law that was passed in 1972 did not afford greater legal freedom to men who had sex with men, and did not immediately end homophobia. Kate Gleeson has argued that the type of laws passed in South Australia in 1975 and Britain in 1967 in fact perpetuated the surveillance of homosexual men and justified state intrusion in their activities, and Dino Hodge has shown that Duncan's death and the 1972 reform did not dramatically alter attitudes to homosexuality,⁴⁵ but the politicisation of homosexuality that occurred as a result of Dr Duncan's death is a highly significant milestone in the history of homosexuality in Australia.

In Chapter 5, I examine the debates on the private member's Bill introduced in the South Australian parliament in the months after the murder of Dr Duncan. As in the equivalent chapter on the abortion Bill, I consider the views of the churches, the medical profession, activists, the media and the general public, before a detailed discussion of the attitudes expressed by members of parliament. My approach is similar to that taken by Miranda Morris in her study of homosexual law reform in Tasmania in 1997, though as the last Australian state to effect reform, 25 years after South Australia, the way in which the debates came about and the content of them are substantially different.⁴⁶ A number of historians including Willett, David Hilliard, Matthew Grimley, and Laurie Guy have examined the attitudes of the churches towards homosexual law reform in Australia, Britain and New Zealand, and Jeffrey Weeks has explored the passage of reform in

⁴⁴ Clare Parker and Paul Sendziuk, 'It's Time: The Duncan Case and the Decriminalisation of Homosexual Acts in South Australia, 1972', in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, p.18.

⁴⁵ Gleeson, 'Consenting Adults in Private', especially pp.321-2; Hodge, 'The Police, the Press and Homophobia', pp.119, 126-31.

⁴⁶ Miranda Morris, *Pink Triangle: The Gay Law Reform Debate in Tasmania*, Sydney: UNSW Press, 1995.

Britain.⁴⁷ Dino Hodge has considered the personal role of Don Dunstan in advocating and assisting the passage of homosexual law reform,⁴⁸ and Honours theses by Tim Reeves and Malcolm Cowan examine the arguments used in the South Australian parliament but the limited form of the Honours thesis does not permit a thorough assessment of the arguments or an analysis of the voting patterns of politicians. Cowan's thesis is chiefly concerned with demonstrating the way in which the state exerted social control and "used the homosexual male to maintain [its] own heterosexist attitudes" and is therefore more analogous to Gleeson's PhD thesis on the Wolfenden Report and state control of sexuality in Britain.⁴⁹ Reeves's study of the Bill's progress through parliament is largely narrative, and primarily examines the impact of different activist groups. He concludes that the 1972 Bill was "simply a rash and empty libertarian gesture fuelled by community concern over an appalling and senseless murder. It was not introduced to bring homosexuals into parity with heterosexuals".⁵⁰ I do not disagree with this fundamental argument, but I provide a more nuanced analysis of the intention behind the Bill (to the extent that politicians were willing to publicly articulate their reasons for supporting the measure) and I dispute the assessment that the legislation was "rash and empty". It is clear that the South Australian reform was passed by a majority of politicians who believed that homosexuality was undesirable, but the belief expressed by many that the reform was necessary to erase an unjust function of the criminal law appears to have been genuine, and important in its own right.

⁴⁷ Graham Willett, 'Into the Present: Anglicanism and Homosexuality in the 1970s', in Colin Holden (ed.), *People of the Past? The Culture of Melbourne Anglicanism and Anglicanism in Melbourne's Culture*, Melbourne: University of Melbourne Department of History, 2000, pp.28-42; Graham Willett, 'The Church of England and the Origins of Homosexual Law Reform', *Journal of Religious History*, vol.33 no.4, 2009, pp.418-34; David Hilliard, 'Australian Anglicans and Homosexuality: A Tale of Two Cities', *St Mark's Review*, no.163, 1995, pp.12-20; Matthew Grimley, 'Law, Morality and Secularisation: The Church of England and the Wolfenden Report, 1954-1967', *Journal of Ecclesiastical History*, vol.60 no.4, 2009, pp.725-41; Laurie Guy, 'Between a Hard Rock and Shifting Sands: Churches and the Issue of Homosexuality in New Zealand, 1960-86', *Journal of Religious History*, vol.30 no.1, 2006, pp.61-76; Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*, London: Quartet, 1977, pp.168-82.

⁴⁸ Dino Hodge, 'The Okayness of Gayness: Don Dunstan's Record in Homosexual Law Reform', in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, pp.36-55.

⁴⁹ Malcolm I. Cowan, 'The Decriminalisation of Homosexuality in South Australia 1972-1975', unpublished BA(Hons) thesis, University of Adelaide, 1990, p.126; Gleeson, 'Consenting Adults in Private'.

⁵⁰ Reeves, 'Poofters, Pansies and Perverts', p.67.

My conclusion that the reform was not passed because of a newfound acceptance of homosexuality marks the South Australian reform as consistent with the recommendations of the Wolfenden Committee in Britain, which Weeks argues were based upon a consideration of the function of the criminal law, even though the activity in question might still be “of *moral* concern to individuals and society”.⁵¹ It also provides context for Dino Hodge’s argument that law reform did not prompt a “widespread shift in societal attitudes rejecting homophobia”.⁵² I suggest that this was not surprising; as the reform itself was not grounded in a greater tolerance for homosexuals, it stands to reason that attitudes did not suddenly change after reform. Politicians considered homosexual *law reform* a separate issue to homosexual *acceptance*, and this reflected (or reinforced) broader societal attitudes. Accordingly, law reform was only one aspect of the agenda of homosexual activists. This point may also explain Tim Reeves’s assessment that Dr Duncan’s death resulted in disappointingly little. Not only was the legislation of 1972 considered inadequate, but substantial attitudinal change towards homosexuality did not follow. Nevertheless, it is wholly reasonable to conclude that without legalisation of male homosexual acts, achieving more rights and acceptance for homosexuals would have been considerably more difficult and so law reform cannot be taken lightly. It was not sufficient for equality, but it was entirely necessary.⁵³ The changes to the laws regarding both abortion and male homosexual acts were limited by the need for political compromise but were nonetheless highly significant as pioneering legislative reforms, and resulted in genuine change in the lives of women and homosexual men.

⁵¹ Weeks, *Coming Out*, p.165.

⁵² Hodge, ‘The Police, the Press and Homophobia’, p.119; see also Cowan, ‘The Decriminalisation of Homosexuality’, pp.79-80, 169.

⁵³ See, for instance, discussion about the importance of lawful male homosexual acts on the approach to managing HIV/AIDS from the mid 1980s. Morris, *Pink Triangle*; Paul Sendziuk, ‘Learning to Trust: A History of Australian Responses to AIDS’, PhD thesis, Monash University, 2001, p.311.

Chapter 1

‘The Practice of Sound Morality’

I hereby call upon them to conduct themselves on all occasions with order and quietness, duly to respect the laws, and by a course of industry and sobriety, by the practice of sound morality, and a strict observance of the Ordinances of Religion, to prove themselves worthy to be the founders of a great and free Colony.

Governor John Hindmarsh

28 December 1836¹

Upon its proclamation on 28 December 1836, the colony of South Australia received the laws of England as its own. These included statutory laws, passed by Act of Parliament of Britain (and its predecessor, the English Parliament), as well as laws developed by the courts of England.² Entrenched in these laws were the key elements of “sound morality” and “Ordinances of Religion” that Governor Hindmarsh hoped would be observed by the colony’s founding settlers. South Australia’s criminal laws were shaped by the Christian beliefs that guided the creation of the laws of England.

The colony of South Australia, alone in the British Empire, was established on the ‘voluntary principle’ of religion, whereby there was no official state-sponsored religion. However, as David Hilliard and Arnold D. Hunt observe, this meant simply that the colony should be neutral in denomination, with no government money going to one

¹ Proclamation of South Australia, reprinted in *South Australian Gazette and Colonial Register*, 3 June 1837, p.1.

² Alex C. Castles, ‘The Reception and Status of English Law in Australia’, *Adelaide Law Review*, vol.2 no.1, 1963, pp.1-4.

Church over any other, and certainly did not promote a secular society.³ The Colonisation Commission reported in 1840 that the colonisers were far from secular: “In no colony since the first British settlements ... has there been a deeper or more earnest tone of religious sentiment prevail”.⁴ This had always been the intention; George Fife Angas, a key figure in the establishment of South Australia, had petitioned religious ministers to encourage emigration to the new colony, hoping “that South Australia will become the headquarters for the diffusion of Christianity in the Southern Hemisphere”.⁵

The founding population of the colony largely identified as belonging to the Church of England, but within twenty years the proportion of non-conformist citizens had grown enormously. Dissenters came from Britain, where the dominance of the Church of England left them without religious equality, and a significant Lutheran population migrated from Germany. The Roman Catholic population remained small, and though in the early years was mainly of Irish descent, the arrival of Austrian Jesuits in the late 1840s diminished the local Catholic Church’s connection with Ireland. Furthermore, South Australia did not acquire large numbers of Irish settlers such as freed convicts or as a result of gold rushes, as other Australian states did in the nineteenth century. By the 1860 census, Methodists outnumbered Roman Catholics (a ratio not reversed until 1971, after waves of post-World War II immigration), and Lutherans, Presbyterians and Congregationalists each formed significant minority groups.⁶ The proportion of the population identifying as Methodist remained at least 20 per cent from the 1870s to the 1970s,⁷ and during the mid-twentieth century was consistently double the national average, and double that of the state with the next highest proportion, Tasmania.⁸ The large numbers of Methodists can be attributed partly to the large number of Cornish Methodist miners who immigrated to the state between 1836 and 1886, but Hilliard and Hunt argue that due to its early efforts to hold regular services in locations with no other denominational presence (greatly enabled by the Church’s reliance on lay preachers), the

³ David Hilliard and Arnold D. Hunt, ‘Religion’, in Eric Richards (ed.), *The Flinders History of South Australia: Social History*, Adelaide: Wakefield Press, 1986, pp.197-200.

⁴ Cited in Douglas Pike, *Paradise of Dissent: South Australia 1829-1857*, 2nd edition, London: Melbourne University Press, 1967, p.146.

⁵ *Ibid.*, p.138.

⁶ Wray Vamplew *et al.*, *South Australian Historical Statistics*, Adelaide: History Project Incorporated, 1984, pp.139-42.

⁷ *Ibid.*, p.140.

⁸ *Census of the Commonwealth of Australia, 1961*. I have compiled figures from each of the seven volumes.

Methodist Church was also successful in converting Anglicans and Presbyterians.⁹ The dominance of Methodism, in combination with other Protestant churches, was to have a significant influence in shaping the moral attitudes of the state.

The historical composition of Christianity in South Australia continued to have an effect on the social reforms of the twentieth century, from liquor licensing and gambling restrictions to the relaxation of laws against abortion and homosexuality. The attitudes of the churches frequently shaped public and political debate on these and similar issues, and these moral attitudes expressed in the earlier decades of the century are integral to understanding the process of reform that occurred from the 1960s. It is essential to examine the way in which abortion and homosexuality (and sexual and moral behaviour more generally) were discussed in public prior to the possibility of reform, and overwhelmingly they only became public in connection with their status as criminal offences. A comprehensive examination of the earlier period is beyond the scope of this thesis, but this chapter provides an overview of the laws against abortion and homosexuality and the way in which they were enforced and reported. It also considers attitudes towards moral behaviour in South Australia, with a particular focus on the period of Sir Thomas Playford's twenty-seven year premiership from 1938 to 1965. Playford's greatest legacy is arguably his systematic fortification of the state's economy, moving away from its reliance of agriculture and primary production and instead actively promoting industrialisation.¹⁰ However, in contrast to this aspect of the Playford years is the enduring perception of the same period as one of social conservatism, and more specifically, moral conservatism. By the time the Playford government lost the 1965 election, the conservative attitudes it had preserved were considerably dated and the governments that followed rushed to pass a series of 'catch-up' and then progressive reforms that quickly shifted the state's reputation from 'wowsers' to 'permissive'. An understanding of the local political situation can help to explain why and how South Australia was able to pass the reforms in the manner that it did.

⁹ Hilliard & Hunt, 'Religion', p.205; Arnold D. Hunt, *This Side of Heaven: A History of Methodism in South Australia*, Adelaide: Lutheran Publishing House, 1985, p.21.

¹⁰ Dean Jaensch, 'The Playford Era', in Dean Jaensch (ed.), *The Flinders History of South Australia: Political History*, Adelaide: Wakefield Press, 1986, p.243.

Policing Abortion and Homosexuality

Amongst the British statutes received by the colony of South Australia in 1836 was the *Offences Against the Person Act* of 1828, which consolidated and amended a great number of earlier statutes and included the laws governing abortion and male homosexual acts.¹¹ Laws against homosexual acts—sodomy or buggery—were first codified (included in statute) in England in the 1533 Act *The Punishment of the Vice of Buggery*. The Act provided for the punishment of death for buggery “committed with Mankind or Beast”¹² and with the exception of a short period during the reign of Queen Mary, the law did not undergo any changes until 1828.¹³ Homosexual acts had previously fallen under the jurisdiction of the canon law and the ecclesiastical courts, considered a sin against nature and based on Biblical teachings such as those dealing with Sodom and Gomorrah (Genesis 13-19), the oft-quoted Leviticus 18:22, “Thou shalt not lie with mankind, as with womankind: it is abomination”, and Leviticus 20:13, “If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them”. These are reinforced by several New Testament passages (Romans 1:26-27, 1 Corinthians 6:9-11).¹⁴ Sodomy was a serious offence, punishable by death, but prosecutions appear to have been rare in England prior to the offence entering the statute books during the reign of King Henry VIII.¹⁵ (It should be noted that female homosexual acts were not specifically referenced in the Bible, and were never criminalised in Britain, though they were illegal in some European countries. The legend that Queen Victoria could not imagine such occurrences, and that Lesbianism was therefore not mentioned in British law, is unlikely to be true and, in any case, the gender distinction had been entrenched since the Act of 1533 under

¹¹ 9 Geo IV c.31 (*Offences Against the Person Act, 1828*).

¹² 25 Hen VIII c.6 (*The Punishment of the Vice of Buggery, 1533*). This Act provided only until the end of the next Parliament; it was continued in perpetuity by an Act of 1540, 32 Hen VIII c.3 (*For the Continuation of Certain Acts, 1540*).

¹³ 2&3 Ed VI c.29; 1 Mary c.1 (*An Act repealing and taking away certain Treasons, Felonies and Cases of Premunire, 1553*); 5 Eliz c.17 (*An Act for the Punishment of the Vice of Buggery, 1562*).

¹⁴ See Michael Goodich, ‘Sodomy in Ecclesiastical Law and Theory’, *Journal of Homosexuality*, vol.1 no.4, 1976, p.429.

¹⁵ R.B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860*, Cambridge: Cambridge University Press, 2006, p.59.

Henry VIII and was not new to the Victorian-era *Offences Against the Person Act of 1861*.)¹⁶

Abortion and related offences was also governed by canon law. In the first few centuries after Christ, only a woman causing herself an abortion could be punished, but the scope of those implicated became greater so that by the sixteenth century any person cooperating in the crime, morally or physically, was also guilty.¹⁷ The abortion laws were codified in 1803, in an Act generally referred to as Lord Ellenborough's Act. It made it illegal to administer, cause to be administered, or take "any deadly Poison, or other noxious and destructive Substance or Thing" in order to procure the miscarriage of a woman "quick with child", and provided for the death penalty. The Act provided less severe penalties for abortions performed before quickening (the first perception of foetal movement, early in the second trimester of pregnancy), for which offenders were "liable to be fined, imprisoned, set in and upon the Pillory, publickly or privately whipped ... or to be transported beyond the Seas for any Term not exceeding fourteen Years".¹⁸ The relatively late codification of the law regarding abortion should not be taken to suggest that the procedure was not an issue of concern prior to the nineteenth century, but rather that it had not sufficiently roused politicians to action until this time.¹⁹

In South Australia, the laws were amended several times. In 1859, abortion was made punishable by a maximum term of life imprisonment, with solitary confinement and optional hard labour. In 1876, the crime of supplying or procuring a drug or instrument was added, attracting a maximum three years in gaol with hard labour, and in 1935 the laws and maximum gaol terms remained the same but no longer permitted solitary confinement or hard labour. The same amendments altered the laws regarding homosexuality too. The "abominable crime of buggery" (with man or animal) allowed for a maximum life imprisonment with solitary confinement in 1859, which in 1876 was

¹⁶ On Lesbianism and the law, see Eric Berkowitz, *Sex and Punishment: Four Thousand Years of Judging Desire*, Berkeley: Counterpoint, 2012, pp.51, 164-5, 280-87; Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*, London: Quartet, 1977, pp.87-100.

¹⁷ Roger John Huser, *The Crime of Abortion in Canon Law: An Historical Synopsis and Commentary*, Washington DC: Catholic University of America Press, 1942, pp.19-20, 66-7.

¹⁸ 43 Geo III c.58 (*An Act for the further Prevention ... of Means to procure the Miscarriage of Women, 1803*).

¹⁹ John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, Cambridge: Cambridge University Press, 1988, pp.12-25.

altered to hard labour and a minimum ten years' imprisonment. The 1876 amendment added a crime of attempting to commit buggery, with a maximum of seven years in gaol. An additional 1925 amendment reduced the maximum penalty for buggery to ten years, and made "gross indecency" unlawful with a penalty of up to three years in gaol. Finally, hard labour and solitary confinement were abolished in 1935, but the substance of the laws remained the same.²⁰ It was this statute of 1935, the *Criminal Law Consolidation Act*, that was amended by the reforms regarding abortion and homosexual acts passed in 1969 and 1972 respectively. The laws in other Australian states varied slightly, but all were similar and based upon the British laws.²¹

It must also be noted that there was some degree of ambiguity in the law regarding abortion. The *Criminal Law Consolidation Act* of 1876 provided for life imprisonment for any person who "unlawfully" administered a noxious substance or "unlawfully" used "any instrument or other means whatsoever" with the intention of procuring a miscarriage.²² However, the word "unlawful" was not defined and left open the possibility that there might be a situation in which an abortion could be 'lawfully' procured. It was generally accepted that a doctor could terminate a pregnancy if the mother's life was at immediate risk, but the Australian laws had not been tested on that point.²³ Policing of the procedure was confined to non-medical abortionists who endangered the lives of pregnant women, suggesting that an 'unlawful' abortion was understood to be one performed by someone other than a doctor on valid medical reasons (the validity of those reasons would be tested in Britain in 1938 and for the first time in Australia in Victoria in 1969).²⁴

The experience of women seeking abortions in South Australia changed over the decades, but certain key elements remained the same. A consistently low rate of prosecution and a lower rate of convictions for abortion-related offences demonstrates not that the procedure was rare, but rather that the laws against it were ineffective and, for the most

²⁰ *An Act for Consolidating the Statute Law in Force in South Australia Relating to Indictable Offences Against the Person, 1859; Criminal Law Consolidation Act, 1876; Criminal Law Amendment Act, 1925; Criminal Law Consolidation Act, 1935.*

²¹ *Criminal Code Act, 1899 [Qld]; Crimes Act, 1900 [NSW]; Criminal Code Act, 1913 [WA]; Criminal Code Act, 1924 [Tas]; Crimes Act, 1928 [Vic]; Castles, 'The Reception and Status of English Law', p.2.*

²² *Criminal Law Consolidation Act, 1876, s.78.*

²³ See also Paul J. Duffy, *The Politics of Abortion*, Sydney: Society of St Paul, 1971, pp.21-3.

²⁴ *R v. Bourne [1939] 1 KB 687; R v. Davidson [1969] VR 667.*

part, unenforceable. In a society that shunned single mothers, and especially in the early twentieth century when contraception which had been widely used at the end of the nineteenth century became less available as concerns escalated about the declining birth rate, women of all ages and classes sought abortions as a means of maintaining their virtue – or in the case of married women, a manageable family size.²⁵

The state's first conviction for abortion took place in 1866, when Edward Charles Smith was found guilty of administering poisonous drugs with intent to procure an abortion, and sentenced to seven years' imprisonment with hard labour. The newspaper report of the trial, which, like most reports of salacious court cases at the time, was lengthy and detailed, suggests that illegal abortions were not unheard of, but it is impossible to know how prevalent the practice was at that time.²⁶ There is minimal literature available on illegal abortions anywhere in Australia prior to the 1880s: Judith Allen's study of New South Wales commences in that decade, and Patricia Sumerling's research into South Australia only begins meaningful analysis in the 1890s. Smith's prosecution is certainly unusual for the time, but it is difficult to place the one case into any context.

The next prosecution for an abortion-related offence was not pursued until 1876, and the *Statistical Register of South Australia* records a total of twenty-two acquittals for 'abortion', 'attempt to procure miscarriage', 'administering noxious drugs with intent', and 'supplying noxious drugs to procure miscarriage' brought before the courts before 1907, when the next conviction took place. However, these figures alone do not represent every person charged with an abortion-related offence. For instance, the *Statistical Registers* record no charges of any abortion offences between 1896 and 1899, yet newspapers show one charge of murder or manslaughter arising out of failed abortions for each of the years 1897, 1898 and 1899. Indeed, the only person found guilty on an abortion-related charge between 1866 and 1907 was the notorious Adelaide abortionist 'Madame Harpur', imprisoned for three years in 1897 for manslaughter.²⁷

²⁵ See Shurlee Swain and Renate Howe, *Single Mothers and Their Children: Disposal, Punishment and Survival in Australia*, Cambridge: Cambridge University Press, 1995, p.36; Judith A. Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, Melbourne: Oxford University Press, 1990, pp.26-8.

²⁶ *South Australian Advertiser*, 11 April 1866, p.3; 10 May 1866, p.3.

²⁷ *Advertiser*, 5 March 1897, p.3; 9 March 1897, p.7. 'Madame Harpur' was an alias, but the woman's real name seems to be a matter of some dispute. In the 1897 case, it is given as 'May E. Freebairn'; in 1903 and 1908, as Melissa Fairbairn. *Advertiser*, 20 May 1903, p.7; 10 April 1908, p.5. See also Patricia Sumerling,

Between 1907 and 1935 (when the law underwent its next minor change), 21 convictions were secured from approximately 58 prosecutions for abortion offences (not including charges of murder or manslaughter), and a further 88 convictions from approximately 124 prosecutions from 1936 to 1969 (see Figure 1.1). Of the 110 people convicted on strictly abortion-related offences in South Australia, 35 were men and 75 were women.²⁸ Accounts of the court cases reveal a wide variety of people accused of performing abortions. They cannot be taken as representative of all types of abortions taking place in South Australia, but they indicate the range of people involved, and methods used. Some, like Madame Harpur, appear to have been professional abortionists: she was estimated by the police to have been performing up to five procedures per morning during the 1890s, and in addition to her 1897 conviction for manslaughter, was acquitted of murder in 1903 and wilful murder in 1908.²⁹ ‘Dr’ Francis Sheridan was another abortionist convicted on two occasions, in 1906 and 1929, and he was acquitted in two further cases.³⁰ The recurrence of a number of names and aliases over several decades demonstrates that the authorities were aware of at least some of those operating as professional abortionists, but even imprisonment seems not to have prevented them resuming their practice upon release. Indeed, the publication of accused abortionists’ names, business addresses and details of alleged associates such as chemists in newspaper reports of trials, likely served as effective advertisements. This appears to have been the case even if the abortionist came to the attention of the courts as a result of serious or fatal complications arising from an operation: that Madame Harpur continued in the business for at least a decade after a well-publicised manslaughter conviction suggests that many women seeking abortions knew of the physical dangers of the procedure, as well as the risk of prosecution, but were not dissuaded by them.

‘Madam Harpur: The Trials and Tribulations of an Adelaide Doctress’, 2006, available at <http://www.sahistorians.org.au/175/documents/madam-harpur-the-trials-and-tribulations-of-an-ade.shtml>, accessed 27 February 2012.

²⁸ *Statistical Register of South Australia, 1859-1969*. Registers were published annually in the *South Australian Parliamentary Papers*. The prosecution figures are approximate as some cases are counted twice on referral from the Magistrates to Supreme Courts, while others went straight to the higher court, a fact not clearly acknowledged in the raw statistics.

²⁹ Patricia Sumerling, ‘The Darker Side of Motherhood: Abortion and Infanticide in South Australia 1870-1910’, *Journal of the Historical Society of South Australia*, vol.13, 1985, p.114; *Advertiser*, 10 June 1903, p.6; 15 April 1908, p.10; 23 May 1908, p.10.

³⁰ *Advertiser*, 19 December 1905, p.4; 12 October 1906, p.5; 15 January 1924, p.8; 14 June 1929, p.10. See also Sumerling, ‘The Darker Side of Motherhood’, pp.115-16.

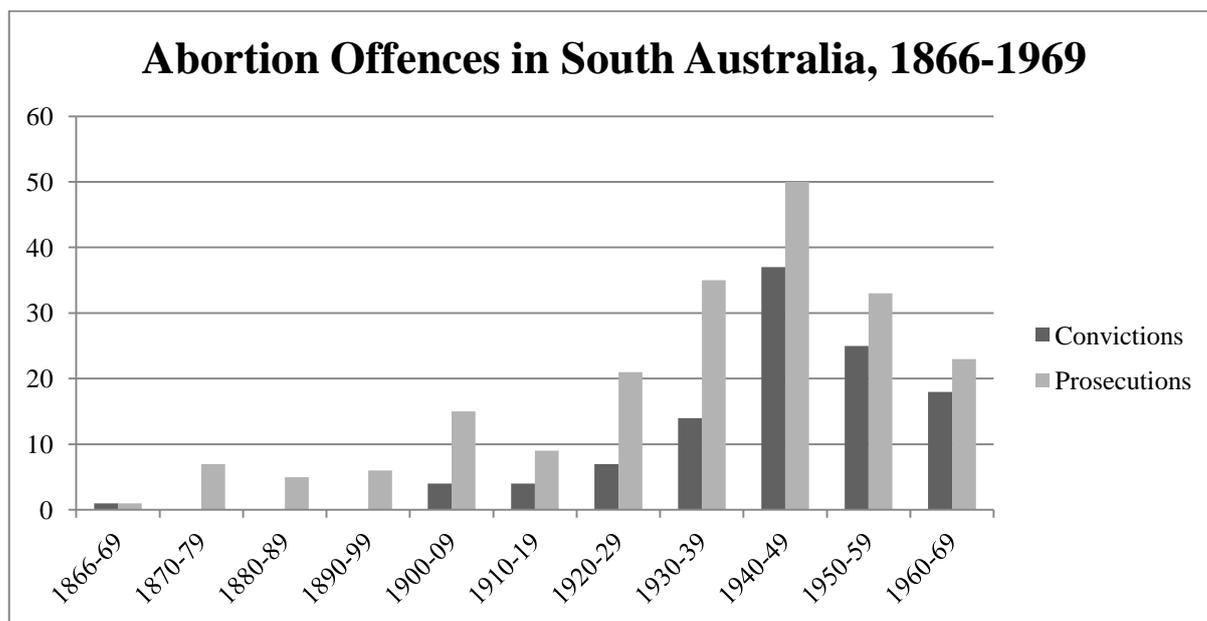


Figure 1.1: The number of prosecutions and convictions for abortion offences (excluding murder and manslaughter) in South Australia by decade, 1869-1969.³¹

Not all abortions were performed by people who made their living from the abortion business. Some alleged offenders were known personally to the woman, such as the case of Walter Francis Bucke who in 1878 was acquitted of assaulting his lover in order to bring about the miscarriage of the child he had fathered.³² These cases were rare, though: in other cases a father was accused of complicity in the abortion, along with a professional abortionist.³³ There is little doubt that a woman was able to procure an abortion without the assistance of a professional, but unless she died, or a serious complication forced her to see a doctor, such ‘private’ procedures were virtually impossible to regulate.

In general, experiences of abortion and abortion prosecutions in South Australia run roughly parallel with those in the larger states of New South Wales and Victoria. However, there is one key difference that is evident throughout the twentieth century. Allen notes that in the period 1900-1919, several doctors were charged with and convicted of abortion-related offences in New South Wales.³⁴ In contrast, no doctors were

³¹ Figures compiled from *Statistical Register of South Australia*, 1869-1969 editions.

³² *South Australian Advertiser*, 16 March 1878, p.6.

³³ See *Advertiser*, 22 January 1930, p.8; 21 June 1930, p.17; 25 June 1930, p.9.

³⁴ Allen, *Sex and Secrets*, pp.98-100. See also Frank Bongiorno, *The Sex Lives of Australians: A History*, Melbourne: Black Inc, 2012, pp.177, 198.

brought before the courts in South Australia. By the 1960s, the abortion trade in NSW and Victoria was synonymous with certain doctors and police corruption. Gideon Haigh writes of Victoria, “For how long abortionists nurtured corrupt relations with police will never be definitively known ... The likelihood is that they always did.”³⁵ He argues that police wages were not generous, and that particularly after World War II, officers began supplementing their incomes through other means, such as involvement with illegal bookmaking, and by offering protection for doctors who provided abortions.³⁶ The result was a number of doctors who made a living from performing abortions, protected for many years from prosecution by members of the police.³⁷

In South Australia, however, there is no evidence of doctors acting illegally as abortionists on a regular basis, though it is probable it did occur from time to time.³⁸ Barbara Baird argues that the lack of a medical abortion trade was due to the absence of systematic police protection such as that apparent in NSW and Victoria.³⁹ It is difficult to argue conclusively that this is the case: it is possible that the reverse is true: there were no doctors wishing to operate as full-time abortionists, and that this explains the absence of police collusion. Doctors who practised at the time have told of rumours that there was one Adelaide doctor who regularly performed abortions during the 1960s, and that another was operating as an abortionist during the 1950s. However, there is no evidence to support either claim, and, if they were true, there is certainly no evidence that police offered protection for their practice.⁴⁰

³⁵ Gideon Haigh, *The Racket: How Abortion Became Legal in Australia*, Melbourne: Melbourne University Press, 2008, p.66.

³⁶ Haigh, *The Racket*, pp.66-7.

³⁷ For detailed analysis of the investigations into police corruption in Victoria, see Haigh, *The Racket*, and Robyn V. Gregory, ‘Corrupt Cops, Crooked Docs, Prevaricating Pollies and “Mad Radicals”: A History of Abortion Law Reform in Victoria, 1954-1974’, unpublished PhD thesis, RMIT University, 2005, pp.183-227.

³⁸ As will be discussed in Chapter 2, from 1938 abortions were assumed to be lawful when performed in order to prevent the mother from becoming “a physical or mental wreck”, and therefore a distinction is required between doctors who performed legal abortions under these circumstances, and those who illegally performed abortions on demand. See *R v. Bourne* [1939] 1 KB 687.

³⁹ Barbara Baird, “I had one too...” *An Oral History of Abortion in South Australia before 1970*, Adelaide: Women’s Studies Unit, Flinders University of South Australia, 1990, p.17.

⁴⁰ *Ibid.*, pp.17, 48; ‘Report of the Select Committee of the House of Assembly on the Criminal Law Consolidation Act Amendment Bill 1968’, *South Australian Parliamentary Papers* (hereafter *SAPP*), no.105, 1968-69, p.17.

As in the case of abortion, laws against male homosexual acts did not stop them occurring. Consensual sexual activity is typically a private matter, and was therefore virtually impossible to police effectively. As I will show, a significant number of the cases that reached the courts concerned non-consensual acts, such as those involving minors, and so while prosecution remained a threat for men who had sex with men consensually, in reality very few men were charged. For those who were, the private details of their sex lives rapidly became public, and the question of the government's right to legislate against consensual private behaviour, thereby causing it to become public, was a significant issue in the debates to legalise homosexual acts in 1972.

It is not possible to argue that early South Australian experiences of homosexual activity mirrored those of other Australian colonies, as the early demography of South Australia was, by design, radically different to the penal colonies. Homosexual activity between male convicts has received attention in recent decades, and it has been suggested that in many cases, the occurrence of male-male sexual activity was based not on same-sex attraction or desire, but was rather the inevitable result of "herding together so large a body of men"⁴¹ without female company. The careful management of early immigrants to South Australia ensured that the preponderance of males seen in the convict colonies was not a factor; a fact acknowledged by Colonial Secretary Robert Gouger when he hoped that "maintaining a balance between the sexes" would keep the colony free from "crimes of the most ... abhorrent kinds".⁴² Nonetheless, it is reasonable to assume that men who desired homosexual activity existed in South Australia, as they existed everywhere else, and that they acted on those desires when possible. Knowledge of any homosexual activity is largely limited to the cases that were brought before the courts, which, like

⁴¹ Rev. Thomas Begley Naylor, chaplain of Norfolk Island penal colony, quoted in David Coad, *Gender Trouble Down Under: Australian Masculinities*, Valenciennes: Presses Universitaires de Valenciennes, 2002, p.32. For discussion of homosexual practices amongst male convicts, see Robert Hughes, *The Fatal Shore*, New York: Alfred A. Knopf, 1987, pp.264-72; Coad, pp.26-38; Walter J. Fogarty, "'Certain Habits': The Development of a Concept of the Male Homosexual in New South Wales Law, 1788-1900", in Robert Aldrich and Garry Wotherspoon (eds), *Gay Perspectives: Essays in Australian Gay Culture*, Sydney: Department of Economic History, University of Sydney, 1992, pp.62-4.

⁴² He likely referred to a range of sexual crimes including rape and paedophilia, as well as homosexual acts. Robert Gouger, quoted in John Lee, 'Male Homosexual Identity and Subculture in Adelaide Before World War II', in Robert Aldrich and Garry Wotherspoon (eds), *Gay Perspectives: Essays in Australian Gay Culture*, Sydney: Department of Economic History, University of Sydney, 1992, p.95; Eric Richards, 'The Peopling of South Australia, 1836-1986', in Eric Richards (ed.), *The Flinders History of South Australia: Social History*, Adelaide: Wakefield Press, 1986, p.129.

abortion-related cases, are not in any way representative of the quantity or nature of homosexual activity that occurred in South Australia.

The number of men charged with homosexual offences in South Australia cannot be determined with exact accuracy, as methods of record-keeping and classification of the offences have undergone several changes. At various stages, offences such as bestiality have been included in the umbrella term of ‘unnatural offences’, and the crime of gross indecency occasionally involved acts committed against (or even by) females. The only way to separate such cases would be to examine every court file, a task not possible for this thesis. However, the available figures represent a trend of the policing of sexual morality in general, and are therefore of some use. From 1859 to 1900, only eleven men were convicted on sodomy charges, of the approximately 69 charged.⁴³ However, each decade of the twentieth century saw an increase in the number of prosecutions and convictions for homosexuality-related offences (see Figure 1.2), and the rate of increase cannot be explained by the rate of population growth alone. For instance, an increase in convictions of more than 200 per cent from the 1930s to the 1940s corresponded to a state-wide population growth of only approximately sixteen per cent.⁴⁴ Clearly, other factors were at play.

⁴³ *Statistical Register of South Australia*, 1859-1900 editions.

⁴⁴ *Statistical Register of South Australia*, 1930-1949 editions; Vamplew *et al.*, *South Australian Historical Statistics*, p.13.

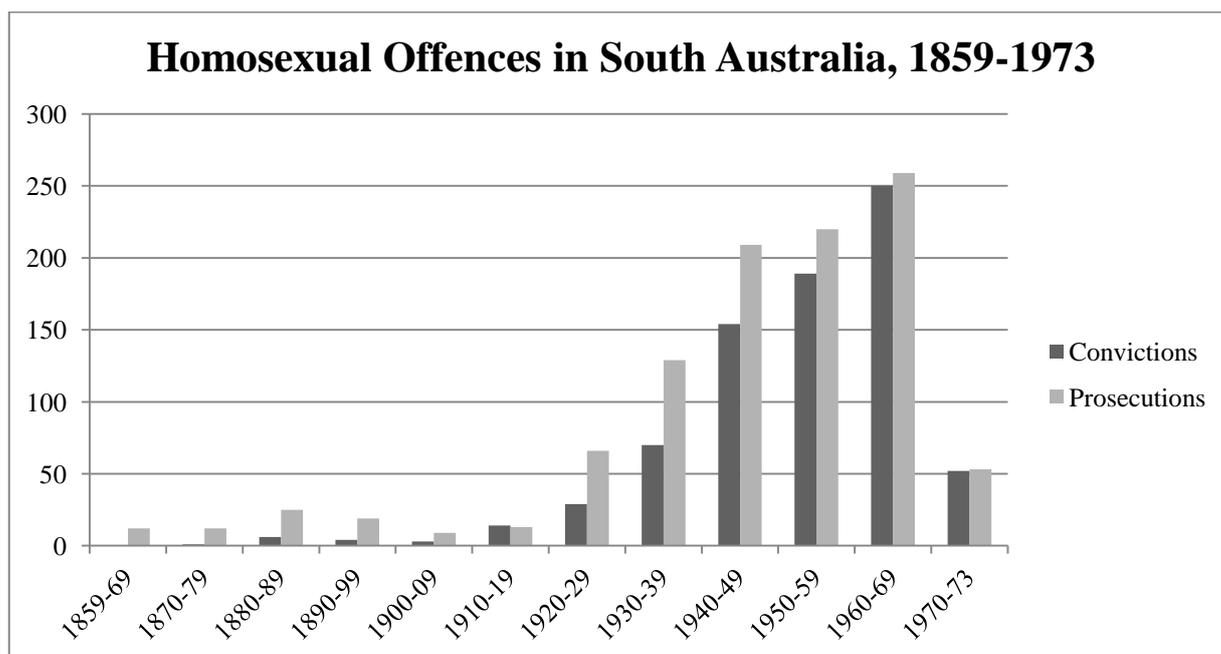


Figure 1.2: Number of prosecutions and convictions for homosexual offences in South Australia by decade, 1859-1973.⁴⁵

One such factor was possibly the changes made to laws governing homosexual activity. While the penalties were steadily reduced—from life imprisonment in 1859 to no more than seven years in gaol by 1935—the range of offences and the specifics of their definitions were widened with each amendment to the Act, and the amendments of 1925 and 1935 loosely coincide with increasing numbers of prosecutions. It is highly probable that the greater scope of the laws against homosexual activity were the result of a growing concern about homosexual interactions some years prior to the passing of the Acts of 1925 and 1935.⁴⁶ Therefore, both the law changes and the increasing prosecution rate should be observed together as an indication of the growing preoccupation with homosexual activity by those who made and enforced the law. Importantly, the changes, including the introduction of the offence of attempting to commit buggery in 1876, and gross indecency in 1925, demonstrate a shift away from the original intention to simply prevent and punish the act of sodomy itself, and show an attempt to criminalise “a whole group of persons, rather than an act”.⁴⁷ John Lee argues that this shift reveals an

⁴⁵ Figures compiled from *Statistical Register of South Australia*, 1859-1973 editions.

⁴⁶ *An Act for Consolidating the Statute Law in Force in South Australia Relating to Indictable Offences Against the Person*, 1859, s.42; *Criminal Law Consolidation Act*, 1876, ss.71-72, 166; *Criminal Law Amendment Act*, 1925, ss.5, 15; *Criminal Law Consolidation Act*, 1935, ss.69-71.

⁴⁷ Lee, ‘Male Homosexual Identity’, p.98.

increasing awareness of homosexuality as an identity, rather than merely the isolated act of sodomy.⁴⁸ The changes in the law are not alone sufficient to explain the rise in prosecutions for homosexual activity, because the amendments were in turn influenced by those in the community who sought to curtail what they saw as the growing threat of homosexuality.

The importance of the ‘beat’ as meeting place reinforced the view of homosexuality as a threat. Beats were typically, though not always, located in or near public toilets, and one of Adelaide’s best known beats from at least the early twentieth century was a section of the city parklands near the River Torrens,⁴⁹ a location that would play a key role in South Australia’s pioneering homosexual law reform of 1972. Lee argues that a beat, in addition to being a meeting place for homosexual men, also operated as “an important source of information when none other was available – about sexual practices, about other places to go and about the potential dangers from the police”.⁵⁰ However, the public setting of the typical beat contributed to fear of homosexual men, as it might be felt that an ‘innocent’ person could inadvertently find themselves caught up in unsavoury behaviour, or be the recipient of unwelcome advances. As a result, police targeted beats. For instance, in 1925, two men were arrested for committing sodomy in Botanic Park; in 1948, two men were found guilty of attempting to commit an unnatural offence with one another in Elder Park; and in 1954, arrests were made over an alleged act of gross indecency in a car parked near the River Torrens weir.⁵¹ Nonetheless, as Patricia Sumerling demonstrates, policing of the Adelaide parklands did not solely target homosexual liaisons: from 1915, the state’s first female police officer, Kate Cocks, spent many years separating amorous heterosexual couples at a time when any public displays of excessive affection were considered highly improper.⁵²

⁴⁸ *Ibid.*, pp.98-9; see also Chiah Mayne, ‘The Nature of Male Homosexual Interactions in Adelaide Before 1945’, unpublished BA(Hons) thesis, University of Adelaide, 2007, p.56.

⁴⁹ Patricia Sumerling, ‘Adelaide’s Lovers’ Lane: Sex on the Park Lands in the Twentieth Century’, *Journal of the Historical Society of South Australia*, no.34, 2006, p.46; Lee, ‘Male Homosexual Identity’, pp.100-01.

⁵⁰ Lee, ‘Male Homosexual Identity’, pp.100-01.

⁵¹ ‘Report of the Commissioner of Police (South Australia) 1924-25’, *SAPP*, no.53, 1925, p.10; see Lee, ‘Male Homosexual Identity’, p.101; *Advertiser*, 24 January 1948, p.5; 25 February 1948, p.5; 12 July 1954, p.6.

⁵² Sumerling, ‘Adelaide’s Lovers’ Lane’, pp.41-3.

Prior to the 1940s, prosecutions were more likely to involve forced sexual encounters, particularly those committed against minors.⁵³ This matches the experience of Victoria; Adam Carr writes that the majority of offences in that state in the nineteenth century involved “acts which would still be illegal today”.⁵⁴ But by 1950, a year which saw particularly high rate of convictions against consenting men in South Australia—Justice Maye expressed an opinion that “homosexual offences were rife, and perhaps increasing”⁵⁵—police were beginning to target what Justice Ligertwood called “centres of homosexuality” in the city.⁵⁶ In his comments, made after sentencing nine men in one session who all pleaded guilty to consensual homosexual acts (following a raid on a premises known as the Lampshade Shop), Ligertwood went on to express his “regret that the arm of the law has not yet reached persons who appear to have permitted their premises to be used as houses of assignation for homosexuals”. Clearly, the judge felt that the purpose of the laws against homosexual behaviour was to stamp out the practice in its entirety, in the same way as laws against all aspects of prostitution were intended to function.

The increase in convictions for consenting homosexual acts was not limited to South Australia. Graham Willett observes a similar trend across the nation, and argues that the shift represents a community-based fear of “social decay”, the fight against which was embraced by the police, working closely with the media and the general populace.⁵⁷ The reaction was, he suggests indicative of “the law ... groping for new ways of addressing an old problem”.⁵⁸ In this way, the newfound enthusiasm for policing consensual homosexual acts was a continuation of the law reforms of the early twentieth century that

⁵³ Accounts of some of the homosexual paedophilia cases include *South Australian Register*, 9 December 1854, p.2; 12 June 1874, p.3; *Advertiser*, 13 July 1918, p.12; 11 May 1927 p.19; *Advertiser and Register*, 14 July 1931, p.5; *Advertiser*, 29 June 1938, p.7; 31 July 1942, p.8; 4 September 1947, p.12; 17 November 1948, p.6; 21 August 1952, p.5. Several offenders were charged on multiple occasions, years apart. See also Mayne, ‘The Nature of Male Homosexual Interactions’, pp.46-50.

⁵⁴ Adam Carr, ‘Policing the “Abominable Crime” in Nineteenth Century Victoria’, in David L. Phillips and Graham Willett (eds), *Australia’s Homosexual Histories: Gay and Lesbian Perspectives V*, Sydney: Australian Centre for Lesbian and Gay Research & Australian Lesbian and Gay Archives, 2000, p.33.

⁵⁵ *Advertiser*, 1 April 1950, p.12.

⁵⁶ *Advertiser*, 27 April 1950, p.13; see also *Advertiser*, 15 April 1950, p.12.

⁵⁷ Graham Willett, ‘From “Vice” to “Homosexuality”’: Policing Perversion in the 1950s’, in Shirleene Robinson (ed.), *Homophobia: An Australian History*, Sydney: Federation Press, 2008, pp.119-23. See also Clive Moore, *Sunshine and Rainbows: The Development of Gay and Lesbian Culture in Queensland*, Brisbane: University of Queensland Press, 2001, pp.126-9.

⁵⁸ Willett, ‘From “Vice” to “Homosexuality”’, p.114.

increasingly sought to curb more than the simple act of buggery. Willett's comment applies equally to abortion, where an upwards trend in prosecutions and convictions was evident during the 1940s and 1950s.⁵⁹

Public Conversation

Prior to the 1960s, public references to abortion and homosexuality were rare, and those that did exist were located in a small number of specific sites. In the daily press, both were discussed in columns that reported on court cases, thereby reinforcing the criminality of the activities. Writing about such reports, Frank Bongiorno has noted that a "climate of illegality ensured that homosexuality impinged on the public consciousness mainly as criminality or tragedy";⁶⁰ the same observation could be made regarding abortion. Euphemistic references to abortion could also be found in newspaper advertisements placed by abortionists offering their services. Politicians became concerned about both types of references and passed laws that aimed to curb discussions about sex and sexuality, demonstrating that it was not only the practices of abortion and homosexuality that they desired to prevent, but all mention of them too.⁶¹ I will show in later chapters that during the decades prior to the 1960s, the two issues were from time to time discussed in more detail in certain non-public sites, and very occasionally in public in the context of possible law reform. However, this section demonstrates the overwhelmingly limited and negative discussion that dominated any mention of abortion and homosexual acts in South Australian newspapers from the late nineteenth century. The issues were very likely mentioned in other public sites (for instance, Finch and Stratton write of abortion advertising in railway stations and the door-to-door sale of booklets)⁶² but as these have not been preserved, newspapers offer the only existing examples of written public conversation about current events in the era. It is difficult to be certain about how influential this newspaper publicity was, but I show that the political action against the publication of 'indecent' material demonstrates that lawmakers were

⁵⁹ *Statistical Register of South Australia*, 1930-1960 editions.

⁶⁰ Bongiorno, *The Sex Lives of Australians*, p.157.

⁶¹ See Clare Parker, 'Female Complaints and Certain Events: Silencing Abortion Discourse', *Lilith*, no.19, 2013, pp.33-47, for a more detailed examination of discussion about abortion and laws against it in South Australia from the 1890s to the 1930s.

⁶² Lyn Finch and Jon Stratton, 'The Australian Working Class and the Practice of Abortion 1880-1939', *Journal of Australian Studies*, vol.12 no.23, 1988, p.56.

concerned that the presence of such material was more influential than they believed was acceptable, and that concern alone marks it as significant.

Reaching a peak in the 1890s and early 1900s, the *Adelaide Advertiser* frequently featured up to six or seven advertisements on one page that promised to treat “female complaints”, “remove all irregularities or obstructions”, or “restore regularity”,⁶³ common euphemisms of the era.⁶⁴ The phenomenon of advertising abortion services was not unique to South Australia, and attracted attention in New South Wales in 1898 when the President of the NSW branch of the British Medical Association observed:

the daily and weekly papers teem with advertisements that most openly and unblushingly ... advertise that they “remove obstructions” ... If the procuring of abortion is illegal, then surely the insertion of advertisements in the public papers directly tempting people to break the law is illegal. Why do not the police proceed against the people advertising in this open way and the papers...?⁶⁵

The euphemisms used in the advertisements were thinly disguised, and most included a postal or street address, so it could be considered surprising that the police had so little success in prosecuting the offenders. However, the uncertainty regarding the definition of an ‘unlawful’ abortion may have dissuaded the police from pursuing abortionists, and if a case did reach court, there were problems of witnesses and proof. In many cases, the woman could not give testimony, as a large number of abortion cases brought before the courts involved abortion-related deaths or serious illness or injury brought about by the attempted procedure. It was generally only under these circumstances that doctors, and subsequently the police, became aware of an alleged unlawful abortion. It is also possible that police deliberately turned a blind eye to the procedure, except when an abortionist proved to be a danger. Judith Allen’s observation of the situation in New South Wales

⁶³ *Advertiser*, 28 May 1895, p.3; 2 March 1896, p.3; 21 July 1898, p.7; 27 April 1901, p.3.

⁶⁴ See Allen, *Sex and Secrets*, pp.27-8.

⁶⁵ *Australasian Medical Gazette*, 20 April 1898, p.141. See also Allen, *Sex and Secrets*, p.40.

applies equally in South Australia: “policing and penalty was substantially confined to only some of those abortionists who regularly killed or endangered women’s lives”.⁶⁶

The South Australian government made an effort to deal with the frequent advertisements when it passed in 1897 the *Indecent Advertisements Act*.⁶⁷ An indecent advertisement included:

any drawing, picture, or written or printed matter of an indecent, immoral, or obscene nature, or which relates to venereal or contagious diseases affecting the generative organs or functions, or to any complaint or infirmity arising from or relating to sexual intercourse, or which relates to female irregularities,⁶⁸

and was prohibited from publication in any form, including in any newspaper. The Chief Secretary acknowledged that no law could entirely abolish the illegal medical trade, but hoped that “the evil might ... be minimised” by preventing advertisements in the “very lucrative business ... of drugs and quackery”.⁶⁹ The Act did not succeed in stopping the advertisements, which were “merely drafted in altered form” as anticipated by the Hon. J. L. Stirling during the debates.⁷⁰ Euphemisms became more ambiguous, with “regularity” and “obstructions” dropped in favour of the term “female complaints”, which became the sole phrase of choice for a number of years. As the term is less clear, it is not possible to be absolutely certain that it always refers to abortion services, but the shift in terminology is clearly demonstrated in the advertisements of individual practitioners.⁷¹

Advertisements were less common during World War I and by the 1920s and early 1930s had become shorter, with fewer theatrical claims and testimonials. Preferred euphemisms were still very vague, offering a “corrective remedy” or “corrective treatment” for women

⁶⁶ Allen, *Sex and Secrets*, p.103.

⁶⁷ *South Australian Parliamentary Debates* (hereafter *SAPD*), Legislative Council (hereafter LC), 1 December 1897, p.339.

⁶⁸ *Indecent Advertisements Act, 1897*.

⁶⁹ *SAPD*, LC, 1 December 1897, p.340.

⁷⁰ *SAPD*, House of Assembly (hereafter HA), 8 December 1897, pp.987-8.

⁷¹ See advertisements for Madame Granville: *Advertiser*, 12 March 1896, p.3; *Advertiser*, 21 July 1898, p.7.

“worried” or “in doubt” regarding their “health”.⁷² Many abortionists styled themselves as a nurse: Nurse Mack, Nurse Willis, Nurse Russell, Nurse Tan, Nurse Goode and Nurse Winter all advertised during the 1930s.⁷³ It is accepted that demand for abortion and contraception rose during the Great Depression, as families strove to maintain a manageable number of children.⁷⁴ Contraception had once again become more widely advertised by this stage, with the influence of English campaigner Marie Stopes evident in advertisements from various agents and suppliers of ‘Dependable Rubber Goods’, for which there appeared to be strong demand during the 1930s.⁷⁵ The growing popularity of contraception complicates analysis of advertisements from later decades, as the euphemisms used could refer to contraception, abortion, or even remedies for common gynaecological problems such as pre-menstrual cramps or heavy bleeding. The most fruitful study of abortion advertising, therefore, remains in the earlier period. However, the presence of advertisements relating to sex, sexuality and ‘immorality’ for decades after the passage of the 1897 Act show how ineffective the attempt was to stem publication of this material.

Abortion was discussed more explicitly in newspapers’ court reports, which from the early decades of the colony went into considerable detail regarding the particulars of the case.⁷⁶ The *Advertiser*’s coverage of the 1897 conviction of Madam Harpur included long passages of near-verbatim court proceedings detailing witnesses’ recollections of events. Included were descriptions of “bloodstains on garments” and Harpur entering the woman’s room with a jar of Vaseline and a catheter, but precise details of the operation were not given.⁷⁷ The reports emphasise salacious descriptions that were permitted only because they appeared as part of a court report; they would have been considered highly indecent in any other form of publication. One article detailed the scene in court when a

⁷² *Advertiser*, 28 March 1931, p.13; 23 November 1931, p.12; 30 March 1935, p.8.

⁷³ *Ibid.*; *Advertiser*, 26 March 1932, p.16.

⁷⁴ Barbara Baird, “‘Somebody Was Going to Disapprove Anyway’: Re-thinking Histories of Abortion in South Australia, 1937-1990”, unpublished PhD thesis, Flinders University of South Australia, 1998, p.114; Ray Broomhill, *Unemployed Workers: A Social History of the Great Depression*, Brisbane: University of Queensland Press, 1978, pp.40-1; Wendy Lowenstein, *Weevils in the Flour: An Oral Record of the 1930s Depression in Australia*, Melbourne: Scribe, 1978, pp.133-4, 290-3.

⁷⁵ *Advertiser*, 28 March 1931, p.13; 30 March 1935, p.8.

⁷⁶ See *South Australian Advertiser*, 11 April 1866, p.3; 10 May 1866, p.3; *South Australian Register*, 19 December 1879, p.4; 27 December 1879, p.7.

⁷⁷ *Advertiser*, 5 March 1897, p.3.

pathologist produced “the wounded part ... removed from the woman’s body and placed in spirits of wine”.⁷⁸ The doctor saw fit to open the jar, and many present in the courtroom left to avoid the putrefying smell.⁷⁹ Similarly graphic descriptions occurred from time to time: the *Advertiser*’s report on a 1904 abortion murder case explained that the deceased woman’s “external genitals were much swollen” and detailed the appearance of her internal organs and the presence of septic inflammation.⁸⁰ These women were portrayed as dead bodies: dehumanised clinical subjects to which damaging things had occurred. They were not portrayed as innocent victims, nor as active agents in the decision to seek an abortion.

In later years, the Adelaide *News* and the local edition of the notoriously scandal-driven Melbourne Saturday paper *Truth* elected to run long articles about abortion cases in prominent positions, rather than confining reports to court columns. A 1926 prosecution of Alice K. for murder arising from an alleged unlawful abortion was featured on the front page of the *News* for a total of six days. A small final front page article curtly reported her acquittal, which seemed an anti-climax after the early sensations.⁸¹ The *Truth*’s reports also detailed various instruments, provisions and bloodstains that were found near the deceased woman.⁸² Where the other papers reported the facts of the court proceedings (albeit often with emphasis on certain salacious aspects of the case), the *Truth* liberally sprinkled its articles with additional personal commentary and featured candid photographs of the deceased woman’s family members leaving the courtroom. Very few South Australian editions of the *Truth* remain, but many of those that have been preserved feature stories about abortion cases, especially those in Melbourne or Sydney (much of the local edition was retained from the Melbourne version). One 1917 article featured an unusually specific headline, “Awful abortion alleged,” followed by a detailed report of a deceased woman’s health prior to her death from an alleged unlawful operation. Most notably, an advertisement for “D. Hartley, Herbal Specialist,” appeared below the article promoting his “absolutely reliable” remedy for “when other so-called

⁷⁸ *Advertiser*, 6 March 1897, p.4.

⁷⁹ *Ibid.*; see also *South Australian Register*, 6 March 1897, p.10.

⁸⁰ *Advertiser*, 22 June 1904, p.6.

⁸¹ *News*, 30 & 31 March, 27 & 28 May, 1 & 2 June 1926.

⁸² *Truth* (SA Edition), 5 June 1926, p.7.

regulating remedies fail”.⁸³ Furthermore, a second advertisement for cures for “ladies’ ailments” appeared on the same page. Although, as already noted, advertisements for abortion services were common, they rarely appeared so blatantly next to an article about an abortion prosecution.

The salacious reporting of the *Truth* caused much concern amongst Adelaide’s respectable citizens, and in 1928 the state parliament passed the *Indecent Reports (Restriction) Act* in an attempt to prevent the circulation of the paper. It was not mentioned by name in parliament, but was described by members as “flagrantly unclean from cover to cover”⁸⁴ and one of “a class of newspaper which we should strive our utmost to suppress”.⁸⁵ Hastening to add that “I do not read such matter but know that it exists”, one member noted that “[f]or many months literature of a very highly immoral character has been circulating in this State ... Unfortunately, it gets into the hands of thousands of readers, which is not a desirable state of affairs.”⁸⁶ The Act prohibited the publication or distribution of newspapers that published a report “relating to any legal proceedings ... or containing any other news, account, or story descriptive of or relative to sexual immorality, unnatural vice, or indecent conduct” and which “occupies more than fifty lines of thirteen ems wide ... or carries a heading composed of type in larger than ten point capitals”.⁸⁷ Though it particularly targeted newspaper reports of divorce proceedings, the terms of the Act also encompassed coverage of rape trials and, it appears, abortion cases. The timing of the Act coincides precisely with changes in the style of court reports on abortion cases, and the *Advertiser* made clear in an editorial that it would in the future be limited in the details it could publish on certain matters relating to “sexual immorality or indecent conduct”.⁸⁸ Abortion-related trials were still regularly reported, but articles were noticeably shorter and contained little more than the bare facts of the name of the accused and the charge laid against them. This change was apparent in the *Advertiser* and the *Mail* from January 1929, just two months after the assent of the Act. These were papers that already tended more towards the clinical approach to reporting rather than the salacious style of the *Truth*, but even these used increasingly vague

⁸³ *Truth* (Adelaide Edition), 3 February 1917, p.6.

⁸⁴ *SAPD*, HA, 24 October 1928, p.1503.

⁸⁵ *SAPD*, HA, 16 October 1928, p.1288.

⁸⁶ *SAPD*, HA, 24 October 1928, p.1502.

⁸⁷ *Indecent Reports (Restriction) Act, 1928*.

⁸⁸ *Advertiser*, 17 October 1928, p.12.

euphemisms. Where earlier reports might refer to “mechanical interference” in inducing a “miscarriage”, these later articles were very short, and used only the terms “illegal operation” and a “serious offence”.⁸⁹ In the 1930s, the *Advertiser*’s court reports favoured descriptions such as “the woman ... supplied pills ... with intent to procure a certain event”, or “he used an instrument ... on her with intent to procure as certain result”.⁹⁰ The euphemistic language did not last, as by mid-1938 “abortion” was being used freely in lengthy court reports on a case involving a doctor and two nurses who were acquitted on the charge of having performed an unlawful abortion.⁹¹ It is possible, however, that as this case involved medical professionals, the paper felt that use of correct medical terminology was appropriate. The impact of the Act on abortion reporting was short-lived, lasting at most a decade. It was intended to end the circulation of the *Truth*, in order to keep sex and sexuality out of the sphere of public discussion, and it served that purpose.⁹²

The terms of the *Indecent Reports (Restriction) Act* would also have applied to reporting of homosexual offences, though its effects are not as apparent. Reports were already heavily filtered by what was considered fit to be published in newspapers, and were radically less detailed than the sensationalist reporting of abortion cases. When ‘unnatural offences’ cases were reported, articles were very short and did not summarise the evidence presented in court. Details of one case were deemed “entirely unfit” for publication,⁹³ and in another the evidence was considered to be “of a very conclusive character” but the “details were too disgusting for publication”.⁹⁴ This particular case involved a man who was convicted of offences against a twelve year old boy; offences against minors formed the majority of homosexual offences reported in the newspapers. The attitude of judges towards homosexual acts was often reported in the articles, and suggested the tacit endorsement of the moralising contained in the judicial comments. In 1864 a judge pronounced that “no Judge would recommend the remission of a single

⁸⁹ *Mail*, 12 January 1929, p.1; *Advertiser*, 14 January 1929, p.6; 15 January 1929, p.9.

⁹⁰ *Advertiser*, 15 June 1932, p.19; 4 February 1937, p.23; 28 October 1937, p.11; 25 November 1937, p.13; 2 April 1938, p.23.

⁹¹ *Advertiser*, 1 June 1938, p.12; 3 June 1938, p.34; 9 July 1938, p.21.

⁹² See SA Memory, ‘SA Newspapers: Truth’, 2011, available at <http://www.samemory.sa.gov.au/site/page.cfm?c=2740>, accessed 10 November 2012.

⁹³ *Advertiser*, 8 August 1894, p.7.

⁹⁴ *South Australian Advertiser*, 16 November 1878, p.6

hour” of the maximum life sentence for sodomy,⁹⁵ and in 1915 another labelled a trial he had heard as “a most disgusting case”.⁹⁶ Justice Boucaut asserted that the 1894 case of a man found not guilty of attempting to commit sodomy was:

one of the most loathsome cases he had ever listened to in any court. As he said before those who stirred up such foul and filthy water should come into court and conduct the prosecution. Never before had he had to sum up in a case in which the details had come out so revoltingly.⁹⁷

The Oscar Wilde trials of 1895 demonstrate the nature of public debate about homosexual activity. The South Australian daily papers reported frequently on the progress of the case in England but did not explain the nature of the offence, instead referring to a “serious charge,”⁹⁸ a “horrible crime”⁹⁹ and a “very intimate and affectionate friendship”.¹⁰⁰ In 1931 (after the passage of the Act restricting discussion of such matters), Adelaide saw its own high-profile prosecution for homosexual offences when state Labor politician Bert Edwards was convicted of committing an unnatural offence with a seventeen year old male. No details of the offence were published, but the case attracted substantial media attention and he was not successful in being re-elected to the South Australian parliament, nor in a bid for Federal parliament.¹⁰¹ Indeed, publishing the names of men accused of unnatural offences, even when not convicted, was sufficient to damage a man’s relationships or reputation and shows that any semblance of privacy was little more than a thin veil of propriety on the part of the media. By the 1940s and 1950s, the threat of public notoriety was deemed a weapon in the attempt to prevent men from committing homosexual acts. Two doctors, giving evidence in separate unnatural offences and gross indecency cases in 1950, stated that “the greatest deterrent in these cases was the shame

⁹⁵ *South Australian Register*, 13 December 1864, p.3.

⁹⁶ *Advertiser*, 27 July 1915, p.10

⁹⁷ *Advertiser*, 8 August 1894, p.7.

⁹⁸ *South Australian Chronicle*, 27 April 1895, p.10.

⁹⁹ *Advertiser*, 27 May 1895, p.5.

¹⁰⁰ *South Australian Chronicle*, 20 April 1895, p.19.

¹⁰¹ Coverage includes *Advertiser*, 22 December 1930, pp.7-8; 18 February 1931, p.7; *Register News-Pictorial*, 4 February 1931, p.4; 18 February 1931, p.3; Suzanne Edgar, ‘Edwards, Albert Augustine (1888–1963)’, *Australian Dictionary of Biography*, Australian National University, available at <http://adb.anu.edu.au/biography/edwards-albert-augustine-6092/text10437>, accessed 9 January 2012.

of public exposure”¹⁰² and even claimed that the accused “would probably, because of these [court] proceedings, remain heterosexual”.¹⁰³

The silence surrounding homosexual acts, therefore, was even more complete than the limited discussion of abortion. Of the very little that was published, much of it reported on offences against minors. Discussion of abortion was shrouded in euphemism, or presented as salacious medical analysis; the circumstances of aborting women was not considered, just as the lives of men who had sex with men were made public only through their (alleged) sexual activity. What comment was offered (usually implicitly) by the newspapers endorsed the immorality of the conduct. As Barbara Baird has noted, “[w]hat little was spoken only confirmed the unspeakability of abortion”;¹⁰⁴ the same applied to homosexuality.

The ‘Wowser’ State

The silencing of conversation about sex and sexuality was not limited to South Australia, but the state did attract a reputation for being unusually ‘wowserish’ in the mid twentieth century. ‘Wowser’ is an Australian term, roughly aligning with the concept of Puritanism. Keith Dunstan argues that the term was widely used during and after World War I, and arose out of the Edwardian era: “a time for passionate campaigning against sin. Almost everything was evil: mixed bathing, dancing, theatre, racing, Sunday picnics, bicycling.”¹⁰⁵ Accordingly, South Australia’s reputation for wowserism pre-dates the ascent of Thomas Playford as premier in 1938, but it was during his lengthy premiership that the state increasingly found itself considered the last bastion of moral conservatism, and therefore it is this period that I focus on here.

Playford is sometimes labelled a socialist, an assessment perpetuated at least in part by Mick O’Halloran, Labor opposition leader from 1949 to 1960. During the 1950 election campaign, O’Halloran was reported as saying that “[t]he Premier’s policy had been more

¹⁰² *Advertiser*, 30 March 1950, p.13.

¹⁰³ *Advertiser*, 15 April 1950, p.12. However, as Frank Bongiorno notes, the mere mention of these offences in the newspapers could have served to raise the visibility of homosexuality. See Bongiorno, *The Sex Lives of Australians*, p.217.

¹⁰⁴ Baird, “‘Somebody Was Going to Disapprove Anyway’”, p.183.

¹⁰⁵ Keith Dunstan, *Wowzers*, Melbourne: Cassell Australia, 1968, p.248.

socialistic than Labor could ever hope to implement”.¹⁰⁶ Katharine West and Dean Jaensch have argued that despite some policies more typical of Labor governments these were not ideologically socialist but simply pragmatic and necessary for his program of industrial development which “was Playford’s greatest contribution, and it has remained as his most enduring legacy”.¹⁰⁷ Furthermore, they were not automatically accepted by his Liberal and Country League (LCL) colleagues, whom the premier often needed to convince before they would accept certain measures.¹⁰⁸ Examples of Labor-like policies include the nationalisation of the Adelaide Electricity Supply Company, the maintenance of rent controls, and the development of infrastructure to support new urban centres such as Elizabeth; Jaensch argues that the extent of public money going to infrastructure was unusual for a conservative government.¹⁰⁹ John Hirst has similarly discounted the concept of the ‘socialist’ Playford, choosing instead to use the term “conservative moderniser” to describe the state’s longest-serving premier.¹¹⁰ The description is particularly apt, because it does more than merely describe Playford as both a conservative and a moderniser – in combination, the phrase accurately conveys the nature of his modernisation agenda. That is, he modernised conservatively. He was dedicated to developing industry and economic policies, but he resolutely refused to modernise his own attitude towards social matters, and therefore the social policies of the state. As I will show, by the mid-1960s, Playford’s conservative social views were increasingly out of step with the dominant attitudes in the community, and played a significant role in his loss of power in 1965.

The accusations of extreme moral conservatism against South Australia in the Playford era chiefly encompass the state’s attitudes towards alcohol, gambling and censorship, though other areas of social activity in SA contributed to the ‘wowser’ soubriquet. Sabbatarianism, the preservation of Sunday as a day of religious worship, saw restrictions on drinking, sporting activities, and leisure activities such as movie screenings in

¹⁰⁶ *Advertiser*, 14 February 1950, p.4; Katharine West, *Power in the Liberal Party: A Study in Australian Politics*, Melbourne: F.W. Cheshire, 1965, p.58; see also David C. Rich, ‘Tom’s Vision? Playford and Industrialisation’, in Bernard O’Neil, Judith Raftery and Kerrie Round (eds), *Playford’s South Australia: Essays on the History of South Australia 1933-1968*, Adelaide: Association of Professional Historians Inc, 1996, p.102.

¹⁰⁷ Jaensch, ‘The Playford Era’, p.252; West, *Power in the Liberal Party*, p.58.

¹⁰⁸ Jaensch, ‘The Playford Era’, p.252.

¹⁰⁹ Jaensch, ‘The Playford Era’, pp.250-1.

¹¹⁰ John Hirst, ‘South Australia and Australia: Reflections on their Histories’, in Robert Foster and Paul Sendziuk (eds), *Turning Points: Chapters in South Australian History*, Adelaide: Wakefield Press, 2012, p.129.

cinemas; though once again, such policies were far from unique to the state.¹¹¹ The state's reputation prior to the 1960s as a 'cultural desert', particularly regarding the performing arts, fitted well with the narrative of a place that did not know how to enjoy itself and disapproved of activities that might loosely be termed 'fun'.¹¹²

South Australia, along with most other states, introduced six o'clock closing of public bars during World War I, after a referendum in early 1915 that saw 56 per cent of voters support the measure.¹¹³ However, it was also the final state to extend pub trading hours to ten o'clock, which did not occur until 1967.¹¹⁴ South Australia was also the last state to establish two key gambling practices. Frank Walsh's Labor party defeated Playford at the 1965 election, and included in its platform a promise to hold a referendum on establishing a state lottery (which Playford had resolutely refused to consider), and to establish a Totalisator Agency Board (TAB) for off-course betting. Walsh stayed true to his election promise, and in November 1965 the state voted at a referendum in favour of a state lottery. Despite a strong 'No Lottery' campaign supported by the Methodist, Anglican and Lutheran churches, who argued that the lottery was wrong on moral and social grounds, nearly 66 per cent voted in favour of the proposal.¹¹⁵ The *State Lotteries Act* was passed in 1966, and the first lottery drawn in May 1967.¹¹⁶ Also in 1967, the *Lottery and Gaming Act* was amended to allow for the establishment of a TAB.¹¹⁷ The Methodist and other Protestant churches were particularly concerned with eradicating the sins of drinking and gambling, and preserving the Sabbath.¹¹⁸ The Woman's Christian Temperance Union, dominated by members of the non-conformist churches, had been

¹¹¹ See Dunstan, *Wowsers*, p.32.

¹¹² See Clare Parker, 'What Have the Arts Ever Done for Us? The Transformation of the Performing Arts in Don Dunstan's South Australia', unpublished BA(Hons) thesis, University of Adelaide, 2009, pp.10-20.

¹¹³ *Advertiser*, 30 March 1915, p.6; *Licensing Act Further Amendment Act, 1915* [SA]; *Liquor (Amendment) Act, 1916* [NSW]; *Intoxicating Liquor (Temporary Restriction) Act, 1916* [Vic.]; *Licensing Act, 1917* [Tas.]; *Intoxicating Liquor (Temporary Restriction) Act, 1914* [UK]; see Walter Phillips, "'Six O'Clock Swill": The Introduction of Early Closing of Hotel Bars in Australia', *Historical Studies*, vol.19 no.75, 1980, p.252.

¹¹⁴ *Licensing Act, 1967*.

¹¹⁵ 'Referendum (State Lottery), 1965: Statistical Returns', *SAPP*, no.108, 1965-66, p.3; Hunt, *This Side of Heaven*, p.394.

¹¹⁶ *State Lotteries Act, 1966*; Dunstan, *Wowsers*, p.294.

¹¹⁷ *Lottery and Gaming Act Amendment Act (No.3), 1967*.

¹¹⁸ Hilliard & Hunt, 'Religion', p.223.

instrumental in influencing the advent of six o'clock closing referendum 1915,¹¹⁹ and Methodist voices were prominent in the debates about betting shops that took place before and during World War II.¹²⁰ David Hilliard and Arnold Hunt show that it was chiefly the Methodists who took the initiative in such campaigns, and the other churches followed.¹²¹

However, it is censorship of the dissemination of material deemed offensive or obscene that is more closely related to the silencing of discussion about sex and sexuality. It is a difficult matter to assess solely in the context of one state as most restrictions were enforced by the Commonwealth, who had control over importations of overseas material.¹²² However, several examples of censorship specific to South Australia illustrate the type of issues that attracted the attention of authorities in that state, and the way they were handled by the authorities.

In 1944, Max Harris, editor of literary magazine *Angry Penguins*, published a series of poems purported to have been discovered among the belongings of the recently deceased Ern Malley, whom Harris editorialised was one of the “giants of contemporary Australian poetry”.¹²³ In reality, the poems had been written by two Sydney poets and sent to Harris to see if it was possible to tell the difference between good modernist poetry and the nonsensical pieces they had written. Harris fell for the hoax, and the ‘Ern Malley affair’, as it has become known, found a place in the history of Australian literature. Its relevance to this discussion, however, is that Harris was charged with having published “indecent, immoral or obscene” material and was subsequently found guilty and fined five pounds.¹²⁴ Harris later wrote about the trial, showing that the prosecuting police officer was frequently unable to explain exactly how the poems were obscene other than identifying individual words such as “incestuous” or “genitals” (in the poem ‘Egyptian

¹¹⁹ Isabel McCorkindale (ed.), *Torch-Bearers: The Woman's Christian Temperance Union of South Australia, 1886-1948*, Adelaide: WCTU of SA, 1949, pp.141-3; *Licensing Act Further Amendment Act, 1915*.

¹²⁰ *Mail*, 20 July 1940, p.2. See also *Advertiser*, 27 June 1936, p.22; 7 November 1936, p.28; 28 October 1937, p.13; 16 December 1937, p.24; 20 July 1938, p.27; 8 July 1944, p.9.

¹²¹ Hilliard & Hunt, ‘Religion’, p.223.

¹²² Anthony Blackshield, ‘Censorship and the Law’, in Geoffrey Dutton and Max Harris (eds), *Australia's Censorship Crisis*, Melbourne: Sun Books, pp.9-26.

¹²³ *Angry Penguins*, no.5, 1944, p.5.

¹²⁴ Max Harris, ‘Appendix’, in *Ern Malley's Poems*, Melbourne: Lansdowne Press, 1961, pp.42-5; *Mail*, 21 October 1944, p.10. For a full account of the indecency trial, see Michael Heyward, *The Ern Malley Affair*, Brisbane, University of Queensland Press, 1993, pp.182-212.

Register’), or in one case, because the setting of the poem was a park at night (‘Night Piece’), and the officer had, in his years of professional duties, “found that people who go into parks at night go there for immoral purposes” – none of which were mentioned in the poem.¹²⁵ Harris argued:

As the law was framed at that stage in South Australia, literary merit or serious literary intentions in no way constituted a defence. Had the Crown Solicitor’s office, in its wisdom, chosen to prosecute the works of Shakespeare or the Holy Bible, a magistrate would have had little choice but to have found those works guilty of indecency, immorality or obscenity.¹²⁶

It was not only explicit sexual topics that were censored or banned, however. Only days after the inaugural Adelaide Festival of Arts in March 1960, American musical comedian Tom Lehrer performed a sell-out concert at the Adelaide Town Hall, before which he was told by the Chief Secretary Sir Lyell McEwin that he would not be permitted to sing five of his repertoire of 27 songs that he had performed in other states.¹²⁷ McEwin drew on powers given to him by the *Places of Public Entertainment Act*, in a section dating from 1913 that allowed him to prohibit a performance for the “preservation of public morality, good manners, or decorum, or to prevent a breach of the peace”.¹²⁸ One song, entitled “I Hold Your Hand in Mine”, told the story of a man who cut off his girlfriend’s hand and carried it around with him.¹²⁹ Following a similar argument to that taken by Max Harris, Lehrer pointed out that the opera *Salome*, in which the title character is presented the head of John the Baptist on a platter, had just been performed to great acclaim during the Festival, and that was hardly less ghoulish,¹³⁰ but there was little he could do and police officers were stationed at the doors during the concert.¹³¹ Even the conservative *Advertiser* editorialised in Lehrer’s favour, labelling the ban “one of the most nonsensical

¹²⁵ Harris, ‘Appendix’, p.44.

¹²⁶ Harris, ‘Appendix’, p.45. A defence of “artistic or literary merit” was eventually introduced in the *Police Offences Act, 1953* [SA], s.33(1).

¹²⁷ *Advertiser*, 28 March 1960, p.3; 29 March 1960, p.2.

¹²⁸ *Places of Public Entertainment Act, 1913*, s.25; *SAPD*, HA, 31 March 1960, pp.14-15.

¹²⁹ *Sydney Morning Herald*, 1 March 2003, ‘Spectrum’ supplement, pp.4-5.

¹³⁰ *Advertiser*, 30 March 1960, p.4.

¹³¹ *Advertiser*, 28 March 1960, p.3; 29 March 1960, p.5.

pieces of censorship that this city has suffered from in a long time – ‘suffered’ because it is going to make us look rather less than adult’.¹³² The same editorial criticised the Vice Squad, which had prematurely ended a wine-tasting during the Festival. The editorial argued that even though the correct permits for serving alcohol had probably not been obtained, the decision to intervene was too heavy-handed: “Everybody understood the wine-tasting to be inspired by a desire to make our wines better known to interstate and overseas visitors.”¹³³ It was precisely those interstate and overseas visitors who, when greeted with such behaviour, and finding they could not have a drink after an evening show, contributed to perpetuating the reputation of the ‘wowsers state’ outside South Australia. Both the Harris and Lehrer incidents were publicised in newspapers around the country.¹³⁴

These measures, designed to minimise as much as possible the prevalence of immoral behaviour, were not unique to South Australia, nor even Australia, during the era. The 1950s are often remembered as a time of conservatism and tradition across the English-speaking world, on occasion being compared to the Victorian era in terms of its focus on wholesome family values and the prominence of religion (where American evangelist Billy Graham is an oft-quoted example). Increasingly, however, historians argue that our memory of the 1950s is clouded by comparisons with the more radical 1960s and 1970s, and that the decline of conservative social values was already well underway during the fifties – and, of course, that it is a gross simplification to attempt to classify events according to neat numerical decades.¹³⁵ As I will show in later chapters, sexual attitudes had been slowly liberalising from at least the 1930s. However, key to the conservative reputation of the 1950s is that, although undercurrents of sexual liberation were occurring, they were not yet regarded as acceptable in the public domain. Laws, or at the very least taboos, still remained about the practice, discussion or dissemination of ‘immoral’ behaviours, and therefore they remained overwhelmingly private. In the following chapters, I will trace the trend that saw these private behaviours become

¹³² *Advertiser*, 29 March 1960, p.2.

¹³³ *Ibid.* See also *SAPD*, HA, 12 April 1960, pp.131-2.

¹³⁴ *Argus*, 6 September 1944, p.4; *Mercury*, 6 September 1944, p.4; *Sydney Morning Herald*, 6 September 1944, p.4; *West Australian*, 30 September 1944, p.4; *Canberra Times*, 6 April 1960, p.3.

¹³⁵ See Peter Lewis, *The Fifties*, New York: J.B. Lippincott Company, 1978, pp.7, 238-9; David Hilliard, ‘Church, Family and Sexuality in Australia in the 1950s’, *Australian Historical Studies*, no.109, 1997, pp.133-46; John Murphy, *Imagining the Fifties: Private Sentiment and Political Culture in Menzies’ Australia*, Sydney: UNSW Press, 2000, pp.2-9.

acceptable topics of public discussion, and show that demands for legalisation increased as they became publicly acknowledged.

The conservatism of South Australia during the mid-twentieth century can be attributed in part to the personal vision of Tom Playford. His great-grandfather, Thomas Playford I, a non-denominational nonconformist pastor, had moved to the colony in its earliest years and established a chapel first in the city and then at Norton Summit in the Adelaide Hills.¹³⁶ Thomas Playford II also practised as an independent Christian pastor, and served as premier of South Australia in the 1880s and 1890s. He would later be elected as a senator in the inaugural Commonwealth parliament, and hold the position of Minister of Defence.¹³⁷ Thomas Playford III lived a far less public life as an orchardist in Norton Summit, and it was there that his son, the future Sir Thomas and record-breaking premier, was born in 1896.¹³⁸ Tom was evidently influenced by his family's Baptist faith, but was not as devout as was sometimes assumed. One of Playford's biographers, Sir Walter Crocker, describes Playford's pious mother Bessie as "a Sabbatarian and somewhat divisive Baptist",¹³⁹ but shows that the future premier was more strongly influenced by his father, "no evangelical by temperament",¹⁴⁰ who allowed work to be carried out on the farm on Sundays. Another biographer, Stewart Cockburn, argues that the "Christian faith which had dominated the lives of his paternal great-grandfather, his mother and his wife ... unquestionably influenced the formation of his character" but was "never so obvious and unequivocal in him".¹⁴¹ Cockburn asserts that it is difficult to assess the "widely perceived" belief that he was a "convinced Christian", but that "[h]e lived and behaved like a good Christian", despite his non-regular attendance at Church.¹⁴²

Playford appeared to believe in the principle of separating religious beliefs from lawmaking. All three of Playford's biographers recount the story of his response to a

¹³⁶ Walter Crocker, *Sir Thomas Playford: A Portrait*, Melbourne: Melbourne University Press, 1983, pp.5-7.

¹³⁷ John Playford, 'Playford, Thomas (1837-1915)', *Australian Dictionary of Biography*, Australian National University, available at <http://adb.anu.edu.au/biography/playford-thomas-8064/text14071>, accessed 12 September 2011.

¹³⁸ Crocker, *Sir Thomas Playford*, p.19.

¹³⁹ *Ibid.*, p.15.

¹⁴⁰ *Ibid.*

¹⁴¹ Stewart Cockburn, *Playford: Benevolent Despot*, Adelaide: Axiom, 1991, p.349.

¹⁴² *Ibid.*, p.210.

suggestion that a large cross or statue of Christ inscribed with the Ten Commandments be built in the hills overlooking Adelaide, similar to the statue of Christ in Rio de Janeiro. The idea was touted in letters to the *Adelaide Advertiser* in 1959 by a number of admirers of visiting American evangelist Billy Graham, and raised in parliament by a backbencher, but the premier declined to build such a thing. He reasoned that “[t]he government deals with the economic affairs of the State rather than spiritual affairs, which it leaves to the churches.”¹⁴³ Crocker argues that this reflects Playford’s awareness of “the importance of the State limiting itself sensibly in the matter” of religion.¹⁴⁴ This is approximately accurate in assessing Playford’s policies directly towards religious institutions, but Cockburn’s conclusion that he “did not preach the Christian ethic. But he did try to practise it”¹⁴⁵ is a more accurate assessment of his policy-making. The social policies of his government were consistently informed by the traditional Christian ethic, while rarely overtly preaching Christianity. His tendency was to endorse traditional Christian moral values less evangelically, by way of legislating on social issues – or more usually, by declining to amend legislation even when it was considered by many to be out of date with current social attitudes. Playford’s endorsement of Christian values alone does not set him apart from other political leaders of the era; Australian society, like that of Britain, was based on its Christian heritage and it was traditionally judged appropriate to establish laws on Christian principles. Rather, Playford’s reputation for conservatism stems from two aspects of his support for Christian values in policy-making. First, the particular non-conformist strain of Christianity that was dominant in South Australia, and which Playford’s personal life and policy choices espoused. Second, Playford steadfastly maintained that the law was an appropriate vehicle for imposing those values upon the population at a time when other governments had acknowledged that such a method was no longer the most appropriate, and he was able to exert significant power as premier to ensure that his views were upheld.

Dean Jaensch, who has published extensive analyses of South Australian politics during the mid-twentieth century, notes that Playford’s Cabinet was the smallest of any

¹⁴³ *Advertiser*, 26 May 1959, p.4; 27 May 1959, p.4; 29 May 1959, p.4; 30 May 1959, p.4; *SAPD*, HA, 30 July 1959, p.264. This response is misquoted in all three biographies of Playford: David Nicholas, *The Pacemaker: The Playford Story*, Adelaide: Brolga Books, 1969, pp.67-8; Crocker, *Sir Thomas Playford*, p.156; Cockburn, *Playford: Benevolent Despot*, p.210.

¹⁴⁴ Crocker, *Sir Thomas Playford*, p.156.

¹⁴⁵ Cockburn, *Playford: Benevolent Despot*, p.210.

Australian state, and argues that he chose ministers “who would be least likely to oppose him”.¹⁴⁶ He had the final say on all Cabinet decisions, and one of his long-serving ministers, Baden Pattinson, was said to have told an unhappy constituent that “[m]inisters in the Playford Government have responsibilities but I’m afraid they do not possess authority!”¹⁴⁷ Sir Walter Crocker writes that “[f]ew [ministers] could stand up to him; it seems that few tried to ... All rulers, alas, are bedevilled with a natural preference for yes-men”.¹⁴⁸ Playford also resisted the expansion of the public service that was taking place in other states, and did not have a large bureaucracy around him. Jaensch writes, “his staff consisted of a secretary and a typist. Playford *was* the Premier’s Department”,¹⁴⁹ and he relied instead on advice from public servants in other departments and experts in private industry of his own choosing.¹⁵⁰ Jaensch and Joan Bullock argue:

In the 1950s South Australia was a model of economic development; its policies were the almost total prerogative of one man. A visitor could easily have assumed that South Australia was guided by a benevolent dictator. He would have been aware of little other than one political party, dominated by its leader, and a situation of almost total political stasis. That was, in fact, how things were. Thomas Playford was the virtual Godfather of South Australian politics.¹⁵¹

Furthermore, Playford’s longevity was supported by a malapportioned electoral system. In 1936, the seats of the House of Assembly were redistributed so that there were twice as many rural seats as metropolitan seats. This favoured the LCL, and meant that the Labor Party’s popular vote did not translate to equivalent representation in parliament.¹⁵²

¹⁴⁶ Jaensch, ‘The Playford Era’, p.264.

¹⁴⁷ Cockburn, *Playford: Benevolent Despot*, p.209.

¹⁴⁸ Crocker, *Sir Thomas Playford*, p.66.

¹⁴⁹ Jaensch, ‘The Playford Era’, p.266.

¹⁵⁰ *Ibid.*

¹⁵¹ Dean Jaensch and Joan Bullock, *Liberals in Limbo: Non-Labor Politics in South Australia 1970-1978*, Melbourne: Drummond, 1978, p.6. Joan Bullock worked as a research officer for LCL Premier Steele Hall, chief protagonist of this book. They later married, and she went on to serve as a member of the SA parliament from 1993-2006.

¹⁵² Jenny Tilby Stock, ‘The “Playmander”: Its Origins, Operation and Effect on South Australia’, in Bernard O’Neil, Judith Raftery and Kerrie Round (eds), *Playford’s South Australia: Essays on the History of South Australia 1933-1968*, Adelaide: Association of Professional Historians Inc, 1996, pp.73-90.

However, demographic change from the late 1950s signified the end of Playford's long period in power. The influx of largely British working-class migrants to the northern suburbs of Adelaide, attracted by Playford's own industrialisation plan, had a dramatic effect on Labor's success at the 1962 and 1965 elections. Senior LCL politician Condor Laucke recalled:

I went to the Premier before the 1965 campaign began and said: "Sir Thomas, I cannot hold Barossa unless you promise to end 6 o'clock hotel closing and permit a State lottery and reasonable TAB facilities. My new English constituents are angry that they can't go down to their 'local' and have a few beers in the evenings after work and dinner. And they miss their football pools. They miss their gambling."¹⁵³

Laucke did lose Barossa, and Frank Walsh's Labor government took office in 1965. Stewart Cockburn relates the story that Playford, when later asked by the Archbishop of York why he lost the election, said, "I think, your Grace, I was not sufficiently liberal in matters relating to alcohol and gambling."¹⁵⁴ Clearly it was not the only reason for losing the election, but Playford acknowledged that it was a significant factor.

Playford's views on censorship and matters related to sex are more difficult to gauge, as public statements on such topics were not commonplace and he left behind little written material such as letters or diaries. Don Dunstan has asserted that Playford was "prudish about any matters which related to sex,"¹⁵⁵ though Dunstan's especially libertarian views on sexual freedoms would render most people of Playford's generation prudish in comparison. Crocker, a contemporary of Playford and equally conservative, characterises the premier's attitudes more favourably:

Playford's views reflected the old South Australian traditions of restraint and responsibility. He was not censorious, and he was not ignorant of the many varieties of human nature. He knew the

¹⁵³ Laucke, quoted in Cockburn, *Playford: Benevolent Despot*, p.333.

¹⁵⁴ Cockburn, *Playford: Benevolent Despot*, p.346.

¹⁵⁵ Don Dunstan, *Felicia: The Political Memoirs of Don Dunstan*, Melbourne: Macmillan, 1981, p.19.

difficulties about censorship. But he also believed that there must be limits. Child pornography and depraved obscenities associated with sex shops let in during the Dunstan decade, for instance, seemed to him not tolerable in a community with rational standards.¹⁵⁶

Crocker further argues that Playford believed that “quality of life had other dimensions than material things. He saw little connection between quality of life and the availability of sex shops, blue films, pornographic publications...”.¹⁵⁷ These assessments of Playford suggest that his attitudes were typical of a person of his generation, and with his religious background. It is impossible to know his specific attitudes towards homosexuality and abortion, although Crocker’s comment that “he was not ignorant of the many varieties of human nature” hints at an acknowledgement of diversity of sexuality, but a preference to keep it out of public conversation.

Increasingly from the 1950s, one member of the South Australian parliamentary Labor party spoke out in opposition to Playford’s morally conservative policies. At the 1953 state election, twenty-six year old Don Dunstan entered parliament as Labor member for Norwood, and immediately made an impression as a voluble critic of the Playford government. He felt that the opposition leader, O’Halloran, was “easily manipulated by the wily premier” and had “a reputation as a supporter of the Playford regime”,¹⁵⁸ and took it upon himself to make his opposition to the government known whenever possible. Of particular concern to Dunstan in the early years was the enduring electoral malapportionment, which was particularly evident at the 1953 election when Labor received 52.9 per cent of the two-party vote but won only fourteen seats out of thirty nine in the House of Assembly.¹⁵⁹ Dunstan was also vocal on the issues of police powers (a topic that would continue to be of relevance during his own premiership in the 1970s, especially in regards to the surveillance of homosexual men), Aboriginal rights, health, education, the provision of the arts and cultural activities, and the censorship of obscene

¹⁵⁶ Crocker, *Sir Thomas Playford*, p.96.

¹⁵⁷ *Ibid.*, p.133.

¹⁵⁸ Dunstan, *Felicia*, p.40.

¹⁵⁹ Neal Blewett and Dean Jaensch, *Playford to Dunstan: The Politics of Transition*, Melbourne: Cheshire, 1971, p.19.

publications,¹⁶⁰ the first of many manifestations of Dunstan's desire for a progressive, social democratic state, in which freedom of speech and behaviour for adults was a feature. Dunstan outlines his grievances with the social and moral attitudes of Playford's South Australia in his 1981 memoirs, *Felicia*: in addition to censorship, especially of written publications, six o'clock closing of hotels, the "Calvinist gloom" of dull Sundays, and few venues for high-quality entertainment attract his criticism.¹⁶¹ He invokes the memory of the "element of radicalism" that he contends had always been present in South Australian history, despite its nonconformist conservatism, and argues that during his political career he sought to "show that it is possible by democratic action to change the political, social, and cultural life" of the state.¹⁶² Dunstan was one of the few articulating the liberalising trend in society which otherwise remained overwhelmingly private.

Playford's conservatism was characterised by the argument that private individual behaviour should be kept private. To Playford and many others like him, sex, sexuality, and all matters relating to them were not considered a proper topic for discussion, and were demonstrably kept out of the public sphere. This view was supported by the major Christian churches, whose teachings had shaped the laws that enforced not only the activities in question, but also attempted to suppress discussion of them. The decline in religious participation that was evident across the Western world in the decades following World War II quietened the voices of religious protest, and some churches simultaneously attempted to situate themselves within the growing liberalisation of social attitudes that I discuss in the following chapters.

¹⁶⁰ See, for instance, *SAPD*, HA, 28 September 1955, p.908 and 1 November 1955, pp.1317-21 on Aboriginal rights; 5 April 1960, pp.38-9 on censorship; 22 October 1953, p.1146 on the arts; 1 August 1961, p.178, on civil liberties in gaol. An overview of Dunstan's interest in certain issues can be gleaned from the indexes to parliamentarians' speeches in the front of each volume of the *SAPD*; eg. 1959, pp.LX-LXI; 1960, p.LVIII; 1961, pp.LI-LII; 1962, pp.LXII-LXIII.

¹⁶¹ Dunstan, *Felicia*, pp.22-3.

¹⁶² *Ibid.*, p.24.

Chapter 2

A Path to Abortion Law Reform

In December 1968, Attorney-General Robin Millhouse introduced into the South Australian parliament a Bill that sought to prescribe certain circumstances in which a woman could lawfully obtain an abortion, simultaneously clarifying and extending the circumstances permitted by the assumed common law precedent.¹ It was not the first attempt by an Australian state to enact such reform, but it would prove, eventually, to be the first to succeed. Millhouse's Bill was in part motivated by a growing feeling within sections of the community that the laws and practices relating to abortion needed to be updated. The changing social attitudes which included but went far beyond issues such as abortion were not unique to South Australia, nor even Australia, but were evident in much of the developed world in the decades following World War II.

The popular memory tends to recall abortion law reform as a result of the women's liberation movement. However, the reform in South Australia predated the rise of Women's Liberation, and the two arose from many of the same conditions. In Adelaide, the Women's Liberation movement began during the final stages of the passage of the abortion Bill, and the women's movement played little, if any direct role in placing abortion reform on the political agenda.² Jill Blewett describes the role of the Abortion Law Reform Association of South Australia as guiding the proposed reform towards success, rather than fighting to get it debated at all,³ and the role of the women's

¹ *South Australian Parliamentary Debates* (hereafter *SAPD*), House of Assembly (HA), 3 December 1968, p.2920.

² See Karen Coleman, 'The Politics of Abortion in Australia: Freedom, Church and State', *Feminist Review*, vol.29, 1998, p.76; Susan Magarey, 'When It Changed: The Beginnings of Women's Liberation in Australia', in Martin Crotty and David Andrew Roberts (eds), *Turning Points In Australian History*, Sydney: UNSW Press, 2009, pp.184-92; Sylvia Kinder, *Herstory of Adelaide Women's Liberation, 1969-74*, Adelaide: Salisbury Education Centre, 1980, pp.31-2.

³ Jill Blewett, 'The Abortion Law Reform Association of South Australia', in Jan Mercer (ed.), *The Other Half: Women in Australian Society*, Melbourne: Penguin, 1975, p.384.

movement was similar. Change occurred rapidly, however: by 1972, when Terry McRae introduced a Bill to overturn parts of the original abortion reform, the women's movement (manifesting in several different organisations) provided more organised activism than in 1968-69, and their counterparts Right to Life and the Community Standards Organisation had similarly become more structured. Millhouse's Bill caught people by surprise: he acted before he was pressured to act, and the formation of pressure groups was a reactive response to Millhouse's announcement. This is an important point that relates directly to the South Australian paths to reform, both of the laws relating to abortion and to homosexuality, which have tended to become obscured by interstate experiences where organised activism did play a vital role in bringing reform to parliament, or attempting to do so. This chapter traces the evolution of discussion about abortion, and more broadly about female sexual morality, in South Australia, to show how it evolved from the privacy and salaciousness of the early twentieth century to a matter for respectable public discussion in the late 1960s.

The 1930s: Doctors, Court Cases and Activism

Prior to the late 1930s, mentions of abortion in the press were very rare, with the exception of court reports and the cloaked terminology of advertising discussed in Chapter 1. Adelaide papers occasionally published articles that raised the issue, though not usually with any suggestion of legalisation, and only buried within a discussion of another related issue. Such mentions cannot realistically be said to have had much, if any, impact on the long-term evolution of public discussion of abortion. For instance, the *Register* published a long article in June 1922 on the International Council of Women's recommendation to grant increased rights to illegitimate children, a happy corollary of which would be "very largely to diminish the deadly and appallingly increasing crime of abortion".⁴ In 1928, the paper reviewed a book on birth control that identified how contraception was different from abortion, and argued that "safe" abortion was available only to the wealthy.⁵ On a slightly different note, in 1931 the *Mail* and the *Advertiser* reported that a British judge had advocated birth control and abortion as a means of reducing the number of "mental defectives" in that country, whom, he argued, must not

⁴ *Register*, 22 June 1922, p.11.

⁵ *Register*, 20 November 1920, p.8.

be allowed to breed.⁶ The *Advertiser* followed with a second article, but it does not appear to have stirred debate locally.⁷

The years from 1936 to 1938 marked a definitive turning-point in the evolution of abortion laws. As Barbara Baird has noted, the end of the 1930s have been seen as a time of change in the understanding and portrayal of femininity and reproduction, and coincides with medical advances that led to better treatment of post-abortive complications.⁸ My own work on abortion court reports and advertising found an end-point in those same years, as a shift occurred in the use of language and style of those limited mentions of the procedure.⁹ Of particular relevance to this project is the shift that occurred within South Australia's conversations about abortion.

Although private conversations undoubtedly continued to exist (and, arguably, to dominate for many more decades, until the public activism of the Right to Life and Pro-Choice movements peaked with public and graphic exchanges of views from the 1990s), a 1937 submission to the National Health and Medical Research Council (NHMRC) marked the end of the era in which conversations about abortion were exclusively private. The submission by Dr A.R. Southwood, Head of the Department of Public Health in South Australia, was published as an appendix in the NHMRC's Report of its second session in June 1937, and appeared alongside submissions from New South Wales and Victoria on illegal abortion in those states.¹⁰ Southwood's report brings together the views of three gynaecologists, two female doctors and the Principal of the Women Police, who address the questions of the "prevalence of and reasons for illegal abortion"¹¹ in South Australia. One gynaecologist noted that there had been an "alarming" increase in deaths due to abortion from 1919 to 1934 (see Figure 2.1), and that in his experience, the "great

⁶ *Advertiser*, 4 December 1931, p.20; *Mail*, 12 December 1931, p.4.

⁷ *Advertiser*, 16 January 1932, p.19.

⁸ See Barbara Baird, "'Somebody Was Going to Disapprove Anyway': Re-thinking Histories of Abortion in South Australia, 1937-1990", unpublished PhD thesis, Flinders University of South Australia, 1998, p.110; Lyn Finch and Jon Stratton, 'The Australian Working Class and the Practice of Abortion 1880-1939', *Journal of Australian Studies*, vol.12 no.23, 1988, pp.45-64.

⁹ Clare Parker, 'Female Complaints and Certain Events: Silencing Abortion Discourse', *Lilith*, no.19, 2013, pp.33-47 and Chapter 1 of this thesis.

¹⁰ *Report of the National Health and Medical Research Council, Second Session, June 1937*, pp.26-33. See also Baird, "'Somebody Was Going to Disapprove'", p.112.

¹¹ *Report of the NHMRC*, p.29.

majority” of abortions occurred in married women, and were “generally self-induced”.¹² The second gynaecologist took a far more judgemental tone, writing that “such practices are more airily undertaken [since World War I], and with astounding callousness”,¹³ and the third argued that “[t]he pagan outlook of the majority of Australian women leads them to evade their responsibilities as best they may”.¹⁴ His only suggestion for a reduction of abortion rates was stricter policing, including compelling the women to face court in an explicit display designed to reduce desire for abortions by public shaming.¹⁵ The second gynaecologist also openly articulated his opposition to legalisation, and endorsed prohibition of all abortion advertisements in newspapers. The two female doctors’ contributions focused on provision of birth control, and adequate child welfare support, but one also opposed legalising abortion and encouraged stricter policing of advertising and means to facilitate convictions of abortionists.¹⁶

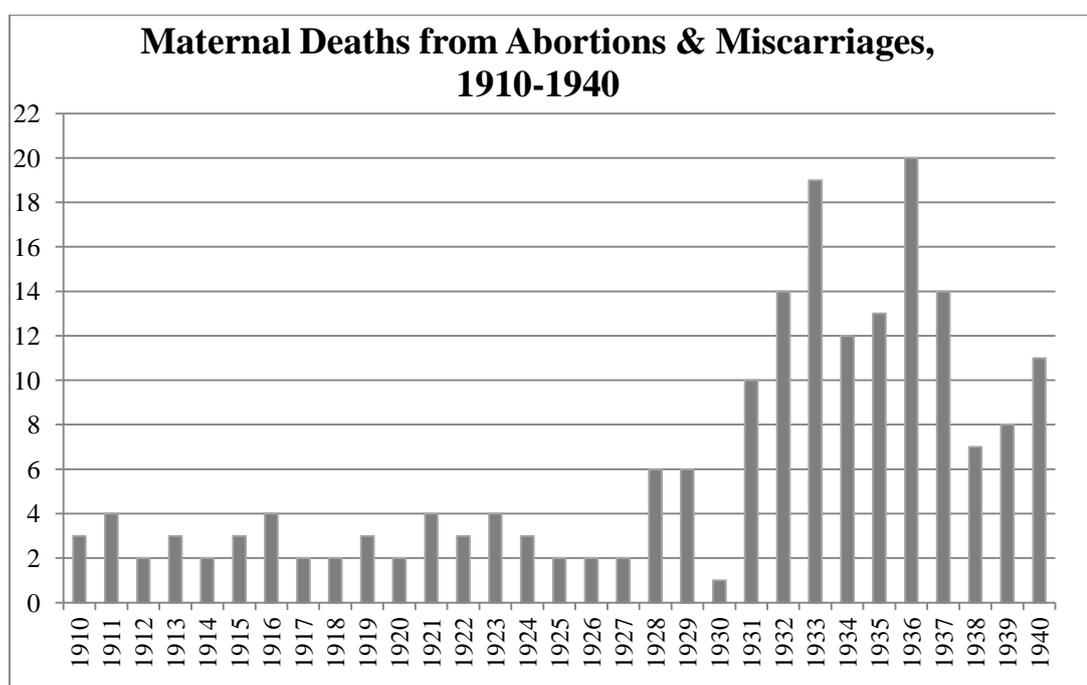


Figure 2.1: Maternal deaths from abortions and miscarriages in South Australia, 1910-1940.¹⁷

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*, p.30.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, pp.30-1.

¹⁷ Compiled from *Statistical Register of South Australia*, 1910-1940 editions. The statistics provided do not always separate induced abortions from other types of miscarriages, but the trend mentioned by the gynaecologist is evident.

The Principal of Women Police also supported financial support for poor mothers, but most of her submission was devoted to statistics on the number of abortion cases treated in the Adelaide Hospital in 1934, 1935 and 1936. These are a particularly valuable source as only mortality statistics are easily accessible in other places, and so the figures regarding women who were treated and survived go some small way to revealing the real extent of abortions. The figures are not perfect—they cover all abortions and miscarriages, whether criminally induced, spontaneous or not able to be proven either way—and so should not be taken to mean that all cases were the result of illegal abortions. The figures showed that in 1934, 513 cases were treated; in 1935, 551; and in 1936, 467. These are contrasted with just one earlier statistic, from 1924, when 220 cases were treated. What is noticeable is the tiny proportion of these that were reported to police, due to suspicion of “criminal interference” – just 6, 9 and 17 cases respectively.¹⁸ The reasons for this are not forthcoming, but once again demonstrate the impossibility of effectively policing abortion, particularly when the women involved were probably highly reluctant to discuss the circumstances of their misadventure.

The NHMRC report, therefore, was not concerned with law reform, but had the explicit aim of trying to find ways to reduce the number of abortions. It offers a view into the private conversations that were evidently occurring within the medical and policing communities about the problem, but it was not intended to be a public document and contributed only to ‘official’ or ‘expert’ thinking on the matter, rather than influencing more general conversation. However, 1938 saw two further conversations about abortion occur in South Australia. The first appeared in the University of Adelaide student newspaper *On Dit*, and straddled the line between private and public – its readership was likely confined to the university community. The second was prompted by a court case in England, but resulting conversation became truly public in the pages of the Adelaide daily papers, before reverting once again to the (semi)privacy of activists’ meetings, and then fading from the record.

The edition of *On Dit* of 26 April 1938 featured an article titled ‘Legalised Abortion: A Plea from a Med’. The anonymous medical student argued that “a more frank and honest consideration of the subject” was needed, and noted that “even now newspaper reporters are given instructions that their sainted papers will not print the word” – a confirmation of

¹⁸ *Report of the NHMRC*, p.31.

the reporting style resulting from the *Indecent Reports (Restriction) Act* analysed in Chapter 1. The author laid out the reasons that women turn to illegal abortions, and concluded that the “case against legalisation is purely moral, and prudish. It considers, not the condition that the woman is in, but how she got into it”,¹⁹ thereby showing that the author construed the problem as a strictly medical concern. Four letters in response to the article were published in the subsequent edition of *On Dit* (all opposed to legalisation, though one appears to be a parody)²⁰ and two more, both supportive, in the edition following that, in addition to another letter from the original medical student, this time using (what one assumes to be) the alias Percival Pignetting. The editors explained that more letters had been received than they had published, and that they considered the matter closed to further discussion.²¹ Correspondents opposed the suggestion on the basis of the unborn child’s right to life, and argued that it was “against morality” and that the medical student did not understand the true meaning of morality. The two letters in support of legalisation echoed the concern that women were dying from illegally performed abortions necessitated by the stigma attached to ‘immoral’ pregnancies. One, an engineer, argued succinctly against the ‘slippery slope’ fear: “it is fair to assume that man’s mind is not so depraved that legalised abortion will drag us down to the level of uncultured, animalistic sexual gorgons”.²² The arguments used for and against legal abortion in these letters were essentially the same as those used during the debates of the 1960s, though the terminology was yet to become formalised – these correspondents were evidently forming their own positions on the matter, rather than reworking and repeating the arguments and phrases used in statements on abortion from activist organisations or religious organisations during later decades. The short-lived debate in *On Dit* marked a very early example of (semi-)public discussion of abortion law reform, but its editors clearly did not wish to prolong the discussion. Indeed, the matter was not raised again later in 1938, even once the daily newspapers began to publish correspondence on abortion laws after the Bourne case in the middle of the year.

In June 1938, London obstetrician Aleck Bourne performed an abortion upon a fourteen year old girl who had been raped. He was dissatisfied with the current law stipulating that

¹⁹ *On Dit*, 26 April 1938, p.4.

²⁰ See Baird, ““Somebody Was Going to Disapprove””, p.119.

²¹ *On Dit*, 3 May 1938, p.5; 10 May 1938, p.5.

²² *On Dit*, 10 May 1938, p.5.

a doctor could only carry out an abortion to save the life of the mother (that is, when she was at immediate and grave physical risk), and so after performing the abortion he reported his actions to the police with the intention of allowing a test case to clarify the law. Bourne was a member of the medico-legal council of the Abortion Law Reform Association, formed in early 1936 and chaired by women who sought to make abortions able to be performed lawfully by doctors.²³ He was prosecuted for procuring a miscarriage, and argued that the abortion had been a medical necessity because he observed in the girl “a complete breakdown of her morale. All her assumed cheerfulness disappeared as she wept beyond control. This decided me at once that she had to be relieved of her pregnancy.”²⁴

The prosecution was required to prove that the act of procuring a miscarriage had been performed “unlawfully”, a term never defined in the terms of the statute, and one which suggested that there was such a thing as a “lawfully” performed abortion. In this case it was conceded that the operation would be lawful if performed to save the life of the mother.²⁵ At the end of the trial, Justice Macnaghten advised the jury that if

the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother.²⁶

Bourne was found not guilty, and the precedent was thereby established that an abortion was lawful in order to save the health (either physical or mental) of the mother, as well as to save her from immediate death; a significant liberalisation of the previous law.²⁷

²³ Barbara Brookes, *Abortion in England, 1900-1967*, London: Croom Helm, 1988, pp.94-5. See Brookes for detail on the establishment of ALRA and British movements of the mid 1930s for abortion reform.

²⁴ Aleck Bourne, *A Doctor's Creed*, cited in Keith Hindell and Madeleine Simms, *Abortion Law Reformed*, London: Peter Owen, 1971, p.70.

²⁵ John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, Cambridge: Cambridge University Press, 1988, p.50.

²⁶ R v. Bourne [1939] 1 KB 687, p.694.

²⁷ See Hindell & Simms, *Abortion Law Reformed*, pp.70-1.

The case potentially had ramifications in Australia, whose common law followed that of England. However, the South Australian Crown Solicitor A.J. Hannan urged caution and noted that Macnaghten's summing-up was not binding in local courts, and a doctor could still be prosecuted in South Australia for terminating a pregnancy for a reason other than to save the mother's life.²⁸ The precedent established by Macnaghten could be used as a persuasive argument in favour of a doctor's actions, but a local judge could make a finding that did not concur with Macnaghten, and result in the prosecution of a doctor.

With a possible local angle, the South Australian press reported on the case and its effects. An article headed "Operation to save mother's life" detailed how Bourne had been charged with "having used an instrument with intent to procure a certain event",²⁹ and the following day an article was prominently titled "Doctor not guilty".³⁰ The *Advertiser* provided a summary of the major British papers' responses to the decision, and reported that the *Daily Mail* published suggestions that the government would soon be asked to introduce legislation to change the statute law to reflect the new precedent.³¹ A "well-known Adelaide gynaecologist" told the *Advertiser* that he believed the case would probably have the effect of changing the local law. He also thought that "even wider powers should be given to the profession" to end the high mortality rate from terminations "conducted surreptitiously, under conditions which were not conducive to the welfare of patients".³² A month later, a South Australian doctor sought permission from the state council of the British Medical Association (BMA) to perform an abortion on a fourteen year old girl in an incest case, in an attempt to provide a test case to establish a local version of Macnaghten's finding. His plea made the front page of the *Adelaide Mail*, but was rejected by the BMA council.³³ The matter reached the Cabinet of the conservative government of Richard Butler, which considered a report from the Crown Solicitor regarding the request for a test case, but decided that no change in the law would be considered. Indeed, some ministers were in favour of tightening, rather than liberalising, the law.³⁴

²⁸ *Advertiser*, 26 July 1938, p.20.

²⁹ *Advertiser*, 19 July 1938, p.19.

³⁰ *Advertiser*, 20 July 1938, p.25.

³¹ *Advertiser*, 21 July 1938, p.20. See also *Mail*, 13 August 1938, p.3.

³² *Advertiser*, 21 July 1938, p.20.

³³ *Mail*, 27 August 1938, p.1; *Advertiser*, 29 August 1938, p.20; 2 September 1938, p.30.

³⁴ *Advertiser*, 6 September 1938, p.24.

The *Advertiser* published a series of letters to the editor regarding the proposed changes in the abortion law, covering a range of views and marking the first instance of public debate on abortion laws. Some rejected any consideration of liberalisation, such as one correspondent who found it “utterly appalling” that a medical man might be permitted to “slay an innocent unborn child”, instead advocating the death penalty for rapists. “Surely it would be better to kill criminals than to kill the innocent results of their crimes”,³⁵ he wrote, thereby entirely marginalising the mother from the matter. Others considered the woman to be the crux of the whole issue, lamenting the law “that inflicts on an outraged woman a punishment worse than that meted out to the most desperate ruffian”.³⁶ The president of the Women’s Non-Party Association wrote to publicise a “general meeting of women” to discuss law reform, at which she hoped “all women will show their interest actively in this vital matter”.³⁷ Other correspondents wrote to commend the involvement of a women’s organisation, and suggested that “had the BMA conference been composed of women, the decision would have been more humane”.³⁸ In October, the paper promoted the public meeting of the Women’s Non-Party Association at which a sub-committee was formed “to consider what measures, if any, medical, social, legal or administrative, are advisable to improve the existing position with regard to abortion”.³⁹ The annual report of the Association for that year mentions the meeting, and the formation of “a representative committee ... to consider the advisability and means of getting the law altered by widening its scope in cases of rape and incest only”.⁴⁰ It reported that “the committee has been working steadily throughout the year”, but there is no reference to any such committee, or the abortion issue, in any future reports of the Association. The matter does not appear to have been raised again, and the issue vanished from the local press. The Butler government clearly did not support liberalisation, and ascension of social and moral conservative Tom Playford as premier later in 1938 did little to assist efforts. A brief moment of public attention subsided once more into silence.

³⁵ *Advertiser*, 31 August 1938, p.26.

³⁶ *Advertiser*, 1 September 1938, p.22.

³⁷ *Advertiser*, 6 September 1938, p.26.

³⁸ *Advertiser*, 8 September 1938, p.26. Letters on the issue continued to appear until 30 September.

³⁹ *Advertiser*, 5 October 1938, p.10; see also *Advertiser*, 4 October 1938, p.7.

⁴⁰ Women’s Non-Party Association of SA, *Thirtieth Annual Report*, 1939, p.3, available at the State Library of South Australia.

World War II

World War II marked a new height in the public awareness and discussion of Australian women's sexual behaviour. Coupled with the absence of husbands and boyfriends was the influx of American soldiers stationed in Australian cities from 1942. South Australia did not host the large quantities of Americans seen in cities such as Brisbane, Melbourne, Perth, and Townsville, and accordingly was not beset by the same moral panic that emerged in those cities over the behaviour of Australian women with the American soldiers. However, South Australia was not immune from publicity relating to public morality. Local newspapers reported on incidences of licentious behaviour in other cities, and from time to time discussed interstate problems in order to highlight the preservation of South Australia's morality.⁴¹ Therefore, while certain behaviours were prevalent in only some parts of the country, the resulting attitudes towards sexual morality occurred across the nation.

Much has been written on the impact of the war and American soldiers on the lives of Australian women. Historians have explored the impact of women's paid employment, and several have focused particularly on venereal disease, contraception and fears about young women's public displays of 'immoral' behaviour and the way these were reported and discussed by media and religious leaders.⁴² Rosemary Campbell has argued that although it was women who were blamed for "the spread of venereal disease and the lowering of the moral tone of the community"⁴³ (a point reinforced by Michael Sturma, who notes that criticism of the American soldiers tended to be minimal and blame was

⁴¹ For example, *Mail*, 25 July 1942, p.3; *Advertiser*, 4 September 1942, p.8; 5 October 1942, p.4.

⁴² Marilyn Lake, 'Female Desires: The Meaning of World War II', in Joy Damousi and Marilyn Lake (eds), *Gender and War: Australians at War in the Twentieth Century*, Cambridge: Cambridge University Press, 1995, pp.60-80; Marilyn Lake, 'The Desire for a Yank: Sexual Relations between Australian Women and American Servicemen during World War II', *Journal of the History of Sexuality*, vol.2 no.4, 1992, pp.621-33; Rosemary Campbell, *Heroes and Lovers: A Question of National Identity*, Sydney: Allen & Unwin, 1989; Frank Bongiorno, 'The Two World Wars and the Remaking of Australian Sexuality', in Martin Crotty and Marina Larsson (eds), *Anzac Legacies: Australians and the Aftermath of War*, Melbourne: Australian Scholarly Publishing, 2010, pp.84-106; Kate Darian-Smith, *On the Home Front: Melbourne in Wartime 1939-1945*, Oxford: Oxford University Press, 1990; Michael Sturma, 'Loving the Alien: The Underside of Relations Between American Servicemen and Australian Women in Queensland, 1942-1945', *Journal of Australian Studies*, vol.13 no.24, 1989, pp.3-17; Lisa Featherstone, *Let's Talk About Sex: Histories of Sexuality in Australia from Federation to the Pill*, Newcastle-upon-Tyne: Cambridge Scholars Publishing, 2011; Michael McKernan, *All In! Australia During the Second World War*, Melbourne: Thomas Nelson, 1983.

⁴³ Campbell, *Heroes and Lovers*, pp.105-7.

instead directed at the local women⁴⁴), the anger directed towards the relationships between Australian women and American servicemen “forced a re-examination of the rigidly defined and impoverished sexual roles that Australian cultural traditions had defined”.⁴⁵ Marilyn Lake has analysed the war in its context as part of the growth of feminism in Australia during the twentieth century, and has argued that war established “women’s interest in and right to sexual pleasure” and placed “female desire ... on the political agenda”.⁴⁶ She argues that the presence of foreign servicemen had “the effect of sexualising the local female population”⁴⁷ and that the “sexually active woman, neither prostitute nor married woman, defied old categories and could not easily be accommodated in prevailing discourses”;⁴⁸ the conceptualisation of women’s sexuality was forced to change. Additionally, Frank Bongiorno notes the simultaneous emergence of “public discussion of sexual citizenship that pointed to new ways of understanding and regulating sexual conduct”⁴⁹ that marked a significant step away from “traditional moralism” that tended to deny desire or at least endorse its unsuitability in the realm of public conversation.⁵⁰

During the war, Australian women took on roles outside the house in unprecedented numbers, entering jobs previously occupied by men and often earning full men’s wages for their work. Young women made the most of their newfound freedom, and their behaviour was repeatedly seen as transgressing the bounds of appropriate conduct. Newspapers reported on young women, often underage, intoxicated in the middle of the day, and decried the associated promiscuity that this was believed to bring. Public romantic entanglements were considered inappropriate between any young people, but were of particular concern when they involved US soldiers and Australian women, who were perceived to be ‘cheating’ on Australian men even if, as individuals, they did not have an absent husband or sweetheart.⁵¹ Venereal disease (VD) was seen as a particularly

⁴⁴ Sturma, ‘Loving the Alien’, p.16.

⁴⁵ Campbell, *Heroes and Lovers*, p.194.

⁴⁶ Lake, ‘Female Desires’, p.75; see also Marilyn Lake, *Getting Equal: The History of Australian Feminism*, Sydney: Allen & Unwin, 1999.

⁴⁷ Lake, ‘Female Desires’, p.67.

⁴⁸ *Ibid.*, pp.67-8.

⁴⁹ Bongiorno, ‘The Two World Wars’, p.98.

⁵⁰ *Ibid.*, pp.98-99.

⁵¹ Featherstone, *Let’s Talk About Sex*, pp.210-22; Sturma, ‘Loving the Alien’, pp.3-4; Campbell, *Heroes and Lovers*, pp.57-108.

potent threat, and, as Michael Sturma argues, “offered a rationale for restricting women’s sexuality”.⁵² VD made women’s sexuality a matter for the police, and also medicalised a ‘moral’ issue in an echo of the increasing medicalisation of abortion (and homosexuality) during the 1930s and 1940s. Contraception, too, was a matter of concern during the war years, as it had been for many years before the beginning of the war. Campbell shows that birth control was not widely available through clinics, and that the federal government banned mail advertising of contraceptive devices and advice on how to use them, “responding perhaps to pressure from Catholic lobbyists, or seeking to impose some control on what it considered to be excessive sexual activity”.⁵³ The experience of South Australian women during the war has not been widely canvassed,⁵⁴ but even a brief examination of the South Australian press demonstrates the fear of immoral behaviour extended across that state’s borders. Adelaide papers freely reported on concerns of immorality in other Australian cities,⁵⁵ and a debate on “social evils” held in the South Australian town of Clare in July 1942 saw a clergyman and a Labor MP agree that “immorality was rife in Adelaide”.⁵⁶ They argued that immorality was “sweeping Australia”, that a vast proportion of VD cases could be blamed on alcohol, and that “moral regeneration” was the solution. They saw the wartime situation as a continuation of an upwards trend in alcohol consumption, gambling, and, worst of all, birth control, next to which “drink is a pygmy”.⁵⁷ The Anglican Bishop of Adelaide reinforced the concern over local behaviour, arguing in a report on the state of his diocese that “the hideous growth of such unwholesome practices as sexual immorality and gross excess in the use of alcohol ... had deeply and rightly disturbed all decent public opinion”.⁵⁸ VD and promiscuity also featured from time to time in letters to Adelaide papers.⁵⁹

The war’s effect on abortion has not been surveyed extensively. Kate Darian-Smith cites Dr Victor Wallace’s 1942 estimate, based on American research, that there were 45,000

⁵² Sturma, ‘Loving the Alien’, p.11.

⁵³ Campbell, *Heroes and Lovers*, p.92.

⁵⁴ See Susan Lemar, “‘Sexually Cursed, Mentally Weak and Socially Untouchable’: Women and Venereal Diseases in World War Two Adelaide”, *Journal of Australian Studies*, vol. 27 no.79, 2003, pp.153-64.

⁵⁵ For example, *Mail*, 1 August 1942, p.2; 24 April 1943, p.12; 15 April 1944, p.3; *Advertiser*, 24 June 1942, p.7; 29 July 1942, p.6; 30 July 1942, p.5.

⁵⁶ *Mail*, 25 July 1942, p.3.

⁵⁷ *Ibid.*

⁵⁸ *Advertiser*, 9 September 1942, p.3.

⁵⁹ For example, *Advertiser*, 17 July 1942, p.8; 5 October 1942, p.4; 28 October 1943, p.6.

illegal abortions performed across Australia that year, but this figure did not attempt to characterise a wartime rise in abortions.⁶⁰ Judith Allen discusses a small number of specific abortion cases that occurred in New South Wales during the war, including a brief mention of the rise of the Bondi area in Sydney as the centre of that city's abortion trade.⁶¹ The only other references comprise vague assertions that the abortion rate rose during the war.⁶² Newspapers reveal several abortion cases during the war, including one in Queensland in 1945 in which the father was identified as a US soldier.⁶³ However, it is very difficult to gauge accurately how many abortions were being performed, just as it is difficult to calculate an accurate figure for any other period due to the secrecy of the procedure. Once again, prosecution figures, revealing only (some of) the abortions that came to the attention of authorities, are the only quantifiable data available.

In South Australia, prosecutions for strictly abortion-related offences peaked between 1942 and 1954, and were highest of all in the years from 1942 to 1945 inclusive.⁶⁴ It is not clear whether this was the result of more women seeking abortions (perhaps due to affairs while husbands or boyfriends were absent, or a belief that the privations of war did not provide an ideal environment for child-rearing), and therefore more cases being brought to the attention of police; or whether police were making a concerted effort to pursue abortionists (perhaps with the intention of stemming the well-publicised decline in morality). Either explanation is plausible; equally likely is a combination of both factors. As discussed in Chapter 1, the peak in abortion prosecutions in South Australia mirrored the peak in prosecution for homosexual acts, and was indicative of a wider attempt to deal with "social decay". It is possible that this was particularly dominant in South Australia in an attempt to withstand the moral decline perceived in other states during the war. However, it is important not to place undue emphasis on these numbers, as even in the year of highest prosecutions, 1943, only ten people were charged and seven convicted. As one abortion might produce two or three arrests, the figures quickly become statistically insignificant. However, they are the only figures available and demonstrate the near-impossibility of accurately assessing such an 'underground' matter as illegal abortions.

⁶⁰ See Darian-Smith, *On the Home Front*, p.197.

⁶¹ Judith A. Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, Melbourne: Oxford University Press, 1990, pp.200-01.

⁶² Campbell, *Heroes and Lovers*, p.94; McKernan, *All In!*, p.253.

⁶³ *Courier-Mail*, 24 October 1945, p.3.

⁶⁴ *Statistical Register of South Australia*, 1859-1969 editions. See also Figure 1.1 in Chapter 1.

Additionally, any attempt to discover to what extent wartime abortions were prompted by specifically war-related factors is virtually impossible.

A federal National Health Council conference held in 1944 to examine the decline in the birth rate, as well as the problem of VD, considered abortion to be a considerable contributing factor, alongside contraception and infant mortality, towards what was unceremoniously termed “child wastage”.⁶⁵ Reports of the conference appeared in the press around Australia, both before and after the event, and led to suggestions that education for women on the health risks associated with illegal abortions would be an effective method of reducing the abortion rate.⁶⁶ Conversations about the declining birth rate continued for several years after the end of the war, and abortion continued to be implicated in some reports.⁶⁷

Abortion was simply one aspect of women’s sexuality given some degree of increased prominence during World War II, and was not as prominent as contraception or VD. Publicly, abortion continued to be portrayed in wholly negative terms, either as an indicator of young ladies’ licentious behaviour, or as a danger to the survival of the Australian population. The coverage given to women’s sexual behaviour during the war was overwhelmingly negative, and chastised women. Their behaviour was variously considered unpatriotic, immoral and unhealthy and represented in discourses of wartime responsibility, ladylike behaviour, and public health. In one way, there was nothing new about the overwhelmingly negative representation of women’s sexual behaviour on the home front during the war. It merely continued a long history of disapproval of women who displayed or acted upon sexual desire, particularly outside the confines of marriage. However, despite being framed negatively, it is notable that sexual morality was being discussed openly, and on a large scale. Lake argues that despite the negative representation, and women returning to more traditional roles in the home after 1945, the preconditions for the rise of feminism had been established and the “restlessness [that] had been unleashed ... could not be easily assuaged”.⁶⁸ The twenty years following World War II were not openly progressive times, though change was beginning to stir in private

⁶⁵ *Advertiser*, 18 May 1944, p.4.

⁶⁶ *Advertiser*, 1 April 1944, p.7; *Mercury*, 25 May 1944, p.8; *Courier-Mail*, 25 May 1944, p.3.

⁶⁷ *Sydney Morning Herald*, 28 January 1946, p.4; *Daily News* [Perth], 2 October 1948, p.2; *Mercury*, 5 December 1950, p.12.

⁶⁸ Lake, ‘Female Desires’, p.75.

settings. Nonetheless, the open displays of sex and sexuality during the war are notable in the evolution of feminist action in Australia. For the first time, women were transgressing *en masse*, which Rosemary Campbell notes “made sweeping generalisations about their moral character difficult to uphold”.⁶⁹ While Australian women were not necessarily making a deliberate political point, the result of their actions still deserves a place in the history of the changing position of women’s sexual desires in Australian society.⁷⁰

Open discussions about sexually transmitted diseases, contraception and abortion (although the latter was always still portrayed negatively as a criminal activity deserving of punishment) that arose during the War established a slightly more public approach to the issues that carried into the following two decades. It is not possible to argue that this wartime discourse had a direct discernable effect on the path to abortion law reform that occurred some 25 years later. However, it is certain that these more open public discussions that arose during the war were part of the broader shift towards breaking the silence regarding female sexual morality, and marked another step towards the public discussion required before law reform could become possible.

The Effects of Thalidomide

The next significant step towards public discussion of abortion took place in the space of a few months in 1962. The sedative drug thalidomide had entered the market in 1957, and was promoted extensively for its lack of serious side-effects that plagued other sedatives of the era.⁷¹ The drug’s West German manufacturer Chemie Grünenthal spent considerable effort advertising its “completely non-poisonous ... astonishingly safe ... non-toxic ... fully harmless” product, claims it knew to be false even as it distributed promotional material to medical journals, doctors and pharmacists.⁷² But despite Grünenthal’s assertions, including an advertisement that boasted a “child’s safety may depend on the safety of “Distaval”⁷³ (see Figure 2.2), thalidomide was not harmless. After

⁶⁹ Campbell, *Heroes and Lovers*, p.108.

⁷⁰ Lake, ‘Female Desires’, pp.61-2, 75; Featherstone, *Let’s Talk About Sex*, p.222.

⁷¹ Trent Stephens and Rock Brynner, *Dark Remedy: The Impact of Thalidomide and its Revival as a Vital Medicine*, Cambridge MA: Perseus Publishing, 2001, pp.4, 15.

⁷² Sunday Times Insight Team, *Suffer the Children: The Story of Thalidomide*, London: Andre Deutsch Ltd, 1979, pp.25-34.

⁷³ *British Medical Journal* (hereafter *BMJ*), vol.1 no.5218, 7 January 1961, Front Matter, p.5. The advertisement ran in the *BMJ* throughout early 1961.

a string of reports of mild to serious side-effects, the drug was suddenly withdrawn in Britain, Germany, Australia and a number of other countries in November 1961, after reports that it could cause “harmful effects on the foetus in early pregnancy”.⁷⁴ It had undergone only limited human trials, and none with pregnant women.⁷⁵ Apart from in the USA, where the Food and Drug Administration blocked the general release of thalidomide,⁷⁶ the drug was being trialled on the population in a way that would never again be permitted.

It was discovered that one dose of thalidomide in early pregnancy (20-35 days after conception) could cause devastating and distinctive deformities to the developing embryo. Typical symptoms were phocomelia, in which hands or feet emerge directly from the shoulder or hip without any long bones of the arm or leg. Craniofacial abnormalities were common, and internal malformations also occurred in the heart, kidneys and digestive system. While a significant number of those affected died, survival rates are estimated to be between 40 and 70 per cent, and approximately 5,000-10,000 ‘thalidomide babies’ were born around the world in the late 1950s and early 1960s.⁷⁷ It is estimated that 39 children survived in Australia with deformities caused by thalidomide, but it is likely that there were more whose disabilities were attributed to other or unknown causes. The number of local deaths is not known as the condition was not notifiable at the time.⁷⁸ Despite the small number of affected families in Australia, a great deal of publicity was given to local and international cases.

⁷⁴ Correspondence, *BMJ*, vol.2 no.5265, 2 December 1961, p.1499; see also Correspondence, *Medical Journal of Australia*, vol.2 no.24, 9 December 1961, p.966.

⁷⁵ Stephens & Brynner, *Dark Remedy*, pp.9-10.

⁷⁶ *Advertiser*, 6 August 1962, p.8; Frances O. Kelsey, ‘Events After Thalidomide’, *Journal of Dental Research*, vol.46, 1967, pp.1201-5.

⁷⁷ Marilyn T. Miller, ‘Thalidomide Embryopathy’, *Transactions of the American Ophthalmological Society*, vol.89, 1991, pp.629-32.

⁷⁸ *Sydney Morning Herald*, Good Weekend supplement, 31 July 2010, p.12; Philip Woodruff, *Two Million South Australians*, Adelaide: Peacock Publications, 1984, p.170.



Studio photo

this
child's
life

may depend on the safety of 'Distaval'

Consider the possible outcome in a case such as this—had the bottle contained a conventional barbiturate. Year by year, the barbiturates claim a mounting toll of childhood victims. Yet it is simple enough to prescribe a sedative and hypnotic which is both highly effective . . . and outstandingly safe. 'Distaval' (*thalidomide*) has been prescribed for nearly three years in this country, where the accidental poisonings rate is notoriously high; but there is no case on record in which even gross overdosage with 'Distaval' has had harmful results. Put your mind at rest. Depend on the safety of

As an hypnotic at bedtime:
ADULTS: 50 mg.—200 mg.
INFANTS AND CHILDREN: 25 mg.—100 mg.

As a daytime sedative:
ADULTS: 25 mg. two or three times daily.
INFANTS AND CHILDREN: Half to one 25 mg. tablet, according to age, one to three times daily.

'Distaval' (25 mg. tablets).
'Distaval' Forte (100 mg. tablets).

Basic cost to N.H.S. of 12 tablets from dispensing pack of one hundred—1/- or 2/6d. according to strength.

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J. clin. exp. Psychopath., 1959, 20, 249.
J. Coll. gen. Pract., 1958, 1, 398.
Brit. med. J., 1959, 2, 835.
Med. Writ. (Lond.), 1959, 33, 26.
Brit. J. Pharmacol., 1960, 15, 111.

'DISTAVAL'
TRADE MARK

DC/BE THE DISTILLERS COMPANY (*Biochemicals*) LIMITED
Broadway House, The Broadway, Wimbledon, London, S.W.19 Telephone: L1Ber7; 6600 Owners of the trade mark 'Distaval'

PPH 1294c

Figure 2.2: Advertisement for Distaval (thalidomide)⁷⁹

Abortion and infanticide ('mercy killings') were enduring themes in the public debate surrounding the effects of thalidomide. International newspaper publicity began in July 1962, when Lady Summerskill asked in the House of Lords whether a woman who had taken thalidomide would be permitted an abortion. Replying in the negative, the Lord Chancellor argued that the presence of deformities could not be accurately determined prior to birth (ultrasound technology was in its infancy),⁸⁰ and, moreover, thalidomide had

⁷⁹ *British Medical Journal*, vol.1 no.5218, 7 January 1961, Front Matter, p.5.

⁸⁰ Kaye Griffiths, 'An Historical Look at Ultrasound as an Australian Innovation', *ASUM Ultrasound Bulletin*, vol.7 no.3, 2004, pp.23-4.

been withdrawn from sale and further cases would be unlikely.⁸¹ In making these two points, he neglected to acknowledge the wider relevance of abortion law reform beyond the immediate crisis, but the issues raised in the exchange framed the debates which were to follow in Australia as well as Britain.

Media outlets soon found individual cases to embody the unfolding tragedy. Newspapers featured the story of a woman from Phoenix, Arizona, who was seeking permission to terminate her pregnancy because she feared her use of thalidomide would cause her baby to be deformed. Sherri Finkbine took the drug after it was purchased by her husband during a holiday in England. Unable to obtain a legal abortion in Arizona, where the law allowed for a termination only if the mother's life was at risk, the Finkbines travelled to Sweden where an abortion was performed legally. The foetus was discovered to have been seriously affected by the drug.⁸² The couple made the decision to break the silence surrounding abortion in the hope that other women might be warned against taking thalidomide.⁸³ Her plight drew a distinctly sympathetic portrayal in the Australian media, where the "attractive 30-year old brunette"⁸⁴ was shown to be a capable and loving mother of four children who wanted the best for her family. Photographs of Mrs Finkbine and several of her children appeared alongside some articles, and her husband reinforced the importance of the existing family, hoping to "go back to Arizona with a healthy mother of four, instead of with a neurotic mother of five".⁸⁵

Mrs Finkbine believed the chances of her baby being born healthy were too slim, and explained why she sought an abortion:

I was raised to believe that what you can do to help alleviate suffering is the humanitarian way ... Would I ever forgive myself if I subjected my new baby to so much grief and suffering? If God

⁸¹ *House of Lords Debates*, 19 July 1962, vol.242 cc.767-8; see also *R v. Bourne* [1939] 1KB 687.

⁸² *Advertiser*, 1 August 1962, p.3; *Age*, 1 August 1962, p.1; *Advertiser*, 20 August 1962, p.3.

⁸³ *Sunday Mail*, 28 July 1962, p.7.

⁸⁴ *News*, 6 August 1962, p.5; *Courier-Mail*, 7 August 1962, p.5.

⁸⁵ *Advertiser*, 6 August 1962, p.8.

wanted me to gain strength through an ordeal like this, He would not have given me the knowledge to avoid it.⁸⁶

The eloquent and religious phrasing of her argument reinforced the image of a model middle-class woman. The occupations of the couple (Sherri was a children's television presenter, Robert a schoolteacher) and the fact they could consider the trip to Sweden showed that they were not poor, but the acknowledged difficulty of meeting the costs—Robert wrote a series of articles about their experience to raise money⁸⁷—made their situation recognisable to the majority of newspapers' readership. This family could have been anybody's family, and the topic of abortion was thrust into the realms of respectable public discussion.

The second widely publicised thalidomide story featured a family from Belgium who were accused of murdering their infant daughter, born with deformities caused by the drug. The topic of infanticide had been raised briefly in Australian newspapers following the Finkbine case,⁸⁸ but the Belgian case reignited public attention on the matter. Suzanne Vandeputte, along with her husband, mother, sister and family doctor, faced trial in November 1962 for the murder of her week-old 'thalidomide baby'. The family admitted poisoning the child, but were acquitted of all charges. Daily stories on the progress of the case appeared in all the major Australian newspapers, and the acquittal prompted front page stories around the country.⁸⁹ The story had less immediate application to the Australian situation—no-one was seriously suggesting legalising infanticide—and so it stimulated fewer local expressions of opinion than the Finkbine case. Nonetheless, coming three months after the abortion discussion, the Vandeputte case, once again involving a respectable middle-class family, served to maintain interest in a topic that might otherwise have lapsed. Furthermore, it benefitted the cause of those seeking to legalise abortion: when compared to infanticide, which a vast majority of the community would have found highly objectionable, abortion may well have seemed the lesser of two evils.

⁸⁶ *Daily Telegraph*, 3 August 1962, p.7.

⁸⁷ *Daily Telegraph*, 20 August 1962, p.11.

⁸⁸ *Courier-Mail*, 14 August 1962, p.2; *Sydney Morning Herald*, 7 August 1962, p.2.

⁸⁹ *Sun-Herald*, 11 November 1962, p.1; *Advertiser*, 12 November 1962, p.1; *Age*, 12 November 1962, p.1; *Courier-Mail*, 12 November 1962, p.1.

Sensationalist reporting abounded: an early report in the *Advertiser* referred to the “horror drug babies”,⁹⁰ a highly emotive phrase where the ambiguous use of “horror” could refer just as easily to the babies as the drug. The Vandeputte case attracted numerous melodramatic headlines, including “Armless baby’s mother on trial”, “Sensation in baby kill case”, “‘Haunted’ by child’s birth” and “Men weep: baby killing trial”.⁹¹ One South Australian article featured a profile of the Hornsby family in England, whose daughter Mandy was born without arms because of thalidomide. The article forcefully argued for allowing affected babies to live:

Mrs Hornsby had no fear or worry in her calm eyes when she looked at her baby. It was when she talked about the argument that has split Britain – mercy killing – that the tears came. “The idea of not letting my baby live because she is different is the most horrible thing I’ve ever heard” she said.⁹²

Although these events were happening overseas, Australian women were also giving birth to affected babies, and local newspapers began to examine the consequences of thalidomide upon their communities. A Sydney mother, Bev Wootton, told Adelaide’s *Sunday Mail*: “Now I have my baby I wouldn’t give him up for the world ... But if I had known in advance that he would be born deformed I can’t say how I would have felt”.⁹³ Her story was revisited by the *Truth* after the Vandeputte case, in a large feature article headed, “I love my baby more each day”. Mrs Wootton said, “I never thought of killing my son. But I certainly would not pass judgement on the action of Mrs. Suzanne Vandeputte ... No two mothers would react in the same way”.⁹⁴ Both articles were accompanied by a picture of the mother and her baby, wrapped so as to hide his deformed limbs. While this might have been an effort to avoid turning the boy into a ‘freak show’ attraction, the *Truth* was not known for its restraint on salacious topics,⁹⁵ and it was more

⁹⁰ *Advertiser*, 28 July 1962, p.3.

⁹¹ *West Australian*, 6 November 1962, p.3; *Courier-Mail*, 7 November 1962, p.4; *Advertiser*, 8 November 1962, p.3; *News*, 9 November 1962, p.11.

⁹² *Advertiser*, 26 July 1962, p.3.

⁹³ *Sunday Mail*, August 4 1962, p.1.

⁹⁴ *Truth*, 17 November 1962, p.5.

⁹⁵ See Graham Willett, *Living Out Loud: A History of Gay and Lesbian Activism in Australia*, Sydney: Allen & Unwin, 2000, pp.10-15.

likely intended to emphasise the ‘normality’ of the baby, thereby making it difficult for readers to tolerate suggestions of abortion or infanticide.

Most arguments presented in articles and letters to the editor were framed in religious language, and the issue attracted more attention in South Australia than other states following the involvement of the local Methodist Church.⁹⁶ An editorial in the *South Australian Methodist* suggested that abortion might be acceptable for mothers who took thalidomide, arguing that “there would be many who would say ... that action [should] be taken to prevent the [birth] of those who can never be fully human or fully normal”.⁹⁷ The *Sunday Mail* sought statements from other major Christian denominations, which it featured in a large front page article only a week after the Finkbine story broke. The Anglican Bishop, Dr T.T. Reed, believed that “theologians and legislators should give this question their immediate attention”.⁹⁸ He was unwilling to countenance abortion where there was any doubt as to whether or not the child would be deformed, but suggested that the Church should examine its position if it were certain that a child would be affected. The Moderator of the SA Presbyterian Church, the Rt Rev. J.D. Bentley, advised the church to seek a “modern answer to an old question”.⁹⁹ The only major denomination not to consider any flexibility was the Roman Catholic Church, whose newspaper editor, Fr. P.R. Wilkinson, argued that all humans had “an eternal soul created directly by God”, and that ‘if we start destroying innocent human life that some find undesirable, we are on the road that leads to Hitler’s gas chambers’.¹⁰⁰ Less than two decades after the end of World War II, the memory of the eugenic policies of Nazi Germany was still very potent, and hovered close beneath the surface of debates based on how society might determine who had the right to live based on purely physical characteristics.

⁹⁶ Wray Vamplew *et al.*, *South Australian Historical Statistics*, Adelaide: History Project Incorporated, 1984, pp.139-40.

⁹⁷ *South Australian Methodist*, 3 August 1962, p.2. This section is slightly misquoted in *Sunday Mail*, 4 August 1962, p.1. The editor of the *South Australian Methodist* who was responsible for the editorial was Dr Arnold D. Hunt, who later wrote the history of Methodism in South Australia where he outlines the liberal shift in Methodist theology (of which he was a part) during this period. See Arnold D. Hunt, *This Side of Heaven: A History of Methodism in South Australia*, Adelaide: Lutheran Publishing House, 1985, p.385.

⁹⁸ *Sunday Mail*, 4 August 1962, p.1.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

Fr Wilkinson's sentiments were echoed in one letter to the *Advertiser*, which argued in terms that no adult of the time could have failed to associate with the atrocities of Hitler:

Who are we to decide that [a child's] life in this deformed state is worthless? ... Murder babies deformed by thalidomide and the thin edge of the wedge is inserted into moral behaviour. Soon it will seem equally justifiable to murder people with other deformities, mental or physical, real or imagined.¹⁰¹

This fear of the 'slippery slope', ever-present in moral arguments, was more than usually relevant in the case of the thalidomide debates. The British Lord Chancellor had accurately observed that the crisis was over; the drug had been banned, and there were explicit warnings to dispose of any remaining supplies. Therefore, the question of abortion no longer directly related to women who had taken thalidomide. Any reforms that might be enacted, motivated by the thalidomide episode, would have to be broader and encompass other causes of physical or mental deformities. To those concerned by such an eventuality, it would indeed seem possible that the hypothetical line might be pushed too far. Furthermore, the line was already blurred due to the inability of contemporary technology to detect foetal abnormalities before birth. *In utero* screening in the form of ultrasound was in its infancy, and so any suggestion of abortion actually entailed a gamble in which it could only be suspected that the foetus was deformed. Mr and Mrs Finkbine's baby did turn out to have been affected, but public sympathy towards them and the entire issue could have been radically different if it transpired that they had aborted a healthy child.

Although the newspapers did not endorse abortion, the stories they ran tended only to imply an editorial opposition to legalising the procedure, rather than openly declaring their position. Furthermore, their largely sympathetic portrayal of Mrs Finkbine and the Vandepettes resulted in widespread press attention that conveyed the mixed feelings apparent in the community about legalising abortion. With no firm editorial line, the newspaper coverage did not stir up a moral panic against abortion, nor begin a large-scale campaign for its legalisation, but simply raised the profile of abortion to a level never before seen in Australia. The press coverage of thalidomide featured families concerned

¹⁰¹ *Advertiser*, 13 August 1962, p.4.

for their ability to care for their children, and worried about the quality of life of disabled children. Whether or not they were morally sound arguments, the fact remained that abortion was discussed in the context of middle-class families trying to do what they believed to be the ‘right’ thing, and public discussion of abortion was thus shifted away from the context of immoral sexual activity that was so evident from the nineteenth century until after World War II.¹⁰²

The thalidomide coverage came very soon after the release of the oral contraceptive pill in 1961, which was rightly celebrated as an important turning point for women’s rights in the modern era. However, as Susan Magarey has noted, the Pill has a tendency to be remembered incorrectly as the trigger for the women’s rights movement that flourished in the 1970s; it certainly comprises part of the same fight, but it did not directly cause Women’s Liberation.¹⁰³ Neither did the Pill directly contribute to abortion law reform. It did represent a shift towards public acceptance of female sexuality and the need to control reproduction, but it did not cause that shift. It formed part of the development of open discussions of women’s reproductive rights; birth control was another site of public discourse that in turn permitted a public conversation about abortion law reform.¹⁰⁴

The Catholic Church was particularly concerned by the move towards widely available contraception, and the Vatican made birth control a focus of its investigations and statements throughout the 1960s, a time of introspection in the Church following the Second Vatican Council of 1962 to 1965. In July 1968, Pope Paul VI released an encyclical titled *Humanae Vitae* [‘Of Human Life’], which condemned the Pill and all other forms of artificial birth control.¹⁰⁵ The decision received extensive coverage in the South Australian press and was criticised in editorials and correspondence that echoed

¹⁰² For a more detailed examination of the impact of thalidomide upon abortion law reform in Australia, see Clare Parker, ‘From Immorality to Public Health: Thalidomide and the Debate for Legal Abortion in Australia’, *Social History of Medicine*, vol.25 no.4, 2012, pp.863-80.

¹⁰³ Susan Magarey, ‘Sex and Citizenship: From Ballot Boxes to Bedrooms’, in Robert Foster and Paul Sendziuk (eds), *Turning Points: Chapters in South Australian History*, Adelaide: Wakefield Press, 2012, pp.73-4.

¹⁰⁴ See Frank Bongiorno, ‘The Release of the Pill: Contraceptive Technology and the “Sexual Revolution”’, in Martin Crotty and David Andrew Roberts (eds), *Turning Points In Australian History*, Sydney: UNSW Press, 2009, pp.157-70.

¹⁰⁵ Pope Paul VI, *Humanae Vitae*, 1968, available at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html, accessed 19 November 2012.

worldwide condemnation of the strict stance.¹⁰⁶ As I will demonstrate in Chapter 3, the Catholic pronouncement on birth control would soon add abortion as a further focus of its efforts to remind society of the sanctity of human life.

Reform in Britain: A Seven Month Catalyst for South Australia

A papal statement in 1951 also prompted the first attempt to reform the statute law governing abortion in Britain. Pope Pius XII gave a speech arguing that abortion was not justified even to save the life of the mother, stating that “to save the life of the mother is a very noble act; but the direct killing of the child as a means to such an end is illicit”.¹⁰⁷ The statement was widely attacked in Britain, including by the Dean of St Paul’s who called the suggestion “inhuman”.¹⁰⁸ The Pope’s comment motivated Joseph Reeves to introduce a Bill in the House of Commons in 1952. The Bill was not radical, seeking only to amend the law to reflect the precedent of the Bourne decision, but its failure nonetheless piqued public interest in the cause.¹⁰⁹ Reeves’s Bill was followed by canvassing of a similar move in the House of Lords, which was abandoned after disagreement between the Peer and the Abortion Law Reform Association over the scope of the proposed measure.¹¹⁰ Keith Hindell and Madeline Simms have detailed the several attempts at reform prior to the introduction of the one that eventually succeeded, Scottish MP David Steel’s Medical Termination of Pregnancy Bill of 1966.¹¹¹ The debates over the proposed law were fierce, and involved not only politicians but doctors, representatives of the churches, and activists, most notably ALRA and the Society for the Protection of the Unborn Child.¹¹² The Bill passed the House of Commons in July 1967, the House of Lords in October, and as the *Abortion Act* received Royal Assent on 27 October. It came into force exactly six months later.

¹⁰⁶ Including *Advertiser*, 30 July 1968, p.1; 31 July 1968, p.2; 1 August 1968, p.1; 2 August 1968, p.2.

¹⁰⁷ Pope Pius XII, ‘Address to Midwives on the Nature of Their Profession’, 29 October 1951, available at <http://www.papalencyclicals.net/Pius12/P12midwives.htm>, accessed 10 October 2012.

¹⁰⁸ See *Spectator* [UK], 2 November 1951, p.558; 9 November 1951, p.591; *Sydney Morning Herald*, 17 November 1951, p.3; Hindell & Simms, *Abortion Law Reformed*, p.80.

¹⁰⁹ Hindell & Simms, *Abortion Law Reformed*, pp.81-2.

¹¹⁰ *Ibid.*, p.83.

¹¹¹ *Ibid.*, pp.81-159; see also Keown, *Abortion, Doctors and the Law*, pp.84-109.

¹¹² *Ibid.*

The Act did not remove the crime of abortion from the statute law, but specified certain circumstances in which an abortion could be lawfully performed. The key section, to be drawn heavily upon by the South Australian reform, made an abortion lawful when:

a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or that there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.¹¹³

The British abortion law received limited coverage in the South Australian press and prompted a small number of responses in newspapers over the following months. Coverage was still only occasional at this stage, but what did appear served as a precursor to the intense discussions that took place once the South Australian government announced measures to consider its own reforms.

Although little television coverage is available from this period, the records of the Humanist Society of South Australia contain a transcript of an episode of ABC television's *Four Corners* programme that was broadcast on 30 March 1968.¹¹⁴ Simply called 'Abortion', it reported on the Melbourne police's crackdown on doctors performing abortion and revealed that, as a result, Sydney doctor abortionists were in high demand. It featured an interview with a woman who had just had an abortion, as well as an anonymous doctor who had previously performed abortions in Melbourne, another doctor who explained the medical aspects of termination, and a Catholic priest, and it concluded with an open forum with audience members asking questions of two studio guests: Mrs Gilling, the chairwoman of the NSW Humanist Society and a member of the NSW chapter of ALRA, and Mrs Macken, who was identified as the wife of a Sydney

¹¹³ *Abortion Act, 1967.*

¹¹⁴ 'Abortion', *Four Corners*, ABC television, broadcast 30 March 1968. Transcript held in *Humanist Society of South Australia*, State Library of South Australia, SRG 741/5/1.

barrister and a mother of nine.¹¹⁵ The programme examined many aspects of abortion, and presented them impartially and relatively explicitly. It is difficult to assess the show's impact, but it marks the beginning of an intensive period of media conversation about abortion.

An initial article on the inside pages of the *Advertiser* on 26 April 1968 reported that the new law was to come into effect in the UK the following day and outlined the key indications for lawful abortion under the terms of the Act. The article explained that the new law aimed to reduce the number of “illegal operations” and resulting health problems such as infections, and noted that the reforms “apply equally to married and unmarried women”.¹¹⁶ Several days later a report appeared claiming an “abortion rush” in Britain, and spoke of doctors' fears that inadequate facilities would drive women to continue to seek terminations from backyard abortionists.¹¹⁷ The same article also told of the formation of an Abortion Law Reform Association in Victoria, which wanted reform based on the British legislation. For the next few weeks it was that state that led the debate on possible changes to the abortion laws, as a forum held at Monash University prompted statements from a Professor of Obstetrics and Gynaecology, and senior Victorian ALP member (and medically trained) Dr Moss Cass.¹¹⁸ By late May, the matter had been raised in federal parliament where Attorney-General Nigel Bowen said he was prepared to discuss reform, but that as the Commonwealth only had jurisdiction in the territories, it was a matter for the states' Attorneys-General.¹¹⁹

The first response based on religious views reported in South Australian papers came from the national Australian Council of Catholic Women, who in early May issued a statement saying that abortion violated the basic human right to life. They argued that permitting abortions could lead to “the destruction of deformed live babies, the mentally sick and elderly helpless people suffering from incurable diseases”.¹²⁰ Later that month, the Anglican Church held a forum on abortion at Holy Trinity Church, which comprised a

¹¹⁵ *Ibid.*, pp.11-18.

¹¹⁶ *Advertiser*, 26 April 1968, p.9.

¹¹⁷ *Advertiser*, 6 May 1968, p.10.

¹¹⁸ *Advertiser*, 16 May 1968, p.11; see also *Advertiser*, 20 May 1968, p.9.

¹¹⁹ *Commonwealth of Australia Parliamentary Debates*, House of Representatives, 29 May 1968, p.1708; *Advertiser*, 29 May 1968, p.7.

¹²⁰ *Advertiser*, 2 May 1968, p.18.

psychiatrist, a professor of theology, a gynaecologist, a social worker, university lecturers and the rector of Holy Trinity, Rev. Lance Shilton, and issued a statement to the Government recommending that the law should not be liberalised, but that some clarification was needed as to when abortion was lawful. It suggested that liberalised abortion laws would lead to abortion on demand; a rise in illegal abortions as well as legal procedures; a higher than acceptable death rate associated with any sort of abortion; and unacceptable pressure being placed on medical staff to perform terminations against their beliefs.¹²¹ The Methodist Church followed by announcing the establishment of a local committee to investigate abortion.¹²²

In early July, Victoria made the first formal move to introduce legislation when that state's ALP executive asked the parliamentary Labor Party to introduce a private member's Bill to change the laws governing abortion. The *Advertiser* also reported that Labor and Liberal members of the Victorian parliament were discussing the possibility of introducing a Bill,¹²³ but Liberal premier Sir Henry Bolte announced that his government would not set up a committee of enquiry as requested by the Victorian branch of the Australian Medical Association (AMA), in part because the AMA had only just established its own committee and was therefore not yet in a position to give a formal opinion to any parliamentary enquiry.¹²⁴ The South Australian press continued to pay attention to the simmering abortion debate in Victoria; a week after Bolte's statement, Moss Cass was again reported to estimate that at least 25,000 abortions were illegally performed annually in Victoria.¹²⁵

The next official statement came from the South Australian branch of the Democratic Labor Party (DLP), in an intersection of the religious and political spheres. The DLP, the largely Catholic product of the 1950s split in the Australian Labor Party, had never been strong in South Australia owing to the state's relatively small Catholic population, and local church politics; Archbishop Beovich had refused to endorse a political alliance in

¹²¹ *Advertiser*, 31 May 1968, p.9.

¹²² *Advertiser*, 18 June 1968, p.7.

¹²³ *Advertiser*, 1 July 1968, p.7.

¹²⁴ *Advertiser*, 2 July 1968, p.14.

¹²⁵ *Advertiser*, 8 July 1968, p.6.

the wake of the Labor Split of 1955.¹²⁶ The SA branch of the DLP held its annual conference in July, where delegates carried a resolution opposing any relaxation of the current abortion laws and recommended that “a campaign be launched to give maximum publicity to the decision”.¹²⁷ Given the DLP’s high proportion of Catholic members, its position on abortion was unsurprising, but the party, mainly through its secretary and regular election candidate Mark Posa, saw the issue as a valuable opportunity to engage with a topical issue.

The final mention of abortion in the Adelaide press prior to the serious discussion of local legislative change came with the results of a national Gallup poll, published in the *Advertiser*.¹²⁸ The survey canvassed 2,071 voters across Australia and revealed that South Australians’ views on abortion were not significantly different from those polled in other states.¹²⁹ The *Advertiser* article explained that Catholics were the least likely to support abortion, and that those who identified as ‘non-Christian’ or non-religious were most likely to support legalisation. The paper summarised that “Australians approve abortions to save mothers, but are equally divided on whether abortions should be legal in cases of exceptional hardship.”¹³⁰

Several weeks after the publication of the Gallup poll, delegates to the annual meeting of the South Australian Liberal and Country League (LCL) passed a resolution that the government consider amending the law regarding abortion, suggesting similar measures to those that had come into force in Britain several months earlier. The LCL government under Premier Steele Hall had won office at the state election in April 1968, narrowly defeating Don Dunstan’s Labor Party, but with a clear minority of the popular vote due to longstanding electoral malapportionment. The resolution was introduced by members of the Young Liberal Movement, which had in the several years since the end of the Playford government substantially changed its purpose. The group was no longer largely a social group, but highly organised and actively sought to influence and modernise LCL

¹²⁶ See Geraldine Little, ‘The Democratic Labor Party in South Australia’, unpublished BA(Hons) thesis, University of Adelaide, 1968; Josephine Laffin, *Matthew Beovich: A Biography*, Adelaide: Wakefield Press, 2008, pp.167-204.

¹²⁷ *Advertiser*, 15 July 1968, p.8.

¹²⁸ *Advertiser*, 2 August 1968, p.6.

¹²⁹ Morgan-Gallup Poll no.198, 22 June 1968, p.38.

¹³⁰ *Advertiser*, 2 August 1968, p.6. The results of this poll will be analysed in detail in Chapter 3.

policy.¹³¹ The first public mention of the Young Liberals' involvement with the abortion issue had pre-dated the LCL meeting by several weeks, when opposition Labor MP Glen Broomhill asked the Attorney-General Robin Millhouse whether he agreed with the Young Liberals' recent motion to support legal abortion. Millhouse replied, "this matter is being watched by the Government".¹³²

In the wake of the LCL annual meeting, Millhouse appeared cautiously supportive of the resolution, and agreed that there was "obviously a great deal of interest in the topic", but also that it was medically, legally and morally "delicate" and "it is not easy to know what action, if any, should be taken".¹³³ Several days after the meeting the *Advertiser* echoed Millhouse's cautious support in an editorial headed 'A Case for Legal Abortion'.¹³⁴ It acknowledged that the issue of abortion was a more suitable matter for public discussion than it ever had been before—"the issue no longer has to be discussed in corners when it is not being ignored altogether"—and congratulated the LCL on its "sensible handling of one of the most difficult of social problems". The editorial did not explicitly support legalisation, but it endorsed the further investigation of the issue. Millhouse later explained his approach towards abortion law reform as part of a wider plan to reform the state's laws on social issues that had lagged behind other countries during the Playford government. He told Therese Nicholas in 1970 that "there was such a tremendous amount of reform or updating of the laws to be done in South Australia ... [the LCL is] engaged in trying to bring our own party out of the nineteen-thirties into nineteen-seventy", and that abortion was a "prime example" of this agenda.¹³⁵ This suggests that Millhouse and his fellow younger members of the LCL (including the premier, Steele Hall) may not have needed a great deal of convincing to introduce the reform, as it was already consistent with their approach to lawmaking during their term in office. However, this was not the first suggestion of abortion law reform by a South Australian government. As Premier in 1967, Dunstan had suggested that the laws governing abortion and homosexual acts might

¹³¹ Robert B. Such, 'Managerial Politics: The Young Liberal Movement and the Liberal and Country League, 1929-70', unpublished BA(Hons) thesis, Flinders University of South Australia, 1971, pp.30-7.

¹³² *SAPD*, HA, 25 July 1968, p.268.

¹³³ *Advertiser*, 12 August 1968, p.3.

¹³⁴ *Advertiser*, 13 August 1968, p.2.

¹³⁵ Robin Millhouse, interview with Therese Nicholas, cited in Therese Nicholas, 'Abortion Law Reform in South Australia', unpublished BA(Hons) thesis, University of Adelaide, 1970, pp.22-3.

be amongst those examined by the newly established Criminal Law Revision Committee, though the proposal did not eventuate.¹³⁶

Two months passed between the LCL meeting and Millhouse's confirmation that he would shortly introduce a Bill into parliament to liberalise the abortion laws, modelled on the British reforms, and a further six weeks before the Bill was introduced.¹³⁷ During those months, the *Advertiser* published 31 letters to the editor on abortion and the law, with roughly half in support and half opposed. It also featured a number of articles and two editorials, including an article that reported on the formation of the Abortion Law Reform Association of South Australia (ALRASA).¹³⁸ In December 1968, the focus of the abortion debates in South Australia moved from the press to parliament, when Attorney-General Millhouse introduced to parliament the government's Bill to legalise abortion and signalled his intention to refer the matter to a Select Committee of the House of Assembly for detailed investigation. The views put forward in parliament and in submissions to the Select Committee represented many sectors of the community, from churches and medical professionals to secular activists and concerned parents. The following chapter examines those views and their proponents, and traces how supporters of the reform overpowered the voices of their opponents to allow lawful abortions in South Australia.

Before returning to a focus on South Australia, it is important to note that Millhouse's Bill was not the first of its kind in Australia. A Medical Termination of Pregnancy Bill was first introduced in the Western Australian parliament on 25 November 1966, even before the British Act was passed, but it did not proceed to debate.¹³⁹ A second attempt was made in Western Australia in 1968, and though debated over the course of several months, it also failed to pass.¹⁴⁰ A similar measure was introduced in the parliament of

¹³⁶ *Advertiser*, 25 July 1967, p.11.

¹³⁷ *Advertiser*, 21 October 1968, pp.1, 7; *SAPD*, HA, 3 December 1968, p.2920.

¹³⁸ *Advertiser*, 25 September 1968, p.14.

¹³⁹ *Western Australian Parliamentary Debates* (hereafter *WAPD*), Legislative Council, 25 November 1966, pp.2899-2900.

¹⁴⁰ *WAPD*, Legislative Assembly, 3 September 1968, p.753; 1 May 1969, pp.3720-1. Both Bills were introduced by Gordon Hislop, a Liberal member of the Western Australian parliament, and a medical doctor.

Victoria in November 1968, but it did not proceed to full debate.¹⁴¹ These attempts attracted no significant media coverage in South Australia, but Millhouse was undoubtedly aware of the interstate activities. More significantly, the abortion law in Victoria was liberalised by a decision in that state's Supreme Court during the period that the South Australian Bill was under consideration. A raid on the surgery of Melbourne doctor Charles Kenneth Davidson in 1967 resulted in a trial held in 1969 at which Davidson was found not guilty. Justice Menhennitt instructed the jury that abortion would be lawful if performed in order to "preserve the woman from a serious danger to her life or her physical or mental health,"¹⁴² thereby reinforcing and extending the precedent established by the British Bourne ruling of 1938 that had not yet been tested in Australia. Abortion performed in those circumstances was therefore considered to be lawful in the state of Victoria, though the statute law remained unamended. The Victorian situation was only twice mentioned in the South Australian parliament during debates on Millhouse's Bill, though it is very likely that most members knew of the Menhennitt ruling.¹⁴³ However, it was the British Act of 1967 that was considered the relevant precedent for the South Australian legislation, and justly so. Justice Menhennitt's ruling centred on the interpretation of the phrase in the statute law, discussed earlier in connection with Justice Macnaghten's ruling in the Bourne case, that made it a crime to "unlawfully" procure a miscarriage and therefore implied that there were circumstances in which it would be lawful.¹⁴⁴ That is, the ruling interpreted the statute law, which was taken as an absolute. In contrast, the members of the South Australian parliament were called upon to make a more profound decision, by questioning the very validity of the type of statute law that Menhennitt had no power to alter. The South Australian parliament therefore had to consider the entire question of abortion, with associated concerns about its desirability, its health risks, and the interaction between religious belief and the secular law, and, indeed, the extent to which the state should be able to control the decisions that private individuals made about their lives.

¹⁴¹ *Victorian Parliamentary Debates*, Legislative Assembly, 27 November 1968, p.2213; Robyn V. Gregory, 'Corrupt Cops, Crooked Docs, Prevaricating Pollies and "Mad Radicals": A History of Abortion Law Reform in Victoria, 1954-1974', unpublished PhD thesis, RMIT University, 2005, pp.146-8.

¹⁴² *R v. Davidson* [1969] VR667, p.672. See also Gregory, 'Corrupt Cops, Crooked Docs', pp.172-4.

¹⁴³ *SAPD*, HA, 29 October 1969, p.2596; 30 October 1969, p.2635.

¹⁴⁴ *R v. Davidson* [1969] VR667, p.668.

Chapter 3

The Abortion Debates

Upon introducing the Criminal Law Consolidation Act Amendment Bill into the House of Assembly on 3 December 1968, Attorney-General Robin Millhouse declared that the government had decided that the “best method of inquiry [into the Bill] is by a Select Committee of members of this House”,¹ which would examine the full scope of the issue of abortion and report to parliament its recommendations on the provisions of the Bill. Millhouse’s original intention was to establish an independent committee, but a parliamentary committee had been decided upon as “it is in Parliament that matters of controversy should be thrashed out and decisions reached”.² He spoke briefly of the prevalence of illegal abortions, and referred to public opinion polls showing that “a large proportion of the community favours [legal] abortion in certain circumstances”.³ The Bill did not propose to remove the crime of abortion from the statute books, but rather provide a certain set of situations when an abortion would be considered lawful. It would therefore still be possible for a person to be charged with having performed an unlawful abortion if the procedure was performed outside the conditions prescribed in the Act.

The Select Committee of the House of Assembly on the Criminal Law Consolidation Act Amendment Bill met nine times between December 1968 and February 1969. It comprised five members: three from the ruling Liberal and Country League (LCL), and two from the Labor opposition. Millhouse was appointed chair, joined by LCL members Stan Evans and Joyce Steele (the government’s only female Member of the House of the Assembly), and Labor’s Ron Loveday and Des Corcoran, who was Catholic and an

¹ *South Australian Parliamentary Debates* (hereafter *SAPD*), House of Assembly (HA), 3 December 1969, p.2920.

² *Ibid.*

³ *Ibid.*

avowed opponent of abortion.⁴ The Committee placed advertisements in newspapers inviting any interested persons to give oral or written evidence, and a total of 34 witnesses appeared to provide testimony, with approximately ten additional submissions in the form of letters.⁵ Witnesses included a number of obstetricians and gynaecologists, other medical specialists and general practitioners, three lay representatives of the Catholic Church, members of the National Council of Women and the Abortion Law Reform Association of South Australia (ALRASA), the state secretary of the Democratic Labor Party and several private citizens. In addition, the Committee requested the evidence of senior health bureaucrats, the president of the South Australian branch of the Australian Medical Association, a senior police officer, and a parliamentary draftsman.⁶

The Select Committee drew together a wide range of views, and formed the substantial bulk of evidence upon which parliamentarians based their vote. The Report of the Select Committee, though published in the Parliamentary Papers of 1968-69, would not realistically have been publicly accessible until later in 1969, and it is unlikely that many members of the public consulted the original document despite some newspaper articles about the findings of the Report. It is largely of use in determining to what degree politicians drew on the research and views of the Select Committee, and to what extent that affected their arguments and votes.

However, other groups, formal and informal, added their views to the debates that played out in the daily press and within groups' own newsletters and periodicals. I will analyse in turn the views of each of these groups, including any evidence they gave to the Committee, and the extent to which their views were publicised beyond the semi-private sphere of their own publications. It is important to acknowledge the intersections between these groups, whose memberships were far from discrete. Members of the medical profession also joined activist groups such as ALRASA and at least one acted as a spokesman for a church. Connections also existed between the churches and activist groups, most notably those opposed to abortion. Public opinion naturally encompassed all

⁴ For analysis of the reasoning behind the selection of these members, see Jill Blewett, 'The Abortion Law Reform Association of South Australia', in Jan Mercer (ed.), *The Other Half: Women in Australian Society*, Melbourne: Penguin, 1975, p.380.

⁵ 'Report of the Select Committee of the House of Assembly on the Criminal Law Consolidation Act Amendment Bill 1968', *South Australian Parliamentary Papers* (hereafter *SAPP*), no.105, 1968-69, pp.3, 7.

⁶ 'Report of the Select Committee', p.6; Therese Nicholas, 'Abortion Law Reform in South Australia', unpublished BA(Hons) thesis, University of Adelaide, 1970, p.25.

groups, and in parliament members represented a range of religious affiliations and professional qualifications, including one medical doctor in the Legislative Council. Gender, too, transcended all other divisions, though men tended to dominate official organisations. Therefore, while dividing my analysis by group affiliation, I will highlight these interconnections that demonstrate the complexity of attempting to create generalisations about ‘what kind of person’ was likely to support or oppose abortion law reform.

Before commencing a detailed examination of the debates on Millhouse’s Bill, it would be an oversight to ignore the fact that 1968 is frequently remembered as the year of revolution. It is possible to assemble a catalogue of notable events that occurred in any year without necessarily proving much at all, but the list for 1968 is, by any measure, a remarkable one. It included political and student uprisings in the USA, Mexico, France, Germany and Czechoslovakia, the assassination of US Democratic presidential candidate Robert Kennedy, the assassination of Martin Luther King amidst widespread civil rights action: this was the year of the black power salute at the Mexico City Olympics. It was the year of the Tet Offensive and Battle of Khe Sanh in Vietnam, and the growing dissatisfaction at the course of the war; the opening of the Nuclear Non-Proliferation Treaty for signatures; feminist protests against the Miss America pageant; and the premiere of the musical *Hair*, replete with sex, nudity and illicit drug use. The ‘social revolution’ of the mid-1960s to mid-1970s is ill-defined at its outer edges—it was certainly underway when Bob Dylan recorded his seminal song ‘The Times They Are a-Changin’” just weeks before John F. Kennedy’s assassination in 1963—but 1968 surely stands at the centre.

1968 and the surrounding years of profound social change were marked particularly by the involvement of students and young adults in riots and political demonstrations. This signified the reaching of adulthood by the post-war generation, the Baby Boomers, who were to have a profound impact on the course of social attitudes and tolerance of new behavioural norms. Although they would not become lawmakers in their own right for another decade, their influence on the older generations who already sat in parliaments and judiciaries was beginning to take hold. Activism and public political engagement was a prominent part of public life at this time. It was not entirely new, and not only driven by young adults, but it was arguably more dominant at this time than any other in the

twentieth century, for its scale of participation as well as its impact on governance and lawmaking. This was the first generation in at least three that was raised without the crippling impact of a World War or Depression; the Boomers' formative years were characterised by relative economic prosperity, which, when coupled with the proliferation of children, led to a targeting of youth as a specific market demographic with purchasing power and young people came to feel they had a voice of their own. In the wake of the atrocities of World War II, human rights emerged as an issue worthy of attention, and the Vietnam War, while more physically distant than World War II had been for the Boomers' parents, had an impact close to home that motivated the politically-minded. Abortion activism and homosexual activism did not necessarily stem from the same group of young adults who protested against the Vietnam War, though they were likely to be on the same side of politics. Many 'moral' activists were older. Politicians such as Don Dunstan, Robin Millhouse and Steele Hall, born in the 1920s, shared many of the views of the Baby Boomers. Participation in 'moral' activism was nowhere near as widespread as, for instance, the 1970 Vietnam moratorium in Adelaide. Public opinion and activism were not necessarily deciding factors in the law reforms, though I will explore that point more in the coming chapters. But the times were a-changin'. The right of individuals to live their lives privately, without the control of the state over their bedroom, their womb, or whether or not they fought in Vietnam, was high on the political agenda. This was not unique to South Australia, but it manifested locally in ways that would distinguish that state from the rest of the nation. This was the global socio-political backdrop against which Robin Millhouse introduced his Bill to permit lawful abortion in South Australia.

The Medical Profession

The views of the medical profession played an important role in the process of abortion law reform in South Australia, as they were set to take control of the previously illegal operation. The *Medical Journal of Australia* had occasionally reported on the possibility of abortion law reform since the passage of the British Act in 1967, and editorial comments endorsed the matter as one for personal conscience.⁷ Correspondence to the journal demonstrated a range of views: Dr J.W. Woolnough of the Abortion Law Reform Association of New South Wales wrote to encourage doctors who supported reform to

⁷ *Medical Journal of Australia* (hereafter *MJA*), 2 March 1968, pp.359-60; 23 March 1968, pp.499-500; 25 October 1969, pp.833-4.

join that cause, and others endorsed removing the practice from the hands of unqualified abortionists or stressed the importance of contraception.⁸ One Victorian doctor argued that “girls with pants on never get pregnant” and compared the situation to sunburn, which he said was considered by the British Army to be a “self-inflicted injury due to deliberate exposure of a portion of one’s anatomy”.⁹ Letters continued throughout 1968 and 1969, though most were from correspondents in the eastern states. The first significant contribution from an Adelaide doctor was not published until March 1970, after the law had already taken effect.¹⁰ Similarly, the national gazette of the Australian Medical Association (AMA) published several articles about abortion reform in Victoria, first looking at the failed legislative attempt and then the Menhennitt decision, but did not discuss the South Australian reform until several months after the passage of the Act.¹¹

The position of South Australian doctors can better be gleaned by considering the views of that state’s branch of the AMA. The branch president, Dr R.W. Steele, was invited to give evidence to the parliamentary Select Committee. He reported that the Association did not have an official policy on abortion law reform, and believed that the current law was sufficient to permit therapeutic abortions when deemed medically necessary. He felt that most doctors believed the assumption of the precedent of the Bourne case should be left to stand in the common law, but that “the branch does not actively oppose the provisions of the Bill except for the social clause”.¹² AMA members at a meeting held in October 1969 voted against the proposed changes in the law, but only 110 of the state’s 1402 members attended the meeting, and just 79 participated in the vote.¹³ However, three doctors (at least two of whom were members of ALRASA) claimed the next day that the meeting had been “unconstitutional, rigged and stacked,”¹⁴ and that very little notice had been given of the meeting. Steele denied this allegation, but acknowledged that the vote represented only a small fraction of South Australian doctors, and affirmed that

⁸ *MJA*, 16 March 1968, pp.465-6; 18 May 1968, p.872.

⁹ *MJA*, 20 April 1968, p.699.

¹⁰ *MJA*, 14 March 1970, pp.557-62.

¹¹ *AMA Gazette*, 3 July 1969, p.4; 4 September 1969, p.5; 9 July 1970, p.5.

¹² ‘Report of the Select Committee’, p.47.

¹³ *Advertiser*, 17 October 1969, p.1.

¹⁴ *Advertiser*, 18 October 1969, p.3.

the AMA considered abortion to be a matter for the conscience of each individual doctor.¹⁵

Professor L.W. Cox, a senior obstetrician and gynaecologist, supported reform in his evidence to the Committee. He argued that there were certainly situations in which abortion was required, and that it was highly undesirable to have “non-medical personnel” performing the operations at risk to the woman.¹⁶ Cox analysed in great detail the medical aspects of the proposed Bill, and his cautious arguments in support of reform (he said that they were “moderate, safe and cannot be criticized on scientific or moral grounds”)¹⁷ were drawn upon by a number of parliamentarians during debates on the Bill. He recommended that abortion should be made lawful when the physical or mental health of the woman was endangered; when there was a “strong chance” of foetal abnormality; and when pregnancy resulted from an offence such as rape.¹⁸ Like Dr Steele, Cox did not endorse the ‘social clause’ of the proposed legislation (which would allow doctors to determine the woman’s need for an abortion based on her ‘home’ situation, including the effect of another child on any existing children), which he believed would lead to abortion on demand.¹⁹

Much of the evidence given by medical professionals to the Select Committee was concerned with attempting to determine the prevalence and nature of illegal abortions.²⁰ However, like Steele and Cox, most also expressed their views on the desirability of the Bill and the specific circumstances (the medical term is ‘indications’) in which lawful abortions would be permitted. Two opposed the reform entirely: Dr E.G. Cleary, a Reader in Pathology, who held firm Catholic views on the procedure, and Dr J.D. Rice, a GP who specialised in obstetrics, who argued that doctors could perform abortions perfectly adequately under the current common law.²¹ Seven more doctors, five female, supported most of the Bill but did not endorse the ‘social’ indications except insofar as they were

¹⁵ *Ibid.*

¹⁶ ‘Report of the Select Committee’, p.24.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*, pp.22-3, 39.

²⁰ See particularly evidence of the Director-General of Public Health and the Director-General of Medical Services, ‘Report of the Select Committee’, pp.18-21, 35-8.

²¹ ‘Report of the Select Committee’, pp.76-83.

considered as part of the physical and mental health of the woman.²² Dr H.G. Edhouse argued that “abortion should not be had for the asking any more than a tonsillectomy or appendectomy ... it should take place after proper medical consideration of all the factors involved”,²³ situating the procedure as no different to any other medical treatment provided under the normal code of medical ethics. Doctors also appeared as representatives of other interest groups: Dr K.C. Texler was part of a deputation from the Catholic Archbishop, and three medical specialists appeared as part of the ALRASA contingent supporting complete liberalisation.²⁴ Furthermore, once the Bill reached the Legislative Council, LCL member Victor Springett offered his views as the sole medical doctor in parliament. He too supported the Bill, though only begrudgingly accepted that abortion was an unpleasant necessity, and like so many of his fellow doctors was hesitant to endorse the ‘social’ indications as separate from a broader consideration of the complete well-being of the woman.²⁵ While there was no consensus amongst medical professionals, the dominant trend to emerge was this reluctance to support non-medical indications for abortion.

This was further demonstrated by a poll carried out by *Modern Medicine of Australia* in 1968, which surveyed nearly 5,000 doctors across the country. It found that 81.5 per cent favoured “liberalising the existing laws on therapeutic abortion”,²⁶ and that South Australian doctors were very slightly more in favour of reform (84 per cent). However, the state’s medical professionals appeared more likely to support abortion reform than their interstate counterparts only for medical reasons such as risk to the woman’s physical health, or risk of foetal abnormality. This position was endorsed by a majority of parliamentarians, who, as John Keown has similarly observed in the context of the British debates, preferred medical rather than ‘social’ indications for abortion because determining the social situation of the woman was considered outside a doctor’s area of expertise, and doctors were the politicians’ preferred gatekeepers of abortion.²⁷

²² *Ibid.*, pp.30, 43, 59-61, 67.

²³ *Ibid.*, p.43.

²⁴ *Ibid.*, pp.25-30.

²⁵ *SAPD*, Legislative Council (hereafter LC), 12 November 1969, pp.2918-22.

²⁶ *Modern Medicine of Australia*, 2 December 1968, p.11.

²⁷ John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, Cambridge: Cambridge University Press, 1988, pp.108-9, 163-6.

The Churches

The Catholic Church was the most vocal of all the opponents of legalising abortion, though its campaign against the proposed reform was not highly structured. Adelaide's weekly Catholic newspaper, the *Southern Cross*, covered the issue extensively from the time of the British reform, warning in a November 1967 editorial that it "may not be long before South Australians have to stand up and be counted over their attitude to abortion".²⁸ The editorial summarised succinctly the key aspects of Catholic opposition to abortion:

The recent British law has made possible the killing of unborn children ... For a Catholic, right or wrong includes more than kindness and feeling. We believe that there are some prices that can never be paid, even to avoid suffering.²⁹

From October 1968, after Millhouse had announced his intention to introduce legislation to make abortions lawful, articles and editorial comment in the *Southern Cross* urged parliamentarians to reject the proposal. It reinforced the teachings of the Second Vatican Council, which concluded in 1965, and the statement made in the July 1968 papal encyclical entitled *Humanae Vitae*. The encyclical stated:

the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children.³⁰

There was no ambiguity in the Vatican's position, and the Catholic Church in South Australia endorsed that position in its public statements. The *Southern Cross* published dozens of articles opposing abortion and the proposed legislation, which were not complicated by engaging with surrounding issues of sexual morality or the situations that might lead women to wanting to end a pregnancy, such as occurred in parliament and in

²⁸ *Southern Cross*, 3 November 1967, p.4.

²⁹ *Ibid.*

³⁰ Pope Paul VI, *Humanae Vitae*, 1968, s.14, available at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html, accessed 19 November 2012.

other sectors of the community when debating the issue. The Catholic position was simple: abortion was murder, and murder could never be justified.

The simplicity of the Catholic position makes it one of the most consistent of all contributors to the debates on abortion. As I will show later in this chapter, the majority of politicians who supported legalisation did so on the proviso that abortion would be legal only in certain circumstances. That is, they argued that some factors made abortion more permissible: for instance, if the foetus was determined to be seriously disabled or, though not explicitly included in the legislation, if a pregnancy had resulted from a rape. The editor of the *Southern Cross*, Fr Bob Wilkinson, criticised this approach, writing that these “pro-abortionists” were “wandering from point to point as though they were discussing details of a dental health measure”.³¹ Though he held precisely the opposite view, Wilkinson praised Don Dunstan for understanding that “there is no half-way house ... Each human life is either subject to the protection of the law or it is not.”³² Dunstan argued that the unborn child was not recognised in law and therefore there was no justification for restricting abortion on any grounds, whereas the Catholic view held that the unborn child’s right to life meant that there was no justification for permitting abortion on any grounds. As Dunstan observed in parliament, these were the only two entirely logical positions to hold;³³ any intermediate position attempted to propose that there was simultaneously a need to protect the unborn in some cases, while certain external situations would override the need for that protection. It was ultimately the intermediate position that permitted the passage of the Bill through the South Australian parliament: the extreme positions of Dunstan and the Catholic Church, though the most strictly logical, were the least palatable.³⁴

Des Corcoran, a senior member of the Labor opposition, was one of the few Catholic voices in the parliament. Due to the non-party aligned ‘free vote’, or conscience vote, his ability to sway his fellow parliamentarians was limited, and he was confined to speaking strongly against the Bill, interjecting to challenge other speakers during their speeches, and moving a series of amendments in an attempt to restrict the procedure as much as

³¹ *Southern Cross*, 31 October 1969, p.4.

³² *Ibid.*

³³ *SAPD*, HA, 28 October 1969, p.2531.

³⁴ See also Clare Parker, ‘A Parliament’s Right to Choose: Abortion Law Reform in South Australia’, *History Australia* (forthcoming).

possible once it became clear that the Bill was likely to pass.³⁵ Instead, Catholics outside parliament were urged to make their position clear to all politicians. Articles in the *Southern Cross* reported on petitions made available in every parish in the Adelaide Archdiocese, coordinated by the secretary of the Catholic adult education group, Christian Life Movement,³⁶ and petitions placed in Catholic schools by the state-wide Parents and Friends Association.³⁷ An article on the efforts of the Hectorville parish revealed that abortion was discussed in sermons at all Masses in the parish during the previous week, and that parishioners had contributed \$100 to the Committee of One Hundred to Defend the Unborn Child, as well as signing petitions.³⁸ Public meetings were held at Catholic schools and in community venues to discuss the issue,³⁹ and ten thousand copies of a pamphlet opposing abortion were available for purchase for 10 cents. The front cover, featuring an image of an *in utero* foetus, was reproduced in the *Southern Cross*⁴⁰ (a paper whose editor had earlier criticised “propaganda [that] has exploited our emotions” from supporters of the reform).⁴¹

The participation rate in these efforts is difficult to assess, but it is clear that organisers had hoped for the involvement of many more Catholics than those who did make their voices heard. Brian Carter, Secretary of the Parents and Friends’ Associations in South Australian Catholic Schools, was disappointed by the

apathy shown to the matter by the majority of Catholics in this state ... we were urged ... to attend the House during the debate ... As this was an important moral issue, and considering there are some 200,000 Catholics in the Archdiocese of Adelaide, I would have thought the attendance would have been large enough to fill the

³⁵ *SAPD*, HA, 21 October 1969, pp.2326-34, 2340; 28 October 1969, pp.2508, 2525-30, 2534; 29 October 1969, pp.2596-9; 30 October 1969, pp.2633-7.

³⁶ *Southern Cross*, 17 January 1969, p.1; see Nicholas, ‘Abortion Law Reform’, p.69; *Advertiser*, 18 January 1969, p.6.

³⁷ *Southern Cross*, 28 February 1969, p.1.

³⁸ *Southern Cross*, 8 August 1969, p.3.

³⁹ *Southern Cross*, 24 January 1969, p.11; 8 August 1969, p.3; 22 August 1969, p.3.

⁴⁰ *Southern Cross*, 3 November 1967, p.4.

⁴¹ *Southern Cross*, 15 November 1968, pp.1, 4.

galleries and overflow into North Terrace. Alas, on most days of the debate there was never more than a mere handful present.⁴²

Early in 1969, a pseudonymous letter to the *Southern Cross* had advocated “a firm and wide attack on public opinion”, warning that the campaign could be lost “by well-meaning amateurism” and suggesting that the Archdiocese should fund professional consultants to launch a “full-scale approach to inform public opinion by press, radio and television ... The church does not hesitate to engage professionals when it plans to build a church ... Let us now erect a monument to the unborn.”⁴³ However, the campaign remained very much a grass-roots affair, and the *Southern Cross*, distributed to and overwhelmingly read by Catholics, sat on the public/private threshold. It was aimed at mobilising lay Catholics to publicly express their opposition to abortion,⁴⁴ but the lack of success indicated in the report on attendance in parliament suggests that South Australian Catholics did not feel strongly enough about the issue to go out of their way to support the campaign. Des Corcoran thanked members of the Catholic community and the *Southern Cross* for their support during his efforts in parliament,⁴⁵ but it was evidently not effective in changing enough politicians’ views on the issue. However, this may not have been due to a lack of reach; it is clear that every parliamentarian was aware of the Catholic, ‘pro-life’ position, at the very least from listening to Catholic members’ speeches. Furthermore, lay Catholic opposition to abortion was, though the strongest of all religious groups, a long way from universal.⁴⁶

The most formal part of the South Australian Catholic campaign took the form of submissions to the Select Committee. Archbishop Matthew Beovich submitted a letter outlining the “Catholic moral conscience” on abortion, writing that “[e]very human being, even a child in the mother’s womb, has a right to life directly from God and not from the parents or from any human society or authority”.⁴⁷ He argued that although society was pluralistic, acting upon the opinions of those who favoured liberalising abortion laws

⁴² *Southern Cross*, 21 November 1969, p.13.

⁴³ *Southern Cross*, 17 January 1969, p.4.

⁴⁴ See, for instance, advertisement-style articles featuring pictures of babies and foetuses: *Southern Cross*, 11 July 1969, p.1; 18 July 1969, pp.1, 4.

⁴⁵ *Southern Cross*, 12 December 1969, p.2.

⁴⁶ Morgan-Gallup Poll no.202, 15 February 1969, p.50.

⁴⁷ ‘Report of the Select Committee’, p.94.

would “not be for the common good of South Australians” and would cause “practical harm”.⁴⁸ These same sentiments and terminology were employed in statements to the *Southern Cross*, and reported in the *Sunday Mail*.⁴⁹ Beovich did not attend the Select Committee hearings, instead nominating three lay Catholics to give oral evidence: Karl Texler, an obstetrician and gynaecologist; Margaret Gibson, a social worker; and David Haese, a barrister and solicitor.⁵⁰ Texler departed from the strict teachings of the church, admitting that although he would not perform an abortion himself there were certain limited circumstances in which the procedure might be permitted, such as when the mother’s life was at risk. He reasoned that he “would be against any provision to ban abortion utterly from our society, even though I personally consider it wrong”.⁵¹ Gibson advocated the establishment of agencies to assist women during unwanted pregnancies, and Haese cautioned against legalising the procedure, arguing that the prevalence of illegally performed abortions must not justify legalisation, just as the prevalence of dangerous driving should not prompt a reform in road traffic laws.⁵² The position of the three lay representatives was slightly more liberal than the Vatican teaching endorsed by the Archbishop and the editorial position of the *Southern Cross*, which permitted no exceptions to the complete prohibition of abortion.

Shortly after the Report of the Select Committee was presented to parliament in February 1969, the *Southern Cross* published an editorial entitled “Abortion: Where are the other churches?”⁵³ It asked:

are Catholics the only people in South Australia who have grave doubts about even risking murder, and of a child at that? Is there such complacency and self-centredness that nobody else cares whether an unborn child is human life or not? ... Are there no Protestants who at least judge that risks cannot be taken with

⁴⁸ *Ibid.*

⁴⁹ *Southern Cross*, 6 December 1968, p.1; *Sunday Mail*, 7 December 1968, p.22.

⁵⁰ ‘Report of the Select Committee’, p.94.

⁵¹ ‘Report of the Select Committee’, p.51.

⁵² ‘Report of the Select Committee’, pp.54-7.

⁵³ *Southern Cross*, 21 February 1969, p.6.

human life ...? ... Are sincere Protestants all quite sure that this is not a horrible wrong against an unborn living child of God?⁵⁴

The majority position of the two major Protestant denominations in South Australia, the Anglican and Methodist churches, was considerably more moderate than the Catholic view, though contradictory views undoubtedly existed within each church. The Methodist position was the most moderate of all, presaged by that church's contribution to the abortion debate at the time of the publicity surrounding thalidomide. Methodist historian Arnold D. Hunt, who was President-elect of the South Australian Methodist Conference at the time of the parliamentary debates,⁵⁵ explains that while not all Methodists held such a liberal view on the issue, the moderates "maintained that abortion might be sometimes (or often) less bad than the alternative" and justified restricted legalisation on the basis of human welfare.⁵⁶

In 1969, the South Australian Methodists released a report of a committee established in 1967 to examine the questions of abortion and homosexuality (I will examine the committee's position on homosexuality in the following chapters). The report concluded that it was not easy to find a simple answer to the problem of abortion, which it believed women would continue to seek even if every possible measure for education and support were introduced. Each woman's situation was unique, and there existed a responsibility "to bring the Christian perspective to each situation, to see it in love and depth, to attempt to do justice to its complexity, and often its tragedy, and to provide a social and legal framework in which appropriate action can be taken".⁵⁷ In addition, the following passage appeared in the conclusion of a draft version of the report, though it was omitted from the final published version: "Where the matter concerns the laws of our land, we do well to remember that the majority of our population are not Christian in commitment, and that the final question, at least in this country, will be left to the individual conscience."⁵⁸ The

⁵⁴ *Southern Cross*, 21 February 1969, p.6.

⁵⁵ *Advertiser*, 11 October 1969, p.2.

⁵⁶ Arnold D. Hunt, *This Side of Heaven: A History of Methodism in South Australia*, Adelaide: Lutheran Publishing House, 1985, p.398.

⁵⁷ Methodist Church of Australasia, South Australian Conference, Department of Christian Citizenship, Commission on Abortion, *Report of the Commission on Abortion*, 1969, p.9. Available at the State Library of South Australia (hereafter SLSA).

⁵⁸ Draft copy of *ibid*, *Papers of the Methodist Church of Australasia, South Australian Conference*, State Library of South Australia, SRG 4/1/149.

report supported the majority of Millhouse's Bill, subject to several changes including the removal of the 'social' clause, which directed doctors to take into account the effect of the new child on any existing children in her family. It also strongly endorsed the establishment of Family Planning clinics around the state.⁵⁹ The findings of the report were publicised in the daily press,⁶⁰ and pre-empted by the statement of a Methodist minister, Rev. E.C.A. Nicholls, in the Adelaide *Sunday Mail*.⁶¹ The Methodist position was strongly condemned by several correspondents to the *Advertiser*, at least two of whom were practising members of the church,⁶² and the Director of the Methodist Department of Christian Citizenship responded to their concerns in the letter pages of the same newspaper.⁶³ In the *South Australian Methodist* in 1968, the former President of the South Australian Conference of the Methodist Church Rev. M.C. Trenorden emphasised the natural difficulty of determining a formal Methodist position when he noted that the "church is liberal in the freedom it grants its preachers; ministers and laymen speak as they feel led on controversial [social] issues as long as this is done as individuals and not as spokesmen for our church".⁶⁴ A series of letters to the *South Australian Methodist* from senior Methodists disagreeing on the abortion Bill demonstrates this point clearly, and the periodical did not otherwise publish articles or comment on the legislation.⁶⁵

Continuing from its historical strength in the colonial era, the Methodist church still claimed the second largest number of members in South Australia behind Anglicanism in the 1966 census,⁶⁶ and a 1969 nationwide Gallup public opinion poll showed that respondents who identified as Methodist tended to have liberal views on permitting abortion.⁶⁷ Official statements by the hierarchy of any denomination can never be

⁵⁹ Methodist Church, *Report of the Commission on Abortion*, p.9.

⁶⁰ *Advertiser*, 9 October 1969, p.3.

⁶¹ *Sunday Mail*, 5 July 1969, p.23.

⁶² *Advertiser*, 11 October 1969, p.2; 14 October 1969, p.2; 15 October 1969, p.2.

⁶³ *Advertiser*, 20 October 1969, p.2.

⁶⁴ *South Australian Methodist*, 18 October 1968, p.4. See also a leading article entitled 'Who Speaks for the Church?', *South Australian Methodist*, 6 December 1968, pp.1-3.

⁶⁵ Letter to the editor from Rev. Malcolm J. Wilson, *South Australian Methodist*, 31 October 1969, p.11; letter to the editor from Keith Smith, *South Australian Methodist*, 21 November 1969, p.7; reply from Wilson, *South Australian Methodist*, 12 December 1969, pp.8-9. The final letter was accompanied by an editorial comment ending the exchange.

⁶⁶ Wray Vamplew *et al.*, *South Australian Historical Statistics*, Adelaide: History Project Incorporated, 1984, pp.139-42.

⁶⁷ Morgan-Gallup Poll no.202, 15 February 1969, p.48.

expected to be adhered to by all followers of that church (the same poll showed that some indications for abortion were supported by up to 44 per cent of Catholics, in a clear departure from the church's unequivocal teaching),⁶⁸ but the poll indicates that Methodists were likely to accept abortion in similar circumstances to those endorsed by the church's official report.

The local Anglican position was also not widely publicised in the daily press. The Anglican Bishop of Adelaide condemned the Bill and was critical of the social clause, which he believed would lead to abortion being permissible for any reason at all. However, he accepted that the procedure was a "repulsive necessity" in "the most urgent of situations".⁶⁹ A forum on abortion held at Holy Trinity Church in May 1968 in the wake of the British law taking effect had also rejected socio-economic grounds as a reason for abortion, and recommended that the law should be clarified but not substantially amended.⁷⁰ The proceedings of the forum were reported without further comment in the monthly Anglican periodical the *Adelaide Church Guardian*,⁷¹ and abortion was mentioned only once more during the course of the parliamentary debates, when an article briefly noted that the General Synod had endorsed legal abortion in the case of risk to the health of the woman, and if there existed substantial risk that the child would be seriously handicapped.⁷² The absence of regular publication of correspondence meant that Anglicans' views were not aired in the periodical.

The Lutheran Church had only a small presence in the state (just under 5.5 per cent of South Australians identified as Lutheran in the 1966 census),⁷³ but joined Catholics in opposition to abortion. The 1968 Convention of the National Synod of the Lutheran Church adopted a statement arguing that "abortion as a means of limiting the family is prohibited by God's word",⁷⁴ and while no representative of the church gave evidence to

⁶⁸ *Ibid.*

⁶⁹ *Advertiser*, 1 March 1969, p.3.

⁷⁰ *Advertiser*, 31 May 1968, p.9.

⁷¹ *Adelaide Church Guardian*, December 1968, pp.20-1.

⁷² *Adelaide Church Guardian*, November 1969, p.9.

⁷³ *Census of the Commonwealth of Australia, 1966*, vol.1 part 7, pp.11-15.

⁷⁴ Convention of the Second General Synod of the Lutheran Church of Australia, *Attitude to Birth Control*, 1968, cited in Daniel Overduin and John Fleming, *Wake Up, Lucky Country! A Reflection on Social Issues During the Past Decade*, Adelaide: Lutheran Publishing House, 1980, p.91.

the Select Committee, the President of the South Australian District sent an official statement to Robin Millhouse, which he read in parliament. It argued that abortion was “contrary to God’s will and also a violation of the basic rights of life of the foetus”, and that liberalisation would cause an increase in demand for abortions, but accepted that the law might need to be clarified in cases where the woman was in “mortal danger”.⁷⁵ Labor member for Wallaroo Lloyd Hughes, who opposed the reform, also quoted a letter from the Lutheran President, who argued that castrating rapists would be a better solution than legalising abortion, as it would eliminate the need for future abortions.⁷⁶ The Lutheran Church did not widely publicise their views in the media during the 1968-69 debates, though Dr Daniel Overduin, a Lutheran pastor, was one of the leading opponents of abortion in South Australia during the 1970s. He and John Fleming have argued that if the Lutheran and Anglican churches had been prepared to vocally support the Catholic Church’s opposition to abortion, then it would have neutralised those who attempted to portray opposition as a sectarian issue and provided a stronger focus for the efforts to block the legislation.⁷⁷ It is certainly true that the Catholic Church provided the only large-scale public opposition to abortion reform—beyond their own *Southern Cross*, the church’s position was discussed widely in the daily press—and that as a result, the debate could have easily been construed as the Catholics against everyone else, making it less likely to succeed. Although the major churches were, on balance, opposed to abortion, the moderation evident in the well-publicised position of the Methodist Church demonstrated to the public and to parliamentarians that abortion was not an issue on which Christians held a black-and-white view.

Activism

While medical groups and churches considered abortion reform privately and then made efforts to communicate their views to the public, the principal aim of activist organisations was to publicise their respective positions. There were only a small number of groups with their sole focus on abortion, and these evolved out of other groups or from people with certain shared backgrounds.

⁷⁵ *SAPD*, HA, 21 October 1969, p.2320.

⁷⁶ *Ibid.*, pp.2344-5.

⁷⁷ Overduin & Fleming, *Wake Up, Lucky Country!*, p.94.

The Catholic Church led the campaign against the reform, but was joined by groups such as the Christian Life Movement, the Society for the Protection of the Unborn Child, the Human Life Research Foundation, Moral Rearmament, and the Committee of One Hundred to Defend the Unborn Child.⁷⁸ The groups all opposed abortion on the grounds that human life began at conception, and abortion constituted murder. These groups are generally not well documented and have left behind little material to reveal their activities. An Honours thesis by Therese Nicholas written less than a year after the parliamentary debates, and a book by two active anti-abortion campaigners permit some degree of understanding about the groups' efforts, alongside some published advertisements. Nicholas has examined in detail the role of the lobbyists in the abortion debates, but I will consider the groups' key arguments and their efforts to publicise their views.

According to Overduin and Fleming, authors of *Wake Up, Lucky Country!* and a Lutheran pastor and Anglican minister respectively, opponents of reform made only an amateurish effort to make their views public, partly out of a naive assumption that politicians would not seriously consider such a "destructive measure" as permitting abortion.⁷⁹ The Human Life Research Foundation was the only community organisation to lobby politicians against liberalisation, and sent its *Abortion Policy Document No. 1* to members of parliament.⁸⁰ The South Australian branch was formed shortly after the national body, both in 1969,⁸¹ and advertised its existence (though only with an oblique reference to abortion legislation) in the local press.⁸² Among other aims, the Foundation's Constitution pledged to "maintain and advance the special safeguards and care, including legal protection needed by children before and after birth",⁸³ and to conduct research and convey the results of that research to law- and policy-makers.⁸⁴ As the group was formed after the hearings of the parliamentary Select Committee, its views were not included in the Committee's Report.

⁷⁸ Blewett, 'The Abortion Law Reform Association', p.383; Nicholas, 'Abortion Law Reform', p.60.

⁷⁹ Overduin & Fleming, *Wake Up, Lucky Country!*, p.103.

⁸⁰ *Ibid.*, pp.101-2.

⁸¹ *Ibid.*, p.101.

⁸² *Advertiser*, 1 November 1969, p.19.

⁸³ Human Life Research Foundation, 'Constitution', 1969, cited in Nicholas, 'Abortion Law Reform', p.64.

⁸⁴ Nicholas, 'Abortion Law Reform', p.65.

One of the most striking public statements against abortion was made by a small anti-reform group called the Committee of One Hundred to Defend the Unborn Child. The Committee placed several quarter-page advertisements in the Adelaide *Sunday Mail* in August 1969, featuring large photos of a newborn child and a foetus, asking “Whom would you kill?” (see Figure 3.1).⁸⁵ It warned that the passage of the abortion legislation would lead to one in twenty pregnancies being aborted and the state would become the “abortion headquarters of the country”, claims ALRASA later asserted were “emotional and misleading”.⁸⁶ Despite its name, Nicholas states that the Committee of One Hundred comprised only three people, acting without the support of a church or any other group, though they appealed for funding to run the advertising campaign that included the expensive medium of television.⁸⁷ She argues that the Committee and the Human Life Research Foundation both actively sought to distance themselves from the Catholic Church, who were so closely associated with the anti-abortion campaign that it was at risk of conveying the image that opposition to abortion was only a Catholic matter.⁸⁸ The public material that remains from the time suggests that this may indeed have been a problem for anti-reform campaigners. The connection was strengthened by the involvement of the Democratic Labor Party (DLP) in campaigning against abortion. Although the DLP was a political party, its lack of power or influence in South Australia meant that it operated outside parliament and functioned similarly to the other pressure groups. Perennial DLP candidate and party secretary Mark Posa gave evidence to the Select Committee, and wrote letters to newspapers on behalf of the party.⁸⁹

⁸⁵ *Sunday Mail*, 10 August 1969, p.20.

⁸⁶ *Ibid.*, p.38.

⁸⁷ Nicholas, ‘Abortion Law Reform’, pp.65-6, 73.

⁸⁸ *Ibid.*, p.70.

⁸⁹ ‘Report of the Select Committee’, pp.73-6; *Advertiser*, 21 February 1969, p.2; 28 February 1969, p.2; 3 January 1970, p.2.

**WHOM WOULD YOU KILL—
HER?**



We would not kill a child after birth. Who should we countenance its killing before birth? South Australia is about to decide how to treat unwanted pregnancies. By more abortion? Or by positive welfare?

**SAVE THE MOTHER
AND THE CHILD**

Modern medicine CAN do both. Why destroy the child?

Idealists are thinking of abortion only for cases of heredity. But under the proposed SA abortion law, 1,000 abortions could be expected in the first year say its proponents. How in haste of our time births. The demand for abortion increases since it is introduced. Do we want half our children aborted like Japan and Yugoslavia?

With the proposed law, cut out present racket in abortion? No. Every country that has made abortion easier by law still has illegal abortion. The United Kingdom now has more racket in abortion clinics than before the Abortion Act of 1968. THIS IS THE LAW WHICH IS THE MODEL FOR THE S.A. BILL.

Any mother who wants an abortion can be given better help instead. No mother is better for destroying her child. Neither is any society.

SUPPORT POSITIVE SOCIAL WELFARE MEASURES TO PROTECT THE MOTHER AND THE CHILD IN CASES OF HARSHIP.

Prevent our State becoming the abortion headquarters of the country. Make South Australia the first State really dedicated to caring for mothers with unwanted pregnancies.

OR HER?



No 'wanted' baby got actually aborted 15 weeks after fertilisation, who was given no chance to become wanted. The S.A. abortion Bill permits abortion up to 27 weeks after fertilisation.

**SAVE THE MOTHER
AND THE CHILD!**

Sponsored by the Committee of One Hundred to Defend the Unborn Child. If you wish to express your information, in this sense, send your donation to Box 2038, G.P.O., Adelaide 5000.

Figure 3.1: Advertisement placed by Committee of One Hundred to Defend the Unborn Child⁹⁰

Little information is available concerning the activities of the other anti-reform groups, though Nicholas does briefly mention that five followers of Moral Rearmament (it was not an official organisation, rather a shared ideology) visited “half the members of each House of Parliament to encourage members to make a conscientious decision” on the reform.⁹¹ The group did not explicitly campaign for or against legal abortion, but sought to ensure that politicians were taking their ‘conscience vote’ obligations seriously. Other prominent groups such as Right To Life formed in the early 1970s, after the passage of the reform.⁹²

⁹⁰ *Sunday Mail*, 9 August 1969, p.20.

⁹¹ Nicholas, ‘Abortion Law Reform’, p.66.

⁹² Overduin & Fleming, *Wake Up, Lucky Country!*, pp.104-5.

Activist groups that favoured reform were generally better organised, and have left behind a significant amount of material to chart their activities. The Abortion Law Reform Association of South Australia (ALRASA) was the most prominent of these, and the only single-issue pro-reform group. It developed out of the Humanist Society of South Australia, which was formed in 1962 with the Constitutional aim: “To act in harmony with the principles of Humanism, which are to encourage a rational approach to human problems, to promote the fullest possible use of science for human welfare ... and to provide a constructive alternative to theological and dogmatic creeds.”⁹³ Discussions in meetings and monthly newsletters covered topics such as censorship, civil liberties, Vietnam and conscription, education, contraception and abortion, and homosexuality.⁹⁴ The Society expressed an interest in abortion law reform before the passage of the British legislation,⁹⁵ and in June 1968 dedicated its meeting to the topic. Humanist Society President Bruce Muirden sent a letter to the premier on behalf of the Society, campaigning for legal abortion “in the name of humanity”, and accepting that Catholics opposed abortion but acknowledging that a change in the law would not compel anyone to act against their beliefs.⁹⁶ The correspondence was mentioned in the *Adelaide News*, and formed the basis of the meeting during which a committee was formed to set up “an independent Abortion Law Reform Association”.⁹⁷ All Humanists were urged to attend the group’s inaugural meeting.⁹⁸ The Society continued to be attentive to the abortion debates, but ALRASA took the lead role in campaigning.⁹⁹

ALRASA’s campaign is the starkest example of the public/private contradiction. The Association took the most liberal of all positions on abortion by arguing that it should be an entirely private matter for a woman, while the group’s very existence centred on the need to make abortion a public issue. This was not an accident: senior ALRASA members understood the need to influence public and political opinion.

⁹³ *Australian Humanist*, no.1, 1966, p.40.

⁹⁴ *Ibid.*, and various issues of *Humanist Post*, 1965-1968.

⁹⁵ *Humanist Post*, vol.3 no.6, 1965, p.3; vol.3 no.8, 1965, pp.4-5; vol.4 no.1, 1966, p.5; vol.4 no.2, 1966, p.2.

⁹⁶ *Humanist Post*, vol.6 no.6, 1968, p.1.

⁹⁷ *Humanist Post*, vol.6 no.7, 1968, p.6; *News*, 19 June 1968, p.32.

⁹⁸ *Humanist Post*, vol.6 no.9, 1968, p.2.

⁹⁹ See Nicholas, ‘Abortion Law Reform’, p.61.

The Association held its first meeting in September 1968, and published its first newsletter soon after.¹⁰⁰ Jill Blewett, a member of the Association's Council, reflected on ALRASA in a 1975 book chapter. She recalled that membership never exceeded 200, comprised largely middle-class professionals, and was deliberately headed by a woman because "politicians find it more difficult to talk them down".¹⁰¹ Blewett argued that the role of the Association was not to put reform on the political agenda, as that had already occurred, but rather

to educate public opinion to provide both community reassurance and a groundswell of opinion so that the MPs would feel neither isolated nor too radical in voting for the Bill; and ... to provide arguments to those MPs already favourable to reform, to influence the uncommitted, and to keep a close watch on numbers. Given limited energy and finance the MPs were the prime target throughout both campaigns.¹⁰²

Although Blewett recalled that ALRASA prioritised political lobbying, the group's inaugural newsletter urged members to "increase pressure on the mass media" and was "eager that members should write letters to editors to counteract the spate of anti-abortion law reform letters in the correspondence columns".¹⁰³ It considered there to be a "strong lobby" against abortion in the state, and suggested that "ALRASA will have to be very vocal if it is to persuade the Select Committee and Parliament that liberalization beyond the British precedent is desirable".¹⁰⁴ As the clear majority of pro-reform letters published in the *Advertiser* were from ALRASA Council members, it is evident they took this responsibility seriously.¹⁰⁵ In 1969, the Association circulated a 'List of points that can be developed in letters to MPs and local press', which provided information that could be used to counteract the arguments of opponents of abortion reform.¹⁰⁶ A series of radio spots were also broadcast in 1969, read by different women on behalf of ALRASA, that

¹⁰⁰ *Advertiser*, 25 September 1968, p.14; *Abortion Law Reform News* (hereafter *ALRN*), no.1, 1968.

¹⁰¹ Blewett, 'The Abortion Law Reform Association', pp.382-3.

¹⁰² *Ibid.*, p.384.

¹⁰³ *ALRN*, no.1, 1968, p.1.

¹⁰⁴ *Ibid.*, p.2.

¹⁰⁵ See list of Council members, *ibid.*, p.3.

¹⁰⁶ ALRASA circular, 1969, *Abortion Law Reform Association of South Australia*, Barr Smith Library Special Collections (hereafter *ALRASA*, BSLSC).

emphasised the existence of public support for the reform and encouraging listeners to ring their MP at Parliament House.¹⁰⁷

ALRASA made a significant contribution to the Select Committee in the form of a lengthy written submission, and a group of six representatives who gave oral evidence. The submitted document, published in full as an appendix to the Report of the Select Committee, addressed a wide range of issues surrounding abortion, including data on physical and psychological risks associated with termination; women's rights; sexual morality; the point at which life begins; and the attitudes of the public, churches, and the medical profession. It advocated the right of the woman to approach a doctor and discuss an unwanted pregnancy,¹⁰⁸ and therefore did not seek abortion 'on demand', where a doctor was obliged to perform an abortion upon request. This position framed an unwanted pregnancy as a medical condition, where a doctor retained the right to determine a medically appropriate course of action. The group who attended the hearing comprised the Association's President and Vice-President (both women, one a social worker and one a university demonstrator), three male doctors, and Beatrice Faust, who was completing a PhD in criminology at the University of Melbourne. Though not a member of ALRASA, Faust had been invited by them to give expert evidence.¹⁰⁹

During the months that the Bill was before parliament, the Association produced a number of media releases and wrote to politicians. One undated letter from the President of ALRASA, Mrs Lilo Weston, that appears to have been circulated to all parliamentarians, encouraged members to "vote in accordance with your conscience" but also to give "attention and consideration" to the views of constituents who "will call upon you shortly to ask your support for this Bill".¹¹⁰ Other letters provided politicians with evidence to use in support of the Bill—or to discourage them from opposing the Bill—such as a letter from Jill Blewett, which followed an earlier pamphlet about a "tragic death" and emphasised the fact that "the illegal abortion rate does decrease with the introduction of liberal laws on abortion".¹¹¹ ALRASA also issued media releases, such as

¹⁰⁷ Transcript of ALRASA broadcasts, *Abortion (LWLA1)*, Dunstan Collection, Flinders University Library, DUN/VF3 Drawer 3.

¹⁰⁸ 'Report of the Select Committee', p.94.

¹⁰⁹ *Ibid.*, pp.25-30.

¹¹⁰ Lilo Weston to MPs, undated, ALRASA, BSLSC.

¹¹¹ Jill Blewett to MPs, undated [Sept 1969], ALRASA, BSLSC. Emphasis in original.

one dated September 1969 that systematically refuted the points made in an advertisement sponsored by the Committee of One Hundred to Protect the Unborn Child.¹¹² Senior ALRASA members spoke at public meetings and appeared on television programmes such as *This Day Tonight* and a panel discussing abortion on the ABC.¹¹³ Members of the Association attended public meetings advertised in the *Southern Cross*, and established their own petitions to counter those of the anti-abortion campaigners.¹¹⁴

Although ALRASA sent some letters, their members also lobbied politicians in person, using tactics that seem to have been inspired by, or at least consistent with, suggestions made by Robin Millhouse during an address to the Humanist Society in October 1966. As part of a talk entitled “What Does Parliament Do?”, he explained that personal appointments were a far more effective lobbying method than a deluge of paperwork, which was “more likely to end up filed in the wastepaper basket”.¹¹⁵ According to Jill Blewett, one or two representatives made an appointment and spoke once to each politician, only making a return visit to key members and those who wavered. A medical professional was the chosen lobbyist on any return visits.¹¹⁶

Blewett continues:

Throughout the weeks immediately preceding the debates, ALRASA was in contact with one or two influential and sympathetic Members on each side of the House, getting constant reports on how the numbers were going, and whom therefore to talk to and how.¹¹⁷

These key members were Robin Millhouse, Stan Evans, John Freebairn, Cyril Hutchens and Dr Victor Springett.¹¹⁸ A roster system made sure there was always one member of ALRASA in Parliament House during the debates,¹¹⁹ “not merely to show official

¹¹² Media release from ALRASA, September 1969, ALRASA, BSLSC.

¹¹³ ALRN, no.5, 1969, p.2.

¹¹⁴ *Humanist Post*, vol.7 no.2, 1969, p.3.

¹¹⁵ *Humanist Post*, vol.4 no.10, 1966, p.6.

¹¹⁶ Blewett, ‘The Abortion Law Reform Association’, pp.387-8; see also ALRN, no.1, 1968, p.3.

¹¹⁷ Blewett, ‘The Abortion Law Reform Association’, p.388.

¹¹⁸ *Ibid.*

¹¹⁹ *Humanist Post*, vol.8 no.9, 1970.

ALRASA interest or to buttonhole last minute waverers ... but also to be able to send in immediate information with which to refute an opposition argument”.¹²⁰ It is clear that this was one of the Association’s key roles in the passage of the reform. Blewett also recalls that ALRASA “arranged” that Hutchens would move an amendment, correctly anticipated to be soundly defeated, to remove all restrictions on abortion from the Bill, as a “purely tactical [move], to make other Members feel more comfortable in supporting a middle-of-the-road solution”.¹²¹

ALRASA also circulated petitions, two of which were presented to parliament on the day the Report of the Select Committee was tabled, though Nicholas writes that these ALRASA members had only collected signatures from their own friends and acquaintances and that the Association did not approach the general public for their support.¹²² Nonetheless, the purpose of the petitions was to convince politicians that there was public support for safe lawful abortion.

The Council for Civil Liberties (CCL), formed in South Australia in July 1967, also supported the campaign for abortion reform, and made a written submission to the Select Committee. Unlike ALRASA, the CCL’s submission desired abortions to be available “at the request of the mother” and not mediated by judgements made by medical practitioners. The submission argued that it was the “fundamental right of a woman to decide whether and when her body is to be used for procreation”.¹²³ The CCL had connections with ALRASA—Peter van Rood was an executive member of both groups—and they shared similar views on the desirability of abortion. However, Therese Nicholas reveals that the executive members of the CCL were “sharply divided”¹²⁴ on the issue of abortion, demonstrating the difficulty of judging groups according to their simplified public statements that suppressed the conflict of private meetings. Indeed, the January 1969 report of the CCL’s Sub-Committee on Abortion Law Reform reveals that the

¹²⁰ Blewett, ‘The Abortion Law Reform Association’, p.388.

¹²¹ *Ibid.*, p.389. I discuss this amendment and its supporters later in the chapter.

¹²² Nicholas, ‘Abortion Law Reform’, p.79.

¹²³ ‘Report of the Select Committee’, p.104.

¹²⁴ Nicholas, ‘Abortion Law Reform’, p.62.

decision about the Council's platform on abortion was made in haste and by a small group of members that they justified through the "urgency imposed on us".¹²⁵

Women's groups were generally not well represented in the debates. Women's Liberation did not form until the end of 1969, when it emerged out of a small group at the University of Adelaide and began regular meetings during the 1970 academic year.¹²⁶ Other women's organisations did exist, such as the Women's Non-Party Association that had briefly discussed limited abortion reform in 1938, but they were significantly more conservative than the groups that emerged in the 1970s,¹²⁷ and their annual reports provide no evidence that abortion was discussed during the time the matter was before parliament. The only women's organisation to contribute formally to the Select Committee hearing was the National Council of Women (NCW), but its position was not publicised in the media. The Council represented over a hundred affiliated women's organisations around Australia and reported on a survey they had carried out. The three senior NCW representatives at the Select Committee hearing also expressed their personal views about the legislation, and though they all desired some liberalisation of the law, the President of the Council expressed concern about it going too far and was more inclined to support the Catholic position on abortion although she was not a member of that church.¹²⁸ That she characterised it as the 'Catholic position' demonstrates the extent to which opposition to abortion reform was associated with the one church.

Therefore, ALRASA was the most prominent group to speak in support of the abortion reform, and made its presence evident in public media coverage and to politicians in private. The Catholic Church was the most high-profile of all groups that opposed abortion reform, though it was not strictly an activist organisation. However, formal organisations were not the only voices heard on abortion. A number of public opinion polls revealed the views of the general public on the issue, and the media played an active role in disseminating the results of some of these polls and providing the most public of all forums for individual citizens to communicate their views. The attitude, tacit or

¹²⁵ Report for the Sub-Committee on Abortion Law Reform, 23 January 1969, *Abortion Law Reform*, South Australian Council for Civil Liberties Collection, Flinders University Library, CCL/003.

¹²⁶ Sylvia Kinder, *Herstory of Adelaide Women's Liberation, 1969-74*, Adelaide: Salisbury Education Centre, 1980, pp.31-2.

¹²⁷ See Women's Non-Party Association of SA, *Annual Report*, 1973, p.3. Available at SLSA.

¹²⁸ 'Report of the Select Committee', pp.71-2.

explicit, of the major newspapers also shaped how South Australians understood the debate both inside and outside parliament.

Public Opinion and the Media

In 1967, Australian academics Paul Wilson and Duncan Chappell commissioned Roy Morgan Research to conduct a nationwide poll of public opinion towards legalising abortion, homosexuality and prostitution. The results were published in 1968 and later incorporated into Wilson's *The Sexual Dilemma*, from which I drew the concept of the "criminal threshold" discussed in the introduction to this thesis.¹²⁹ The poll of 1,045 Australians found that 27% believed that abortion should not be legal under any circumstances; 66% accepted legal abortion if the mother's life was in danger; 60% in the case of rape; 53% if the child would be disabled; and 19% if the mother was financially unable to support the child.¹³⁰ People with tertiary education were more likely to support at least one indication for legal abortion than those whose education only went to primary level, 76% to 56%. Education may also have affected the age-based analysis, where women under 45 were significantly more supportive than older women; in the 1960s, women in their fifties and sixties were far more likely not to have completed secondary education. Wilson and Chappell note that it is also "tempting to explain the differences in terms of the general emancipation of women ... over the last two decades in our society".¹³¹ In contrast to the Catholic Church's official teachings, 49% of surveyed Catholics accepted at least one indication for abortion, along with 69% of Anglicans and 68% who belonged to another or no religion. Regular churchgoers were far less likely to support legal abortion, a trend particularly evident amongst Catholics which, logically, suggests that those who attended weekly Mass were much more likely to follow the church's official position.¹³² Wilson and Chappell suggested in 1967 that "[i]t is probably ... true that few people would want to be among the first to start a move for the legalisation ... unless their anonymity could be preserved",¹³³ which reinforces that the

¹²⁹ P.R. Wilson and D. Chappell, 'Australian Attitudes towards Abortion, Prostitution and Homosexuality', *The Australian Quarterly*, vol.40 no.2, 1968, pp.7-17; Paul Wilson, *The Sexual Dilemma: Abortion, Homosexuality, Prostitution and the Criminal Threshold*, Brisbane, University of Queensland Press, 1971.

¹³⁰ Wilson & Chappell, 'Australian Attitudes', p.9.

¹³¹ *Ibid.*, p.11.

¹³² *Ibid.*, pp.9-10.

¹³³ *Ibid.*, pp.14-15.

issues were still not widely considered suitable for frank discussion in the public sphere. The authors concluded that the “prognosis for rapid social change in these areas [was] rather doubtful”,¹³⁴ but that if it did come, it would be from the “so-called middle-aged group—those between 26 and 45”,¹³⁵ which was where the most liberal support for all three behaviours (abortion, homosexuality and prostitution) was to be found.

In early August 1968, the results of another national poll were reported in the *Advertiser*.¹³⁶ The full analysis published by Morgan-Gallup provides a detailed picture of Australian attitudes on abortion. The survey asked 2,071 people:

Which of these statements comes closest to your opinion on abortion?

- Abortions should not be legal in any circumstances.
- Abortion should be legal only if mother’s life is in danger.
- Abortion should be legal in cases of exceptional hardship – either physical, mental or social.
- Abortion should be legal even if the only reason is that the mother would be unable to support the child.¹³⁷

The poll showed that people intending to vote for the Democratic Labor Party (DLP) were many times more likely to believe that abortion should never be legal (31.6%) compared to Labor supporters (9.0%) and Liberal/Country Parties (LCP) supporters (8.8%), and shows that significantly more Labor voters supported abortion only when the mother’s life was in danger, whereas more LCP voters supported it in cases of exceptional hardship. This is mirrored in the analysis based on “economic classification”, where those classified on that scale as “lower” (income) were likely to support the Labor voters’ view that only the mother’s life being in danger was sufficient grounds; and those of “upper” income supported the LCP voters on the issue of exceptional hardship. Gender was statistically insignificant, but the clearest trend was evident in the age-based analysis. Those in the 70+ age group were over twice as likely to say abortion should not be legal than those in their 20s, and nearly half as likely to say it should be legal with no

¹³⁴ *Ibid.*, pp.13-14.

¹³⁵ *Ibid.*, p.16.

¹³⁶ *Advertiser*, 2 August 1968, p.6.

¹³⁷ Morgan-Gallup Poll no.198, 22 June 1968, p.38.

conditions. Religious analysis showed that Roman Catholics were least likely to support any abortion (though 24% stated that it should be legal in cases of exceptional hardship, an argument not recognised by the Church hierarchy). Anglicans held the most liberal views by a considerable margin, followed by Presbyterians. Methodists were also somewhat supportive, though most only supported abortion to preserve the mother's life. Baptists showed the most consistent views, with not one saying it should be legal under all circumstances, but also few who believed it should never be legal: 65% favoured it to save the mother's life. Respondents who identified as "non-Christian" or as having no religion were dramatically more likely to support abortion in all circumstances or in the case of exceptional hardship. South Australians were slightly more likely than the national average to support the statement that abortion should not be legal, and slightly less likely to agree that it should be legal with no conditions; similarly, they were more likely to support it when the mother's life was in danger, but less likely (in fact, the lowest of all states) in cases of exceptional hardship. This suggests that those in support of abortion were only in favour of conservative measures. Indeed, the current common law precedent already allowed abortions when the mother's life was in danger, though this was not explained to participants in the survey.¹³⁸

The poll contributes little conclusive evidence to show that South Australian voters were more likely to support liberalising abortion laws. As with all opinion polls, these trends can only ever be indicative and carry a significant margin of error, but as these raw data were available to and utilised by politicians and other organisations as a factor in determining positions on abortion law reform, they are a valuable contemporary source, even with their imperfections. It is reasonable to conclude that the population of South Australia was not at the time believed to hold particularly radical views on abortion.

A second Gallup poll was conducted nationally in February 1969, surveying approximately 2,000 people, and the results were summarised in the *Advertiser* in April.¹³⁹ It showed an increase in the number of Australians who believed that abortion should not be legal at all (16.8%, up from 10.6%), but an even more significant increase in those who believed that abortion should be legal for all reasons (27.7%, up from 13.1%). As the questions were phrased differently, it is difficult to make direct

¹³⁸ *Ibid.*, pp.38-40.

¹³⁹ Morgan-Gallup Poll no.202, 15 February 1969, p.47; *Advertiser*, 26 April 1969, p.5.

comparisons between the two polls. Nonetheless, the second poll clearly points to wider acceptance for abortion under all circumstances, with 73% supporting abortion when a woman's health was threatened, 67.9% when deformities were likely in the child, 69.5% if the pregnancy was the result of rape or incest, and 64.7% if the woman was mentally ill. 30.7% supported legal abortion if "another child would gravely disturb the economic state of the family".¹⁴⁰ South Australian figures were close to the national average and DLP voters remained significantly least likely to support legal abortion, but Liberal voters moved ahead of Labor voters as more likely to support abortion for each reason. Roman Catholics and Baptists remained the least supportive, but the Catholic figures once again revealed a significant departure from the church's strongly worded official teachings.¹⁴¹ The later poll was far less conclusive on age as a factor in support; younger people were still less likely to completely oppose abortion, but older people were more favourable towards each individual indication.¹⁴² The two individual polls are not enough to categorically conclude that opinions changed in the intervening eight months, but they suggest that the significant increase in public discussion of the matter as several states considered law reform led to a move towards broader acceptance of legal abortion.

Other smaller surveys were also conducted. One by SA Opinion Polls run in September and October 1969 found very liberal support for abortion, with 82% favouring Millhouse's Bill on abortion and 51.1% agreeing that "abortion should be permitted if the woman requests and her doctor agrees".¹⁴³ The methodology of the poll is unknown, but it may have suffered from some degree of bias as the chairman of SA Opinion Polls was Michael Kowalik, a member of ALRASA.¹⁴⁴ The National Council of Women reported to the Select Committee on a questionnaire carried out amongst their members. Of 600 who replied, 33 opposed any liberalisation of the law, 29 of whom were over 40 years of age. Only three people supported abortion upon request of the woman. 491 supported a panel of doctors making the decision about termination. The questionnaire did not enquire about respondents' religion, as it was believed an "impertinent" question.¹⁴⁵ A poll of 200

¹⁴⁰ Morgan-Gallup Poll no.202, p.47.

¹⁴¹ *Ibid.*, p.50.

¹⁴² *Ibid.*, p.48.

¹⁴³ Press Release, 20 October 1969, ALRASA, BSLSC; *Advertiser*, 28 October 1969, p.2; SAPD, HA, 21 October 1969, p.2334.

¹⁴⁴ *Advertiser*, 28 October 1969, p.2; ALRN, no.1, 1968, p.3.

¹⁴⁵ 'Report of the Select Committee', p.71.

people conducted by Frank Small and Associates in Melbourne and reported in the *Australian* in September 1969 found that 67% replied ‘no’ to the statement: “Abortion may or may not be morally wrong, but do you feel it should be a crime?”¹⁴⁶ Such localised surveys are not useful for determining widespread public opinion, but the National Council of Women’s poll is one of few efforts to canvass women’s views on the issue.

Apart from these few polls, the range of public opinion is reflected in—and was perhaps driven by—the media. In addition to reporting the political events and religious and community views surrounding the abortion debates, Adelaide newspapers also editorialised on the reform. The afternoon tabloid the *News* responded to the release of the Select Committee report in one of its few editorials on the subject, calling the legislation “a commendable effort to meet a social evil head-on”, and endorsing the decision to permit a conscience vote.¹⁴⁷ The *Advertiser* published nine editorials about abortion during 1968 and 1969 and alluded to the reform when discussing other matters such as the role of the church in politics, and law and morality. In its first abortion editorial in August 1968, the paper cautiously supported an investigation into liberalising the law, and explicitly noted that a once private matter had become suitable for public discussion: “the issue no longer has to be discussed in corners when it is not being ignored altogether”.¹⁴⁸ As the reform progressed through parliament in 1969, the *Advertiser*’s support for legal abortion was increasingly strongly worded. In February, an editorial argued that there was a “real need for change”, while opposing abortion “on demand” as “extreme”.¹⁴⁹ By October, the paper called reform an “urgent necessity” and “essential” and noted that the decision of the South Australian parliament was an important precedent for the other states “which are watching SA developments very closely”.¹⁵⁰ A final editorial towards the end of the parliamentary debates congratulated the South Australian parliament on leading the country with a “genuine legal reform” and clarifying a law that had been “vague, saying that abortion is illegal except when it is legal”.¹⁵¹

¹⁴⁶ *Australian*, 18 September 1969, p.17; Press Release, September 1969, ALRASA, BSLSC.

¹⁴⁷ *News*, 20 February 1969, p.24.

¹⁴⁸ *Advertiser*, 13 August 1968, p.2.

¹⁴⁹ *Advertiser*, 20 February 1969, p.2.

¹⁵⁰ *Advertiser*, 21 October 1969, p.2.

¹⁵¹ *Advertiser*, 7 November 1969, p.2.

The *Advertiser*'s editorials discussed a range of pertinent aspects of the proposed abortion laws, clearly setting out some of the key points of contention and outlining the notable clauses of the legislation. Immediately after the release of the Select Committee report, an editorial addressed one of the major opposition objections to the reform: that if abortions were legalised, there would be a huge rise in the number of procedures as there had been in Britain. The *Advertiser* responded more convincingly than any supporter of reform in parliament, arguing that this should not be seen as a criticism but rather a sign that the law was effective and ending the need for hidden illegal abortions which had never been enumerated.¹⁵² The paper also published lengthy feature opinion pieces by participants on both sides of the debate: Dr Cleary, a Catholic pathologist, and Dr Colin Brewer, a psychiatrist and member of ALRASA.¹⁵³ The *News*, too, examined the abortion situation from a number of angles, including a feature investigation that interviewed an Adelaide woman on her journey to Sydney to obtain an abortion from a doctor.¹⁵⁴

Abortion also regularly featured in the correspondence pages of the local press. Between October 1968, when the legislation was announced, and January 1970, when it took effect, the *Advertiser* published 111 letters to the editor that dealt with abortion. Seventy of those opposed legal abortion, 37 supported it and four discussed aspects of the issue without making their position clear. The majority of the 70 opposing reform were from private citizens, whereas 22 of the 37 letters in favour were from members of ALRASA or the Humanist Society (sometimes identifying as such, sometimes not).¹⁵⁵ A meaningful quantitative analysis of newspaper correspondents is difficult, as editorial decisions are made over what is published – public discussion in newspapers is not truly representative of the public, as it is mediated by editors. We can only trust that the printed letters were representative of the quantity and arguments of those that were not. In an ALRASA newsletter, members were reminded that “relatively few of those pro-abortion law reform letters which are sent to the press are actually printed”,¹⁵⁶ though it is likely that the same was true of many anti-reform letters. As the paper editorialised in favour of legalising abortion, it is unlikely that attempts were made to quieten the reform's supporters by

¹⁵² *Advertiser*, 20 February 1969, p.2. Other editorials to comment on abortion include *Advertiser*, 12 October 1968, p.2; 5 December 1968, p.2; 14 December 1968, p.2; 15 March 1969, p.3.

¹⁵³ *Advertiser*, 28 May 1969, p.2; 30 June 1969, p.2; ‘Report of the Select Committee’, p.81.

¹⁵⁴ *News*, 12 March 1969, p.37.

¹⁵⁵ *Advertiser*, 22 October 1968 to 14 January 1970, all p.2.

¹⁵⁶ *ALRN*, no.5, 1969, p.1.

choosing to publish more letters against. It seems likely that many more letters were received that opposed abortion.

From the outset, abortion reform appeared likely to succeed. It was supported and introduced into parliament by the Attorney-General with the support of the Cabinet, and the Leader of the Opposition was known to favour the measure. Few parliamentarians spoke openly against the reform prior to the second reading speeches in parliament, and so South Australians would have heard little solid evidence that the Bill was likely to be defeated by a majority in parliament. This was not a piece of legislation introduced by a private member in the vain hope that it might pass. Its success was not a foregone conclusion, and certain aspects of the Bill were debated at length and some were defeated by amendments. The efforts of ALRASA and others who actively campaigned for legal abortion during the months it was before the parliament must not be undervalued, as it is possible that without their work, more politicians would have opposed some or all parts of the Bill. Nonetheless, it seems likely that many individuals who supported abortion reform did not feel the need to contribute to the debate, as their position was already the dominant one. In contrast, those who opposed abortion had an ongoing need to make their position heard. Even before the Select Committee had finished its hearings, one correspondent to the *News* wrote, “Although I feel it to be quite hopeless, I must protest against having abortion put under the shelter of the law.”¹⁵⁷

The Parliamentary Debates

The views expressed in the media and to the Select Committee helped to shape the opinions of politicians who debated and voted on the Bill in late 1969. In total, 47 of 59 members of the South Australian parliament spoke during the second and third reading debates on the Bill. The Speaker of the House of Assembly and the President of the Legislative Council did not customarily participate in debates, and two Members of the House of Assembly (MHA) were absent due to recent heart attacks. The total proportion of speakers was therefore exceptionally high, largely attributable to the fact that members were granted a free vote, and MHA Joe Jennings explained that “we do not want to cast a silent vote on such an important social matter. We usually adopt the practice of not

¹⁵⁷ *News*, 5 December 1968, p.22.

casting silent votes unless we have made our position on the matter clear previously”.¹⁵⁸ Some members spoke briefly, while others gave lengthy speeches that engaged with a wide variety of arguments surrounding the issue of abortion and demonstrated a considerable breadth of research and interest in the topic. In addition to discussions of the merits of specific clauses of the Bill, speeches explored the prevalence and dangers of illegal (‘backyard’) abortions; the point at which human life was understood to begin; the ideals of ‘moral’ behaviour that a state should be trying to uphold, and the right of a woman to control her body and reproductive health. Politicians canvassed religious teachings on abortion and the sanctity of life, expert medical opinions and arguments, the experiences of countries where abortion had been legalised, and gave their views on public opinion within South Australia.

The first issue covered by many politicians in their speeches was the need to legislate on abortion at all. The current understanding of the common law, and whether or not the 1938 Bourne precedent applied in South Australia, was central to this discussion. Millhouse explained that the current statutory law governing abortion, sections 81 and 82 of the *Criminal Law Consolidation Act* stated that it was an offence to “unlawfully” bring about a miscarriage, but that the “question of what is lawful and unlawful is left to the common law”.¹⁵⁹ Colin Rowe strongly argued that the Bourne precedent would apply, declaring “I cannot believe that any court in Australia would not follow that decision”,¹⁶⁰ but as other members pointed out, it had never been tested in South Australia.¹⁶¹ As Justice Macnaghten’s directions to the jury in the trial of Aleck Bourne was the interpretation of a single judge and never tested on appeal, a judge in South Australia could easily have made a conflicting interpretation and a procedure judged lawful in England would be unlawful in South Australia. For this reason, many members saw great benefit in ending the confusion by clarifying the common law with legislation, typified by Glen Broomhill’s statement that “[t]he present situation in South Australia is unsatisfactory, and this is an appropriate time for us to pass firm legislation on abortion”.¹⁶²

¹⁵⁸ *SAPD*, HA, 23 October 1969, p.2462.

¹⁵⁹ *SAPD*, HA, 19 February 1969, p.3710.

¹⁶⁰ *SAPD*, Legislative Council (hereafter LC), 19 November 1969, p.3105.

¹⁶¹ *SAPD*, HA, 28 October 1969, p.2520; LC, 20 November 1969, p.3160.

¹⁶² *SAPD*, HA, 28 October 1969, p.2508. See also Wardle, *SAPD*, HA, 22 October 1969, p.2415; Hurst, *SAPD*, HA, 23 October 1969, pp.2467-8; Potter, *SAPD*, LC, 20 November 1969, p.3160.

Labor member Des Corcoran, Deputy Leader of the Opposition and the most vocal opponent of the Bill, repeatedly stated his belief that the matter was not pressing and did not warrant legislation. He declared that before the matter was raised by Millhouse, “I frankly admit that this question had never occurred to me personally as being one of great concern to anyone”, and he had never heard anyone discuss it.¹⁶³ He went on to argue that “there was nothing in this area that demanded legislative action”, as there had been no sudden increase in illegal abortions.¹⁶⁴ He “[did] not think the time is yet ripe for this matter to be fully debated in the Chamber”,¹⁶⁵ and believed “[t]here is no need for haste on this matter”.¹⁶⁶ Reginald Hurst agreed: “I cannot recall any request being made to me for such legislation”,¹⁶⁷ he told the House, and went on to suggest that Millhouse had introduced the measure in order to create a legacy for himself. Tom Casey later echoed the same sentiment.¹⁶⁸ Lloyd Hughes reasoned that if abortion was a vital issue for South Australian women, then more women would have given evidence to the Select Committee.¹⁶⁹ Opponents also expressed a belief that this was not the sort of legislation that parliament should be dealing with at all. With a line of reasoning reminiscent of Tom Playford, Corcoran stated: “This is a social measure. It is not a measure which will advance the State in any way. We are not talking about something that Parliament normally looks at – some State control; it is a social measure.”¹⁷⁰ Corcoran did not concede the anomaly in this reasoning: that if abortion was a social matter that did not warrant parliamentary attention, why should it remain prohibited by Act of Parliament? Hurst concurred with Corcoran’s view, arguing that education and the standard of living should be a government’s chief concerns, and that this Bill constituted “an abdication of the responsibility of responsible Government”.¹⁷¹ In contrast, supporters of the Bill argued that “a person who says that there is no demand for legislation of this nature can only be said to lack realism”,¹⁷² and that even if there were not public interest in the

¹⁶³ *SAPD*, HA, 21 October 1969, p.2326.

¹⁶⁴ *Ibid.*, p.2327.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*, p.2328.

¹⁶⁷ *SAPD*, HA, 23 October 1969, p.2464.

¹⁶⁸ *Ibid.*; *SAPD*, HA, 5 November 1969, p.2775.

¹⁶⁹ *SAPD*, HA, 21 October 1969, p.2344.

¹⁷⁰ *Ibid.*, p.2328.

¹⁷¹ *SAPD*, HA, 23 October 1969, p.2466.

¹⁷² Hutchens, *SAPD*, HA, 21 October 1969, p.2337.

matter, “are we to blame any member because he raises some matter here that he believes is in the public good? ... members ... are usually criticized for having no ideas ... surely we cannot reverse things and blame them for when they do.”¹⁷³

As Hugh Hudson observed, whether or not members believed there was a need for the Bill to be debated in parliament, they were “compelled to vote on it”.¹⁷⁴ A wide range of arguments and justifications were used during the parliamentary debates before the vote took place, and I will use examples of the most typical lines of reasoning used by politicians, which can be grouped into a number of key arguments.¹⁷⁵

The first and most fundamental argument invoked by members of parliament was the question of when life begins, and whether abortion is murder (in more recent times referred to as the ‘personhood’ debate, though this term was not in common use at the time). Des Corcoran and Tom Casey, both Catholics, expressed strongly their opinion that abortion did indeed constitute murder, with Corcoran suggesting that the Bill would be better renamed as a Bill “to provide for the destruction of life and other purposes”.¹⁷⁶ He argued that the rights of the unborn child meant that abortion could not be permitted under any circumstances, and that it was parliament’s responsibility to defend the rights that the unborn child could not defend for itself.¹⁷⁷ Casey asserted that it was “absolutely ridiculous not to accept the fact that the foetus is a human life”, and that “anyone who suggests it is not a human being is being irrational and probably atheistic. I honestly believe that such a person does not believe in God”.¹⁷⁸ Allan Burdon and John Clark equated their opposition to abortion with their opposition to capital punishment, reasoning that the State never had a right to permit the taking of a human life.¹⁷⁹ In total, six members used personhood debates to oppose the Bill, but many more expressed a belief that abortion affected only the potential for life. Some argued that life began at twelve weeks; others reasoned that the foetus became a human life only when it reached

¹⁷³ Pearson, *SAPD*, HA, 22 October 1969, p.2411.

¹⁷⁴ Hudson, *SAPD*, HA, 5 November 1969, p.2779.

¹⁷⁵ See also Overduin & Fleming, *Wake Up, Lucky Country!*, pp.48-51.

¹⁷⁶ *SAPD*, HA, 21 October 1969, p.2330.

¹⁷⁷ *Ibid.*

¹⁷⁸ *SAPD*, HA, 22 October 1969, p.2416.

¹⁷⁹ *Ibid.*, p.2409; *SAPD*, HA, 23 October 1969, p.2458.

viability.¹⁸⁰ Hugh Hudson noted that no amount of rational debate could determine the answer to the question, and it must remain a matter of personal opinion.¹⁸¹ In the absence of certainty, Stan Evans argued for consistency, pointing out that the law did not acknowledge a foetus of under 20 weeks' gestation to be an individual life: its death prior to that time would not require an inquest. "Not in any facet of our life do we accept the foetus as a human being",¹⁸² he reasoned, and therefore aborting a pregnancy prior to that time would not constitute murder.¹⁸³ It is evident that only a minority of politicians accepted the premise that abortion amounted to murder. The more influential aspects of the debate were the discussions that took place about the need for and likely ramifications of lawful abortion. Those opposed to abortion from the pro-life position had already conceded ground to supporters of abortion reform, as they extended their arguments beyond the straightforward 'abortion equals murder' position held by the Catholic Church, and engaged with arguments about morality and the social and sexual circumstances that led women to seek an abortion. Pro-reform politicians and activists had been able to move the debate onto their terms.

At the root of one argument used by parliamentarians who opposed the Bill was the notion that codifying lawful abortion would be seen as an endorsement of the procedure as acceptable, which would in turn lead down the 'slippery slope' to a more permissive and less morally sound society. Allan Burdon argued that legalisation would be "a step backwards" and "against the principles of Christianity,"¹⁸⁴ and even that it would signify "the commencement of a backward slide in civilization".¹⁸⁵ Tom Casey commented, "Lord knows where we will finish up if we allow this Bill to pass",¹⁸⁶ and pondered the imminent acceptability of euthanasia, an issue that also concerned John Clark.¹⁸⁷ Bryant Giles articulated his belief that politicians "are here not only to look after people's material well-being but also to try to maintain a high moral standard in the

¹⁸⁰ *SAPD*, HA, 21 October 1969, p.2338-40.

¹⁸¹ *SAPD*, HA, 23 October 1969, p.2470.

¹⁸² *SAPD*, HA, 21 October 1969, p.2347.

¹⁸³ Other members expressed a similar view: see Pearson, *SAPD*, HA, 22 October 1969, p.2413; McKee, *SAPD*, HA, 22 October 1969, p.2414; Nankivell, *SAPD*, HA, 28 October 1969, p.2513.

¹⁸⁴ *SAPD*, HA, 22 October 1969, p.2408.

¹⁸⁵ *Ibid.*

¹⁸⁶ *SAPD*, HA, 22 October 1969, p.2416.

¹⁸⁷ *Ibid.*, p.2418; *SAPD*, HA, 23 October 1969, p.2459.

community”,¹⁸⁸ and to “protect the morals of the people of this State”.¹⁸⁹ He made it clear that he referred to the Christian moral ethos, and suggested that advocates of abortion on demand (a position further than the Bill allowed for) were “not committed Christians” and “do not take into account the moral issues involved”.¹⁹⁰ Others contended that the need for abortions was a result of the moral decrepitude already present in society, as, according to Ernest Edwards, unwanted pregnancies arose variously from overindulgence in alcohol and drugs, unmarried couples living together, adultery, households in which both parents worked and did not have time to educate their children on matters relating to sex, and additionally argued that some girls deliberately became pregnant in order to coerce their parents into giving permission to marry.¹⁹¹ The same politicians argued that abortion could be avoided if young women received proper sex education, as “[p]revention is better than cure”.¹⁹² Those in favour of legalisation agreed that education and support for young mothers was essential, but accepted that such measures would not entirely remove the demand for abortions.¹⁹³

Opponents of the Bill feared that as South Australia was the first state to effect reform, it would become “the abortion centre of Australia”.¹⁹⁴ Burdon likened the situation to marriage in Gretna Green or gambling in Las Vegas, warning that people would travel to Adelaide for the sole purpose of having an abortion.¹⁹⁵ Even some members who supported the Bill were concerned by the thought of Adelaide as the “abortion capital,” and sought a residency clause that required a woman to have lived in South Australia for a certain number of months before she could obtain a lawful abortion.¹⁹⁶ A residency requirement of two months was eventually included in the Act as it passed, though various amendments attempted to remove it, or set it at one, four or seven months. Some members feared that any requirement would encourage unsafe late-term abortions, and

¹⁸⁸ *SAPD*, HA, 23 October 1969, p.2460.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *SAPD*, HA, 28 October 1969, pp.2506-8.

¹⁹² *SAPD*, HA, 22 October 1969, p.2419; 23 October 1969, p.2458.

¹⁹³ *SAPD*, HA, 22 October 1969, p.2422; 23 October 1969, p.2470; 28 October 1969, p.2510; LC, 12 November 1969, p.2922; 20 November 1969, pp.3161-2.

¹⁹⁴ *SAPD*, HA, 21 October 1969, p.2330.

¹⁹⁵ *SAPD*, HA, 22 October 1969, p.2408.

¹⁹⁶ *SAPD*, HA, 23 October 1969, p.2471; 30 October 1969, p.2636.

was especially damaging to women who had legitimately moved to the state after becoming pregnant.¹⁹⁷ Don Banfield saw no need for the requirement at all, responding to the risk of ‘border-hopping’ with the comment: “So what? Aren’t we Australian? Are we in favour of women being protected, or are we [being] parochial?”,¹⁹⁸ but the argument appears to have been only partly about avoiding the ‘abortion capital’. Firm opponents of any abortion reform desired the longest possible residency period, and the most liberal supporters overwhelmingly supported the shortest period, or none at all. This suggests that the issue was not only about parochialism, but also a reflection of members’ views on the desirability of abortion itself; the longer residency requirement was understood to be considered a deterrent to women seeking an abortion and would therefore minimise the number being performed.

Most politicians did not support the Bill in order to seek the empowerment of women. Rather, many desired to end the dangerous practice of illegal abortions. Nearly all members who gave substantial speeches referred to the issue, with eleven arguing that the legislation would at least reduce the incidence of ‘backyard’ procedures, if not eliminate them altogether. One of the more personal moments in the speeches came when 63 year old Samuel Lawn told of his visit to his parents’ grave in the West Terrace cemetery, and seeing the nearby funeral of a 42-year-old woman who had died from an illegal abortion.¹⁹⁹ He used this point to respond to an interjection from Corcoran, who suggested that the legislation was permitting the destruction of human life. “I will illustrate the difference in the way the honourable member and I view the destruction of human life”, Lawn replied. “In principle I want to save human life ... Do the living not matter? I believe they do.”²⁰⁰ Cyril Hutchens argued that if “there is one illegal abortion, it is one too many”,²⁰¹ recalling that he had lived near an abortionist during the Great Depression, and had seen the desperation of the women who could not support a child.

Many politicians considered the reform an exercise in sound lawmaking in that it granted freedom of conscience to the individual rather than imposing a state-sanctioned morality

¹⁹⁷ *SAPD*, HA, 28 October 1969, p.2525; 30 October 1969, pp.2636-7.

¹⁹⁸ *SAPD*, LC, 25 November 1969, p.3214.

¹⁹⁹ *SAPD*, HA, 21 October 1969, p.2334.

²⁰⁰ *Ibid.*

²⁰¹ *SAPD*, HA, 21 October 1969, p.2338.

on everyone. They also saw it as a public health measure, designed to save the life and reproductive health of women by placing control of the procedure in the hands of doctors. It would be inaccurate to suggest that women's empowerment and the 'right to choose' was not a factor in the debates; six members argued that a woman should be able to choose whether or not to bear a child.²⁰² However, at least fourteen members referred at far greater length to the need to separate law from morality and not impose personal beliefs upon other people. One of the most striking speeches to this effect came from Joe Jennings, who was Catholic and explained that his first instinct was to oppose the Bill, as his Catholic colleagues Des Corcoran and Tom Casey were doing. However, he continued, "since I have been a member (which is a long time now), I have realized that many people in the community have views different from mine and that I cannot ram my religious convictions down their throat".²⁰³ Geoffrey Virgo also argued that members of parliament had no right to "inflict on other people [their] personal views" and "by the same token, I do not believe that a group has the right to place a restriction on others merely because it desires to restrict its own members".²⁰⁴ He criticised Playford, whom he said had "inflicted on the whole State his views about lotteries",²⁰⁵ and several other members likened the abortion proposal to liquor licensing and gambling reforms. Stan Evans reminded the House that "now that we have 10 o'clock closing, [opponents] do not participate in something that is against their conscience or moral beliefs",²⁰⁶ and John Ryan noted that "no-one was compelled to bet; it was left to the person's own free will if he desired".²⁰⁷ Seven members emphasised the fact that if abortion were lawful, it would not compel anyone to act against their own personal morality.²⁰⁸ Several politicians explicitly argued that law and morality should be separated. Glen Pearson and David McKee argued that "legality is not morality",²⁰⁹ Samuel Lawn contended that "conscience and morals should not be a matter for the law",²¹⁰ and Dunstan stated that "the criminal

²⁰² *SAPD*, HA, 21 October 1969, pp.2325, 2338-9, 2348; 28 October 1969, p.2525; LC, 25 November 1969, p.3211.

²⁰³ *SAPD*, HA, 23 October 1969, p.2462.

²⁰⁴ *SAPD*, HA, 28 October 1969, p.2515.

²⁰⁵ *Ibid.*, pp.2515-16.

²⁰⁶ *SAPD*, HA, 21 October 1969, p.2348.

²⁰⁷ *SAPD*, HA, 28 October 1969, p.2518.

²⁰⁸ *SAPD*, HA, 21 October 1969, p.2336; 22 October 1969, pp.2412-13; 23 October 1969, p.2464; 28 October 1969, pp.2516, 2518, 2524; LC, 25 November 1969, p.3214.

²⁰⁹ *SAPD*, HA, 22 October 1969, pp.2412, 2414.

²¹⁰ *SAPD*, HA, 21 October 1969, p.2334.

law is not there to enforce private morals” and “has no place in the bedrooms of the nation”.²¹¹ Significantly, these four were amongst the seven members of the House of Assembly who took the most liberal position on abortion reform, and who were easily outvoted on the attempt to remove all restrictions on abortions from the Bill.

After the second reading speeches, a number of amendments were moved during the committee stage of debates on the Bill.²¹² Some were highly technical or administrative in nature, but several were important markers of the types of restrictions that some members desired to see included before they would support legalised abortion. Des Corcoran was most active in moving restrictive amendments. These included one to require that a specialist obstetrician/gynaecologist must examine the woman in order for an abortion to be lawful (the amendment failed, 9-27) and one to tighten the wording of the clause permitting abortion in the case of risk to the life or health of the mother (it failed narrowly, 17-19).²¹³ He also attempted to ensure that the ‘conscientious objection’ clause—a term that evoked another prominent political debate of late 1960s Australia—would apply to doctors even in emergency situations, when the life of the mother was at immediate risk, but this also failed (14-22).²¹⁴ Corcoran attempted to remove the so-called ‘eugenic’ clause, which covered situations such as those raised in the debates over thalidomide by permitting abortion where there was “significant risk” that “the child would such physical or mental abnormalities as to be seriously handicapped”,²¹⁵ but this too failed, 12-24.²¹⁶

One of the most contentious debates concerned the ‘social clause’ of the Bill, which was perceived to be one of the greatest failings of the British Act upon which the South Australian legislation was modelled. It would allow doctors to take into account the effect that continuing the pregnancy would have on “any existing children of [the woman’s] family”, and Millhouse himself moved the amendment to remove the clause from his original version of the Bill as he had come to the conclusion that “we are asking medical

²¹¹ *SAPD*, HA, 28 October 1969, p.2532.

²¹² The committee stage comprises the debate on proposed amendments to the Bill. It should not be confused with the Select Committee.

²¹³ *SAPD*, HA, 28 October 1969, p.2534; 29 October 1969, pp.2589-97.

²¹⁴ *SAPD*, HA, 4 November 1969, p.2679-83.

²¹⁵ *Criminal Law Consolidation Act Amendment Act, 1969*, s.3(a)(ii).

²¹⁶ *SAPD*, HA, 29 October 1969, pp.2599-2605.

men to make a judgment on what is essentially a non-medical matter”.²¹⁷ Ron Loveday and Joyce Steele supported the retention of the clause, both arguing that the situation of the whole family must be considered alongside the woman’s own physical and mental health, but the amendment passed easily, 25 votes to 11. (In the discussion below, I have categorised those eleven supporters as the parliamentarians with the most liberal position on abortion law reform in South Australia.) However, when Corcoran later moved an amendment to remove the next level of ‘social’ consideration in the Bill, known as the ‘environmental clause’, it narrowly failed. This permitted the doctor to take into account a woman’s “actual or reasonably foreseeable environment”, and Millhouse supported this distinction, arguing that no matter what the condition being treated, a doctor “must have regard for [a patient’s] total well-being, and he treats her in the situation in which he knows she finds herself”.²¹⁸ It was not explained in detail how a woman’s “environment” excluded her children and therefore how it differed from the ‘social’ clause, but a sufficient number of members evidently understood there to be a meaningful difference between the two.

Furthermore, a small number of politicians who supported the Bill made clear that they would also have voted for a much less restrictive Bill, up to abortion ‘on demand’. Seven MHAs voted for an amendment, moved by Cyril Hutchens (and arranged by ALRSA),²¹⁹ to remove all specific grounds for lawful abortion and effectively making the procedure a matter for a woman and her doctor.²²⁰ Don Dunstan was one of those seven, and stated that his “own position is that a woman should have a right to determine whether she proceeds with a pregnancy or not”.²²¹ He argued that there were two positions: either abortion involved killing “an identifiable and protectable human life”, and was therefore not justified except perhaps only when the mother’s life was at certain risk; or abortion did not amount to murder, in which case “the law, in my view, has no place in the matter” and that there was no logical grounds for restricting when it was permitted.²²² Treasurer Glen Pearson agreed with Dunstan, arguing that “if abortion is acceptable and if it is not criminal, there is no intermediate ground on which we can

²¹⁷ *SAPD*, HA, 29 October 1969, p.2597.

²¹⁸ *SAPD*, HA, 30 October 1969, p.2638.

²¹⁹ Blewett, ‘The Abortion Law Reform Association’, p.389.

²²⁰ *SAPD*, HA, 28 October 1969, pp.2530-4.

²²¹ *SAPD*, HA, 21 October 1969, p.2325.

²²² *SAPD*, HA, 28 October 1969, pp.2531-2.

stand”.²²³ However, 28 MHAs opposed the amendment, demonstrating that a large majority of parliamentarians supported abortion law reform only when it contained specific restrictions on the procedure.

Parliamentary speeches reveal that most members reflected upon public opinion and the views of their constituents rather than relying solely on their own conscience in deciding how to vote on the Bill. Several referred to the Gallup and other opinion polls, but each used it to support their own position. Members who were adamantly opposed to abortion questioned the methodology of the poll. William McAnaney and Bryant Giles doubted that those polled would have known the exact contents of the Bill (when the poll asked about support for the Bill, rather than for abortion in general),²²⁴ and this was a valid concern. Lloyd Hughes doubted the accuracy of polls altogether.²²⁵ In contrast, Millhouse, Lawn and Banfield cited supportive poll results as indicative of public desire for some level of reform,²²⁶ though Millhouse explained, “I do not rest my case on the results of a Gallup poll; I rest my position on my own convictions after much discussion and thought”.²²⁷ He also discussed the “unprecedented” number of petitions presented to parliament on the issue: 94 petitions featuring nearly 17,000 signatures. The majority of these opposed the reform, but argued that “codification of present practice” was acceptable if some change was to be made.²²⁸ Members who opposed the legislation used these figures in support of their position.²²⁹

Many more members discussed the communications they had received on the issue from their constituents, and to what extent those opinions had influenced their position. Colin Rowe told the Legislative Council: “The volume of correspondence ... that I have received from numerous sources is the greatest I have received in respect of any legislation since I have been in Parliament”²³⁰ (Rowe had entered parliament in 1948). Millhouse also reported a great deal of personal correspondence, some “quite touching”

²²³ *Ibid.*, p.2532.

²²⁴ *SAPD*, HA, 22 October 1969, p.2420; 23 October 1969, p.2460.

²²⁵ *SAPD*, HA, 21 October 1969, p.2343.

²²⁶ *SAPD*, HA, 3 December 1968, p.2920; 21 October 1969, p.2334; LC, 25 November 1969, p.3212.

²²⁷ *SAPD*, HA, 21 October 1969, p.2320.

²²⁸ *Ibid.*, p.2319.

²²⁹ *Ibid.*, p.2342; *SAPD*, HA, 23 October 1969, pp.2461-2.

²³⁰ *SAPD*, LC, 19 November 1969, p.3102.

but some offensive, including a telegram he received which read: “Re abortion Bill. Judas was a traitor. He committed suicide. Examine yourself.”²³¹ Samuel Lawn argued that parliament existed to represent the people, and that he believed his electorate supported the reform.²³² Joyce Steele judged that “the people of South Australia are applauding the Government for having the courage to bring this matter into the open”, and believed that young people were particularly supportive of the measure.²³³ Citing various evidence or none at all, most politicians reported that they felt their views tallied with either those of the majority of South Australians, or the majority of their electorate.

Voting Patterns

Hansard records the individual votes of members on amendments, as well as on the final version (third reading) of the Bill, and so it is possible to assess the position that each politician took on the reform, beyond a simple ‘yes’ or ‘no’ vote. Members can be divided into three groups, based on a full analysis of their voting patterns. One group opposed abortion under all or almost all circumstances (the exception generally being in the case of the pregnancy posing an immediate threat to the life of the woman, already permitted in the common law prior to 1969), and desired no change in the law. They opposed the Bill and, aware that it was likely to pass, introduced amendments to restrict the procedure as much as possible. Many of these members expressed sentiments that would later become known as ‘pro-life’. The second group comprised those members who held the exact opposite position, which would now be called ‘pro-choice’. They supported the Bill in its entirety and introduced amendments with the intention of further expanding the availability of abortion. The third group was less unified, but comprised the members whose position sat between the two extremes. They supported the codification of the laws governing abortion, but were anxious to ensure that the procedure was carefully regulated and that the law contained safeguards to prevent abortions becoming too readily available. An analysis of speeches and the voting patterns of members on the series of amendments that were moved on the Bill shows that in the House of Assembly, these three groups

²³¹ *SAPD*, HA, 5 November 1969, p.2782.

²³² *SAPD*, HA, 21 October 1969, p.2334.

²³³ *Ibid.*, p.2341.

were each a similar size, comprising 13, 11 and 13 members respectively (see Figure 3.2).²³⁴

Most liberal MHAs (voted 'yes')	Moderate MHAs (voted 'yes' but supported two or more conservative amendments)	Most conservative MHAs (voted 'no')
Don Dunstan (Labor) Stan Evans (LCL) John Freebairn (LCL) Steele Hall (LCL) Cyril Hutchens (Labor) Joe Jennings (Labor) Samuel Lawn (Labor) Ron Loveday (Labor) David McKee (Labor) Glen Pearson (LCL) Joyce Steele (LCL)	Peter Arnold (LCL) David Brookman (LCL) Glen Broomhill (Labor) Molly Byrne (Labor) Hugh Hudson (Labor) Reginald Hurst (Labor) Gil Langley (Labor) Bill McAnaney (LCL) Robin Millhouse (LCL) Bill Nankivell (LCL) Alan Rodda (LCL) John Ryan (Labor) Geoff Virgo (Labor)	Ernest Allen (LCL) Allan Burdon (Labor) Tom Casey (Labor) John Clark (Labor) Des Corcoran (Labor) Ernest Edwards (LCL) James Ferguson (LCL) Bryant Giles (LCL) Lloyd Hughes (LCL) Tom Stott (Ind; Speaker) Bert Teusner (LCL) Ivan Venning (LCL) Ivon Wardle (LCL)

Figure 3.2: Attitudes of the Members of the House of Assembly towards the abortion Bill and its amendments.

Although I discuss the votes of the Legislative Councillors to illustrate several points, I focus my analysis on the House of Assembly for two main reasons. The Legislative Council voted on fewer amendments, and some were passed 'on the voices' and so members' votes were not individually recorded. It is therefore more difficult to accurately categorise members of the Legislative Council (MLCs) into the three groups just discussed. Furthermore, Jill Blewett notes in her reflection on reform as part of ALRASA that as the entire LCL cabinet voted for the Bill, and as it had been introduced by the Attorney-General, approximately half of the government MLCs considered it to be a government Bill and voted in support more as a matter of party unity than personal belief, even though they were permitted a free vote.²³⁵ Blewett's view is supported by the fact

²³⁴ The Speaker, Tom Stott, did not vote on the third reading (final vote) of the Bill, nor give a speech, but he voted very conservatively on all amendments during the committee stage (where the Speaker is permitted to vote as a regular member). I have therefore included him in the 'pro-life' group. 'Moderates' are categorised as those who voted in favour of at least two restrictions on abortion, but voted 'yes' to the Bill as a whole.

²³⁵ Blewett, 'The Abortion Law Reform Association', p.391.

that of the five MLCs (apart from the President) not to speak on the Bill, three of them (including two ministers) were LCL members who voted ‘yes’,²³⁶ suggesting that they felt no need to personally justify their vote. This differs from the House of Assembly, where only one LCL member—once again, a minister—voted ‘yes’ without justification.²³⁷

Just as the membership of interested community groups was not discrete, it is not possible to make broad statements about ‘what type of politician’ supported or opposed the abortion legislation. Members’ voting patterns transcended not only party lines, but age, gender, location, education level, profession, and religion.²³⁸ Nonetheless, trends certainly emerge, and in some cases these mirror demographic trends revealed by public opinion polls, although the members of the South Australian parliament in 1969 were far from demographically representative of the state’s population: women comprised only five per cent of members. An examination of the way politicians voted, and possible influences based on their personal backgrounds, therefore adds to an understanding of how and why that parliament voted to legalise abortion. It is important to note that biographical information on many members is scant, and even when it is available, a simple statement of religious affiliation in *Who’s Who*, for instance, cannot be interpreted as a dogmatic adherence to every tenet of that denomination’s position on moral issues. For this reason, I restrict quantitative analysis to objective facts such as age, gender and political party. I use ‘social’ information, where available, more cautiously and to illustrate the types of ways in which abortion blurred religious and class boundaries.²³⁹

The extent to which the issue of abortion defied all demographic categorisation is best illustrated by the seven members of the House of Assembly who supported the amendment to remove all prescribed grounds from the Bill, in an attempt to make

²³⁶ Ren DeGaris, Clarence Story and Norman Jude.

²³⁷ David Brookman.

²³⁸ See also John Warhurst, ‘Conscience Voting in the Australian Federal Parliament’, *Australian Journal of Politics and History*, vol.54 no.4, 2008, p.595.

²³⁹ The ages and information analysed in the next section are readily available only for the most high-profile MPs. I have therefore compiled information from a wide range of sources including Hansard, *Who’s Who*, a register of former members on the South Australian Parliament website (<http://www.parliament.sa.gov.au/MEMBERS/FORMERMEMBERS/Pages/default.aspx>), profiles in newspapers around the time of state elections, and a published biographical register of MPs (Howard Coxon, John Playford and Robert Reid (eds), *Biographical Register of the South Australian Parliament 1857-1957*, Adelaide: Wakefield Press, 1985). In some cases, only a birth year, not a precise birth date, has been available and so I have calculated ages on the basis that all were born on 1 January.

abortion a private matter between a woman and her doctor. These seven members comprised a subcategory of the group of eleven most supportive MHAs I outlined above – four other members opposed this amendment to remove all prescribed grounds, but also favoured the retention of the ‘social clause’, thereby marking them as the most liberal group of parliamentarians. Of the seven, five were from the Labor Party and two from the LCL, including one of the most senior from each party: Glen Pearson, the Treasurer, and Don Dunstan, Leader of the Opposition. Cyril Hutchens, who introduced the amendment, and Samuel Lawn were both in their mid-60s; John Freebairn was one of the youngest MHAs at just 39. Dunstan and Pearson had attended two of Adelaide’s top private schools; Hutchens was a wool classer and Lawn a labourer. Dunstan and Lawn held inner-city electorates; Pearson and David McKee were from the Eyre Peninsula and Port Pirie respectively. Pearson identified as Methodist, Hutchens as Baptist, McKee as Anglican, Dunstan as a rationalist, and Joe Jennings as Roman Catholic. The only thing the seven members had in common was their gender.²⁴⁰

The three female members—Molly Byrne (Labor) and Joyce Steele (LCL) in the House of Assembly, and Jessie Cooper (LCL) in the Legislative Council—expressed different levels of support for the Bill. In the Legislative Council, Cooper did not vote on the final reading of the Bill, for reasons I have not been able to determine. She contributed little to the debates, but did speak briefly on the residency clause. The amendment to remove the residency provision passed on the voices, so her formal position is unknown. However, she argued that “surely the object of this Bill in the first place is to do away with backyard abortions. This provision more than any other will drive people to seek backyard abortions,” and that it would be dangerous for women to have to wait four months for a termination.²⁴¹ This suggests that she supported the need to reduce the number of dangerous illegal abortions, but it is difficult to be certain of her position.

In contrast, Joyce Steele held the most liberal position of the three women. She believed that “for too long men have decided this matter, which I believe is a matter for a woman to decide according to her conscience,”²⁴² and that “the Bill is enlightened, forward-looking legislation, and that it has the support of many thousands of young people in this

²⁴⁰ All were also white and appear to be of British or Irish origin. This was true of every MP.

²⁴¹ *SAPD*, LC, 3 December 1969, p.3514.

²⁴² *SAPD*, HA, 21 October 1969, p.2340.

State”.²⁴³ She supported the social clause because she accepted that women could become very distressed by an unwanted pregnancy.²⁴⁴ Steele further believed that by bringing abortion into the open and allowing discussion between a woman and her doctor, it would remove some of the stigma associated with certain types of pregnancies and that some women “will be converted to the idea of wanting to keep the previously unwanted child”.²⁴⁵ Like many supporters of reform she argued that abortions should be minimised as much as possible, but simultaneously accepted that lawful procedures were required when no other alternative existed.

Steele’s support of the social clause situated her as one of the four next most liberal members after the group of seven who supported removal of all grounds, along with Premier Steele Hall, and Stan Evans and Ron Loveday, who had both sat on the Select Committee alongside Joyce Steele.²⁴⁶ It is difficult to be certain how important this point is: it is possible that the Committee was deliberately stacked with supporters of reform to ensure a positive report and assist passage of the Bill. However, Steele explained that she went into the Committee with an open mind and only made up her mind at the end of the process, and Jill Blewett asserts that Evans’s view on the issue was unknown at the time of his selection.²⁴⁷ This suggests that the experience of hearing first-hand the extensive evidence given to the Committee encouraged Steele, Evans, Loveday and Millhouse, whose position was only slightly less liberal (he opposed the social clause but otherwise voted in favour of less regulation, rather than more), to support a less restrictive version of the Bill. Evans and Millhouse both moderated their views slightly—Evans reported he had favoured “abortion on demand” prior to sitting on the Committee²⁴⁸ and Millhouse originally favoured the first version of the Bill that included the social clause—but their position still did not come close to the more restrictive views of many other members. However, Des Corcoran, the fifth member of the Committee, did not moderate his strictly anti-abortion views as a result of the evidence, and given the religious nature of his basis for that position, this is not surprising. The similarly liberal positions of the majority of

²⁴³ *Ibid.*, p.2341.

²⁴⁴ *Ibid.*, p.2340.

²⁴⁵ *Ibid.*, p.2341.

²⁴⁶ *SAPD*, HA, 29 October 1969, pp.2597-9.

²⁴⁷ Blewett, ‘The Abortion Law Reform Association’, p.380; *SAPD*, HA, 21 October 1969, p.2340.

²⁴⁸ *SAPD*, HA, 21 October 1969, p.2346.

Committee members is a point too striking to ignore, but can really only be a matter for conjecture.

The third female member of parliament, Molly Byrne, voted for the Bill, but also voted in favour of a number of restrictive amendments, including the seven month residency clause, the longest period suggested throughout the debates. Like many other members, Byrne's support for the Bill was moderated by her desire for certain safeguards and restrictions. She argued that the current situation disadvantaged poorer women, who were more likely to seek dangerous illegal abortions. She noted that men were also affected, as they may be compelled to marry or financially support a child, and argued that "on humanitarian grounds, some reform in this direction should take place".²⁴⁹ While many of her arguments were similar to those of her male colleagues, one aspect of her speech was not replicated by any other member. Byrne spoke of women, married and single, who had come to ask her, in her official capacity as an elected representative, for advice on where to obtain an abortion.²⁵⁰ Although she did not linger on this point as an explicit reason for her support for the Bill, it clearly sets her apart from her male colleagues in her awareness of the extent of the problem.

As the examples already mentioned indicate, voting was not divided along party lines. Across both houses of parliament, 63.2% of all members voted 'yes' and 31.6% voted 'no' on the third reading (the final passage of the Bill).²⁵¹ Of the LCL members who voted, 59.4% supported the Bill and 40.6% opposed it. Labor members were more supportive: of those who voted, 77.3% voted 'yes' and 22.7% voted 'no' (see Figure 3.3). The LCL split was approximately even across both houses, with the number of supportive MHAs marginally higher than the MLCs in support. Labor members were significantly more likely to support the Bill, but a clear majority of LCL members also joined them. As I have noted, Jill Blewett's explanation that a number of LCL members considered the matter one on which to toe the party line, and it is possible that if the measure had been introduced as a private member's Bill, rather than by the Attorney-General as a government Bill, support may have been less forthcoming from some LCL members.

²⁴⁹ *SAPD*, HA, 22 October 1969, p.2422.

²⁵⁰ *Ibid.*

²⁵¹ Just over 5% did not vote due to absence, and the Speaker and President are not included in any of these figures.

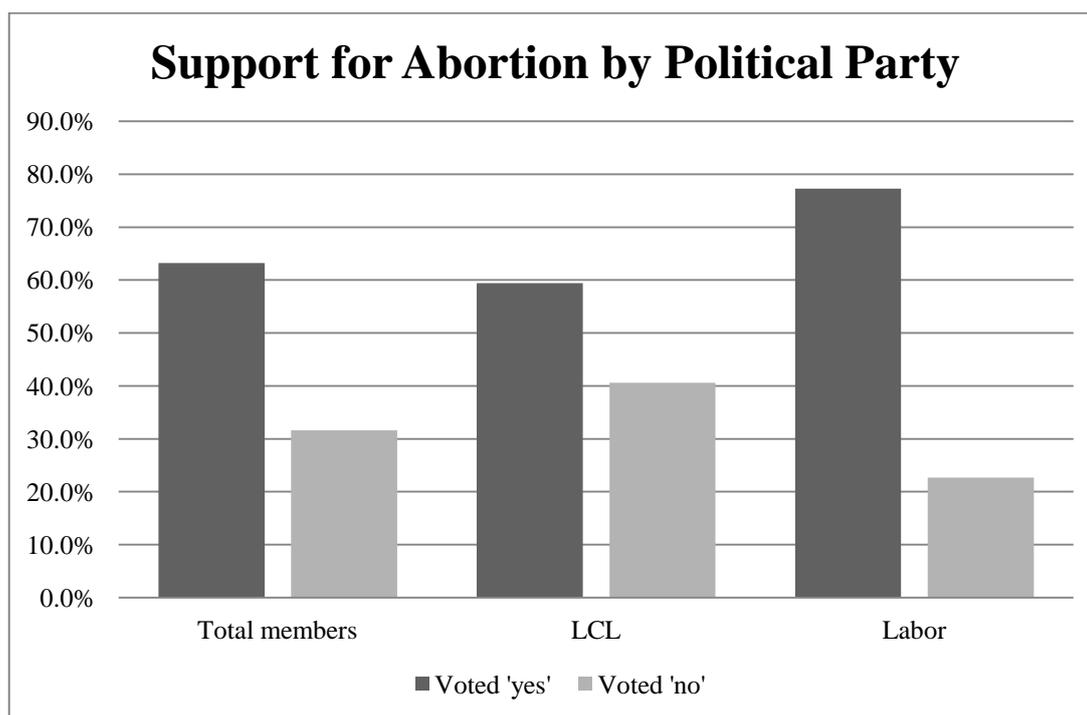


Figure 3.3: Percentage of Members of Parliament who voted for and against the abortion Bill, by party.

The age of members of parliament was not a clear indicator of their support for the Bill: in both houses, both the youngest and oldest member voted ‘yes’, and the average ages of ‘yes’ votes was 52.3 and ‘no’ votes, 53.5. The most interesting age-based observation is that the average age of supportive LCL members in the House of Assembly was significantly lower than LCL members in that house who opposed the Bill, 47.5 years compared to 54.9 (see Figure 3.4). All three LCL members in their 30s voted yes, as well as three of the four LCL members in their 40s. (This was replicated in the Labor members, where five of the six MHAs in their 30s and 40s voted yes. Corcoran was the sole exception.) This reveals the significance of generational change within the LCL, in a departure from the views of the Playford era. Robin Millhouse and Steele Hall, aged 40 and 41 respectively, typified the younger, progressive generation of LCL members. (Dunstan, it should be noted, was 43 at the time of the vote.) This confirms Wilson and Chappell’s analysis of public opinion poll results, and their prediction that reform would come from the “so-called middle-aged group—those between 26 and 45”.²⁵²

²⁵² Wilson & Chappell, ‘Australian Attitudes’, p.16.

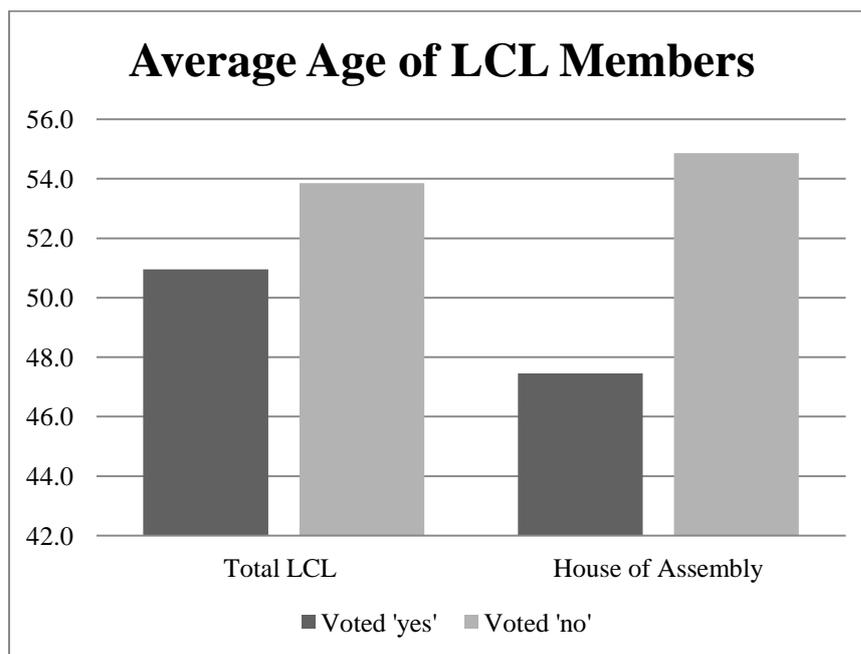


Figure 3.4: LCL Members of Parliament who voted for and against the abortion Bill, by average age.

Finally, urban members were significantly more supportive of the reform than their rural and regional counterparts. Members of the Legislative Council were elected in five districts (two metropolitan, three regional), and all seven of the eight metropolitan members who voted supported the reform, as well as five of the eleven regional members who voted. That is, all six of the ‘no’ votes came from regional districts. The same divide is apparent in the House of Assembly: all twelve metropolitan MHAs who cast a vote did so in favour of the reform, while the 24 country members split evenly, twelve yes and twelve no.²⁵³ The legacy of electoral malapportionment from the Playford era that maintained 13 metropolitan Adelaide seats and 26 rural seats, despite the state’s population being centred in the capital, meant that country members were representing a far smaller number of constituents than metropolitan members. This manifested at its most extreme in the 1968 election between Tom Casey, who represented 4,989 voters in his country seat of Frome, and Joe Jennings’s 45,510 voters in suburban Enfield. This astonishing difference of representation meant that although the final vote on the abortion legislation in the House of Assembly passed 24 to 12 (i.e. twice the number of supporters

²⁵³ *SAPD*, HA, 5 November 1969, p.2784; LC, 4 December 1969, p.3612.

than opponents), that represented total electorate populations of 461,385 to 112,538.²⁵⁴ That is, members in support of the reform represented over four times the number of South Australians than members who opposed the reform. It is unlikely that this represents a much wider acceptance of abortion in the state than is revealed by, for instance, the Gallup polls, but it demonstrates that the abortion reform passed in spite of the conservative, rural-based bias in the South Australian electoral divisions prior to the changes effected by the Hall government.

This analysis of the key actors and arguments in the abortion debate demonstrates, above all, one thing: that there was no single factor that made the reform possible. There was no clear catalyst for the legislation being introduced into parliament, comparable to the catalyst for homosexual law reform that becomes evident in the following chapter. Political support for the reform had no firm demographic or party-political base, though its introduction by the Attorney-General very likely contributed to its success. Millhouse's desire for reform, and to modernise his party to end association with the social conservatism of Playford, was therefore one of the more influential factors. However, the broad support for the measure by members of the Labor opposition means that I am confident to suggest that had a Labor government been in power in the years after Britain's abortion reform, it too would likely have introduced and successfully passed reform – assuming Dunstan, not Corcoran, held sway, as those two Labor men's positions represented the two extremes of the debate. Four of the seven staunchest opponents of abortion in the House of Assembly were Labor, and three of those openly based their position on the teachings of their Catholic faith. Had the Catholic Church been a stronger, more organised or more political presence in South Australia, the reform might not have had such success. In contrast, the cautious Methodist support for the reform, in a state where Methodism had an unusual dominance, contributed to that success. The contribution was not as simple as arguing that there were more Methodists in parliament, but rather that the church's position was widely publicised and potentially affected community attitudes more than other churches that minimised their public statements on abortion.

The political and social factors that permitted reform in South Australia were not specific to the issue of abortion. Less than three years after the state legalised abortion, it

²⁵⁴ 'Periodical and General Elections, 1968: Statistical Returns', *SAPP*, no.80, 1968-69.

liberalised its laws on another 'moral' issue. Laws against abortion could arguably be construed as a medical issue first and a comment on sexuality second, but laws against male homosexual acts explicitly targeted a certain type of sexual behaviour. Many of the same actors in the debates to legalise abortion suddenly found themselves once again debating the right of the state to legislate 'immorality'.

Chapter 4

A Path to Homosexual Law Reform

The progress of homosexual rights in South Australia is inextricably linked with the name of a man made famous by his death. The murder of Dr George Ian Ogilvie Duncan in May 1972 became front page news and by August had prompted a member of parliament to introduce legislation to end the legal sanctions against male homosexual acts. Homosexuality had never before received so much attention in Australia. Dr Duncan's death was a catalyst for law reform in the original, scientific, sense of the word: his death rapidly accelerated a process that was already occurring, rather than causing a change on its own. Homosexual activist groups had already formed and were having some degree of success in stirring public awareness about homosexuality and the laws against it; Duncan's death made clear to lawmakers the need to act.

The increase in public debate about homosexuality only became significant from the mid 1960s. As I will show, discussion of the issue in the 1950s remained taboo and rarely breached the professional spheres of law and medicine. When it did receive public coverage, it was not prominent and remained overwhelmingly negative. As Graham Willett has argued, the repression of homosexuality also successfully repressed public visibility of homosexuality.¹ What, then, changed between the 1950s and the second half of the 1960s, when, as Willett has noted, "homosexuality was not only being talked about in public, but was widely seen as an issue that needed to be dealt with"?² In this chapter, I trace the increasing public visibility of homosexuality from the 1940s to the early 1970s, set against the more general liberalisation of society attitudes that I have already noted in previous chapters. For this reason, my analysis also extends to include other examples of

¹ Graham Willett, 'The Darkest Decade: Homophobia in 1950s Australia', *Australian Historical Studies*, no.109, 1997, pp.121-3.

² Graham Willett, *Living Out Loud: A History of Gay and Lesbian Activism in Australia*, Sydney: Allen & Unwin, 2000, p.19.

sex and sexuality discourse in the same period. I argue that while descriptions and depictions of heterosexual activity were taboo, homosexuality had even less chance of achieving any level of publicity, let alone respectability. Discussions about homosexuality relied upon the broadening of all sexual discourse, so developments in the latter are just as important to understand the progression towards permitting public discussion about homosexuality.

This chapter first examines the appearance of homosexuality and sexual offences in professional reports and studies of the 1940s to the 1960s, and then the shift away from censorship of literature towards the 1970s. It then analyses the intensification of discussion about homosexuality, especially homosexual law reform, in the years between 1969 and 1972, beginning with the first Australian activist group dedicated to homosexual issues and ending with the death of Dr Duncan. I examine the shift from private professional conversation (simultaneous with the peak in prosecutions outlined in Chapter 1) towards public debate; not, for the most part, considerably more positive, but undoubtedly more visible. It was the location of the conversation that changed most significantly, not the nature of the conversation or by whom it was spoken.

Professional Publications and Prohibited Literature

In the years after World War II, the Australian media revealed a fear of the increase in sexual offences, including but far from limited to homosexual offences. In addition to this general fear, specific comment on sex, sexuality and sexual offences during the late 1940s, 1950s and early 1960s tended to be a response to the release of research publications. Several high profile challenges to censored works also prompted not just public discussion about sexual matters, but about the *desirability* of public discussion of sexual matters. The impact of the war itself was not as pronounced on homosexuality as it had been on expressions of female sexuality, though the same public concern about sex and sexuality (in general terms) may have had some effect on attitudes to male sexuality revealed in the decades after the war.³ However, any such effect is difficult to quantify.

³ See Frank Bongiorno, 'The Two World Wars and the Remaking of Australian Sexuality', in Martin Crotty and Marina Larsson (eds), *Anzac Legacies: Australians and the Aftermath of War*, Melbourne: Australian Scholarly Publishing, 2010, p.93.

In 1946 and 1947, newspaper articles occasionally made reference to the ‘problem’ of homosexuality, and sexual offences in general. Sometimes these arose in discussions of other matters, such as a ‘Question of the Week’ feature in the *Mail* in September 1946 that published twelve letters from readers on the controversy surrounding the new revealing French swimsuit fashion for women. Three correspondents argued that brief bathing costumes would encourage sexual offenders; one wrote, “It is any wonder, then, that sex perverts are the problem of the age? The potential evils arising out of this immodesty are its condemnation.”⁴ In January 1947, it was revealed that sex crimes had increased, and comprised “31 per cent of all serious offences” in South Australia in the previous year.⁵ An unnamed local psychiatrist responded by arguing that the problem needed to be addressed “on a long-range basis with the raising of moral standards and the adequate treatment or restraint of persistent offenders”.⁶ He supported an increase in sexual education for children to place sex “in its proper perspective”, encouraged “early marriages”, and argued that “[i]f a community relaxes its moral standards and denies itself nothing that money can buy, it is inevitable that the self-control of individuals will suffer”.⁷ Later in the year, the increase in sex crimes was discussed at the conference of the Federated Association of Australian Housewives, held in Adelaide, where delegates variously suggested that all sex offenders should be segregated in a specialised institution, and that “sexual films” popular amongst adolescents were partly to blame for the offences.⁸ The *Mail* later published several street interviews regarding whether flogging should be part of the punishment for sex offenders, following a South Australian judge’s sentencing of two men to flogging for offences against children, and the New South Wales Attorney-General’s comment that flogging was “archaic, barbaric, and anachronistic”.⁹ Three people interviewed supported flogging and three opposed it, instead preferring treatment for offenders’ abnormalities. One older woman argued, “All sex offenders should be flogged ... Everyone is capable of realising these crimes are monstrous ... If the men concerned need treatment they should have it, but I would flog

⁴ *Mail*, 14 September 1946, p.5.

⁵ *Mail*, 4 January 1947, p.2.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Advertiser*, 12 September 1947, p.14. See also Frank Bongiorno, *The Sex Lives of Australians: A History*, Melbourne: Black Inc, 2012, p.179, on complaints about ‘immoral’ films in the 1930s.

⁹ *Mail*, 1 November 1947, p.6.

them, too, whether the doctor said they were normal or not.”¹⁰ In November, the premier, Thomas Playford, was asked in parliament what his government would do to manage the rise in sexual offences. Playford’s response was abrupt and admitted no role for the government: “I think the figures are inevitable when the shorter week now being worked is taken into account”.¹¹ This comment fuelled discussion in the *Advertiser*, where correspondents contributed their views on the cause of sexual offences. One wrote: “Much blame for sex crimes lies in unclean thinking, derived from crude conversation, pornographic literature, and suggestive pictures. The cure will not be found in the reduction of leisure, but in clean heart and mind, aided by sane dietary observance” (he had earlier blamed alcohol and a meat-heavy diet).¹²

Specific mentions of homosexual offences were less frequent, though in July 1947 the *Mail* reported that Mr L. McLean Wright, a lawyer and the President of the South Australian chapter of the Howard League for Penal Reform, had called for a “proper psychiatric investigation of the problem of homosexuality” and that society should attempt to find a way to help homosexual men.¹³ He observed that such men were not like other criminals, were often “intelligent and fastidious” and suffered from “remorse, fear of the future, and from a complete sense of hopelessness”.¹⁴ Several weeks earlier, while hearing a case against two men for homosexual offences, Justice Mayo had lamented that “[g]aol terms frequently do no good at all to offenders in homosexual cases, but while the law remains as it is, what is to be done?”¹⁵ He considered that these “cases may be curable”, but that homosexual acts were a “social evil” and the community must be protected.¹⁶ It is interesting to note that Justice Mayo was the younger brother of Helen Mayo, who was a high-profile and politically-active Adelaide doctor and a Lesbian.¹⁷ Whether Mayo’s mildly sympathetic views on sentencing homosexuals to prison were

¹⁰ *Ibid.*

¹¹ *South Australian Parliamentary Debates* (hereafter *SAPD*), House of Assembly (hereafter HA), 26 November 1947, p.1585.

¹² *Advertiser*, 5 December 1947, p.4. See also *Advertiser*, 1 & 2 December 1947, p.4.

¹³ *Mail*, 19 July 1947, p.7.

¹⁴ *Ibid.*

¹⁵ *Mail*, 5 July 1947, p.2.

¹⁶ *Advertiser*, 1 August 1947, p.15.

¹⁷ Neville Hicks and Elisabeth Leopold, ‘Mayo, Helen Mary (1878–1967)’, *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, available at <http://adb.anu.edu.au/biography/mayo-helen-mary-7542/text13157>, accessed 10 July 2013.

influenced by this fact can only be a matter for speculation, but it is a theme that emerges again during the parliamentary debates on homosexual law reform in the 1970s when sympathy or acceptance was often (though not always accurately) linked with a personal association to homosexuals.

From 1948, several key publications marked the increasingly public professional debate about sexual offences and homosexual activity. These were not examples of truly public conversation, but occupied the middle space. They publicised private discussions held by ‘professionals’ behind closed doors, which then provoked discussion in the community at large.

On 5 January 1948, Alfred Kinsey’s *Sexual Behavior in the Human Male* was published in the USA.¹⁸ It did not immediately attract a great deal of publicity in Australia, and in South Australia it tended to be referred to in the course of more general articles such as several about events in New York which described the book as one of “the most discussed books of the year”¹⁹ that was “decorating every library, bookstall, window and bedside table”.²⁰ The findings of the report were not disseminated in the Australian press, though it was available locally for purchase, and by the time *Sexual Behavior in the Human Female* was released in 1953, booksellers had requested reprints of the original volume.²¹ The Kinsey reports did not cause a sudden increase in public debate about sex and sexuality, but nevertheless played an equally important, if less direct, role in contributing to homosexual law reform. The findings of the reports were drawn upon by South Australian politicians to support their position on reform during the parliamentary debates in 1972, and Kinsey’s works were therefore an important source of publicly available knowledge about homosexuality that strengthened lawmakers’ confidence to legislate on homosexuality as a (somewhat) known phenomenon, rather than relying on pure speculation.²²

¹⁸ Alfred C. Kinsey, Wardell D. Pomeroy and Clyde E. Martin, *Sexual Behavior in the Human Male*, Philadelphia: W.B. Saunders Company, 1948.

¹⁹ *Advertiser*, 27 February 1948, p.2.

²⁰ *Advertiser*, 16 April 1948, p.2; see also *Mail*, 21 May 1949, p.26.

²¹ *Mail*, 29 August 1953, p.18; see also advertisement, *Advertiser*, 24 August 1950, p.9.

²² A number of parliamentarians speculated on the prevalence and causes of homosexuality. See, for instance, *SAPD*, Legislative Council (hereafter LC), 2 August 1972, p.465; 16 August 1972, p.787; 23 August 1972, p.939; 4 October 1972, pp.1799-1800; *SAPD*, HA, 18 October 1972, p.2201.

In 1949, a committee in Britain that comprised medical and legal experts representing the British Medical Association and the Magistrates' Association recommended that "homosexual conduct in private between consenting adults" should no longer be illegal, bringing the British law in line with the "Continental" law.²³ It should be noted that unlike abortion, where reformists agonised over the circumstances in which the procedure might be permitted, advocates of legalising homosexual acts consistently defined their preferred scope of reform from the beginning. However, a medical spokesman admitted that he did not expect the law to change immediately and believed it "would be a bad political risk, as only an intellectual 5 per cent section of the community is in favor".²⁴ The most he hoped for was that the committee could "carry public enlightenment a step further so that the 5 per cent grows to a point where it is a worthwhile political risk".²⁵ Public opinion—public enlightenment—was recognised as an essential part of successfully changing the law. The *Adelaide Mail* published several feature articles that considered the application of the British committee's findings in South Australia (the committee had examined all types of sexual offences, not only homosexual acts). One article written by 'An Adelaide Lawyer' argued that there was a "great deal of confusion in the public mind about the nature and extent of sexual offences" and blamed sensational press reports for increasing that confusion.²⁶ He believed that the British committee's recommendation on homosexual offences was "very wise", as the "public interest is not involved as it is a form of degeneracy affecting only the participants".²⁷ The next month, the newspaper published the first in a series of three articles by Rev. Norman Crawford, a psychologist and another member of the Howard League. Crawford argued that homosexuality was "a practice ... to be deplored" but that it "would be better left to other corrective measures".²⁸ He argued that homosexual activity would decrease if it were not illegal, though did not suggest why this would be the case. He favoured attempting to cure homosexuality through treatment, and noted that "apart from this one activity, a number

²³ *Times*, 11 March 1949, p.2; *Mail*, 19 March 1949, p.20. France, in particular, was noted for having removed the laws against homosexual acts in the early nineteenth century; see Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*, London: Quartet, 1977, p.15.

²⁴ *Mail*, 19 March 1949, p.20.

²⁵ *Ibid.*

²⁶ *Mail*, 2 April 1949, p.7.

²⁷ *Ibid.*

²⁸ *Mail*, 7 May 1949, p.7.

of homosexuals are well dispositioned, and of high moral character”.²⁹ Crawford’s arguments, though brief, presaged those that featured prominently in the debates about homosexual law reform in the South Australian parliament in the early 1970s.

Just two days after Crawford’s first article, South Australian Chief Secretary Lyell McEwin announced the appointment of a special committee “to consider appropriate methods of treating sexual offenders”, to be chaired by the Superintendent of Parkside Mental Hospital, alongside the acting Crown Solicitor, a doctor representing the local branch of the British Medical Association, and a representative of the Law Society. The formation of the committee, very similar in scope and representation to the British committee, was prominently reported in the South Australian press.³⁰ The committee did not present its report to parliament until September 1952, and during the intervening years the press occasionally reported on the progress of the committee. In October 1950, the *Mail* reported that a police superintendent told the committee that “[i]n spite of prosecutions and a continual drive against perverts, the number of sex offences in SA showed no signs of decreasing”.³¹ As demonstrated in Chapter 1, prosecutions of homosexual offences were at their height during this period, and this comment followed the prosecutions associated with the Lampshade Shop.

However, the South Australian committee did not believe that legalising male homosexual acts was an appropriate response. The report began with preliminary comments on sexual activity and offences, including the belief that “there is no real substitute for the inculcation in children ... of the principles of Christianity” emphasising “the fundamental virtues of self-control and respect and consideration for other people”.³² It then considered in detail aspects of certain types of sexual offences and their punishment. In its section on homosexual offences, the report stated that there was “overwhelming evidence in favour of maintaining the existing law against all homosexual practices among males”.³³ It recommended that the police should continue to strive to

²⁹ *Ibid.* The second and third parts of Crawford’s article appear in *Mail*, 14 May 1949, p.7, and 21 May 1949, p.39.

³⁰ *Advertiser*, 10 May 1949, p.3; *Port Pirie Recorder*, 11 May 1949, p.2, *Chronicle*, 12 May 1949, p.5.

³¹ *Mail*, 7 October 1950, p.7.

³² ‘Report of the Committee on Treatment of Sexual Offences’, *South Australian Parliamentary Papers*, no.58, 1952, p.1.

³³ *Ibid.*, p.6.

“detect and bring offenders before the court” as “a proper enforcement of the law will tend to discourage even the true invert from attempting to indulge his abnormal propensities” due to the “disgrace of prosecution”.³⁴ The report noted the evidence of police regarding the use by homosexuals of “certain places in the city with the apparent object of establishing association with others,” including public urinals, and lamented the men’s “habit of congregating in cafes and other places and behaving in ways that do not involve a breach of the law, but which are offensive to normal people and which are indicative of homosexuality”.³⁵ The police desired powers to deal with such behaviour “in a way similar to that applied to reputed thieves”, and the report endorsed this view by suggesting that it be made an offence to habitually consort with or frequent a place with “reputed homosexuals”, or to loiter “near any public convenience or in any public place with intent to solicit male persons to commit acts of indecency”.³⁶ The committee also suggested that “adequate lighting of all conveniences” would be a valuable measure.³⁷ The government did act quickly to introduce amendments to the laws regarding some sexual offences, but made no change to offences between adult males.³⁸

Also in 1952, the American Psychiatric Association released the first edition of the *Diagnostic and Statistical Manual of Mental Disorders*, which catalogued criteria for classifying mental disorders.³⁹ Homosexual behaviour was one on a very long list of disorders, and was placed under the heading “sexual deviation” along with “transvestism, pedophilia, fetishism and sexual sadism (including rape, sexual assault, mutilation)”.⁴⁰ Homosexual acts were now formally classified as a mental abnormality, and the pathologisation of homosexuality was at its height during this time. As I have already shown, “treatment” and “cure” for homosexual tendencies dominated debate during these years, both in formal medical circles and within any discussion that emerged in public forums.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Criminal Law Consolidation Act Amendment Act, 1952*; see *SAPD*, HA, 1 October 1952, p.727.

³⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Washington DC: APA, 1952.

⁴⁰ *Ibid.*, pp.38-9.

In August 1954, the British government announced the formation of the Committee on Homosexual Offences and Prostitution to examine the laws regarding prostitution and male homosexual acts. The Committee was chaired by Sir John Wolfenden and its findings, presented to parliament in 1957, became known as the Wolfenden Report. Earlier in 1954, public attention had been drawn to the laws against homosexuality when Lord Montagu, a member of the House of Lords, was gaoled for participating in consensual homosexual acts with two other men, though it is not universally accepted that the Wolfenden Committee was established from this motivation alone.⁴¹ The key recommendation of the Wolfenden Committee's consideration of homosexual laws was that "homosexual behaviour between consenting adults in private should no longer be a criminal offence",⁴² essentially the same recommendation that was made by the medico-legal committee in Britain in 1949. Once again, no change in the law was immediately forthcoming; Jeffrey Weeks argues that the Conservative government, heavily comprised of "backwoodsmen, interested in nothing more than the moral *status quo*" demonstrated a "crushing unwillingness" to act on the recommendations of the Wolfenden Committee.⁴³ A Homosexual Law Reform Society was established in 1958, which Weeks calls "a classical middle-class single-issue pressure group of a type which flourished in the 1960s"⁴⁴ (and therefore analogous to the Abortion Law Reform Societies), but the law would not be changed in Britain until 1967.

In addition to the series of medical and legal reports, which did not have a significant impact on public discourse,⁴⁵ the mid-1950s marked a change in the type of published material that became available for the public to consume. Much has been written about such novels, magazines and films in an international context, and as they did not uniquely affect South Australia I will not dwell on them here, except to note them as indications of a gradual liberalisation of public discussion about sex and sexuality (though not necessarily homosexuality) around the English-speaking world during the 1950s and 1960s. In the US, *Playboy* was first published in December 1953 and grew steadily in

⁴¹ See Kate Gleeson, 'Consenting Adults in Private: In Search of the Sexual Subject', unpublished PhD thesis, University of New South Wales, 2006, pp.141-2.

⁴² Lord Wolfenden *et al.*, 'Report of the Committee on Homosexual Offences and Prostitution', London: Her Majesty's Stationery Office, 1957, p.25.

⁴³ Weeks, *Coming Out*, p.168.

⁴⁴ *Ibid.*, p.171.

⁴⁵ See Willett, 'The Darkest Decade', p.122.

popularity and availability throughout the 1950s, though its import into Australia was not permitted until 1960, and individual editions were still liable to be banned.⁴⁶ Australia's censorship laws during this period were stricter than many countries; in addition to the state-based laws discussed in Chapter 1 in connection with the *Angry Penguins* prosecution, federal customs laws prohibited the importation of material judged indecent. For instance, after the 1960 prosecution of Penguin Books in the UK for publishing D.H. Lawrence's *Lady Chatterley's Lover*, the Australian government not only maintained its own ban on the novel, but also banned a book written about the case, *The Trial of Lady Chatterley*. The novel was eventually made widely available from 1965.⁴⁷

From 1970, a spate of controversial novels and plays drew attention to the state government's censorship policies. In April of that year, the play *The Boys in the Band* was performed in Adelaide after a viewing by Attorney-General Robin Millhouse at which he decided that two small cuts must be made before the play could be shown to general audiences. The *Advertiser* described that play as "full of ripe language and four letter words" and "set around a homosexual's birthday party",⁴⁸ but a review published in the paper was favourable.⁴⁹ Dunstan ridiculed the scenario, describing to a meeting of the South Australian Council for Civil Liberties the "extraordinary spectacle" of having a play performed "for the sole convenience of the South Australian Attorney-General. Seated in the theatre, script and torch in hand, our South Australian version of the Lord Chancellor ... apparently considered that he himself was strong enough to withstand any temptations".⁵⁰ In September 1970, after the election of the Labor government, Dunstan and his Attorney-General Len King moved to relax censorship laws and South Australia became the first state to permit the sale of the Philip Roth's 1969 novel *Portnoy's Complaint*, even as other Australian state governments vowed to prosecute anyone attempting to sell the book.⁵¹ Dunstan told parliament: "It is not for the Government or anyone else to tell people what they may read ... it is for the people themselves to say."⁵²

⁴⁶ Nicole Moore, *The Censor's Library*, Brisbane: University of Queensland Press, 2012, p.201.

⁴⁷ *Ibid.*, pp.245-50.

⁴⁸ *Advertiser*, 8 April 1970, p.1; 9 April 1970, p.1.

⁴⁹ *Advertiser*, 10 April 1970, p.8.

⁵⁰ Speech given by Don Dunstan to SA CCL meeting, 23 April 1970, published in *Civil Liberty*, no.7, June 1970, p.4.

⁵¹ *Advertiser*, 2 September 1970, p.6; see Moore, *The Censor's Library*, p.276.

⁵² *SAPD*, HA, 1 September 1970, p.1140.

The book could be sold to adults who requested it, though it could not be on general display in bookshops.⁵³ The move caused a sizeable stir in the media and attracted praise and vehement condemnation from correspondents to the daily papers.⁵⁴

The following year, the planned performance of the play *Oh! Calcutta!* caused an even greater controversy. The play—really a musical revue—comprised a series of sex-themed sketches featuring songs, dancing, male and female nudity and liberal use of profanities. The Adelaide season was initially permitted, but roused a considerable group of opponents. One correspondent to the *Advertiser*, who had seen the play in London, believed that the play was “degrading, disgusting, obscene, humiliating and vile”,⁵⁵ and several church spokesmen agreed that it would be an undesirable influence on South Australian society.⁵⁶ A committee, chaired by Lance Shilton of Holy Trinity Church, was formed specifically to organise formal protests against the play.⁵⁷ Naming themselves the Moral Action Committee, the group placed advertisements in newspapers which served as a template for members of the public wishing to add their voice to the protests against the play.⁵⁸ The protests continued for several months, and a Supreme Court decision eventually prevented the play’s performance in the week it was due to open.⁵⁹ Justice Hogarth found that the play would “manifestly offend—and offend many times—against the standards of decency and propriety that the law tells me exists in the community”.⁶⁰ Publicity about the play stretched from January to August, and in December a book was released by members of the Moral Action Committee, edited by Shilton, documenting their successful efforts to prevent the play from being seen in South Australia.⁶¹ Unlike *The Boys in the Band*, *Oh! Calcutta!* did not deal with homosexuality but it created a great deal of publicity about censorship and the desirability of public access to stories about sex and sexuality, and the rights of adults to choose what to view. In 1972 this

⁵³ *Advertiser*, 1 September 1970, p.1.

⁵⁴ Including *Advertiser*, 5, 7, 8, 9 September 1970, p.2; *News*, 1 September 1970, p.1; 2 September 1970, p.3; 3 September 1970, p.2; *Sunday Mail*, 5 September 1970, p.2.

⁵⁵ *Advertiser*, 15 February 1971, p.2.

⁵⁶ *Advertiser*, 15 February 1971, p.6; 22 February 1971, p.9.

⁵⁷ *Advertiser*, 22 February 1971, p.9.

⁵⁸ *Advertiser*, 3 March 1971, p.4.

⁵⁹ *Advertiser*, 10 March 1971, p.3; 7 May 1971, p.3; 3 August 1971, pp.1, 5.

⁶⁰ Justice Hogarth, cited in Lance Shilton (ed.), *No No Calcutta*, Adelaide: Brolga Books, 1971, p.75.

⁶¹ *Ibid.*

debate would be echoed by discussions about civil liberties when debating the rights of adults to choose how to behave in private.

Plays such as these attracted only a niche audience, but other portrayals of homosexuality were beginning to reach a far wider audience. By mid 1972, Australia had its first openly homosexual leading character on the immensely popular television serial *Number 96*. Despite being called a “filthy, dirty little queer!” when he revealed his sexuality, Don Finlayson was a long-standing character and was portrayed as living happily with his partner in the apartment block that gave its name to the programme.⁶² Although there had been identifiably homosexual characters in earlier Australian television programmes, such as a lesbian in a 1965 episode of the similarly popular *Homicide*, these characters tended to be the ‘villains’ and audiences were therefore encouraged to think of them as the ‘other’. In contrast, Don in *Number 96* was presented as an ordinary good man who happened to be in a homosexual relationship. His character was indicative of the changing understanding, and greater visibility, that homosexual men gained in the first years of the 1970s.

As creative works changed their portrayal of sexuality and homosexuality, so too did factual publications that moved homosexuality away from a medical and legal issue and focused instead on the politics of homosexual identity and social acceptance. Dennis Altman’s *Homosexual: Oppression and Liberation* is especially noteworthy. Published in New York in 1971 and in Australia in 1972, it received a great deal of publicity, and Altman appeared on ABC current affairs programme *Monday Conference* in July 1972 to discuss the work.⁶³

Homosexual Visibility in Australia

The increase in public portrayals and discussion of homosexuality came in a decade when law reform was beginning to be discussed in earnest in English-speaking countries. Illinois had been the first of the United States to legalise male homosexual acts in 1962, and in 1967, Britain passed an Act to legalise homosexual acts between consenting adult

⁶² Keith Howes, ‘Gays of our Lives’, *Outrage*, no.177, February 1998, p.43.

⁶³ Dennis Altman, *Homosexual: Oppression and Liberation*, Sydney: Angus & Robertson, 1972; see Willett, *Living Out Loud*, pp.55-6; ABC Television, 7:30, 6 February 2012, transcript available at <http://www.abc.net.au/7.30/content/2012/s3424275.htm>.

males in private, acting upon the decade-old recommendation of the Wolfenden Committee.⁶⁴

South Australia showed little sign that it would emulate the British reform. In an interview in 1970 about his abortion legislation, Robin Millhouse revealed that he also considered homosexual law reform important and part of his desire to move the platform of the Liberal and Country League away from the socially conservative legacy of Thomas Playford.⁶⁵ However, no change in the law was seriously canvassed in the 1960s or first years of the 1970s, despite increasing public discussion about homosexuality.

After Playford's defeat in the 1965 election, Labor took power under Frank Walsh. That year, Attorney-General Don Dunstan suggested to the South Australian Labor Caucus that it might be desirable to liberalise the laws governing homosexual acts in the manner recommended by the Wolfenden Report. He later recalled that the proposal was not met with much enthusiasm. Dunstan argued in his memoirs that the Caucus "wasn't ready for it", partly attributing members' reluctance to the scant coverage of the Wolfenden Report in South Australia.⁶⁶ It is true that the mainstream newspapers in 1957 virtually ignored the Report,⁶⁷ and it prompted no mention of homosexuality in the South Australian parliament. This was not surprising, as the state's laws against homosexual activities had been endorsed by the Playford government in 1952 and little had changed in the intervening five years. No community organisations yet existed that might formally urge reform; the Humanist Society, civil liberties and homosexual activism groups did not emerge until the 1960s. In any case, law reform in Britain was still far from inevitable. The recommendation of the Wolfenden Committee offered no certainty that homosexual acts would soon be legalised, and as I have already shown, the same recommendation had been made in 1949 by the British medico-legal committee yet no change occurred.

⁶⁴ *Sexual Offences Act, 1967*; Kate Gleeson, 'Freudian Slips and Coteries of Vice: The Sexual Offences Act of 1967', *Parliamentary History*, vol.27 no.3, 2008, pp.393-409. The law applied only in England and Wales.

⁶⁵ Therese Nicholas, 'Abortion Law Reform in South Australia', unpublished BA(Hons) thesis, University of Adelaide, 1970, pp.22-3.

⁶⁶ Don Dunstan, *Felicia: The Political Memoirs of Don Dunstan*, Melbourne: Macmillan, 1981, pp.126-7.

⁶⁷ Two short articles appeared in the *Advertiser*, 6 September 1957, p.9; 9 September 1957, p.7.

As the *Sexual Offences Act* progressed through the British parliament in 1966 and 1967, homosexuality received isolated coverage in the Australian media. The *Advertiser* reported in December 1966 that the law was likely to pass soon,⁶⁸ and prompted several letters to the editor. Dr F.M.M. Mai, a mental health academic based at the Queen Elizabeth Hospital, wrote to argue that it was time South Australia passed a similar law as it was “absurd” to imprison a homosexual man because that punishment “is likely to reinforce the practice of this perversion”. He believed that legalisation would “encourage[e] individuals to receive appropriate treatment”.⁶⁹ This was not the only time Dr Mai would comment publicly on the state’s social legislation: he later worked to oppose the abortion legislation in 1968-69.⁷⁰ As I will explore in the following chapter, this dual position—opposition to abortion but support for legalisation and medical treatment of homosexuality—was common to the Catholic Church and a number of members of the South Australian parliament. Another correspondent argued that legalisation would lead to “breeding sex perverts on a wholesale scale” and advised that “the Bible ... condemns this immorality as one of the most revulsive sins”.⁷¹ In August 1967, Rev. E. Nicholls of the Methodist Church suggested that relaxation of the laws governing homosexuality might be desirable, and attracted criticism for his position.⁷² A string of letters echoed the Biblical condemnation of homosexuality and one believed that religious support for legislation was “decadent”.⁷³ Also in 1967, an episode of current affairs show *Encounter* hosted by Barry Jones explored the issue and featured interviews with a doctor, sociologist, psychiatrist and homosexual men and women.⁷⁴

Several weeks after the passage of the British Act, Don Dunstan (now premier) raised the possibility that the laws on homosexuality, along with abortion, might be part of the focus of the planned Criminal Law Revision Committee.⁷⁵ This was the first of a series of

⁶⁸ *Advertiser*, 21 December 1966, p.6.

⁶⁹ *Advertiser*, 2 January 1967, p.8.

⁷⁰ *Advertiser*, 12 November 1968, p.2; see involvement in Human Life Research Foundation, *Southern Cross*, 22 August 1969, p.3.

⁷¹ *Advertiser*, 5 January 1967, p.6.

⁷² *Advertiser*, 16 August 1967, p.2.

⁷³ *Advertiser*, 28, 29, 31 July 1967, all p.2.

⁷⁴ Howes, ‘Gays of our Lives’, p.41. This programme is unavailable, but it appears that the homosexuals were presented anonymously.

⁷⁵ *Advertiser*, 25 July 1967, p.11.

public comments from Dunstan on the issue. In 1969 a reform measure was due to be introduced by a fellow Labor member, Lindsay Riches (after Dunstan was discouraged by Caucus from personally taking charge of the measure) but the Hall government called an election and the parliament was dissolved before the matter could be debated.⁷⁶ In a major televised speech prior to the 1970 election when the Labor Party regained power, Dunstan promised to work towards removing “ancient and outmoded” laws that “invade[d] areas of private morality”. He argued: “Liberty ... means that people should be able to live the way they wish, providing they don’t harm others or the property of others.”⁷⁷ Dunstan would use the same argument about the purpose of the criminal law to support the homosexual law reform Bill in 1972. Days after the 1970 election, Dunstan confirmed that homosexuality laws would be examined by the law review committee.⁷⁸ It is clear that the reform was important to Dunstan personally, but the issue was only very sporadically raised and would not have made a significant impact on public thinking about homosexuality except to those directly affected by the possibility of legalisation.

In 1967 the Methodist Church in South Australia appointed a commission to investigate the “questions of homosexuality and abortion in their relation to the law”,⁷⁹ amidst the legal reforms underway in Britain. The report on homosexuality was released in October 1968, but I have found no mainstream press coverage at the time. I will examine the details of the Methodist position on homosexual law reform in the next chapter, but here it is pertinent to note that the report’s findings were inconclusive due to division of opinion between the commission members. It recommended a local enquiry similar to the Wolfenden Committee, and though it did not believe an immediate change in the law was desirable, “some changes appeared to all members to be necessary”.⁸⁰ The absence of a definitive recommendation to change or retain the law may have contributed to the press’s lack of attention to the report.

⁷⁶ Dino Hodge, ‘The Okayness of Gayness: Don Dunstan’s Record in Homosexual Law Reform’, in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, p.41.

⁷⁷ Don Dunstan, ‘Televised policy speech, General Election, May 30th 1970’, available at the State Library of South Australia (hereafter SLSA).

⁷⁸ *News*, 3 June 1970, p.5; see Hodge, ‘The Okayness of Gayness’, pp.40-3.

⁷⁹ Methodist Church of Australasia, South Australian Conference, Department of Christian Citizenship, Commission on Abortion, *Report of the Commission on Abortion*, 1969, p.1. Available at SLSA.

⁸⁰ Methodist Church of Australasia, South Australian Conference, Department of Christian Citizenship, *Report of the Commission on Homosexuality*, 1968, pp.11-12. Available at SLSA.

Mentions of homosexual law reform remained rare in the South Australian press during the late 1960s. A letter to the *Advertiser* from Humanist Society president Bruce Muirden, advocating legalised abortion and homosexuality, publicly reveals the support for reform that was being expressed within the Society, but little else was said on the matter.⁸¹ The riots at the Stonewall Inn in New York in June 1969, though not immediately about law reform, did not attract coverage in the Australian press. A religious ‘Guideline’ column written by Lance Shilton, rector of Holy Trinity Church, in May 1970 addressed the question of the Bible’s attitude towards homosexuality. The column tended to deal with topical issues, and was likely prompted by the publicity about *The Boys in the Band*, the play that featured homosexual characters. Shilton wrote that homosexuality was “clearly condemned in both the Old and New Testaments”, “contrary to God’s law”, and indicative of “a disordered life”.⁸² However, the student press did pay some attention to the experience of homosexuals; Monash University student paper *Lot’s Wife* published an article by an anonymous homosexual man entitled ‘The Homosexual Villain’ as early as August 1964; it was reprinted in the University of Adelaide’s *On Dit*.⁸³ Four articles about various aspects of homosexuality appeared in *On Dit* in August 1969, written anonymously by members of the University of Adelaide community. They hoped to dispel “false taboos and fears” and lead to a “clearheaded debate on such social reforms”.⁸⁴

The first organised push for changes to laws governing homosexuality came in July 1969, marked by a front page article in the *Canberra Times* which reported that a homosexual law reform society was likely to be formed in the ACT. The move was prompted by discussions between four men: Dr Thomas Mautner, a philosophy lecturer at the Australian National University; Michael Landale, a solicitor who had recently represented a Canberra man gaoled for indecent assault; Peter Sekules, a journalist; and Dennis Rose, who had been discussing abortion law reform with Mautner when the topic of homosexual law reform arose. Mautner and Landale were named in the newspaper article,

⁸¹ *Advertiser*, 12 September 1968, p.4.

⁸² *Advertiser*, 23 May 1970, p.6.

⁸³ *Lot’s Wife*, 27 August 1964, reproduced in *On Dit*, 25 September 1964, p.8. See also Graham Willett, ‘The Origins of Homosexual Politics in Australia’, in David L. Phillips and Graham Willett (eds), *Australia’s Homosexual Histories: Gay and Lesbian Perspectives V*, Sydney: Australian Centre for Lesbian and Gay Research & Australian Lesbian and Gay Archives, 2000, p.72.

⁸⁴ *On Dit*, 5 August 1969, pp.5-6, 11-12.

and were said to have “decided to try to form a society aimed at reforming the laws relating to homosexuality in Australia”.⁸⁵ A number of letters to the editor were published in the *Canberra Times* over the next few weeks,⁸⁶ and on 27 July Mautner and Landale convened a public meeting at which the Homosexual Law Reform Society (HLRS) of the ACT was formally founded, with the position that “all sexual conduct between consenting adults in private should be beyond the scope of the criminal law”.⁸⁷ Letters and articles continued in the *Canberra Times*, including feature pieces by Sekules and Mautner,⁸⁸ and the Melbourne *Age* and national broadsheet the *Australian* published articles of considerable length dealing with the formation of the HLRS and the laws governing homosexual activity.⁸⁹ The first edition of the HLRS newsletter confidently argued that “[t]here can be no doubt that the leading newspapers of this country favour law reform”.⁹⁰ The topic was not dealt with in the Adelaide newspapers, and though the *News* did publish two letters to an advice column penned by Dame Zara Bate (wife of former Prime Minister Harold Holt) in which the anonymous correspondents admitted they were homosexual,⁹¹ no mention was made of the discussions about homosexuality taking place in the ACT.

Despite the absence of local coverage, national media allowed South Australians to learn about the HLRS. At least four of the letters received by the Society in its first months of existence were from South Australians, including from Dr Colin Brewer, who wrote to express an interest in joining “a local HLRS if a branch is formed”, though he was currently “embroiled in abortion law reform”⁹² (as noted in the previous chapter, he was an active member of the Abortion Law Reform Association of South Australia, ALRASA). Bruce Muirden from the South Australian Humanist Society wrote to request

⁸⁵ *Canberra Times*, 4 July 1969, p.1; see Graham Willett, “‘We Blew Our Trumpets and...’: The ACT Homosexual Law Reform Society”, in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, p.2.

⁸⁶ *Canberra Times*, throughout July 1969.

⁸⁷ Homosexual Law Reform Society of the ACT (HLRSACT), Newsletter no.1, 27 August 1969, p.2.

⁸⁸ *Canberra Times*, 29 July, 1, 4, 6, 7, 12-18, 20 August 1969.

⁸⁹ *Age*, 9 August 1969, p.7; *Australian*, 21 August 1969, p.8.

⁹⁰ HLRSACT, Newsletter no.1, 27 August 1969, p.5.

⁹¹ *News*, 21 July 1969, p.19; 5 August 1969, p.21.

⁹² Colin Brewer to Thomas Mautner, 15 September 1969, *Records of the Homosexual Law Reform Society of ACT*, National Library of Australia, MS8898/5.

a copy of the HLRS's draft ordinance for publication in the Humanist's next newsletter,⁹³ and Mr A. (Peter) van Rood, a committee member of the SA Council for Civil Liberties (who had also been on the committee of ALRASA) offered his assistance in campaigning for reform after reading an article on the HLRS in the *Australian*.⁹⁴ Only one of the four South Australian correspondents was unaffiliated with an organised activist group.⁹⁵ Other letters to the HLRS came from all Australian states, and New Guinea.⁹⁶ Paul Wilson, having carried out his research on public opinion towards homosexuality, abortion and prostitution, wrote to explain that he was writing a book (*The Sexual Dilemma*, published in 1971) and desired further information on the Society.⁹⁷

As Graham Willett notes, the HLRS was not a homosexual group; its origins in a conversation about abortion law reform, its membership and its stance (focused entirely on legal reform) identify the Society as a single-issue civil liberties group more akin to the Abortion Law Reform Society than to homosexual groups such as Campaign Against Moral Persecution (CAMP) that would emerge in the following years.⁹⁸ Reform was not achieved in the ACT until 1976, and Willett argues that the Society's lack of immediate success was not because its formation came at a time when there was hostility towards reform, but rather because legislators were yet to be convinced of the importance of the issue.⁹⁹ According to Willett, the HLRS

put the issue of homosexual law reform on the public agenda; it had even ... [shown] that there was real public support for decriminalisation. But in the end, it lacked the capacity to overcome the relative insignificance of the issue to those who alone had the power to change the law.¹⁰⁰

⁹³ Bruce Muirden to Thomas Mautner, November 1969, NLA MS8898/5.

⁹⁴ A. van Rood to Thomas Mautner, August 1969, NLA MS8898/5.

⁹⁵ Paul Aamodt to Thomas Mautner, 27 August 1969, NLA MS8898/5. As some letters remain, at time of writing, embargoed by the National Library of Australia, it is possible that some of these were also from South Australians.

⁹⁶ Letters to Thomas Mautner, NLA MS8898/5.

⁹⁷ Paul Wilson to Thomas Mautner, 5 September 1969, NLA MS8898/5.

⁹⁸ Willett, "We Blew Our Trumpets and..." , pp.1-2.

⁹⁹ *Ibid.*, pp.9-10.

¹⁰⁰ *Ibid.*, p.12.

Some federal parliamentarians, both Labor and Liberal, did express support for law reform, including a comment by Federal Opposition Leader Gough Whitlam in 1970 that he would support removing matters of private morality from the criminal law, but that anything other than a conscience vote would be “monstrous”.¹⁰¹ The HLRS communicated with some members about their views, but no change was forthcoming.¹⁰² Before the first Australian reform to laws governing homosexuality—prompted by an event that stirred South Australian politicians into accepting the significance of the issue—several more developments were to occur, with a deliberate focus on making homosexuals visible in Australian society.

On 19 September 1970, a feature article titled “Couples” in the *Australian* reported on the formation of Campaign Against Moral Persecution, also known as CAMP or Camp Inc, in Sydney. Significantly, the article featured interviews with the two founders of CAMP, John Ware and Christabel Poll, and identified them as homosexual. A photograph of Ware and Poll accompanied the report.¹⁰³ Publicly identifying as homosexual was a vital part of CAMP’s aim to “rid [the public] of their misconceptions and be so over-exposed to the topic that homosexuality will be accepted like red hair and freckles”.¹⁰⁴ Ware explained: “A group was formed in Canberra to agitate for homosexual law reform, but its members are not homosexuals. Camp Inc is the first genuine homosexual group in Australia”. CAMP’s own newsletter, *Camp Ink*, was first published by Ware and Poll in November 1970, and was distributed nationally, though its readership was highly unlikely to have extended very far beyond members of the group.

The formation of CAMP and its early activities have been examined in some detail by Graham Willett and Robert Reynolds, and Tim Reeves has discussed the emergence of a South Australian branch of the group.¹⁰⁵ Their accounts deal with the ideologies, intentions and actions of CAMP and its members, but my focus here is on the effect that

¹⁰¹ *Advertiser*, 1 September 1970, p.14.

¹⁰² Willett, ‘The Origins of Homosexual Politics in Australia’, pp.78-9.

¹⁰³ *Australian*, 19 September 1970, p.15.

¹⁰⁴ *Australian*, 19 September 1970, p.15.

¹⁰⁵ Willett, *Living Out Loud*, pp.33-52; Robert Reynolds, ‘CAMP Inc. and the Creation of the “Open” Homosexual’, in David L. Phillips and Graham Willett (eds), *Australia’s Homosexual Histories: Gay and Lesbian Perspectives V*, Sydney: Australian Centre for Lesbian and Gay Research & Australian Lesbian and Gay Archives, 2000, pp.133-49; Tim Reeves, ‘Poofters, Pansies and Perverts: 1972 Debate on Homosexuality in South Australia’, unpublished BA(Hons) thesis, University of Adelaide, 1992, pp.17-25.

the formation of the group had on public awareness about homosexuality. That effect began with the publication of the article in the *Australian*; Willett has argued that “[i]f the Australian lesbian and gay movement can be said to have a birthday, 19 September is it”.¹⁰⁶ The article was certainly not the first time that homosexuality had been discussed in print, but, like the group itself, it was the first time that homosexual Australians had voluntarily revealed their sexuality in a public space (with many witnesses) in order to campaign for rights and acceptance for homosexual people. In fact, the article featuring Ware and Poll was the second report about the formation of CAMP; nine days earlier, the same newspaper had published a prominent article on page three, with a photo of Ware, which began: “John Ware is a homosexual who is tired of being furtive about it”.¹⁰⁷ The discussion of the HLRS in newspapers in 1969 was held between non-homosexual people (or people not identifying as homosexual) who advocated fairness in the law for a group of people to which they did not (openly) belong, based on a liberal, civil rights position. In contrast, CAMP and its members, in their early publicity, spoke for themselves and sought to claim their place in public space. Robert Reynolds notes that the establishment of CAMP clubrooms in Sydney and Brisbane in early 1971 “could be read as a claim for a semi-public space in which homosexuality might safely, and in relative comfort, flourish”.¹⁰⁸ At the same time the group was aiming to claim discursive public space, they became confident to openly occupy physical public space. Later campaigns would also support homosexuals seeking to legitimately occupy living space and working space (by challenging rental and employment prejudice),¹⁰⁹ but all these steps towards equality first required positive public awareness of homosexuality. CAMP aimed to achieve this not simply through media attention, but through personal interactions by members within their communities.

In South Australia, no-one was yet willing to speak openly about being homosexual, though in May 1971 the *Advertiser* featured an article by journalist Shirley Despoja entitled “What’s it like... being a homosexual?” The article was one of a series, with other instalments including “What’s it like... having a legal abortion?” and “What’s it like...

¹⁰⁶ Willett, *Living Out Loud*, p.33.

¹⁰⁷ *Australian*, 10 September 1970, p.3.

¹⁰⁸ Reynolds, ‘Camp Inc’, p.142.

¹⁰⁹ See Willett, *Living Out Loud*, pp.136, 243-6.

being single at 35?”¹¹⁰ Despoja interviewed two men and one women, all homosexual, and revealed only their first names and ages. She began the article by stating that male homosexual activity was an offence, and was grateful to the men she interviewed who “risked prosecution and perhaps persecution if their identity became known. I respect their secret – and their courage.”¹¹¹ The interviewees spoke candidly but not explicitly about their own experiences of being homosexual with no other comment from Despoja, and spoke of their attitudes towards their own sexuality. One man, David, believed that the “homosexual world is an underground and most of us don’t want it any other way ... I think we have the right to rebel quietly, but I’d be the first person to faint dead away if there was anything like a Gay Liberation Front in Adelaide.”¹¹² However, he also expressed the firm desire to see community attitudes towards homosexuality change. The tone of all three interviews was positive; they expressed the difficulty of keeping their relationships secret, but none expressed dissatisfaction with their sexuality, or a desire to be heterosexual. The interviews mark a radical departure from the discourse of pity and disgust that dominated discussion of the ‘unhappy’ homosexual during the era.

A South Australian branch of CAMP was established in late 1971, but unlike Ware and Poll’s open declaration of their sexuality in the national newspaper, South Australian CAMP members did not make a point of coming out (or being out).¹¹³ Indeed, following an article about the group in the *Advertiser* in February 1972 which referred to CAMP being formed by homosexuals, vice-president Duncan Hartshorne wrote to the paper to clarify that the group was “open to all persons, male and female, married and single, who are interested in the issue of homosexual law reform and the unfortunate plight of homosexual[s]”.¹¹⁴ Separate working groups were established within CAMP on law reform, public relations, religious and moral issues, and psychology,¹¹⁵ and when in December the state government confirmed that the laws governing homosexuality would be amongst reforms considered by the Criminal Law and Penal Methods Reform Committee, the law reform group began to prepare a submission. The enquiry was

¹¹⁰ *Advertiser*, 8 May 1971, p.17; 11 May 1971, p.24; 12 May 1971, p.30.

¹¹¹ *Advertiser*, 12 May 1971, p.30.

¹¹² *Ibid.*

¹¹³ Correspondence with David Hilliard, February 2013. Notes in possession of the author.

¹¹⁴ *Advertiser*, 17 February 1972, p.5. The initial article appeared in *Advertiser*, 16 February 1972, p.22.

¹¹⁵ *Camp Ink*, vol.2 no.4, February 1972, p.10; invitations to working group meetings, February 1972, *CAMP Ephemera*, Eros Collection, Flinders University Library.

anticipated to take up to three years, and CAMP made no suggestion that they would seek to demand reform any earlier.¹¹⁶ The SA branch of CAMP (autonomous from the New South Wales CAMP)¹¹⁷ functioned in the early months largely as a social organisation, and by February 1972 had approximately 100 members, including a small proportion of women.¹¹⁸ The group began to advertise in the daily press and arranged radio interviews, including on religious radio programmes such as the Methodist ‘Sunday Focus’,¹¹⁹ and members wrote a number of letters to the newspaper as part of their aim to educate the community about homosexuality and the difficulties facing homosexuals.¹²⁰ In April, the newspapers reported that Adelaide’s first homosexual dance would be held in the Estonian Hall, and the next day announced that it had been called off after the Estonian community read about the event in the paper. They declared that “Estonians have nothing to do with homosexuals”¹²¹ and that they were “not interested in hiring the hall out to controversial minority groups”.¹²² CAMP, and homosexuality, were therefore in the early stages of developing a public profile in South Australia when Dr Duncan drowned in the River Torrens and homosexuality became front page news.

The Death of Dr Duncan

While public debate about homosexuality was slowly shifting, men who had sex with men in Australia continued to be subjected to the threat of public prosecution. Police had for decades been believed to be harassing homosexual men,¹²³ and the death of a man on a homosexual beat in Adelaide in May 1972, strongly believed to be at the hands of police officers, was therefore not an unforeseeable event that arose out of nowhere though it likely appeared that way to most South Australians at the time.

¹¹⁶ *Camp Ink*, vol.2 no.4, February 1972, p.10; *Advertiser*, 15 December 1971, p.2; see Reeves, ‘Poofters, Pansies and Perverts’, pp.20-1.

¹¹⁷ Reeves, ‘Poofters, Pansies and Perverts’, p.21.

¹¹⁸ ‘Calender [sic] January/February 1972’ and ‘March Calendar’, *CAMP Ephemera*, Eros Collection, Flinders University Library; Reeves, ‘Poofters, Pansies and Perverts’, pp.22-3.

¹¹⁹ *Advertiser*, 17 April 1972, p.4; 19 April 1972, p.30; see Reeves, ‘Poofters, Pansies and Perverts’, pp.24-5.

¹²⁰ *Advertiser*, 17, 18 & 19 February 1972, p.5; 15 March 1972, p.5; see Reeves, ‘Poofters, Pansies and Perverts’, pp.21, 31; Correspondence with David Hilliard, 2013.

¹²¹ *News*, 19 April 1972, p.10.

¹²² *Advertiser*, 20 April 1972, p.3; also 19 April 1972, p.8.

¹²³ See Dino Hodge, ‘The Police, the Press and Homophobia in South Australia: 1941-1991’, *Melbourne Historical Journal*, vol.39, 2011, pp.121-2.

Just after nine o'clock on the morning of 11 May 1972, the body of a man was pulled from a stretch of the River Torrens north of the Adelaide CBD. The following day, an article on the inside pages of the *Advertiser* reported that police hoped a set of car keys found on the man would help to identify him, and that they were “hunting four or five young men who are alleged to have thrown the dead man and a second man into the river”.¹²⁴ The next day, the paper identified the man as Dr George Duncan, a law lecturer at the University of Adelaide. He had been thrown into the river late on Wednesday night, along with another man, Roger James, who survived with a broken ankle.¹²⁵ Duncan had recently arrived from England, and had no family or any close friends in Adelaide.

The story became front page news a week later when the Saturday *Advertiser* published a large article headed “Police questioned over river death”. Several police officers from the vice squad had been questioned about their involvement. The paper reported:

two members of the vice squad had been in the vicinity when they visited a lavatory near City Bridge because one of them had felt sick. They had been driving home from a party, held after the Vietnam protest march in which the sick man inhaled fumes from a bomb.¹²⁶

Duncan's death continued to be a presence in the newspapers, and prompted an editorial in the *Advertiser* on 2 June and publication of correspondence between the Commissioner of Police and the head of the University of Adelaide's law school, who, in the absence of Duncan's family, pressed for a full investigation into the conduct of the police officers.¹²⁷ The mainstream press followed the case closely, frequently dedicating lengthy articles to the progress of the investigation, allegations against vice squad members, the inquest and the investigation carried out by Scotland Yard detectives over the months following Dr Duncan's death. The case was featured on the front page of the *Advertiser* on eighteen separate days between 20 May and the end of July (see Figure 4.1), nine times on page 1

¹²⁴ *Advertiser*, 12 May 1972, p.9.

¹²⁵ *Advertiser*, 13 May 1972, p.4.

¹²⁶ *Advertiser*, 20 May 1972, p.1.

¹²⁷ *Advertiser*, 2 June 1972, pp.5, 8.

of the *News*, and four times on the front page of the Sunday paper the *Sunday Mail*.¹²⁸ The impact of the case cannot be understated: this was an enormously prominent story and it would have been very difficult for any resident of Adelaide to avoid hearing about Duncan's death.



Figure 4.1: Front page of *Adelaide Advertiser*, 21 June 1972.

However, the reason for the presence of so many men at the riverbank at 11pm on a Wednesday night was not clearly articulated in the daily press for some weeks. On 3 June, the *News* explained that Duncan's death "occurred on the bank of the Torrens which is known as a favourite meeting place for Adelaide's homosexuals. Was Mr [sic] Duncan homosexual? Reports say an autopsy will shed some light on this."¹²⁹ The *Advertiser* was far less explicit two days later when it reported that police "have made extensive

¹²⁸ *Advertiser, News and Sunday Mail*, May-July 1972.

¹²⁹ *News*, 3 June 1972, p.5.

enquiries among Adelaide's homosexual community"¹³⁰ but did not clarify the connection until 8 June, when a front page article revealed that the pathologist at the inquest into Duncan's death confirmed the deceased had been a "passive homosexual".¹³¹ As Tim Reeves notes, the details of this determination were "politely left unsaid by the *Advertiser*".¹³²

However, other publications had written earlier and in greater detail on the homosexual angle. In its edition of 27 May the *Review* argued that his death was "probably at the hands of men who mistook him for a homosexual".¹³³ The *Review* and, from July 1972, its post-merger version, *Nation Review*, closely resembled the university press; it was not aimed at a wide or general readership, but rather a middle-class, university-educated audience that, on the whole, leaned decidedly to the left of the political spectrum. Together with several of the university periodicals, they pursued the Duncan case closely. *National U*, the periodical of the Australian Union of Students, reported in its edition of the fortnight ending 9 June that several people had contacted their correspondent claiming to have witnessed the "slaying"¹³⁴ but were afraid to speak publicly. The article, by an anonymous Adelaide writer, reinforced the evidence against the members of the vice squad, and argued that:

If the police are to be left in charge of this case, the public and the government may well be condoning the use of blackmail and intimidation of homosexuals and others in order to prevent the bringing of justice of the perpetrators [*sic*] of a vicious, senseless and wilful crime.¹³⁵

¹³⁰ *Advertiser*, 5 June 1972, p.1.

¹³¹ *Advertiser*, 8 June 1972, p.1.

¹³² Tim Reeves, 'The 1972 Debate on Male Homosexuality in South Australia', in Robert Aldrich (ed.), *Gay Perspectives II: More Essays in Australian Gay Culture*, Sydney: Department of Economic History with The Australian Centre for Gay and Lesbian Research, University of Sydney, 1994, p.159.

¹³³ *Review*, 27 May 1972, p.1.

¹³⁴ *National U*, vol.8 no.6, fortnight ending 9 June 1972, p.1.

¹³⁵ *Ibid.*, p.2.

A month later, *National U* anticipated demand for a Royal Commission “into the incidence of police victimization of homosexuals”.¹³⁶ It asserted that “public awareness of the homosexual community is at an all-time high” and that CAMP “have been making their fair share of political capital out of all this”, and also indicated that the legal profession was in the early stages of preparing some sort of suggestion for law reform.¹³⁷ But it was the Australian National University student newspaper *Woroni* that featured the most detail: an article, photographs of the area around the Torrens, a transcript of a police officer’s evidence, and two interviews with anonymous men who told of their interaction with police in the parklands. These interviews were carried out by Paul Foss of *Woroni* (who declared himself in the article to be homosexual), and Jon Ruwoldt of CAMP (SA).¹³⁸ It also reprinted an article from *Camp Ink* summarising the Duncan case.¹³⁹ Much of this material was reprinted in the August edition of *National U*.¹⁴⁰ The University of Adelaide newspaper *On Dit* published several feature articles on homosexuality during this time, stemming from a Gay Liberation meeting held on campus in late July (discussed in the following chapter), but did not dwell on the Duncan case despite his connection with the university.¹⁴¹

In mid June, the *Advertiser* reported the government’s pledge to ensure that any witness coming forward would be “immune from any prosecution for any personal activities as a homosexual”.¹⁴² The connection between homosexuality and the threat of the criminal law slowly became a matter of public discussion, aided by one of a series of stereotype-heavy articles by *Advertiser* journalist John Miles about “the homosexual scene in Adelaide” which focused on the extent of policing homosexual activities.¹⁴³ Then on 1 July, the *Saturday Advertiser* editorial took an unequivocal line: “Legalise homosexuality”. It called for the removal of legal sanctions against consenting adult males in private, arguing: “The State has no business in its citizens’ bedrooms and the

¹³⁶ *National U*, vol.8 no.7, fortnight ending 10 July 1972, p.2.

¹³⁷ *Ibid.*

¹³⁸ *Woroni*, 31 July 1972, pp.1-5. There was some later dispute about this article, as outlined in letter from Jon Ruwoldt to Don De Bats, 6 August 1972, *Homosexual Law Reforms*, South Australian Council for Civil Liberties Collection, Flinders University Library, CCL/049.

¹³⁹ *Ibid.*, p.6.

¹⁴⁰ *National U*, vol.8 no.8, week ending 7 August 1972, pp.1-3.

¹⁴¹ *On Dit*, 4 July 1972, p.7; 11 July 1972, p.5.

¹⁴² *Advertiser*, 12 June 1972, p.9.

¹⁴³ *Advertiser*, 23 June 1972, p.4.

sooner it is completely removed from them, the better".¹⁴⁴ The *Review* summarised the discussions in the daily papers, and argued:

the time couldn't be more ripe for something to be done ... [Duncan's] death has caused a wide awareness of, and profound public sympathy for, the plight of the homosexual in our society ... if there is any hope for legalisation of homosexuality anywhere in Australia in the near future, it is in South Australia *now* ... Perhaps Dr Duncan can still become something of a martyr among homosexuals. Is there one South Australian politician or party willing to move *NOW*?¹⁴⁵

A private member's Bill to liberalise the law was introduced into the South Australian parliament three weeks later. The investigations into Dr Duncan's death would continue until 1990, but his murder remains officially unsolved.

From the 1940s to the late 1960s, homosexuality very slowly entered the public discourse and moved away from an association purely with indecency that rightly deserved criminal sanctions. Discussion of law reform increased after the British Act of 1967 and the establishment of the Homosexual Law Reform Society in Canberra in 1969, but it was not until the death of Dr Duncan in May 1972 that reform came close to being achieved. However, despite the undisputable mood that 'something had to be done' in the wake of Duncan's death, it is clear that the overwhelming desire for 'something' did not extend to acceptance of homosexuality. As Kate Gleeson and Graham Willett have argued, the construction of an acceptable code of homosexual behaviour ("consenting adults in private"), though appearing to be a libertarian ideal, in fact reinforces the threat of the homosexual as a predator and represents continued interference by the state into the behaviour of men who engaged in homosexual acts.¹⁴⁶ I will show in the next chapter that the South Australian law reform debates of 1972, both within and outside parliament, revealed that men who had sex with men were still considered appropriate subjects for public scrutiny.

¹⁴⁴ *Advertiser*, 1 July 1972, p.5.

¹⁴⁵ *Review*, vol.2 no.38, 8-14 July 1972, p.1074.

¹⁴⁶ See Willett, *Living Out Loud*, p.22; Gleeson, 'Consenting Adults in Private', p.321.

Chapter 5

The Homosexuality Debates

The Bill to make lawful homosexual acts between consenting adult males in private was introduced to the South Australian Legislative Council by the Hon. Murray Hill less than three months after Dr Duncan was murdered, and was wholly inspired by the new awareness of homosexuality that came about as a result of Duncan's death. Hill, a member of the opposition Liberal and Country League (LCL), introduced the private member's Bill at a time of profound disharmony within his party. Several months earlier, Steele Hall had resigned as Leader of the Opposition and moved to form a breakaway faction, the Liberal Movement (LM), with five other moderate LCL members in the lower house. In September, three Legislative Councillors joined them: Murray Hill, Frank Potter and Martin Cameron.¹ It is not certain how much influence the party instability had on Hill's decision to introduce the homosexual reform; he had not yet formally joined the LM, and as I have shown in Chapter 3, party discipline within the Legislative Council had traditionally been less rigid than in the House of Assembly. Nonetheless, Hill may have considered the issue a good opportunity to effect a meaningful and progressive reform and thereby establish something of a precedent for the new moderate force in state politics.² Even if the factional dispute was not an explicit motivation for his move, the fact that the legislation was introduced by a soon-to-be LM member reveals the strength of the progressives within the South Australian parliament that tends to be obscured in the popular memory of that state in the 1970s – the 'Dunstan Decade'. This chapter will examine the debates about the Bill in 1972, both within and outside the parliament. It reveals the attitudes towards homosexuality that were expressed during the passage of the Bill, and assesses why the reform passed, but was amended to stop short of fully removing the crime of homosexual activity from the law.

¹ Steele Hall *et al.*, *A Liberal Awakening: The LM Story*, Adelaide: Investigator Press, 1973, pp.5-7, 91.

² See *ibid.*, pp.137-9.

It should be noted that during the course of the debates about homosexuality, parliament was also considering a Bill aiming to repeal some aspects of the 1969 abortion legislation, in order to restrict the availability of the procedure. A large anti-abortion rally was held in May 1972, just weeks after Dr Duncan's death; a petition of over 43,000 signatures was presented to parliament in July, and the Bill was introduced into the House of Assembly by Labor's Terry McRae on the same day that Hill introduced his Bill on homosexual offences into the Legislative Council. The abortion Bill was rejected several weeks later.³ However, the presence of both issues in the media and the parliament at the same time led some to make comparisons between the two issues, and reveals the effect that the 1969 abortion legislation had on the legislation of 'moral' issues in South Australia during these years. It allowed opponents the opportunity to invoke the argument of the 'slippery slope', but also potentially served to encourage some politicians to change the law on homosexuality knowing that there was a recent precedent for the parliament to involve itself in the question of equating crime with sin.

Activism

The groups that first supported homosexual law reform in the 1960s, the Council for Civil Liberties (CCL) and the Humanist Society, took an interest in but did not lead the campaign for reform in South Australia in 1972. The New South Wales CCL had expressed support for law reform in the wake of the British Act of 1967, and resolved to approach state parliamentarians and ascertain the position of the churches on the issue.⁴ A South Australian branch of the CCL was formed in early 1968, but its early publications reveal little on attitudes to homosexual law reform. The reform was consistent with the views of the CCL, as emphasised in a speech by Don Dunstan to the SA CCL in April 1970 in which he argued that the laws "which restrict the private sexual behaviour of consenting adults" were part of a series of laws with "illogical and inconsistent provisions that were the product of 19th Century repressions".⁵ He continued: "Members of society may pass judgement upon the morality of other people's behaviour. But they have no right to enforce rules upon others which do not involve the protection of person or

³ *South Australian Parliamentary Debates* (hereafter *SAPD*), House of Assembly (hereafter *HA*), 2 August 1972, pp.481-500, 616-32, 819-53.

⁴ NSW Council for Civil Liberties, 'Newsletter', no.12, September 1967, p.5.

⁵ Speech given by Don Dunstan to SA CCL meeting, 23 April 1970, published in *Civil Liberty*, no.7, June 1970, p.5.

property from harm from others.” This concisely summarised the position of the CCL. At the height of public debate about homosexuality in July 1972 the president of the SA CCL wrote to the *Advertiser* to support law reform, and in August he wrote an open letter to members of parliament, but the group was otherwise not prominent in the progress of the reform, despite the CCL having formed a sub-committee on homosexual law reform prior to Dr Duncan’s death.⁶

The Humanist Society had also expressed interest in the issue after the British Act. In April 1968, Adelaide psychologist Dr John Court addressed a Humanist Society meeting on the topic of ‘Sexual Deviations’.⁷ The lecture was later published in the Society’s national periodical, *Australian Humanist*.⁸ Court argued that “it is proper as a Christian to support liberalisation of the legal position here as has occurred in Britain, while at the same time believing that homosexuality is morally wrong.”⁹ However, he warned that there was a “real danger that if one legalised homosexual practices, these too will appear also to have a moral sanction”.¹⁰ Court echoed the position of the major churches that though removing criminal sanctions might be acceptable, it should not, and must not, suggest to the community that homosexual behaviour was therefore condoned. He argued that the “homosexual repeatedly finds his affairs short-lived and unrewarding” and that “an unsatisfied emptiness” tended to characterise long-term lesbian relationships, as only in a “God-ordained” heterosexual relationship could individuals “experience[e] a deeply satisfying form of behaviour”.¹¹ Though he appeared to accept law reform, Court’s religious-based moral judgement of homosexual activity was not well-received by the Humanists, and a lengthy response to his arguments was published in the following edition of the *Australian Humanist*.¹²

⁶ *Advertiser*, 6 July 1972, p.5; W.B. Fisse to Members of Parliament, 4 August 1972 and A. van Rood to Errol Bray, 14 April 1972, *Homosexual Law Reforms*, South Australian Council for Civil Liberties Collection, Flinders University Library, CCL/050. The CCL would play a larger, though not public, role in 1973, when communicating with Peter Duncan about the wording of his Bill to fully legalise homosexual acts. See Peter Duncan, interview with Dino Hodge, September 2009, transcript in possession of Dino Hodge.

⁷ *Humanist Post*, vol.6 no.4, April 1968.

⁸ *Australian Humanist*, no.6, July 1968, pp.20-6.

⁹ *Ibid.*, p.25.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p.26.

¹² *Australian Humanist*, no.7, October 1968, pp.33-6; also letter, p.38.

In late 1969, Thomas Mautner addressed the NSW Humanist Society on the Homosexual Law Reform Society he had co-founded in Canberra. The NSW Humanists formed a sub-committee to urge law reform, which would receive assistance from the Canberra group.¹³ A resolution was adopted at the 1970 national conference to urge the state societies to “form a group dealing with homosexuality with the object of pressing for a reform in the law”,¹⁴ and a Victorian sub-committee was formed, but there is no trace of a similar group in South Australia—though it may have existed—despite the local *Humanist Post* paying some attention to the formation of the Homosexual Law Reform Society in Canberra in 1969.¹⁵ Letters appeared in the Humanists’ national periodical throughout 1970 on homosexuality and law reform; one was from John Ware, founder of Campaign Against Moral Persecution (CAMP) in Sydney, but not all were entirely supportive.¹⁶ The Victorian society was particularly active, publishing in 1970 a pamphlet entitled ‘The Homosexual and the Law: A Humanist View’.¹⁷ It argued that “when sexual acts are committed in private between consenting adults, then it is difficult to see what harm is done, either to the individuals concerned or to society”,¹⁸ and that the law was irrational and unenforceable. The pamphlet considered the matter of public opinion, pondering whether it was public opinion that shaped the law, or the law that shaped public opinion, and labelling “naive” a hope that a change in the law would immediately change public attitudes towards homosexuals.¹⁹ Articles and letters on homosexuality continued in late 1971 and 1972, with Lex Watson confidently predicting that homosexual law reform would occur in “most, if not all” Australian parliaments within the next decade.²⁰ However, after the death of Dr Duncan and during the debates in South Australia, the Humanist Society did not appear to take an active role in lobbying politicians to support reform. The President of the Humanist Society of South Australia, John Chandler, wrote to the *Advertiser* in July 1972 in response to a letter from John Court. Chandler stated that

¹³ *Viewpoints* (Newsletter of the NSW Humanist Society), November 1969. See also *Australian Humanist*, no.12, December 1969.

¹⁴ *Australian Humanist*, no.14, June 1970, p.48.

¹⁵ *Humanist Post*, vol.7 no.10, October 1969, p.4; *Australian Humanist*, no.13, March 1970, p.4.

¹⁶ *Australian Humanist*, no.13, March 1970, pp.34-5; no.14, June 1970, p.42; no.15, September 1970, pp.33-4.

¹⁷ Humanist Society of Victoria, ‘The Homosexual and the Law: A Humanist View’, pamphlet, 1970.

¹⁸ *Ibid.*, p.3.

¹⁹ *Ibid.*, p.4.

²⁰ *Australian Humanist*, no.20, December 1971, p.36.

“humanists welcome ‘The Advertiser’s’ firm stand on the issue”,²¹ but otherwise made no statements on the matter. Prominent Humanist member Bruce Muirden was approached by CAMP to speak at the forum on homosexuality held at the University of Adelaide on 29 July.²² Though other groups expressed internal support for homosexual rights, such as the observation in the South Australian Women’s Liberation newsletter in July 1972 that the “oppression of homosexuals is closely analogous to the oppression of women”,²³ it was only CAMP that launched a large scale campaign to influence the votes of parliamentarians. One other group played a small but apparently important role, however; the Moral Freedom Committee (a group that did not otherwise gain any publicity at all) wrote an open letter to parliamentarians in late June arguing that “homosexual behaviour is a moral matter and therefore not the laws [*sic*] business” and that the issue “is of such social and moral importance that it should not have to wait ... to be resolved” until the Criminal Law and Penal Methods Reform Committee had delivered its findings.²⁴ Murray Hill later referred to this letter as a motivation for introducing his Bill.²⁵ However, it was CAMP that actively campaigned to ensure the Bill was passed by parliament.

Duncan’s death had brought about public awareness of homosexuality far beyond that which CAMP had already created, and so the group quickly sought to find ways to capitalise on the growing mood for law reform. On the Sunday after Murray Hill’s announcement that he would introduce a reform Bill, the premier’s Press Secretary Peter Ward met with a group of CAMP members and advised them that the government wished to see the Bill pass, and encouraged the group to concentrate their lobbying efforts on members of the Legislative Council.²⁶ Ward told them that Labor members of the House of Assembly would support the measure—as they held a majority in that house, it would therefore pass—but the Council still retained the effects of the malapportionment and

²¹ *Advertiser*, 5 July 1972, p.5.

²² Jon Ruwoldt to Bruce Muirden, 21 June 1972, *Humanist Society of South Australia*, State Library of South Australia, SRG 741/5/4.

²³ *Liberation*, no.13, July-August 1972, p.1.

²⁴ Moral Freedom Committee and Association, ‘Open Letter to South Australian Politicians’, 21 June 1972, *Homosexuality*, Dunstan Collection, Flinders University Library, DUN/VF7 Drawer 2; *Advertiser*, 23 June 1972, p.6.

²⁵ *SAPD*, Legislative Council (hereafter LC), 2 August 1972, p.464.

²⁶ Correspondence with David Hilliard, February 2013. Notes in possession of the author. See also Tim Reeves, ‘Poofters, Pansies and Perverts: 1972 Debate on Homosexuality in South Australia’, unpublished BA(Hons) thesis, University of Adelaide, 1992, p.43.

limited franchise of the Playford era. Of the four Labor members, only Tom Casey was likely to oppose the Bill, but there were sixteen LCL members, many of whom would need to be convinced of the merits of the legislation. Furthermore, because Murray Hill was introducing the reform as a private member's Bill in the Legislative Council it would have to pass the Council prior to reaching the supportive House of Assembly.

CAMP was inexperienced at lobbying and sought advice from a group recently involved in successful parliamentary activism: the Abortion Law Reform Association of South Australia (ALRASA). In early July, CAMP members Warren Harrison and David Hilliard visited Jill Blewett, an ALRASA committee member, for advice on effective ways to lobby politicians.²⁷ CAMP's first move was to undertake a letter-writing campaign, sending multiple letters to parliamentarians during July. The first invited them to a Public Forum to be held on 29 July at the University of Adelaide, examining the issue of homosexuality.²⁸ On 10 July, letters were sent to every politician with a copy of Brian Magee's book *One in Twenty*, one of the few books published at the time on the nature of homosexuality; the title referred to the author's estimate of the prevalence of same-sex attraction. The letter advised members that CAMP also had available copies of D.J. West's *Homosexuality*, which they would send if the politician desired.²⁹ Several replied that they would like the second book, and Labor member Ron Payne even forwarded three dollars to CAMP to "cover any outlay".³⁰ (During the debates that followed, Payne expressed full support for the measure and had clearly studied the available literature.)³¹ On 11 July, a letter was sent to MPs arguing for legalisation of homosexual acts and the removal of discrimination against homosexuals. Several days later, another batch of letters reached the parliamentarians, this time in the name of D.G. Woodards, supporting the Bill that had been announced but not yet introduced by Murray Hill.³² Jon Ruwoldt, representing CAMP's Religious and Moral Issues group, sent copies of the Anglican Diocese of Melbourne's 1971 Report on Homosexuality to Attorney-General Len King and Ren DeGaris, Leader of the Opposition in the Legislative Council, and possibly to

²⁷ Correspondence with David Hilliard, 2013.

²⁸ Letters from parliamentarians to Michael Cooper, CAMP correspondence, in possession of David Hilliard.

²⁹ *Ibid.*

³⁰ Letter from Ron Payne to Michael Cooper, 14 July 1972, CAMP correspondence.

³¹ *SAPD*, HA, 18 October 1972, pp.2212-13.

³² Letters from parliamentarians to D.G. Woodards, CAMP correspondence.

others.³³ LCL member David Tonkin wrote in reply to another CAMP letter that he felt some degree of reform was “long overdue” and the matter had been “brought ... very much to the fore” by “the most unfortunate episode involving the late Dr Duncan”.³⁴ Murray Hill also received supportive correspondence from CAMP; Hill thanked Roger Knight for one such letter, mentioning that “the number of letters that I am receiving in support of the proposal far exceed the number which are against the idea”.³⁵ The letter writing continued throughout the months that the Bill was before parliament; in October, CAMP members were urged to send letters: “If each member could write four or five letters ... much could be achieved ... You need not write as a homosexual, but only as a concerned citizen.”³⁶ CAMP members also arranged to attend a regular Monday morning meeting of the LCL Legislative Councillors, along with Anglican and Methodist ministers, psychiatrists and the University of Adelaide Law Professor, Horst Lucke, though not all Councillors attended.³⁷ A CAMP periodical also encouraged members to attend parliament and watch the proceedings: “At time the speeches can be quite fun. If you have a free Wednesday afternoon [the time allocated for debate of private member’s Bills] why not roll along?”³⁸

CAMP made a considerable effort to contact religious ministers and churches. In June and July, a letter was sent by the Religious and Moral Issues group to “all parish clergy of the Anglican, Methodist, Roman Catholic, Presbyterian and Congregational Churches in the Adelaide metropolitan area”,³⁹ from a list that they had to collate themselves and that comprised some 370 clergy.⁴⁰ CAMP members also addressed meetings of Methodist and Presbyterian churches, the Jewish Youth League, a medical-clerical group at the Parkin-Wesley Theological College, and wrote to *The Lutheran* and *Accent* (the paper of the

³³ Attorney-General’s Department to Jon Ruwoldt, 27 July 1972; letter from R.C. DeGaris to Jon Ruwoldt, 4 August 1972, CAMP correspondence.

³⁴ David Tonkin to M.O. Cooper, 27 July 1972, CAMP correspondence.

³⁵ Murray Hill to G.R. Knight, 25 July 1972, CAMP correspondence; see also Murray Hill to CAMP Secretary, 19 July 1972, CAMP correspondence.

³⁶ *Canary*, vol.1 no.2, October 1972, p.8; see also letters from parliamentarians to Roger Knight, CAMP correspondence.

³⁷ *Canary*, vol.1 no.3, November 1972, p.10; correspondence with David Hilliard, 2013.

³⁸ *Campcites*, no.1, September 1972, p.1.

³⁹ *Canary*, vol.1 no.2, October 1972, p.10.

⁴⁰ David Hilliard, ‘20 Years On’, notes from address to the Uranian Society, Adelaide, 31 May 1992, in possession of David Hilliard.

Catholic Graduate's Association).⁴¹ David Hilliard of CAMP met personally with Anglican Bishop T.T. Reed.⁴² Some efforts were also made to influence public opinion, though at this stage the political action took precedence. Badges were printed and distributed that read "How Many More Duncans? Legalise Homosexuality Now,"⁴³ and the public forum on homosexuality to which politicians had been invited was held on 29 July at the University of Adelaide, organised by CAMP and Campus CAMP, the university branch of the group. Nine speakers addressed the forum, comprising two psychiatrists (Dr F.F. Mai and Dr Vance Tottman); Dr John Court, who supported behavioural therapy for homosexuals; the Rev. Keith Smith and the Rev. Keith Seaman, both of the Methodist Church; a social worker (Adrian Watkins); Bruce Muirden of the Humanist Society and also a government press secretary; and history and politics academics from Flinders University (Jill Matthews and David Hollinsworth).⁴⁴ Campus CAMP's periodical reported that over 300 people attended the forum,⁴⁵ but Murray Hill was the only politician to take up the invitation and the event was not reported in the press.⁴⁶ The speeches were published later in 1972 in a small book entitled *Homosexuality in South Australia*.⁴⁷

The influence of CAMP on the passage of the legislation is difficult to assess. It is evident that the group was not prepared for the campaign; the South Australian branch had formed only six months earlier and law reform was not its chief concern. CAMP had yet to make a significant impact on public or political opinion on homosexuality at the time of Dr Duncan's death, though the mood had liberalised a little in the years following the British Act and after activity in the eastern states in 1969 and 1970. However, CAMP was the sole active lobby group in favour of the legislation (the active contributions of the Humanist Society and Council for Civil Liberties appear to have been minimal), and did carry out a—somewhat—planned campaign, particularly targeting members of the

⁴¹ *Campcites*, no.1, September 1972, p.2.

⁴² Hilliard, '20 Years On'.

⁴³ Reeves, 'Poofers, Pansies and Perverts', p.44.

⁴⁴ 'Homosexuality: A Summary of Speeches Made to the Forum on Sexual Oppression and Liberation', 29 July 1972, p.1, *CAMP Ephemera*, Eros Collection, Flinders University Library.

⁴⁵ *Campcites*, no.1, September 1972, p.1.

⁴⁶ Reeves, 'Poofers, Pansies and Perverts', p.45; Hilliard, '20 Years On'.

⁴⁷ *Homosexuality in South Australia: A Collection of Writings from South Australia 1972*, Adelaide: CAMP SA, 1972.

Legislative Council. Whether their efforts changed the mind of any Legislative Councillors is impossible to ascertain; none admitted to a change of heart, but that is not surprising. The stream of letters in support may have provided encouragement to parliamentarians concerned that this would be an unpopular measure; it may also have worked against the activists, if politicians did not desire to be swayed by a minority interest pressure group. Graham Willett has suggested that although CAMP did its best under the circumstances, more effort could have been made in some areas of activism, particularly targeting letters to the editor, where most correspondents wrote in opposition of the reform.⁴⁸ It is certainly true that CAMP's efforts were targeted more at convincing politicians than raising public awareness during this time, though with a Bill already in parliament that would likely have seemed the most sensible immediate strategy. It is reasonable to conclude that CAMP was a valuable counter-presence to the arguments of opponents. CAMP's campaign was at its most effective when rebutting the position of individuals such as John Court, and when attempting to demythologise 'the homosexual' for lawmakers who were compelled to determine their position on a subject that most would never before have considered in any detail. This role alone was highly valuable, as it involved the need to break down the status quo, which the opponents of reform had merely to reinforce.

One other group dedicated to homosexual causes emerged during 1972. In August, the Adelaide chapter of Gay Liberation was formed at a meeting held at the University of Adelaide, reported by the *Advertiser* to have been attended by about 300 people who were "mainly young and almost half women".⁴⁹ Activists and academics Dennis Altman and Lex Watson travelled from Sydney to speak at the meeting, where they criticised two aspects of the Bill currently before parliament – the clause dealing with procurement, and the age limit of 21 maintained despite 18 recently being advocated as the age of adulthood. Instead of the relatively limited terms of the Bill, Watson advocated the removal of all laws related to consensual sexual acts; equal economic and legal rights for homosexual couples; the institution of wide-ranging anti-discrimination laws, and a public education campaign to end prejudice against homosexuals.⁵⁰

⁴⁸ Graham Willett, *Living Out Loud: A History of Gay and Lesbian Activism in Australia*, Sydney: Allen & Unwin, 2000, pp.93-4.

⁴⁹ *Advertiser*, 24 August 1972, p.9.

⁵⁰ *Ibid.*

The most prominent opponents to the reform were Community Standards Organisation (CSO),⁵¹ the group formerly known as the Moral Action Committee and led by Lance Shilton, Rector of the Anglican Holy Trinity church on North Terrace in the city. The Moral Action Committee had formed to oppose the performance of *Oh! Calcutta!* in 1971, and mobilised again when homosexual law reform seemed likely to occur. They utilised the language of religious morality to express their opposition; though, as I will show in the following section, they differed from the Anglican hierarchy's position on homosexual law reform. As with the groups that opposed abortion, there is little material available on the actions of this group other than that which was publicly published in the daily press. The branch newsletter of the CSO in August 1972 revealed that "a delegation [had] waited on the Hon. C.M. Hill, MLC, to request him to consider postponement of his proposed Private Members Bill on Homosexuality",⁵² and also that MPs had been sent a letter outlining the views and recommendations of the CSO on homosexuality.⁵³ A five page press release was also issued by the group in late July.⁵⁴ Entitled 'Considerations Against Following the Change in the Law Regarding Homosexuals Adopted in Britain', it was a "direct critique" of the CAMP statement to clergy,⁵⁵ and was reported by the *News* but not the *Advertiser*. It argued that the death of Dr Duncan would cloud judgement with emotion, and that society was not prepared for "hasty legislation". It suggested that treatment—"a provision for help"—might be included in the law, and argued that a law was needed "not *against* homosexuals but *for* them".⁵⁶ The CSO believed that the homosexual law was only one of many where liberalisation was sought, and identified a number of other laws under general debate in the media at the time including the abolition of religious education in schools, censorship of pornography, drug policies, "easy abortion" and "easy divorce", and euthanasia. The *News* reported that the CSO pamphlet warned: "Those who support the change on homosexuality should consider whether they want the package deal."⁵⁷ The focus of the CSO was, as their name suggested, on

⁵¹ On the origins of the group, see *Community Standards News*, no.15, October 1970, p.1; no.19, September 1971, p.1.

⁵² Community Standards Organisation, SA Branch, 'Newsletter', August 1972, p.2.

⁵³ *Ibid.* The press release is available in *Homosexual Law Reforms*, South Australian Council for Civil Liberties Collection, Flinders University Library, CCL/049.

⁵⁴ *Ibid.*

⁵⁵ Reeves, 'Poofters, Pansies and Perverts', pp.44-5.

⁵⁶ *Ibid.*, p.45; see also *News*, 27 July 1972, p.5.

⁵⁷ *News*, 27 July 1972, p.5.

maintaining standards of moral behaviour in the community, and the ‘slippery slope’ was regularly invoked. Once laws regarding homosexual behaviour were repealed, or once one ‘immoral’ play such as *Oh! Calcutta!* was permitted to be performed, they argued that more immoral laws would follow.⁵⁸ As I will show later in this chapter, these arguments were used by some politicians during the parliamentary debates, and also in letters to newspapers. In addition to this circular released by CSO, representatives of the group appeared on local radio programmes to argue their position. The CSO public relations officer Peter Daniels spoke on the Methodist ‘Focus’ radio programme in early November, after the passage of the legislation, arguing that homosexuality was becoming more “blatant” and had “an encouraging effect” for others to become involved in the behaviour.⁵⁹ These comments were reported in the *Advertiser*, but as radio programming has not been preserved it is difficult to establish the extent to which CSO used the medium to speak about the homosexuality Bill. Their presence in the daily press was relatively limited, but two members of the group led the opposition as individuals: Lance Shilton and Dr John Court.

In addition to his role as Rector of Holy Trinity, Lance Shilton wrote a regular ‘Guideline’ column for the *Advertiser*. His columns often addressed an aspect of morality or religion with relevance to a current news story, and two editions of ‘Guideline’ dealt with homosexuality during June and July 1972. One was substantially similar to the column he wrote in 1970 during the controversy about homosexuality in the play *The Boys in the Band*.⁶⁰ Shilton wrote in 1972 that both the Old and New Testaments were “consistent and definite in condemning homosexuality as an unnatural and harmful practice”, and made no distinction between homosexual acts conducted in public or private, or with or without consent.⁶¹ He did not explicitly argue against legalisation, but wrote: “Even if some of the legal restrictions ... were amended, what may consequently be considered not legally punishable would not become morally right”.⁶² With this argument, he simultaneously disclaimed the possibility that homosexual acts might be

⁵⁸ See *Community Standards News*, no.19, September 1971, p.1.

⁵⁹ *Advertiser*, 6 November 1972, p.6. See also responses by Rev. Keith Seaman and Roger Knight (of CAMP) in letters to the *Advertiser*, 7 & 9 November 1972, p.5. Knight suggested that Daniels and the CSO were “frightened that we shall all become homosexuals if the law is changed”.

⁶⁰ *Advertiser*, 23 May 1970, p.6, as discussed in Chapter 4.

⁶¹ *Advertiser*, 24 June 1972, p.7. The other column appeared on 22 July 1972, p.21.

⁶² *Advertiser*, 24 June 1972, p.7.

completely removed from the criminal law, and emphasised that the present attention on homosexual law reform must not be confused with acceptance for homosexual acts in the eyes of God.

Dr John Court, a lecturer in psychology at Flinders University and a member of the CSO, also presented arguments against homosexuality, rather than explicitly targeting the proposed legislation. Like Shilton, he subtly stopped short of arguing that legalisation of homosexual acts was wrong. His argument progressed in several stages: homosexuality was immoral, and although he did not believe that criminal sanctions were the best option, he warned that legalisation would lead to total acceptance of homosexuality, which was undesirable. As this was too great a risk, it was safer not to alter the law.⁶³ Instead, he strongly advocated attempts to treat same-sex attraction with behaviour therapy, though he acknowledged this was not possible in every case. Court discussed his views at the CAMP forum on 29 July 1972, where his presence was not widely welcomed,⁶⁴ and his position was publicised in the press on several occasions.⁶⁵ Court presented his arguments with the authority of his position as a psychologist, but was also clearly influenced by his religious beliefs and affiliation with Holy Trinity, Shilton and the CSO.

In his speech introducing the Bill to parliament, Murray Hill argued that “the only real opposition comes from those who deal solely with the religious viewpoint, and it comes from the extreme literist group who provide judgmental attitudes, based upon Biblical passages”.⁶⁶ His observation was accurate. As I will show in the next section, the major denominations did not oppose liberalising the law, though most did not actively support it. Their chief concern was a pastoral responsibility for same-sex attracted individuals. It was the smaller churches that argued against the reform, as well as private citizens using religious arguments that emphasised the immorality of homosexual activity without the pastoral concern expressed by the hierarchy of the larger churches. The Eyre Bible

⁶³ See letter to the *Advertiser*, 3 July 1972, p.5.

⁶⁴ John Court, ‘Behavioural Therapy and the Homosexual: A Scientific Approach’, summarised in ‘Homosexuality: A Summary of Speeches Made to the Forum on Sexual Oppression and Liberation’, p.1; John Court, ‘Behaviour Therapy with Homosexuals’, in *Homosexuality in South Australia: A Collection of Writings*, pp.8-13. See also Hilliard, ‘20 Years On’.

⁶⁵ *Advertiser*, 3 July 1972, p.5; *News*, 19 July 1972, p.36.

⁶⁶ *SAPD, LC*, 2 August 1972, p.471.

Fellowship, a private group on the Eyre Peninsula that would later form the Free Presbyterian Church of South Australia,⁶⁷ placed an advertisement in the *Advertiser* while the Bill was before parliament. The ad was headed 'Homosexuality' and cited multiple Bible passages emphasising the sinfulness of the behaviour. It stated that South Australians "have the opportunity to stand for Godliness and protest to their parliamentary representatives" about the proposed legalisation of homosexuality.⁶⁸ A number of letters published by the *Advertiser*, which I will discuss later in this chapter, also invoked the Bible and reminded readers that homosexual acts were sinful in the eyes of God.

Activist groups had a significant impact on the rapidly developing public attention regarding homosexuality. Partly because of the speed with which matters escalated from an anonymous river death to full-blown parliamentary debate, the activist campaigns were not particularly well planned, but still played an important role in shaping public and political opinion. Both sides understood the need to influence the public discourse about homosexuality, and though CAMP were arguably more successful in achieving this aim, the conversation nonetheless remained firmly fixed on the distastefulness of homosexuality. I discuss this point further in my analysis of the parliamentary debates, but it is clear that in 1972 CAMP did not succeed in their original (and ongoing) aim to educate the public to remove the stigma of homosexuality. Those who opposed the reform reinforced the undesirability of homosexual acts, and the resulting discourse disapproved of the behaviour but accepted that individuals should have the legal freedom to privately behave in that way if they so desired. This position was also endorsed by the major churches; they argued that homosexuality was sinful (and it was from this argument that all disapproval of homosexual acts stemmed, whether or not it was acknowledged), but most had come to understand that the secular law did not have the right to impose morality upon every member of a modern, pluralistic society.

⁶⁷ Lock Free Presbyterian Church, 'Church History', available at http://www.lockfpcsermons.com.au/?page_id=13, accessed 14 March 2013.

⁶⁸ *Advertiser*, 21 September 1972, p.8.

Churches and the Medical Profession

The most striking difference between the debates on abortion and homosexual law reform was the absence in the latter of significant institutional opposition to the legislation. An article in the *Sunday Mail* several days before Murray Hill introduced his Bill into parliament summarised the positions of the major churches to the proposed reform; indeed, the headline conveyed the whole story: “No church fight”. The Moderator of the Presbyterian Church referred to a recommendation made by the national church’s general assembly in Sydney in 1970 that homosexual acts “should not attract sanctions of criminal law”,⁶⁹ and Keith Smith, director of the Department of Christian Citizenship of the Methodist Church, reported that the Methodist General Conference believed that homosexual behaviour should not be proscribed, but instead treated in the same way as “adultery, fornication and lesbianism”.⁷⁰ The President General of the Lutheran Church, Dr Lohe, said that his church required more study of the “full implications” of the proposed law before it could determine its position, and the Anglican spokesman also reported that his church was awaiting the findings of a study carried out by its social questions committee. The Catholic spokesman was Father Bob Wilkinson, editor of the South Australian Catholic weekly newspaper the *Southern Cross*, who explained that the Church, although condemning homosexual practices, “had no official position on legislation concerning homosexuality”.⁷¹ Even prior to Dr Duncan’s death, the *Advertiser* had reported on the attitudes of the major churches in response to early comments by CAMP. Published in February 1972, that article had reported that the Anglican Bishop, Catholic Archbishop and President of the Methodist Conference of South Australia were not opposed to legalisation, but condemned the practice of homosexual acts. The Executive Minister of the Congregational Union—a church that did not make any public statement later in the year—was keen to see the law changed, as was Rev. Rod Jepsen, a minister at the Scots Church and Chaplain to the University of Adelaide, who was strongly in favour of reform and believed that “[p]ersecution of homosexuals by law is ridiculous”.⁷² The views of the smaller churches were not generally canvassed by the media during 1972, though the position of some Baptists was conveyed through the letters pages to the daily newspapers, as I show in the next section.

⁶⁹ *Sunday Mail*, 29 July 1972, p.11.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Advertiser*, 17 February 1972, p.20.

The Catholic position was explained in greater detail in an article by Fr Bob Wilkinson in the *Southern Cross*, which was the only mention of the proposed change in the law in the paper during 1972. He made clear that the church's position was to oppose homosexual acts as immoral, and argued that it was a Christian responsibility to assist people who had "homosexual drives" to resist the temptation. He also questioned whether a law against homosexual acts was useful, and noted that no other infringement of sexual morality was punishable by law. He did, however, caution against possible legalisation leading to acceptance of homosexual behaviour, in much the same way as John Court, but focused more on the need to assist homosexuals.⁷³ Fr Wilkinson was known to hold views considerably more liberal than some of the church hierarchy on a number of issues, but no other senior South Australian Catholics contradicted his position on homosexuality so it can only be assumed that on this matter his views were not substantially out of line. There would inevitably have been some difference of opinion within the church, but this was not expressed publicly. Arguments from the Catholic Church did not feature prominently in debates, and in parliament, Catholic members such as Attorney-General Len King echoed the position explained by Fr Wilkinson.⁷⁴

The position held by the Anglican Church was similar, and it also did not intervene greatly in the debates. A detailed article in the *Adelaide Church Guardian* by the periodical's editor discussed Christian attitudes towards homosexuality, argued that even though homosexuals could not help their feelings they should strive not to act upon them, and concluded that the difference between crime and sin must be recognised. He wrote that "removing the penalties" against homosexual behaviour would not in any way suggest that the behaviour was approved of.⁷⁵ A pseudonymous response appeared several months later, arguing that the earlier article was "condescending and pitying" and decried all suggestion of treatment or expectation that homosexuals attempt to behave "normally" while also rejecting the authority of the few and oft-quoted Biblical passages used by those who condemned homosexual behaviour.⁷⁶ From this exchange it is clear that Anglican position on homosexuality and homosexual law reform, and the arguments drawn upon in support of that position, differed little from the other major denominations.

⁷³ *Southern Cross*, 14 July 1972, p.4.

⁷⁴ *SAPD*, HA, 18 October 1972, pp.2213-15.

⁷⁵ *Adelaide Church Guardian*, September 1972, p.13.

⁷⁶ *Adelaide Church Guardian*, December 1972, p.13.

The Anglican Bishop of Adelaide Dr T.T. Reed argued that the church would work pastorally to support homosexuals no matter the state of the law and accepted that punishment was not useful and made clear that neither he nor the church would actively campaign for reform.⁷⁷ David Hilliard, writing as an historian but also with knowledge as a member of CAMP who had personally met with Bishop Reed in 1972, reveals that Reed “privately knew of the existence of homosexual clergy in his diocese” and believed that the existing law against homosexual acts was “inconsistent and unjust”.⁷⁸ The South Australian Anglican Church’s position differed significantly from the support of the Church of England and the Archbishop of Canterbury for the Wolfenden Report and the 1967 *Sexual Offences Act*.⁷⁹ Murray Hill, who introduced the South Australian Bill, was Anglican and a volunteer at his local church,⁸⁰ but he did not raise his religious beliefs during his speeches. Some other Anglicans in parliament voted against the Bill.⁸¹

Although the local Anglican Church was not formally committed either way, one part of the South Australian Anglican community held a very different view. Holy Trinity Church on North Terrace in the city was closely affiliated with the socially conservative Moral Action Committee (by 1972 the Community Standards Organisation, CSO). Two prominent members of the CSO attended Holy Trinity: Lance Shilton was the Rector of the church, and Dr John Court was a member of the congregation. Shilton had arrived at Holy Trinity in 1957 and established his difference on moral issues in 1959 when he actively supported American evangelical Billy Graham’s Crusade to Adelaide, despite Bishop Reed’s caution about Graham’s fundamentalist preaching.⁸² During Shilton’s tenure the church became more closely aligned with the conservative theology that dominated in Sydney’s Anglican community (indeed, Shilton departed Holy Trinity to become Dean of Sydney in 1973). Hilliard argues that the conservative, more evangelical tradition of Holy Trinity and the Sydney diocese (and therefore the CSO and its next

⁷⁷ Correspondence with David Hilliard, 2013.

⁷⁸ David Hilliard, ‘Australian Anglicans and Homosexuality: A Tale of Two Cities’, *St Mark’s Review*, no.163, 1995, p.15.

⁷⁹ See Matthew Grimley, ‘Law, Morality and Secularisation: The Church of England and the Wolfenden Report, 1954-1967’, *Journal of Ecclesiastical History*, vol.60 no.4, 2009, pp.725-41.

⁸⁰ Hilliard, ‘Australian Anglicans and Homosexuality’, p.15.

⁸¹ John Coumbe, Robin Millhouse, Arthur Rymill. There were undoubtedly more Anglican members, but information on parliamentarians’ religions is difficult to confirm.

⁸² Brian Dickey, *Holy Trinity Adelaide 1836-1988: The History of a City Church*, Adelaide: Trinity Church Trust Inc, 1988, pp.130-2.

incarnation, Festival of Light) took “absolute positions on social and moral issues and [saw] the world as a battleground between the forces of light and darkness. They believed that the law should reinforce morality”.⁸³ The CSO’s connection with Holy Trinity, therefore, was not representative of the local Anglican Church’s views on social and moral issues.

The Report of the Methodist Commission on Homosexuality, completed in October 1968, was not conclusive in its position on law reform. It believed that a local enquiry similar to the Wolfenden Committee was required in order to understand the issue in greater detail, and argued that without “such an enquiry, the commission does not recommend a change in the law, although some changes appeared to all members to be necessary”.⁸⁴ The Report emphasised the church’s responsibility to assist any person requiring help, even when their behaviour was condemned in the Bible, though it noted that neither Testament gave any specific reason for the offensiveness of homosexual acts.⁸⁵ The members of the Commission were divided on the matter of law reform: some were in favour of change, arguing that “law and morality are not the same thing”,⁸⁶ that removing the threat of prosecution may encourage homosexuals to seek medical treatment, and that imprisonment was not a useful response. They argued that a change in the law would not necessarily lead to an increase in homosexual behaviour, as the “general repugnance of the community ... would prevent many men from turning to it”, but that even if an increase did occur, other benefits would still make the law change worthwhile.⁸⁷ However, other members believed that not enough was known about homosexuality, and reminded those advocating the findings of the Wolfenden Report that the South Australian 1952 report on sexual offences had strongly recommended against a change in the law. Members also argued that there was a serious risk of “progressive moral degradation” if this sort of law were to be passed.⁸⁸ By 1972, the General [National] Conference, endorsed by the South Australian Conference, officially considered that

⁸³ Hilliard, ‘Australian Anglicans and Homosexuality’, p.16.

⁸⁴ Methodist Church of Australasia, South Australian Conference, Department of Christian Citizenship, *Report of the Commission on Homosexuality*, 1968, pp.11-12. Available at the State Library of South Australia.

⁸⁵ *Ibid.*, pp.4-5.

⁸⁶ *Ibid.*, p.6.

⁸⁷ *Ibid.*, pp.6-7.

⁸⁸ *Ibid.*, p.8.

legalisation was appropriate, and did not further involve itself with the issue.⁸⁹ Occasional discussion of homosexual law reform appeared in the *South Australian Methodist* during the late 1960s,⁹⁰ and in 1972 the Methodist periodical, renamed the *Central Times*, rarely mentioned the homosexuality legislation and never did so prominently.⁹¹

In his history of Methodism in South Australia, Arnold D. Hunt argues that homosexuality did not appear to be a major issue for clergy or lay members, and that the more liberal and flexible theology apparent by the 1960s permitted a “socially pragmatic” stance on homosexuality and abortion too.⁹² Hunt also notes that all churches faced “a challenge of colossal magnitude” due to the “revolution in sexual ethics” that had occurred in the community, and that they could, at best, encourage Christians to make responsible decisions about their own behaviour.⁹³ The Methodist Church chose, in this era, to focus its efforts on moral issues that they considered to have a more direct impact on the wellbeing of society at large, such as liberal liquor licensing and gambling laws, rather than individual behaviour such as abortion and homosexual activity.⁹⁴

As Daniel Overduin and John Fleming note, the major churches were concerned chiefly by the need to provide counselling and treatment to individuals.⁹⁵ The churches largely accepted that the laws against male homosexual acts were inconsistent with the absence of laws against other sinful sexual behaviour—female homosexual acts, adultery and fornication—and that in a modern, plural society, it was not appropriate for the criminal law to be directly shaped by religious morality. However, their own doctrine on the immorality of homosexual activity was not liberalised. As I show later in the chapter, the language and arguments used by the churches appeared to influence the arguments used by politicians in their parliamentary speeches. Like the churches, few MPs believed—or, just as significantly, felt confident to argue—that homosexual behaviour was acceptable.

⁸⁹ See *Advertiser*, 21 October 1972, p.10; Arnold D. Hunt, *This Side of Heaven: A History of Methodism in South Australia*, Adelaide: Lutheran Publishing House, 1985, pp.398-9.

⁹⁰ Editorial, *South Australian Methodist*, 7 November 1969, p.2; letters to the editor, *South Australian Methodist*, 21 November 1969, p.6; 12 December 1969, p.8.

⁹¹ See *Central Times*, 30 August 1972, p.12.

⁹² Hunt, *This Side of Heaven*, p.399.

⁹³ *Ibid.*, pp.399-400.

⁹⁴ See *ibid.*, p.399; Don Hopgood, interview with Clare Parker, 2012. Recording in possession of the author.

⁹⁵ Overduin & Fleming, *Wake Up, Lucky Country!*, p.201.

A small number of medical professionals contributed publicly to the debates about the reform, though much of the discussion was underpinned by a medicalised understanding of homosexuality as a mental disorder that could (and, according to some, should) be treated. In the absence of a formal investigation into homosexuality equivalent to the Select Committee on abortion, expert opinions did not play such an important role in this reform as they had in 1969. Medical doctors did not contribute directly to the debates, though some parliamentarians cited statistics provided by psychiatrists. The *Medical Journal of Australia (MJA)* and the periodical of the Australian Medical Association did not discuss homosexual law reform, or homosexuality, during 1972. The *MJA* had published an article on psychotherapy treatments for homosexuality, written by a Sydney psychiatrist in 1967 (after the passage of the British homosexual law reform).⁹⁶ The author, Dr William Rowe, purported to address ‘the Homosexual and the Law’ in one section of the article, but merely commented that prosecution would not necessarily hinder treatment, and made no comment on the desirability of the law against male homosexual acts. The next detailed examination of homosexuality in the *MJA* appeared in January 1973, likely as a result of the increased attention about the issue during 1972. The article, written by a different Sydney psychiatrist, noted that the response of a doctor towards a patient’s homosexual feelings is somewhat determined by the doctor’s own attitude towards homosexuality, but also did not argue for or against legalisation.⁹⁷ A letter from a CAMP NSW representative responded critically to the article in a letter to the journal, arguing that the author was supporting treatment for homosexuals and that his article was not in any way a balanced comment on the issue.⁹⁸ Not until 1974 did an editorial comment in the *MJA* comment specifically on law reform, when it reported on moves by the Commonwealth government to legalise homosexual acts in the ACT. It stopped short of formally arguing for reform, instead stating that “many doctors will welcome the ... decision”.⁹⁹ It did, however, argue that in Australia “professional bodies, including doctors, have tended to be too reticent about stating their views on social issues ... it is desirable that opinion should be made public and so widen the area of debate”.¹⁰⁰ The same short article reported that the Australian and New Zealand College of

⁹⁶*Medical Journal of Australia* (hereafter *MJA*), 30 September 1967, pp.637-9.

⁹⁷ *MJA*, 13 January 1973, pp.68-70.

⁹⁸ *MJA*, 19 May 1973, p.1015.

⁹⁹ *MJA*, 9 February 1974, p.158.

¹⁰⁰ *Ibid.*

Psychiatrists had in 1972 “approved a position statement urging homosexual law reform”, but this was not widely covered in the South Australian media at the time.

Several positions were publicly stated by psychologists. Most prominent of these was Dr John Court who, as I have already noted, conflated his professional and religious views on the desirability of homosexual practice. However, not all psychologists shared his view. The Chairman, Vice-Chairman and Secretary of the South Australian branch committee of the Australian Psychological Society wrote to the *Advertiser* with unanimous support from their branch.¹⁰¹ They believed that “homosexual behaviour between consenting adults should not be a concern of the criminal law”, regardless of the causes of homosexuality or possible treatments for it. The letter argued that behaviour modification may be unethical and ineffective (though it was not ruled out entirely) and that punishment could cause “irreparable psychological damage”.¹⁰² While there was no universal position amongst medical professionals on the desirability or effectiveness of treatment, there did exist somewhat more support for legalisation. A great number of politicians who spoke to the Bill during the parliamentary debates commented on treatment for homosexual attraction, as well as appearing to be influenced by the views of medical professionals. Clarence Story noted that this was not necessarily the easiest way to make up one’s mind: “For every one eminent psychologist and psychiatrist who has written about this subject and who had discussed it with honourable members, another comes forward with a counter proposition.”¹⁰³ The problem with relying on medical opinions was that there was no unanimity on the causes or treatment of homosexuality, and the differing positions amongst medical professionals was as likely to be influenced by personal beliefs as it was amongst other, less ‘expert’ members of the community.

The Media and Public Opinion

The detailed coverage of the investigation into Dr Duncan’s death continued in the Adelaide press throughout 1972, and as I have shown in the previous chapter, this prompted an increasing number of articles about homosexuality. This chapter has shown that the newspapers also reported on attitudes towards legalising homosexual acts

¹⁰¹ *Advertiser*, 18 July 1972, p.5.

¹⁰² *Ibid.*

¹⁰³ *SAPD*, LC, 4 October 1972, p.1798.

expressed by activists and the churches. However, newspapers also participated in the campaign. In an editorial on Saturday 1 July headed “Legalise homosexuality”, the *Advertiser* argued that the current law against homosexual activity “cannot be justified” and that the basis of the law was “unsound”.¹⁰⁴ It refuted two key arguments used to oppose legalisation—that homosexuality was immoral, and that legalisation would cause more people to become homosexual—and disputed the validity of outlawing the act simply because some non-participants considered it ‘unnatural’. It acknowledged that the police did not firmly enforce the law, but reasoned that it was “objectionable that such a law exists at all” as “such acts harm no one and offend no one”. It concluded: “The State has no business in its citizens’ bedrooms and the sooner it is completely removed from them, the better.” It is highly significant that the newspaper supported the reform, and with the use of arguments more akin to those promoted by civil rights groups than the cautious, treatment-focused position of some churches. The arguments used in the editorial were considerably more liberal than the views expressed by many politicians who supported the reform, who, as I will show, dwelt on the ‘wrongness’ of homosexuality.

Less than a week after the *Advertiser*’s editorial, Murray Hill announced his intention to introduce into parliament a Bill to make lawful homosexual acts committed in private between males over the age of 21. It is not known if Hill’s decision was influenced by the firm stand taken by the state’s leading newspaper, but it surely added important support to demonstrate that his move to legalise homosexual acts was not the act of an extremist or someone pandering only to a tiny minority. The *Advertiser* publicised Hill’s announcement with a large front page article¹⁰⁵ and continued coverage of the reform in regular articles throughout July, followed by reports on the parliamentary debates during August, September and October.¹⁰⁶ A second editorial appeared in October, after the Bill had passed the Legislative Council, noting that homosexuality had been “widely discussed lately” and criticising opponents of the Bill who had argued that homosexuals were “grossly immoral, a threat to family life and a vehicle of the permissive society”.¹⁰⁷

¹⁰⁴ *Advertiser*, 1 July 1972, p.5.

¹⁰⁵ *Advertiser*, 7 July 1972, p.1.

¹⁰⁶ Articles include *Advertiser*, 8 July, pp.3, 5; 13 July, p.10; 3 August, p.3; 23 August, p.4; 24 August, p.12; 25 August, p.5; 14 September, p.10; 5 October, p.6; 12 October, p.3; 19 October, p.3; 25 October, p.5; 26 October, pp.1, 10.

¹⁰⁷ *Advertiser*, 13 October 1972, p.5.

Once again the newspaper concluded that “[h]omosexual acts in private between consenting males can offend no one, and the law should not intervene in such a situation.”

Letters to the editor published by the *Advertiser* revealed that many readers did not agree with the paper’s stance. Although it is impossible to know how many letters were received on the issue but not published, it is reasonable to conclude that the newspaper did not selectively publish letters according to their position, since a good deal more letters opposed law reform (and therefore the paper’s editorial position) than supported it. Many of the letters objected to the reform, or homosexuality in general, by drawing on religious arguments and language. Miss G. Ayliffe called homosexuality “sinful” and “unnatural” and believed that reform would be “lamentable and bestirs us to get rightly related to our Creator”.¹⁰⁸ Anne E. Joyce wrote that “God, in his Holy Word, has set down moral rules for mankind, and if man deliberately and defiantly disobeys them, then he will destroy himself.”¹⁰⁹ J.N. Collins, Grace Magarey, Lorna Roesler and W.J. Meath made reference to Biblical teachings, and variously argued that “the flouting of God’s laws produces a harvest of misery” and that society had a duty to help homosexual people to help themselves.¹¹⁰ Dorothy Storr called upon South Australians to “look into the Christian principles of those for whom we vote” before the next election,¹¹¹ and Mrs Z.M.C. Gill commended the recent formation of a United Christian Political Party to meet “the needs of an aberrant and apostate society”.¹¹² Mary Jonats, after recounting that she felt “sick and disgusted at [her] breakfast table” when reading of the homosexual Bill, declared that she would vote against any politician who supported the measure.¹¹³ None of these correspondents identified as a member of a particular church or admitted membership of a group such as the Community Standards Organisation, though it is possible such a connection existed. The effect of these letters, however, was to reinforce that the opposition to the legislation was informed heavily by religious moral teachings. A number of clergy also had letters published; Rev. David White from the Seaton Park Baptist Church wrote twice, arguing that “Homosexuality is NOT normal! It is a sexual aberration, a perversion which the Living Word of God calls an ‘abomination’

¹⁰⁸ *Advertiser*, 8 July 1972, p.5.

¹⁰⁹ *Advertiser*, 11 July 1972, p.5.

¹¹⁰ *Advertiser*, 6, 21 & 27 July 1972, p.5.

¹¹¹ *Advertiser*, 20 July 1972, p.5.

¹¹² *Advertiser*, 16 October 1972, p.5.

¹¹³ *Advertiser*, 8 July 1972, p.5.

before God”.¹¹⁴ He believed that the law shaped standards of morality in the community, and that although homosexuals should be assisted to “be restored to normality”, this measure would risk “an increasing moral landslide” already suggested by the “iniquitous Abortion Law”.¹¹⁵ Two other clergy of non-specified churches wrote letters supporting Rev. White, John Court and a letter from Mark Posa.¹¹⁶ Posa was the perennial Democratic Labor Party candidate who had vocally opposed the abortion legislation in 1969, and who again wrote to the *Advertiser* to oppose the paper’s supportive editorial position on homosexual law reform. He, too, invoked the “moral landslide”, or ‘slippery slope’ by pointing to the abortion law and suggesting that euthanasia would be next if “another aspect of our Judeo-Christian heritage” was overturned.¹¹⁷ Correspondent Andrew McComb echoed this warning, reminding readers that “civilisations which became permissive and abandoned inhibiting laws frequently degenerated and disappeared from the historical scene”.¹¹⁸

Of the letters published in support of the reform, only five were from private individuals (rather than stating their connection to CAMP, the Humanist Society or the Council for Civil Liberties), and at least one of those five was from a member of CAMP who did not identify his membership of the group. In that letter, Roger Knight wrote:

We have been told repeatedly in your letters columns recently that homosexual behaviour should not be legalised because it is condemned in the Old Testament as contrary to the will of God. There is a short answer to this. We are not living in pre-Christian Israel ... Selective quotation from Leviticus is not, in these circumstances, justification for the continued legal persecution of homosexuals.¹¹⁹

CAMP’s contributions to the correspondence columns actively engaged with and rebutted the religious arguments put forward by opponents, just as the group did when lobbying

¹¹⁴ *Advertiser*, 15 July 1972, p.5.

¹¹⁵ See also *Advertiser*, 22 July 1972, p.5.

¹¹⁶ *Advertiser*, 12 & 27 July 1972, p.5.

¹¹⁷ *Advertiser*, 6 July 1972, p.5.

¹¹⁸ *Advertiser*, 21 July 1972, p.5.

¹¹⁹ *Advertiser*, 18 July 1972, p.5.

politicians. Other correspondents questioned the justification of relying on Biblical laws, arguing that “[s]urely there is such a thing as progress and reform”¹²⁰ and that “Christ himself never condoned nor condemned homosexuality”.¹²¹ Linda Brabham hoped “that soon homosexuality will become legal and that narrow-minded MPs will realise that we can no longer punish people just because they are different”. She believed that “[h]omosexuality is something that people can’t help, not a condition they have forced themselves into”.¹²² Some letters opposed reform by engaging with this argument, suggesting that the ability—and responsibility—of the homosexual to help himself would obviate the need for a change in the law. Both Gordon C. Brown and P.P. Kelly likened homosexuality to alcoholism, suggesting that a homosexual man “can change by God’s grace and become a new man”¹²³ and with free will “can successfully and happily subdue even his worst tendencies”.¹²⁴

The preponderance of letters opposing the reforms was not necessarily representative of that view in the wider community, but represents those who were stirred to write to the newspaper. Few public opinion polls of the era canvassed attitudes towards homosexuality; the first was Paul Wilson and Duncan Chappell’s 1967 commissioned poll that also investigated attitudes to abortion. Only 22 per cent of 1,045 respondents agreed that homosexual acts should no longer be an offence between consenting adult males in private (the phrase used in the British reform passed the previous year).¹²⁵ In their analysis of the poll, Wilson and Chappell reveal that a “large proportion” of additional comments gathered during the survey demonstrated a very negative attitude towards homosexuals, believing it to be “unnatural”, with suggestions that they should be “whipped severely” and face “a long prison sentence”.¹²⁶ In contrast, a survey conducted by the Australian National University and published in the *Canberra Times* in September 1970 revealed that 68 per cent of males in the ACT supported law reform,¹²⁷ though a poll

¹²⁰ *Advertiser*, 11 July 1972, p.5.

¹²¹ *Advertiser*, 19 July 1972, p.5.

¹²² *Advertiser*, 25 July 1972, p.5. See also letter from P.S. Delin, 5 July 1972, p.5.

¹²³ *Advertiser*, 7 July 1972, p.5.

¹²⁴ *Advertiser*, 10 July 1972, p.5.

¹²⁵ P.R. Wilson and D. Chappell, ‘Australian Attitudes towards Abortion, Prostitution and Homosexuality’, *The Australian Quarterly*, vol.40 no.2, 1968, p.12.

¹²⁶ *Ibid.*, p.13.

¹²⁷ *Canberra Times*, 24 September 1970, p.3.

of Melbourne and Sydney residents in 1971 revealed conservative attitudes towards homosexuality without specifically asking about law reform. The accompanying article by Michelle Grattan noted that women, tertiary educated, and agnostics and atheists were the most supportive.¹²⁸ As well as not revealing specifically South Australian attitudes, these polls were all taken prior to the death of Dr Duncan, and it is not possible to know to what extent public opinion changed immediately after his death. No Gallup poll addressed homosexuality until 1974, when it was revealed that 54.3 per cent of Australians, and 56.6 per cent of South Australians agreed that homosexual acts in private should be lawful.¹²⁹ These polls were infrequent and are not directly comparable; all were carried out by different organisations, in different jurisdictions and asked different questions. Several were very small and carried a large margin of error. As a result, their findings should be considered with caution. Public contributions to the Adelaide newspapers are not necessarily representative of broader community opinion, but they do represent those who were most interested in the issue and willing to take time to contribute publicly to the debates.

The Parliamentary Debates

The Criminal Law Consolidation Act Amendment Bill was introduced into the Legislative Council by Murray Hill on 2 August 1972. As it was a private member's Bill, time was only allocated for discussion of the measure once a week, on Wednesday afternoons. Debates on the Bill therefore stretched across nearly two months before it was passed by the Legislative Council. In contrast, it passed the House of Assembly in one evening after just three and a half hours of debate, and in time usually restricted for discussion of Government Bills.¹³⁰ This disparity is reflected in the number of members who spoke to the Bill in each house: 12 out of 19 Members of the Legislative Council (MLCs) gave speeches, but only 12 out of 46 Members of the House of Assembly (MHAs).¹³¹ Eight MHAs were granted paired votes (meaning they were absent from the chamber for legitimate reasons) and three others did not vote (it is unclear whether they

¹²⁸ *Age*, 27 March 1971, p.9.

¹²⁹ Morgan-Gallup Poll no.41, 24-31 August 1974, p.22.

¹³⁰ *SAPD*, HA, 18 October 1972, p.2219.

¹³¹ These numbers exclude the President of the Legislative Council and the Speaker of the House of Assembly, who did not customarily participate in debates.

deliberately abstained or were absent for other reasons). If the debate had extended across more days, it is likely more members would have desired to speak. In any case, the vote was effectively considered a party vote rather than a conscience vote by Labor MHAs, as indicated by Peter Ward in his meeting with CAMP in July,¹³² and so there may have been less incentive for those MPs to defend their vote than if it had been a legitimate matter of individual conscience. However, the one dissenting member of the Labor Party, MLC Tom Casey, voted against the Bill without making a speech to explain his position. He was known to hold conservative views on moral issues and evidently felt no need to justify his vote.¹³³

In his opening speech, Murray Hill gave several reasons for his decision to introduce the Bill. He cited the letter urging reform sent to politicians from the Moral Freedom Committee in late June, as well as “deep concern” about the death of Dr Duncan. He also argued that he had a duty to “represent the interests of people”,¹³⁴ and that the parliament was “charged with the responsibility of making and changing laws ... so that optimum freedom, happiness and contentment can be enjoyed by all”¹³⁵ even if the matter at hand may be considered by some to be offensive or the concern of a minority. He reiterated these points at the conclusion of the debates, and argued that social legislation was becoming an increasingly important area of governance in the state, which had previously focused on economic legislation.¹³⁶ Hill believed that after the publicity surrounding the Duncan case in the media, “there is now a tolerance and understanding of the problems confronting homosexuals that were not apparent until recently”.¹³⁷ The effect of Dr Duncan’s death on public opinion was acknowledged by nine other MPs,¹³⁸ though not all believed the impact had been helpful. Leslie Hart, Robin Millhouse and Roger

¹³² See also Clare Parker and Paul Sendziuk, ‘It’s Time: The Duncan Case and the Decriminalisation of Homosexual Acts in South Australia, 1972’, in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, p.29.

¹³³ One of the other Labor MLCs, Alfred Kneebone, did not vote; it is likely he deliberately abstained, as a legitimate absence from the parliament would usually result in a paired vote. Possibly he was unwilling to vote for the Bill, but also reluctant to vote against the expected but informal party position. Hence, only two Labor MLCs voted for the Bill.

¹³⁴ *SAPD*, LC, 2 August 1972, p.464.

¹³⁵ *Ibid.*

¹³⁶ *SAPD*, LC, 11 October 1972, p.1955.

¹³⁷ *SAPD*, LC, 2 August 1972, p.470.

¹³⁸ Dunstan, Goldsworthy, Hart, Hopgood, King, McRae, Millhouse, Springett and Tonkin.

Goldsworthy all argued that the Duncan case had led to an over-emotional approach to lawmaking. Goldsworthy suggested that the case was being “used as a lever to bulldoze this Bill through the House”,¹³⁹ and Millhouse argued that “there is still a high measure of emotionalism following the Duncan incident, and I do not agree ... that this is a good thing and that it creates a proper atmosphere for change in the law ... We should slow down, rather than hasten.”¹⁴⁰ Millhouse was particularly concerned that the Bill was being “pushed” through the House of Assembly in one evening, and called for a Select Committee (such as the one he had initiated on the abortion Bill in 1968).¹⁴¹ Other members felt that the Wolfenden Report was a sufficiently valuable source of information; Terry McRae believed that a local Select Committee would not achieve much more.¹⁴² Labor members Len King, Ron Payne and Don Hopgood argued that there was plenty of research available on homosexuality and that MHAs had months of notice to research the matter while the Bill was being debated in the Legislative Council.¹⁴³ Both houses divided on the issue of whether to refer the Bill to a Select Committee, and both houses voted against the move.¹⁴⁴ The hastiness of the Bill’s introduction after Duncan’s murder, and the speed with which it moved through the House of Assembly, were both therefore arguments used by opponents of the Bill. Some may genuinely have been concerned and desired more time to consider the issue, but it is also likely that some parliamentarians used it as a convenient argument to delay the need to commit one way or the other on a reform that was considered controversial and, by many, distasteful as well.

It is notable that many MPs who voted for the reform nonetheless expressed their distaste for homosexuality and homosexual acts. LCL member Stan Evans stated that the “whole thought of homosexuality abhors me [*sic*]”,¹⁴⁵ Attorney-General Len King called it “intrinsicly evil”,¹⁴⁶ and Labor’s Don Hopgood had a “feeling of personal revulsion ... against homosexual behaviour”.¹⁴⁷ LCL Legislative Councillor Clarence Story argued

¹³⁹ *SAPD*, HA, 18 October 1972, p.2217.

¹⁴⁰ *Ibid.*, p.2216.

¹⁴¹ *Ibid.*, pp.2204, 2216.

¹⁴² *Ibid.*, p.2208.

¹⁴³ *Ibid.*, pp.2213-14, 2220.

¹⁴⁴ *SAPD*, LC, 11 October 1972, p.1955; HA, 18 October 1972, p.2216.

¹⁴⁵ *SAPD*, HA, 18 October 1972, p.2211.

¹⁴⁶ *Ibid.*, p.2213.

¹⁴⁷ *Ibid.*, p.2201.

that it was “not a palatable subject to discuss” and likened it to “alcoholism, mental derangement and adultery”¹⁴⁸ and Don Banfield made clear that he did “not approve of homosexual acts or of many other things done by various people”.¹⁴⁹ Dunstan told how he observed “vulgarity and unpleasantness of behaviour” in “people who were obviously homosexual,” and had been surprised to discover that some men “whom I had considered obviously masculine and apparently normal” were in fact homosexual.¹⁵⁰ He admitted that he had been “hopelessly prejudiced” and appeared to have changed his mind to some extent, but he did not stop short of using language that marginalised homosexual men as abnormal and reinforced behavioural stereotypes. David Tonkin called homosexual activity “deplorable” and emphasised that it was not condoned by parliament.¹⁵¹ These politicians evidently felt compelled to temper their support of the legislation with a clear statement that they did not in any way approve of homosexual acts. Likely there existed a fear that their motivations, and their own sexuality, would be questioned. This is best evinced in an interview with Murray Hill broadcast on *This Day Tonight* in which the journalist asked Hill if he was a homosexual. Hill hastily replied, “No, no,” almost before the question had been completed.¹⁵² More recently, Don Hopgood, one of the most vocal supporters of the reform in parliament, has explained that he felt confident to speak openly in favour of the reform because he was married with three children, and no-one could suspect him of being homosexual.¹⁵³ (It should be noted that Don Dunstan was at the time married with three children, though later lived with a male partner.) It is quite possible that some parliamentarians also felt compelled to state, or overstate, their distaste for homosexuality because they did not want to marginalise constituents who did follow Christian moral teachings on the behaviour. Together, the parliamentarians who voted for the Bill but articulated their dislike of homosexuals demonstrate that public discussion about homosexuality had not yet shifted significantly. Distaste for homosexuality was still

¹⁴⁸ *SAPD*, LC, 4 October 1972, p.1797.

¹⁴⁹ *SAPD*, LC, 13 September 1972, p.1256.

¹⁵⁰ *SAPD*, HA, 18 October 1972, p.2205.

¹⁵¹ *Ibid.*, p.2198.

¹⁵² ABC Television, *This Day Tonight*, 19 July 1972, excerpt available at Australian Broadcasting Corporation ‘80 Days That Changed Our Lives: Violent Death at Gay Beat in Adelaide Triggers Homosexual Law Reform’, <http://www.abc.net.au/archives/80days/stories/2012/01/19/3411558.htm>, accessed 1 April 2013.

¹⁵³ Don Hopgood, interview, 2012.

normal and expected, and Dino Hodge has shown that this did not change after the passage of law reform.¹⁵⁴

The belief that homosexuality was undesirable was shared by most politicians who supported and opposed the reforms, and so the differences between the two positions must be explored further. In fact, the key distinctions were politicians' views on the role of the criminal law, and the risk of harm. Supporters of legalisation argued that even though homosexuality was undesirable, religious morality must not dictate the law, which had no right to control private and consensual behaviour that harmed no-one. In contrast, opponents believed that homosexuality was so undesirable that the risk of harm to society justified the intrusion of the law.

I will begin with an examination of the arguments proposed against legalisation, which can be grouped into several categories. These follow a progressive logic, though not all politicians necessarily articulated each stage. Members explained that homosexuality was undesirable due to traditional religious moral standards and the teaching of the Bible. Legalising homosexual acts would lead to community acceptance of the behaviour, which might lead to more people becoming homosexual or participating in homosexual acts.¹⁵⁵ Opponents also warned against the 'slippery slope', arguing that the legalisation and acceptance of homosexuality would lead to a society in which further immoral activities became permissible.

MLC Arthur Whyte suggested that to legalise homosexuality would be to "rewrite the law of God" and that on "judgment day" he would not want to be accused of arguing that "God's law had become outdated".¹⁵⁶ He noted that St Paul, "something of a favourite of mine, an old soldier ... had quite a bit to say about homosexuals, none of it in their favour".¹⁵⁷ Other members avoided quoting specific Bible verses, which may have been considered a step too far in allowing religious teachings to explicitly influence the secular

¹⁵⁴ Dino Hodge, 'The Police, The Press and Homophobia in South Australia: 1941-1991', *Melbourne Historical Journal*, vol.39, 2011, pp.119-40.

¹⁵⁵ It should be noted that many politicians used language loosely, sometimes confusing or conflating 'homosexuality' with 'homosexual acts'. This extended beyond parliament; the *Advertiser's* editorial headed "Legalise Homosexuality" actually meant 'legalise homosexual acts'. *Advertiser*, 1 July 1972, p.5; see also John Court's response on this point, *Advertiser*, 3 July 1972, p.5.

¹⁵⁶ *SAPD*, LC, 23 August 1972, p.940.

¹⁵⁷ *Ibid.* He referred to Romans 1:26-27.

law. Instead, they referred in general terms to the “law of God” and religious arguments against homosexuality, as well as “standards of morality”.¹⁵⁸ These arguments were in essence no different to those advanced by politicians who voted for the Bill but expressed their distaste for homosexuality, and were, in fact, more honest about the fundamental justification for their position. The members whose comments I discussed earlier stated that they believed homosexuality was objectionable without reference to the religious grounding of its ‘unnaturalness’ (with exception of Len King, who did remark on the traditional Judeo-Christian ethic that informed his position).¹⁵⁹

Opponents of the Bill went on to suggest that if the parliament legalised homosexual acts, it would be seen as condoning the behaviour and would lead to homosexuality being accepted by society. They argued that this was not desirable, and would also result in more homosexual behaviour. MLC Edwin Russack believed that “what was once frowned on as wrong [would be] made to appear right and accepted by the community”.¹⁶⁰ Whyte felt the legislation would signify “an acceptance of something I am not prepared to have publicly flaunted or publicly accepted”, and argued that the effect would be similar to the abortion legislation that had led to a wider acceptance of abortion.¹⁶¹ Richard Geddes and Gordon Gilfillan, too, feared that the public would see reform as political approval for homosexuality, as “in this permissive society, people find it easy to accept what is legally right as being morally right”.¹⁶² The argument that more people would become homosexual—or that homosexual acts would become more prevalent—was advanced by two LCL members in the Legislative Council. Boyd Dawkins suggested that making the behaviour lawful “will make it easier for young lads to be influenced and for those on the borderline to be swung over on to the wrong side”,¹⁶³ while Leslie Hart believed that “anything we do to relax the laws on homosexuality will tend to increase its incidence”.¹⁶⁴ The fear of influencing or ‘converting’ young people, especially in schools, featured

¹⁵⁸ *SAPD*, LC, 30 August 1972, p.1078; 4 October 1972, p.1799; HA, 18 October 1972, p.2203.

¹⁵⁹ *SAPD*, HA, 18 October 1972, p.2213.

¹⁶⁰ *SAPD*, LC, 30 August 1972, p.1078.

¹⁶¹ *SAPD*, LC, 23 August 1972, p.940.

¹⁶² *SAPD*, LC, 13 September 1972, p.1255; also 27 September 1972, p.1598.

¹⁶³ *SAPD*, LC, 13 September 1972, p.1254.

¹⁶⁴ *SAPD*, LC, 4 October 1972, p.1799.

prominently in these arguments,¹⁶⁵ and perpetuated the idea of the homosexual as paedophile.

Opponents did not just fear an increase in the acceptance and practice of homosexual acts, but also an increasing tolerance for other rights for homosexuals, as well as the practice of other ‘immoral’ acts. Dawkins warned members not to “open the floodgates” and reminded them that lessons should be learnt from the experience of the abortion legislation.¹⁶⁶ Russack was fearful of “changes going progressively from step to step”, and noted that marriage for homosexuals was already being mooted as a possibility.¹⁶⁷ Hart also feared further changes in the law, including marriage of homosexuals, and criticised the churches that were “no longer oppos[ing] what they once regarded as moral degradation”. He believed that there existed people “whose whole purpose in supporting the legalizing of homosexual acts is to corrupt society and to break down the established and accepted customs, replacing them with their own ideology”.¹⁶⁸ After his speech, Hart reported that “many people” had commended him for the stance he had taken.¹⁶⁹ His arguments against legalisation closely resemble those advanced in many of the letters to the editor published in the *Advertiser*, and clearly had some degree of popular support in South Australia.

The arguments put forward in support of the Bill also corresponded with those advanced outside parliament. In addition to refuting the opposing arguments, and drawing upon the supportive position of (or at least the lack of opposition from) the major churches,¹⁷⁰ parliamentarians argued that the law should be separate from moral approval, and that private liberty was desirable. They also highlighted the danger and misery caused by the present law, and some suggested that it would be easier for homosexual men to seek treatment if they no longer feared prosecution.

¹⁶⁵ *SAPD*, LC, 13 September 1972, pp.1253-4; 4 October 1972, p.1799.

¹⁶⁶ *SAPD*, LC, 13 September 1972, pp.1254-5.

¹⁶⁷ *SAPD*, LC, 30 August 1972, p.1078.

¹⁶⁸ *SAPD*, LC, 4 October 1972, p.1799.

¹⁶⁹ *SAPD*, LC, 11 October 1972, p.1949.

¹⁷⁰ See *SAPD*, LC, 2 August 1972, pp.468-71; 16 August 1972, p.1954; HA, 18 October 1972, pp.2198, 2208-9.

In his speech introducing the Bill into parliament, Murray Hill quoted a number of passages from the Wolfenden Report, including several that reflected on the function of the law. It argued that it was not “the function of the law to intervene in the private lives of citizens, or to seek to impose any particular pattern of behaviour further than is necessary” to “preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others”.¹⁷¹ Later in his speech, Hill noted the Report’s statement: “there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business”.¹⁷² Hill argued that the change in the law would not condone homosexual activity, but would establish the principle that, “like other sins such as adultery, fornication, homosexual acts between women, the sin of homosexual acts between adult males in private is not a criminal offence”.¹⁷³ A number of other members specifically differentiated between moral conduct and lawful conduct,¹⁷⁴ and it is significant that Len King and Don Dunstan were two of the most insistent on this point. Both were lawyers of some note, and King was Attorney-General (he would later be appointed Chief Justice) and Dunstan had served as Attorney-General in the Labor government of 1965 to 1968. King and Dunstan therefore had particularly well-informed views on the role of the law and desirable law-making, grounded in their legal training and professional interest, and undoubtedly shaped by their progressive and reformist ideology that was evident in the wide range of social and legal reforms implemented by the government between 1970 and 1975. Dunstan, a civil libertarian, argued:

The purpose of the criminal law is to protect persons from physical harm and from active affront, and their property from harm, also. Outside of that area, I believe the criminal law has no place at all, and it is for the social influences of the community to impose or induce the moral standards which will be accepted by the majority of the community. The law is not a means of enforcing morality.¹⁷⁵

¹⁷¹ Wolfenden Report, cited by Murray Hill, *SAPD*, LC, 2 August 1972, p.466.

¹⁷² *Ibid.*, p.467.

¹⁷³ *SAPD*, LC, 2 August 1972, p.470.

¹⁷⁴ See Potter, *SAPD*, LC, 16 August 1972, p.790; Springett, *SAPD*, LC, 16 August 1972, p.787; Hopgood, *SAPD*, HA, 18 October 1972, p.2201.

¹⁷⁵ *SAPD*, HA, 18 October 1972, p.2207.

King maintained that “in our plural society ... it is no longer possible to say that the State is competent to lay down moral norms to be followed by individual citizens in their personal lives”,¹⁷⁶ and that “the area of private morality is not one in which the criminal law should operate”.¹⁷⁷ His efforts to differentiate between morality and the law were made more powerful by his unequivocal statement that he personally believed homosexuality to be perverted and “intrinsically evil”.¹⁷⁸ More than any other parliamentarian, King demonstrated the need and the ability to separate his personal understanding of morality from affecting the criminal law. (It should be noted, however, that King did not make this distinction during the debates about the attempted repeal of some of the abortion laws in 1972. The difference in King’s approach to the two Bills is very likely explained by his faith: as a devout Catholic, he took the same position on both abortion and homosexuality as the Catholic Church. He believed that homosexual conduct was a matter of private morality, but abortion was a greater evil and he could not condone legalised murder.) Though no parliamentarian connected their position with any particular philosophy or ideology, the arguments advanced by Hill, King and Dunstan closely resembled those put forward by British philosopher John Stuart Mill in *On Liberty* (1859), in which he wrote: “The only purpose for which power can rightfully be exercised over any member of civilised community, against his will, is to prevent harm to others.”¹⁷⁹

A similar line of reasoning was pursued by politicians who argued that the law should not encroach upon private consensual behaviour. King, Dunstan, Ron Payne, Gavin Keneally, Frank Potter and Vic Springett defended the right of individuals to participate in whatever activity they wished when in private. Keneally succinctly summarised this argument when he reasoned that this was “a matter of private morality between the people concerned and not a matter in which the public or the law should interfere”.¹⁸⁰ Springett

¹⁷⁶ *Ibid.*, p.2215.

¹⁷⁷ *Ibid.*, p.2213.

¹⁷⁸ *Ibid.*

¹⁷⁹ John Stuart Mill, *On Liberty*, London: Penguin Books, 1985, p.68. See also Don Dunstan, ‘Talk to Newman Association by Don Dunstan’, 18 October 1968, Dunstan Collection, Flinders University Library, DUN/Speeches/3141, in which Dunstan discusses, amongst other things, the impact of Mill and Jeremy Bentham on the formation of the approach to laws regarding sexual behaviour promoted by the Wolfenden Committee. In this speech, Dunstan demonstrates that the arguments he used in parliament in 1972 were fully consistent with his view of the role of the criminal law formulated well before this Bill.

¹⁸⁰ *SAPD*, HA, 18 October 1972, p.2212.

reasoned that “[e]very man has the right to be let alone ... There is ... nothing more personal, intimate and private than the physical relationship that exists between two persons within the privacy of their own home.”¹⁸¹ In addition to the ideological arguments, some members noted the logistical problem of enforcing a law regarding private activity. King argued that the current law could “only be enforced by means of police methods which are themselves repulsive, intolerable, and indeed counter-productive”¹⁸² and Potter maintained that the “administration and policing of this law constitutes an unwarranted invasion of a person’s right to privacy”.¹⁸³

The issue of blackmail and violence against homosexual men, and the secrecy in which most were compelled to live, was also emphasised by many parliamentarians who supported the Bill, though disputed by Arthur Whyte who opposed the measure in its entirety.¹⁸⁴ The focus on this aspect was not entirely due to the impact of Dr Duncan’s death; it was addressed in the Wolfenden Report and had long been highlighted as a weakness of the legal situation regarding homosexuality. The Duncan case made the risk of violence to homosexuals more directly relevant to South Australia, though more politicians addressed the threat of blackmail.¹⁸⁵ Murray Hill cited several newspaper articles that addressed suicide and violence against homosexual men,¹⁸⁶ and during the third reading speech argued that with this legislation “we have the opportunity to remove fear from the hearts of men”.¹⁸⁷ Hill told at length a story of a homosexual man who he spoke to about the Bill; a “pitiful, frustrated man” who desired to live with dignity and in peace,¹⁸⁸ and Dunstan referred to “the misery, the harm, the hurt and the injustice” caused by the law.¹⁸⁹ They argued that these men were otherwise valuable members of society who were forced to live in fear because of this one unjust law that was a simple matter to repeal.

¹⁸¹ *SAPD*, LC, 16 August 1972, p.786.

¹⁸² *SAPD*, HA, 18 October 1972, p.2213.

¹⁸³ *SAPD*, LC, 16 August 1972, p.790.

¹⁸⁴ *SAPD*, LC, 23 August 1972, p.939.

¹⁸⁵ *SAPD*, LC, 16 August 1972, p.789; 11 October 1972, p.1955; HA, 18 October 1972, pp.2205, 2210-11.

¹⁸⁶ *SAPD*, LC, 2 August 1972, pp.470-1.

¹⁸⁷ *SAPD*, LC, 11 October 1972, p.1955.

¹⁸⁸ *Ibid.*, p.1953.

¹⁸⁹ *SAPD*, HA, 18 October 1972, p.2205.

The final prominent argument drawn upon by members returned closely to the fundamental theme of the parliamentary debates: the undesirability of homosexual behaviour and the desire to see it minimised or eliminated. Parliamentarians who voted for the Bill suggested that removing the threat of arrest would encourage men who wanted to seek treatment to do so. They did not necessarily argue that treatment was the only or even the best option, and politicians who opposed the Bill undoubtedly expressed more explicit approval for treatment as a suitable option for homosexual men.¹⁹⁰ However, the fact that treatment was mentioned (uncritically) by a number of pro-reform MPs demonstrates the dominance of the medical discourse of homosexuality at the time. Hill, Dunstan, David Tonkin, Stan Evans and Don Hopgood all suggested that legalisation would permit men who desired help to seek treatment without threat of prosecution. Tonkin, in particular, used medicalised language; he referred to the “psychological nature” of homosexuality and to the homosexual who desired treatment as “the patient”.¹⁹¹ His professional training as a medical doctor may well have influenced his conception of homosexuality and the associated issues. Springett, too, was a doctor, but only briefly alluded to treatment, and made sure to emphasise that even if some homosexual men did want to change, they were still fundamentally normal people who deserved privacy.¹⁹²

These statements about treatment for homosexuals, coupled with the number of members who felt compelled to state their aversion to homosexuality—albeit often with a disclaimer of pity, though never empathy—combine to demonstrate the primacy of disapproval regarding homosexual acts. Some members justified their distaste with reference to religious teachings, but even those who referred only broadly to standards of morality or gave no justification at all based their disapproval on the same Judeo-Christian moral tradition that dominated society at the time. The Bill did not pass because members of parliament believed that homosexual activity should cease to be controlled, but rather because it should cease to be controlled by the criminal law. Certain members displayed a genuinely civil libertarian approach to the issue, such as Hill and Springett,

¹⁹⁰ See *SAPD*, LC, 30 August 1972, p.1078; 13 September 1972, p.1254; 11 October 1972, p.1955. Millhouse suggested celibacy as the “only moral solution to the problem”, rather than explicitly endorsing treatment: *SAPD*, HA, 18 October 1972, p.2203.

¹⁹¹ *SAPD*, HA, 18 October 1972, pp.2193-4.

¹⁹² *SAPD*, LC, 16 August 1972, p.788.

but even Dunstan, who endorsed this view, also admitted distaste for homosexuals and suggested treatment as a possible way to deal with the ‘problem’.

The matter of Dunstan’s sexuality does not concern this thesis, which deals chiefly with the nature of public discussion about homosexuality rather than the contribution of individual members of parliament. The impact of Dunstan’s sexuality is no more pertinent than personal connections that may have existed for other members of parliament who similarly did not want to discuss those connections in public. This research can only deal with the public comment on the legislation, though I understand that Dino Hodge’s embargoed thesis considers Dunstan’s efforts at effecting change for homosexuals, which has previously been overlooked and is an important contribution to the understanding of the history of homosexuality in Australia.¹⁹³ For the purposes of this thesis, it is important to note that Dunstan’s sexuality (he had relationships with both men and women during his life) may have affected the extent and nature of his *public* connection with the reform. He may have avoided playing a large part in the debates out of a fear that it would suggest a vested interest in the matter; as I noted earlier, any particular interest in homosexual law reform tended to prompt suggestions of a close acquaintance with a homosexual. However, there is also a possible political reason for his relative silence. The Labor Party strongly supported the Bill (at least in the House of Assembly), but as this was not announced publicly nor ever admitted by members in their speeches, there appears to have been a reluctance to formally associate the legislation with the government. The parliamentary Labor Party was content to allow Hill to take credit for the measure as a private member’s Bill. The motivation for this was likely a desire to maintain the belief that members had the right to vote according to their conscience on moral issues, and if Dunstan, as premier, had taken a leading role in campaigning for reform then the issue may have become too closely associated with the government. In responding to letters sent to him regarding the homosexual law reform in 1972, Dunstan was careful to emphasise that “I am only expressing my personal opinion and not necessarily that of the Government which leaves to each individual member ... the question of making up his

¹⁹³ See abstract for Dino Hodge, ‘Pink, Red and Vermillion: Homophobia in the Life and Times of Don Dunstan’, unpublished PhD thesis, University of Melbourne, 2012, available at <http://repository.unimelb.edu.au/10187/16786>, accessed 27 May 2013. See also Dino Hodge, ‘The Okayness of Gayness: Don Dunstan’s Record in Homosexual Law Reform’, in Yorick Smaal and Graham Willett (eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, pp.36-55.

own mind according to his conscience”.¹⁹⁴ I am reluctant to speculate on Dunstan’s own identification of his sexuality at this point in his life, though it is reasonable to suggest that his vote may have been affected if he was aware at the time of an attraction to men. However, his position on homosexual law reform is also entirely consistent with his much broader views on civil liberties and to suggest that these were entirely due to a sexual identity he may or may not have acknowledged at the time is unreasonable. As a final comment on the matter, an interesting exchange occurred during the debates in the House of Assembly. LCL member Stan Evans noted the title of the book sent to members by CAMP, *One in Twenty*, and pointed out that as “there are 47 members in this Parliament, one starts to worry”.¹⁹⁵ In later life, both Dunstan and one other male MHA are known to have had relationships with men, and so Evans’s observation (and perhaps the estimate of the book’s author!) was surprisingly accurate. The comment is more than a throwaway quip, however: it hints once again at the discourse of secrecy and shame surrounding homosexuality, its desirability and ulterior motives for supporting the legislation. Homosexuality was a matter for pity and, on this occasion, derision.

Although the Bill was passed by parliament in October 1972, the final version was substantially altered.¹⁹⁶ LCL Legislative Councillor Ren DeGaris introduced an amendment that maintained homosexual acts as an offence, but permitted ‘consenting adults in private’ to be used as a defence before the courts.¹⁹⁷ This meant that a man could still be arrested for a homosexual act, and therefore afforded him no more privacy than if the Bill had not been passed. The amendment was passed in the Legislative Council without a division, so it is not possible to know how individual members voted. Don Hopgood moved to remove the amendment in the House of Assembly, but it was accepted that the Legislative Council would block the Bill in this form and so the DeGaris version was permitted to pass.¹⁹⁸ Millhouse and Dunstan, both former Attorneys-General, were uncomfortable with the amendment as it shifted the onus of proof and therefore, Dunstan argued, was “a complete departure from the normal principles of the law”.¹⁹⁹ Potter,

¹⁹⁴ Series of letters in response to constituents, July and August 1972. *Homosexuality*, Dunstan Collection, Flinders University Library, DUN/VF7 Drawer 2.

¹⁹⁵ *SAPD*, HA, 18 October 1972, p.2210.

¹⁹⁶ *Criminal Law Consolidation Act Amendment Act, 1972*.

¹⁹⁷ *SAPD*, LC, 11 October 1972, p.1956.

¹⁹⁸ *SAPD*, HA, 18 October 1972, pp.2217-18; 25 October 1972, pp.2454-6.

¹⁹⁹ *SAPD*, HA, 18 October 1972, p.2207.

Hopgood, Payne, Terry McRae and, unsurprisingly, Murray Hill all argued that the amendment would not solve anything and would leave the Bill so weak as to be ineffective,²⁰⁰ and outside parliament, an editorial in the *Advertiser* criticised the amendment as “counter to the spirit of the original Bill”.²⁰¹ CAMP called the situation “ridiculous” and “farcical”.²⁰² In fact, in the three years until new legislation was passed to completely remove consensual homosexual acts from the criminal law, no man was arrested for private homosexual acts, and so the defence clause was never used. The spirit of the original Hill Bill was brought into practice, though not yet in law.

It is not possible to make such a fruitful analysis of the voting patterns on the Hill Bill as was possible with the abortion Bill of 1969. There are two chief reasons for this: Labor members of the House of Assembly appeared to vote according to an unofficial party line, and there were fewer divisions on amendments, which permits less analysis of the complexity of parliamentarians’ opinions on the issue. Gender analysis is not possible, as none of the three women who sat in the South Australian parliament of 1972 spoke to the Bill. All three were granted a paired vote as they were absent from the chamber at the time of the division. In the House of Assembly, Labor’s Molly Byrne voted for the Bill, and Joyce Steele (LCL) opposed it, and her colleague Jessie Cooper in the Legislative Council also voted against the measure. However, with no justification of their votes, nothing further can be inferred.²⁰³

Nevertheless, one key point emerges: the age of LCL members who voted for the Bill. Across both houses, 12 LCL members voted ‘yes’ (4 in the House, 8 in the Council) and 20 voted no (13 and 7 respectively). In both houses, the average age of LCL members voting for the Bill was lower than the average age of those voting against it, and the difference was particularly large in the House with an average age of 41.75 voting yes compared to 52.85 voting no.²⁰⁴ This reflected the findings of the 1967 opinion poll that

²⁰⁰ *SAPD*, LC, 11 October 1972, p.1957; *SAPD*, HA, 18 October 1972, pp.2202, 2208, 2212, 2216.

²⁰¹ *Advertiser*, 13 October 1972, p.5.

²⁰² *News*, 27 October 1972, p.14.

²⁰³ It is interesting to note that despite the increased number of seats in the House of Assembly in the 1970 election, not one of the new members was female. Byrne, Steele and Cooper are the same three female members who voted on the abortion Bill in the previous parliament.

²⁰⁴ As I noted in Chapter 3, all ages are calculated from birth year only, as though all were born on 1 January.

found that the lowest level of support for homosexual law reform was found in the oldest age bracket of the Australians surveyed. The age division in parliament was not clear-cut, as the youngest LCL member voted no (Graham Gunn, aged 30) and the oldest voted yes (Vic Springett, aged 70). The overall age of the Legislative Council was very high; only two members were under 50 (both LCL: Murray Hill, 46, and Martin Cameron, 36) and the eldest, President Lyell McEwin, was 75. Hill had introduced the Bill, and Cameron supported it (though did not make a speech). In addition to the clear tendency for younger LCL members to support legalising homosexuality, I will show later in this chapter that the age and nature of the still-gerrymandered Legislative Council (and the role of the elderly McEwin) was to become significant in 1973 when new legislation was introduced to fully legalise male homosexual acts.

Voting patterns also suggest that LCL members representing metropolitan seats were more likely to support the Bill than those from rural and regional seats, but it is only conclusive in the House of Assembly. Three of the four LCL MHAs who supported the Bill were from metropolitan seats. John Carnie, who represented the seat based on Port Lincoln and the lower Eyre Peninsula, was the exception. Of the thirteen who voted against the Bill, ten were from the country and just three from metropolitan seats. This suggests that had the gerrymander still been in existence in the lower house, with a much higher proportion of regional seats, the Bill might not have passed so easily. The electoral reforms passed by the Steele Hall government significantly changed the nature of the House of Assembly. However, in the Legislative Council, where four members represented each of the five districts (two urban, three regional), the division was not so clear. Four LCL members represented one of the metropolitan districts, Central No. 2, and of those, two voted yes (moderates Hill and Potter) and two voted no (Arthur Rymill and Mrs Cooper). The 'no' votes dominated in Northern district and Midland (only one 'yes' vote in each), but in the Southern district, all four LCL members voted 'yes'. One was DeGaris, whose support for the Bill was contingent upon the success of his amendment, and he could therefore be classed as, at best, a moderate supporter of the reform. (In fact, he was the only MP who had supported the Bill in 1972 who went on to oppose the full legalisation passed in 1975.) Another was Martin Cameron, the youngest MLC by ten years, and a true progressive amongst the LCL: he soon joined the moderate Liberal Movement and fought for universal suffrage in the Legislative Council, and was therefore well outside the standard demographic of LCL members of the time. A slight tendency to

rural opposition can be detected in the votes of MLCs, but the small numbers involved means that one or two factors easily skew the analysis.

A final comment should be made regarding Robin Millhouse's position on the Bill. As a senior member of the preceding government, he had successfully seen the abortion legislation through parliament and in 1970 had indicated that he believed homosexual law reform was desirable.²⁰⁵ However, he expressed great caution on the issue during the debates, in particular desiring that the matter be referred to a Select Committee similar to that established in 1968 on his abortion Bill. Millhouse criticised the haste with which the Bill moved through parliament, and was reluctant to ignore religious objections to homosexual conduct. He "respect[ed] greatly" the arguments of John Court.²⁰⁶ Don Hopgood sarcastically complimented Millhouse on his ability "to rise to his feet many times ... and yet not once really making his position clear on the issue",²⁰⁷ and it is true that it is difficult to ascertain exactly how Millhouse felt about the legislation from his parliamentary speeches. Possibly he was still equivocating on the best course of action, for reasons both ideological and political, and thus sought more time. He argued that "it will not do any harm for us to wait another few weeks" and insisted that his proposal to establish a Select Committee was not made "simply to try to kill the Bill".²⁰⁸ However, he later voted for legalisation in 1975, consistent with his earlier statements, and it appears that he never really opposed the measure. Millhouse's uncertainty hints at a reluctance to publicly identify as supportive of homosexuals. It was not desirable to be seen to have too close an alliance with homosexuals, seen to differing extents in statements by everyone from Millhouse and Dunstan to CAMP, whose South Australian members did not make a point of publicly identifying as homosexual even when advocating law reform. But where CAMP aimed to give the impression that this was not a niche matter solely concerning homosexuals, politicians and other contributors to the debates sought only to distance themselves from the undesirable perversion, with which no-one in public (or private) life wished to be associated.

²⁰⁵ Therese Nicholas, 'Abortion Law Reform in South Australia', unpublished BA(Hons) thesis, University of Adelaide, 1970, pp.22-3.

²⁰⁶ *SAPD*, HA, 18 October 1972, pp.2203-4.

²⁰⁷ *Ibid.*, p.2219.

²⁰⁸ *Ibid.*, p.2216.

1973 to 1975

The passage of the Hill Bill, altered by the amendment introduced by Ren DeGaris, was considered to be an unsatisfactory law by supporters of homosexual rights, and activists continued to press for full legalisation. A study of the activism and changing debates about homosexuality in South Australia between 1972 and 1975, when full legalisation was achieved, would be valuable and has been considered to some extent by Malcolm Cowan and Tim Reeves.²⁰⁹ It is beyond the scope of my study, which focuses on the changing discussions that permitted the first parliamentary reform. Nonetheless, a very brief consideration of 1973 to 1975 is profitable here as several factors emerge during those years to place into context the events of 1972.

Discussion of homosexuality continued to change and develop during these years. From its formation in mid 1973, the Gay Activists Alliance (GAA) took over from CAMP as the most prominent activist group. However, law reform was not their sole concern, and GAA's focus was on a much broader set of 'gay rights' (note the new use of the word 'gay', which had not featured widely in 1972 and indicated a new degree of self-identity). Their proposal to present talks about homosexuality in high schools was immensely controversial, and may have damaged the chances of passing the next attempt at reform.²¹⁰ However, matters were moving quickly beyond South Australia, too, as homosexual groups expanded in other states.²¹¹ In a new edition of the American Psychiatric Association's *Diagnostic and Statistical Manual*, homosexuality was removed as a disorder (though not entirely; a category of Sexual Orientation Disturbance remained).²¹² Some churches moderated their position further: the new Anglican Archbishop of Adelaide, Keith Rayner, made a statement that supported further efforts at law reform. David Hilliard argued that from that moment, "it was impossible for Festival

²⁰⁹ Malcolm Cowan and Tim Reeves, 'The "Gay Rights" Movement and the Decriminalisation Debate in South Australia, 1972-1975', in Robert Aldrich and Garry Wotherspoon (eds), *Gay and Lesbian Perspectives IV: Studies in Australian Culture*, Sydney: Department of Economic History and Australian Centre for Lesbian and Gay Research, University of Sydney, 1998, pp.164-93; Malcolm I. Cowan, 'The Decriminalisation of Homosexuality in South Australia, 1972-1975', unpublished BA(Hons) thesis, University of Adelaide, 1990.

²¹⁰ See Cowan and Reeves, 'The "Gay Rights" Movement', pp.179-80.

²¹¹ See Willett, *Living Out Loud*, pp.108-20.

²¹² Robert L. Spitzer, 'The Diagnostic Status of Homosexuality in *DSM-III*: A Reformulation of the Issues', *American Journal of Psychiatry*, vol.138 no.2, 1981, p.210.

of Light opponents ... to maintain that they represented ‘the Christian view’²¹³ Festival of Light (FOL) was the latest incarnation of the group formerly known as the Moral Action Committee and the Community Standards Organisation, which was now a national group but still strongest in Adelaide. FOL campaigned extensively against what it saw as the breakdown of society’s morals and aimed to alert Australians to “the dangers of moral pollution”.²¹⁴ It actively supported the October 1973 visit to Adelaide by British morals campaigner Mary Whitehouse, and hosted a large festival—the event was also called Festival of Light—including rallies to coincide with her speaking engagements.²¹⁵ The traditional opposition to homosexuality by evangelical Christian groups was maintained during these years, and their arguments continued to be supported by lawmakers. However, the key difference between the partial failure of the 1972 Bill, and the success of the 1975 legislation, was generational change in a parliament elected with universal suffrage for the first time.

Prior to the legislation of 1975, however, an unsuccessful attempt was made to change the law. In September 1973, newly elected 28 year old Labor member Peter Duncan introduced a Bill to abolish the laws relating to unnatural offences.²¹⁶ It passed easily through the House of Assembly, where only four members gave speeches (two for, two against) before the Bill was passed on the voices.²¹⁷ Arguments had not changed significantly in the year since the debates on the Hill Bill; Duncan reassured the House that his legislation “in no way seeks to assist or approve of homosexual practices”²¹⁸ and he claimed to “know that all members ... of this Parliament would like to see a lessening of the incidence of homosexuality”.²¹⁹ Importantly, David Tonkin even noted how frequently members actively sought to avoid condoning homosexual activity, and argued that it was still necessary because “there is still enough social stigma attached to it in our community for us to want to dissociate ourselves from any possible rub-off that may

²¹³ Hilliard, ‘Australian Anglicans and Homosexuality’ p.16; see also David Hilliard, *Godliness and Good Order: A History of the Anglican Church in South Australia*, Adelaide: Wakefield Press, 1986, p.148.

²¹⁴ David Hilliard and John Warhurst, ‘Festival of Light’, *Current Affairs Bulletin*, vol.50 no.9, 1974, p.14.

²¹⁵ See flyers and material contained in Festival of Light Collection, Flinders University Library.

²¹⁶ The Bill also removed gender specific terms from other laws relating to sexual offences. Criminal Law (Sexual Offences) Amendment Bill, 1973.

²¹⁷ *SAPD*, HA, 3 October 1973, p.1036.

²¹⁸ *SAPD*, HA, 19 September 1973, p.824.

²¹⁹ *Ibid.*, p.825.

come from speaking in favour of this legislation”.²²⁰ In the Legislative Council, the Bill was also introduced by a young, newly elected Labor member, Brian Chatterton, but debate was more extensive. Eleven members gave speeches, and the vote was tied nine all (including one set of paired votes). Lyell McEwin used his casting vote as President to oppose the Bill, and it therefore did not pass.²²¹ However, the one member who had failed to vote, Labor’s Cec Creedon, claimed to have accidentally missed the vote as he had not heard the bells ringing due to “traffic noise from North terrace”.²²²

In a highly unusual move, the Bill was controversially allowed to be voted on a second time. Leader of the LCL in the Council Ren DeGaris was unhappy with the move, and the paired vote afforded to Labor’s Tom Casey (‘no’) and LCL’s Clarence Story (‘yes’) was not repeated in the second vote, though this did not alter the result. The only difference was that Creedon’s ‘yes’ vote was counted, meaning that the Bill looked to have passed, nine votes to eight. However, McEwin on this occasion chose to take advantage of very recent changes to the state’s constitution that extended the right of the President to cast a deciding vote, permitting him to vote when “a question arises with respect to the passing of the second or third reading of the Bill”.²²³ It is not clear exactly what “question” that was, though possibly he was unsatisfied with the repeated vote on the Bill and saw that as sufficient cause. In any case, he once again opposed the reform, resulting in a tied vote and the Bill lapsed. The timing of these events is fascinating: the first vote was held on 21 November; the changes permitting McEwin to vote were proclaimed as law on 22 November, and the second vote was held on 29 November. That is, McEwin’s vote to block the Bill would not have been lawful if the division had occurred just a week earlier. Although McEwin claimed his vote had not been influenced by personal opinion, and it was traditional for a President’s casting vote to maintain the status quo,²²⁴ 76-year-old McEwin was widely known to hold very conservative views, having been a senior member of the Playford governments and in parliament continuously since 1934.²²⁵

²²⁰ *SAPD*, HA, 26 September 1973, p.967.

²²¹ *SAPD*, LC, 21 November 1973, p.1848.

²²² *Advertiser*, 22 November 1973, p.1. The veracity of this excuse has been doubted by many who have heard the volume of the bells.

²²³ *SAPD*, LC, 29 November 1973, pp.2090-1; *Constitutional and Electoral Acts Amendment Act, 1973*, s.12.

²²⁴ *Advertiser*, 22 November 1973, p.1.

²²⁵ Leith G. MacGillivray, ‘Snapshot: Sir Lyell McEwin’, in Bernard O’Neil, Judith Raftery and Kerrie Round (eds), *Playford’s South Australia: Essays on the History of South Australia 1933-1968*, Adelaide:

Though influential at the time, McEwin's preservation of the status quo was short-lived. The very Act that permitted him to block the Bill was the same Act that would allow homosexual law reform to pass easily less than two years later. The Dunstan government, supported by the moderate LCL (LM) members in the upper house, had long pushed to reform the Legislative Council to abolish the five malapportioned electoral districts and allow universal adult suffrage for that house. The *Constitutional and Electoral Acts Amendment Act* proclaimed on 22 November 1973 that allowed the President's deliberative vote also, more significantly, created a single state-wide electorate for the Legislative Council and enabled any person eligible to vote for the House of Assembly to vote for the Council.

The new electoral laws took effect at the next state election, which occurred in July 1975. The following month, Peter Duncan, now Attorney-General, introduced the Criminal Law (Sexual Offences) Amendment Bill to legalise male homosexual acts. The debate was not extensive, and the Bill passed with a comfortable majority in both houses: 31 to 12 in the House on the second reading (and passage on the voices on the third reading), and 13 to 7 in the Council. As in 1972, Tom Casey was the only Labor member not to vote for the Bill, though CAMP members recall that pressure appeared to be placed on him by other Labor parliamentarians to support the measure.²²⁶ As a result of the electoral reforms, Labor had a much greater representation in the Legislative Council (10 Labor, 11 Liberal, compared to 6-14 in 1973). The overall age of the Council had dropped dramatically, from 58.15 in 1972 to 47.6 in 1975, with the oldest member only 61 (compared to the 76 year old McEwin in 1973). Only four Liberal MLCs supported the Bill, but their average age was again significantly lower than those who opposed it (47.75 to 54.6). The average age of the eight new MLCs (six of whom represented Labor) was 43.5, with Chris Sumner the youngest at just 32. This was true generational change, and was the most important reason for the easy passage of the Bill. A majority of Liberal MLCs opposed legalising homosexual acts, and had the conservative dominance continued in the Council, it may well have been amended or blocked as it had been during previous attempts. However, the electoral reform was not passed (solely) as an attempt to gain dominance in the Legislative Council and therefore make progressive lawmaking easier;

Association of Professional Historians Inc, 1996, pp.52-3; David Hilliard, 'Religion in Playford's South Australia', in O'Neil, Raftery & Round (eds), *Playford's South Australia*, pp.271-2.

²²⁶ Parker & Sendziuk, 'It's Time', p.29.

it was supported by the progressive members of the opposition and was a genuinely overdue measure to achieve full democratic representation in South Australia. In 1975, seventy per cent of this new democratically elected parliament believed that male homosexual acts should no longer be unlawful.²²⁷

The 1975 Act was one of a series of social reforms passed by the Dunstan governments from 1970, and consistent with others passed by the Walsh, Dunstan and Hall governments between 1965 and 1970. The issues dealt with in these reforms included liquor licensing, gambling, censorship, abortion, rape in marriage, sexual discrimination, and nude bathing. To social conservatives, especially those from evangelical Christian traditions, these reforms were concerning enough as individual measures, but together signified an undesirable secularisation of society and had the potential to prompt further, more drastic, changes to the law.²²⁸ Only one man went so far as to predict that South Australia's capital city would be physically destroyed by a tidal wave, but many more warned that its moral destruction was already well underway.

²²⁷ See *Criminal Law (Sexual Offences) Amendment Act, 1975*.

²²⁸ See Overduin & Fleming, *Wake Up, Lucky Country!*, pp.248-50.

Conclusion

Drawing upon the evidence already presented, I will evaluate the factors that permitted the passage of abortion and homosexual law reform in South Australia by considering in turn the two main themes of this thesis. I first assess the role played by public discussion, and demonstrate that it was not the nature of the discussion that was critical, but the location of that discussion. I then analyse the social and political situation in South Australia that permitted the reforms to pass.

‘Moral’ Law Reform and the Public Interest

Much analysis of discussion about sexual morality draws upon the work of Michel Foucault and focuses on the origins and effects of the repression of sexual discourse and the creation of homosexual identity.¹ However, my approach has been an expansion of the approach of Graham Willett in his study of homophobia in the 1950s, where his concern was “not with homosexual identity as such but, rather, with the narrower question of homosexual visibility in society”. He noted that this was the “absence that I want to demonstrate, and its political consequences that I want to explore”.² In a similar vein, this thesis has been concerned with the public visibility of abortion and homosexual acts and has shown not merely that the issues became more public during the twentieth century, but that the shift towards public awareness was not accompanied by a significant or widespread liberalisation of attitudes towards the two activities.

¹ See discussion in Graham Willett, ‘The Darkest Decade: Homophobia in 1950s Australia’, *Australian Historical Studies*, no.109, 1997, p.121; Lisa Featherstone, *Let’s Talk About Sex: Histories of Sexuality in Australia from Federation to the Pill*, Newcastle-upon-Tyne: Cambridge Scholars Publishing, 2011, p.239; Garry Wotherspoon, *City of the Plain: History of a Gay Sub-Culture*, Sydney: Hale & Ironmonger, 1991, pp.18, 138.

² Willett, ‘The Darkest Decade’, p.121.

Prior to the early 1960s, the vast majority of the little public discussion that occurred about abortion and homosexuality served to endorse the illegality of the activities. Court reports informed newspaper readers of prosecutions for crimes relating to abortion or homosexual acts, and from 1928 the prominence of those reports and the language they utilised were brought under the control of the law. References to abortion could also be found in advertisements printed in the daily newspapers, despite legislation prohibiting this that was introduced in 1897. The newspaper reports about abortion prosecutions, in particular, reveal an awkward balance between the taboo surrounding the topic and a salacious fascination with the activity. Newspapers such as the *Truth* were directly targeted by politicians who were uncomfortable with the discourse they promoted. In an era when all matters of sex, sexuality and sexual attraction were inappropriate for public discussion, abortion and homosexuality were particularly taboo due to their transgressive nature: homosexual acts were ‘unnatural’, and abortion challenged the accepted understanding of motherhood as a woman’s responsibility and destiny. The two issues remained overwhelmingly private, and any public discussion that did occur was framed in opposition to the existence of the two practices.

The dominance of the private/negative conversation was incrementally eroded during the middle decades of the twentieth century, though the effect did not begin to become evident until the 1960s. Abortion was discussed publicly in South Australia after the British Bourne ruling in 1938, but conversation soon disappeared. The nature of romantic interactions especially with American soldiers on the home-front in Australia during World War II prompted discussion of sexual morals but those discussions tended to reinforce traditional attitudes towards sex and sexuality, particularly as they applied to women. Medical and legal reports on the nature of sexuality and sexual offences emerged in the late 1940s and 1950s, most prominently in Britain with the release of the Wolfenden Report in 1957, which failed to make a public impression in Australia at the time. From the late 1950s, campaigns against highly restrictive censorship laws not only raised awareness of sex and sexuality, but specifically addressed the taboos that existed regarding speech about sexual issues. In 1962, the publicity regarding thalidomide marked the first time that abortion and the complex choices regarding parenthood were discussed widely in the context of respectable middle-class families, and coincided with the early years of the birth control pill and the associated conversations about contraception. Finally, after several years of debate, the British parliament passed the

Abortion Act and the *Sexual Offences Act* in 1967 and created a legislative precedent for South Australia to follow, and also indicated that a society substantially similar to the state's own was ready for reform in these areas. The support of the Church of England for the British reforms was a crucial aspect, signifying that the traditional hegemony of the Christian churches on moral behaviour was becoming more flexible, and showing that the separation of religious teachings and the secular criminal law would not be universally opposed.

Although public discussion and debate had become acceptable by the late 1960s, the abortion and homosexual law reforms passed by South Australia in 1969 and 1972 reveal that attitudes towards the two issues had not changed substantially from those expressed in earlier decades. The reforms were not passed because abortion and homosexual acts were suddenly considered acceptable; rather, it was now considered unacceptable to restrict by law those individual, private, victimless behaviours (though the conceptualisation of abortion as 'victimless' encapsulates much of the opposition to that reform). Politicians expressed their distaste and many of those who supported the reforms made clear that they did not condone the activities.

The carefully drafted and extensively debated terms of the abortion legislation show that it was intended to restrict the occurrence of abortions to the greatest possible extent. The Act passed judgement on the circumstances in which it was acceptable for a woman to end her pregnancy: namely, when her condition was able to be attributed to factors outside her control. The pregnant woman could usually not be held responsible for a serious health problem (either in her or the foetus, though the blame apportioned to mothers who took thalidomide is an interesting case) or for rape (discussed in debates though not explicitly mentioned in the Act). The legislation implicitly told women that they could not seek a lawful abortion if they had become pregnant due to their own carelessness, rather than a factor beyond their own control, and thereby reinforced traditional attitudes about a woman's responsibility to subjugate her sexual desires (insofar as they were acknowledged at all) to her expected reproductive function.³ Ultimately, lawful abortion was accepted as necessary because parliamentarians understood that women would continue to seek abortions regardless of the law, and it was desirable to protect the health and lives of women who would otherwise seek unregulated

³ See Featherstone, *Let's Talk About Sex*, pp.21-5.

‘backyard’ procedures. Abortion was reinforced as a medical procedure (it had already been a matter for doctors, who could perform abortions when life was at risk), in which two doctors had control over a woman’s body. It was also argued that it was not appropriate to legally compel people to behave according to the doctrine of a faith that was not their own, though the restrictions retained in the Act demonstrated that this ideal was not meaningfully converted into the terms of the new law and women remain nominally subject to medical determinations about their reproductive choices. However, those restrictions quickly became virtually meaningless: within only a few years it was apparent that South Australian women were able to obtain a lawful abortion for a psychological indication—the risk of injury to the mental health of the mother—and that situation remains in effect to the present day when, in practice, abortion is available ‘on demand’.⁴

The debates on homosexual law reform reveal that politicians went to considerable effort to distance themselves personally from homosexuality and argued that it was an undesirable practice that should ideally be minimised through treatment or self-control. Attorney-General Len King’s speech is representative of those who argued that although they believed homosexual acts to be sinful, the law had no right to intrude upon an individual’s standards of moral behaviour. The amendment moved by Ren DeGaris and accepted by parliament diminished the reform, as men who had sex with men could still be arrested and have their sexual behaviour discussed in court. The law was repealed three years later and the provision of the DeGaris amendment was never used; like abortion, the reform was effectively more liberal in practice than it was in the statute book. However, the passage of the amendment reveals that parliamentarians (particularly those in the Legislative Council) believed that homosexual acts still required surveillance and legislative disincentives in order to protect ‘the public’ from the undesirable actions of a minority.⁵ The dominant attitude expressed about homosexual acts (as opposed to the benefits of legalisation) had not changed substantially from earlier decades, when homosexual men were considered dysfunctional and deviant.

⁴ See Clare Parker, ‘A Parliament’s Right to Choose: Abortion Law Reform in South Australia’, *History Australia* (forthcoming).

⁵ See also Kate Gleeson, ‘Consenting Adults in Private: In Search of the Sexual Subject’, unpublished PhD thesis, University of New South Wales, 2006, p.328, on the equivalent argument in Britain.

The attitudes expressed by the major South Australian churches reinforced the distinction between sin and crime (The Catholic Church's stance on abortion was an exception, which I discuss below.) Like politicians, the churches explicitly did not condone the activities and advocated alternatives to their practice, but accepted that punishment was not necessarily useful and that religious morals should no longer be enforced upon all of society by the criminal law. The churches' views were influential and an important indication to parliamentarians that the traditional guardians of moral behaviour were willing to accept some change in the law.

The most extreme positions in the two debates were presented by smaller activist groups. Single-interest pro-reform groups, the Abortion Law Reform Association of South Australia (ALRASA) and Campaign Against Moral Persecution (CAMP), understood the need to convey their strongly pro-reform positions to as many people as possible, both inside and outside parliament. They chiefly sought to counter opponents' arguments with facts that supported reform, and argued their views in newspapers, on radio and television. In both reforms, a smaller group actually held the most extreme, pro-*total*-reform position: the submission of the Council for Civil Liberties to the Select Committee on abortion and the arguments expressed by Gay Liberation members in August 1972 conveyed a desire for total removal of all criminal sanctions from the law, but the two larger lobby groups aimed for a less complete but arguably more palatable reform. In both cases, the reform that eventually passed through parliament was even less liberal than those advocated by ALRASA and CAMP. It is clear that some of the arguments advanced by groups and individuals that opposed the reforms influenced the restrictive nature of the Bills that passed. Although much of the opposition was not formally constituted into organised lobby groups, their task was, in some ways, simpler: they had only to reinforce the traditional views about abortion and homosexuality that had prevailed for centuries, and traces of those views remained evident in the laws that were passed.

The role of the media in the reforms was not confined to reporting the events and opinions of others, but on occasions also extended to voicing editorial support for the reforms. Editorials in South Australia's major daily newspaper the *Advertiser* openly supported abortion and homosexual law reform; the latter was called for in the newspaper prior to Murray Hill's announcement that he would introduce a Bill. The editorial support of the *Advertiser* signalled a move away from its reputation as a conservative institution

that had existed well into the 1960s and was the starkest indication that the debate about the issues, once almost unspeakable, was now not only possible but important. As the paper itself noted in the context of abortion, “the issue no longer has to be discussed in corners when it is not being ignored altogether”.⁶

This comment summarises the change in the debates that had occurred and that permitted the passage of the reforms in South Australia. It was the location of those discussions that had meaningfully changed, not the attitudes expressed in the discussions. The attitudes towards *law reform* had changed, but not towards the practice of the behaviours themselves. This reflected a change in attitudes about the role of religious moral teachings and the secular law, and a new pluralism evident in society that was no longer so heavily dominated by one particular cultural or religious identity. By the time of the South Australian reforms, the two behaviours could be spoken about more freely in the print and broadcast media than was possible at any time before. However, *they were still characterised as deviant*. The dominant position continued to emphasise the ‘wrongness’ of abortion and homosexual acts, and the desire that they be minimised. Public visibility of the two issues allowed them to be considered topics worthy of political attention, and permitted debate about their legal status, but their ‘moral’ status was unchanged. The shift in location of the discussion, from private—“in corners” or otherwise ignored—to public permitted the law reforms, but was not accompanied by meaningful change in attitudes towards the behaviours themselves. It is, after this period of time, impossible to ascertain if politicians were motivated to pass the reforms because of other factors that they felt unable to express publicly, but this merely reinforces the importance of a thorough analysis of the accepted tone of public debate about abortion and homosexuality.

It is true that during the debates on the reforms, some participants expressed views that more explicitly supported the right of people to practice abortion and homosexual acts. A small number of parliamentarians who spoke to the Bills held this more liberal position, as advocated by some pro-reform activist groups. There had always existed people who supported the activities, but prior to the 1960s these people very rarely felt confident to express their position publicly as the taboo against the activities was so profound.⁷ Some

⁶ *Advertiser*, 13 August 1968, p.2.

⁷ As I have shown, early considerations of some degree of law reform were evident in Britain after the Bourne ruling of 1938, and can be traced back as far back as Jeremy Bentham, whose 1785 essay ‘Offences

men who had sex with men presumably believed that they should be able to have freedom to behave without the attention of the law, though many may not have explicitly been able to articulate it due to conditioning in the social and moral expectations of earlier times. Similarly, there had always existed people who performed abortions, and women who sought them. However, we cannot automatically conflate the desire to have abortion with a desire for legal abortion. Some women who terminated their pregnancy may, if they felt they had a choice, have preferred to give birth to an illegitimate child without societal condemnation, or to have a reliable and affordable means of preventing the pregnancy in the first place. It is likely that many women felt compelled to end their pregnancy although the idea was abhorrent to them. These views could, by the late 1960s, be expressed much more openly. However, the inclusion of these views in the South Australian debates only marks an expansion of the conversation, not a fundamental change in its nature. The more conservative (pro-reform, anti-practice) position remained the most dominant, and was held by a critical mass of parliamentarians. The nature of the conversation had broadened slightly, but not convincingly, and not enough to mark abortion and homosexual acts as deserving of acceptance in their own right. The reforms were not passed because the behaviours were considered acceptable, but because belief about the role of the law had changed. In the case of homosexuality, parliamentarians believed that the criminal law should not intrude into private behaviour. And even though only the most liberal supporters of abortion advocated a near-complete removal of the criminal law from intrusion into women's reproductive choices, a majority of parliamentarians desired some degree of abortion law reform in order to clarify the common law position which they argued was ambiguous and causing undesirable consequences. This argument implied a belief within parliament of the primacy of statute law over common law,⁸ and reinforces the observation that both reforms were framed as questions regarding the role and function of the law, rather than the fundamental acceptability of abortion and homosexual acts.

Against One's Self' was written (though not published) in the early period of repression of discussion about sexual matters. It was published in *Journal of Homosexuality*, vol.3 no.4, 1978, pp.389-405.

⁸ On the tension between statute and common law regarding abortion (in a more contemporary context), see Helen Pringle, 'Is Abortion Illegal?', *Australian Journal of Political Science*, vol.32 no.1, 1997, pp.93-110; and Kate Gleeson, 'The Other Abortion Myth – the Failure of the Common Law', *Journal of Bioethical Enquiry*, vol.6 no.1, 2009, pp.69-81. On the reluctance of judges to 'make' law in South Australia in the first half of the twentieth century, see Alex. C. Castles and Michael C. Harris, *Lawmakers and Wayward Whigs: Government and Law in South Australia 1836-1986*, Adelaide: Wakefield Press, 1987, pp.347-8.

The shift from private to public discussion was crucial to achieving this type of law reform. Political action was highly unlikely to occur without evidence of public interest in the topic. Politicians are reliant on the public to gain and maintain their seats in parliament, and they aim to govern in the public interest. It is apparent (at least on social issues) that they first need to be convinced that the public is interested. A pro-reform politician who broached a taboo issue prior to public awareness risked being accused of pursuing a niche issue or a personal hobby-horse. Not only could the politician be labelled out of touch, but as these issues were highly controversial they had the potential to be electorally damaging to the member, and by extension, his or her party. Dunstan found the lack of public awareness a problem when he suggested homosexual law reform to Caucus in 1965: his colleagues argued that the public would not be ready for such a measure. Similarly, during debates on the abortion Bill in parliament in 1968-69 opponents of legal abortion attempted to discredit the relevance and importance of the reform by questioning whether public support existed for a change in the law.

It is clear that public visibility is an important part of the process of liberalising laws that relate to 'immoral' activity. Indeed, it is possible to observe a number of specific stages in the shift away from abortion and homosexual acts as unlawful and unsuitable for public discussion. Five stages are identifiable, with each being a necessary pre-condition for the next to succeed. First, the issue must be on Paul Wilson's "criminal threshold" that I identified in the Introduction to this thesis; there must exist in some place the legitimate recognition that the current law is unsatisfactory and that change will be beneficial. (This prevents crimes such as murder from earning a place on the reform agenda.) Second, public discussion of the behaviour must be evident. This stage forms the focus of much of this thesis. A catalyst may assist in accelerating the prominence of the issue, but it is not necessary for reform if the public discussion develops sufficiently of its own accord. In the case of homosexual law reform, the Dr Duncan case can be considered a catalyst, as it greatly accelerated the quantity of publicity given to the issue which in turn made reform much more achievable. In this situation, it is useful to draw upon the original meaning of the word 'catalyst' as it is used in chemistry, where a catalyst accelerates a chemical reaction that is already occurring, rather than causing a reaction (as a precipitant does). As I have demonstrated, the passage towards homosexual law reform had already commenced prior to May 1972, but the murder of Dr Duncan greatly accelerated the cause within South Australia. An immediate catalyst is not as evident in abortion law

reform; the British reform was evidently part of the justification behind Millhouse's Bill, but its impact was not as extreme as the effect of Duncan's death on Hill's Bill.

The third stage involves small-scale political will, in which one or a small group of parliamentarians believes that the issue warrants the attention of parliament, and introduces a Bill. Fourth, the issue requires continued publicity during the process of the political debates, reinforcing positive outcomes of legalisation and rebutting opposition arguments. This is driven by activists, but is most effective when it extends beyond a conversation between activists and politicians and brings the voices of private citizens into the debates as it is from there that the relevance and importance of the issue can be demonstrated to politicians. Finally, the fifth stage is majority political will, when sufficient numbers of politicians are convinced of the merits of the reform, and the Bill is able to pass through parliament.

This model is useful to characterise the process of abortion and homosexual law reform, and emphasises the interaction of the public and political agendas. A preliminary analysis of the state of law reform regarding other moral issues in Australia suggests that this model is applicable more broadly, though considerably more research would be required to justify this argument. For instance, same-sex marriage currently occupies a very prominent place in the public discourse and it appears that eventual passage of the law is likely; it has successfully achieved the fourth stage and now only requires a majority of federal parliamentarians to echo the sentiment expressed in nationwide opinion polls. In contrast, legalisation of drugs such as cannabis has not yet garnered sufficient public discussion and support to earn a serious place on the political agenda. In South Australia, the legalisation of sex work has achieved small-scale political will as Bills have been introduced into the state parliament, but the issue is still considered 'niche' and this suggests that the proposed reforms (stage 3) has been introduced prior to sufficient support having been achieved in the community (stage 2).

As the debates about same-sex marriage in the early twenty-first century demonstrate, public visibility and public opinion are necessary, but are far from sufficient to permit reform. The parliament must also be willing. The composition of the parliament is important, though a left (socially progressive) majority is not essential. What is more crucial is that the Liberal Party (or its equivalent) is permitted a conscience vote, to allow

the natural division of libertarians and social conservatives that exists within the party to vote according to their own position, not the position of the dominant faction at the time. As I will demonstrate in the following section, this occurred in South Australia, and, together with a number of other political and social factors specific to the state, permitted the passage of the abortion and homosexual law reforms through the parliament in 1969 and 1972.

Progressive Reform in South Australia

Although this thesis has been concerned chiefly with the change in discussion about abortion and homosexuality, its focus on South Australia allows a simultaneous examination of the circumstances that permitted the two reforms at a time when no other Australian jurisdiction had yet made similar changes to the law. A comparison with other states is beyond the scope of this thesis, but analysis reveals that certain aspects of the social and political history of South Australia contributed to the nature of the debates in the 1960s and 1970s. It reveals much about the socio-political situation of the state during the post-Playford decade (1965-1975), the years that saw a series of progressive social reforms under both Labor, and Liberal and Country League (LCL) governments. I use the term ‘post-Playford’ because it embraces the shorter-term governments of Frank Walsh and Steele Hall that are often obscured in the popular characterisation of the period as a dichotomy between Playford and Dunstan, and because it points to the effect of Playford’s decades in power on the period that followed. It also acknowledges that the premiers and the governments during the post-Playford period were not necessarily fundamental to the reforms: the pieces of legislation I examine were not introduced as government measures, and were (formally) passed by free votes. Furthermore, analysis according to convenient calendar decades (‘The 1960s’, ‘The 1970s’) is often misleading, and this is the case when examining the social reforms in South Australia at this time.

The legacy of the Playford era had several striking effects on the passage of the two reforms. First, the Playford governments’ policies resulted in a strong and stable state economy, moving away from a reliance on agriculture towards an expanded manufacturing and industrial sector. This economic stability meant that the parliaments that followed—at least until the mid-1970s—were able to justify the expansion of their lawmaking beyond immediate financial concerns and spend time on matters that sought to

enhance the quality of life of citizens beyond balancing the household budget. Of course, economic stability was not unique to South Australia in this period, and this explanation is overly simplistic. A more compelling argument draws upon the rise of capitalism in this period, which I discuss below. Nonetheless, the observation remains true that the sound economic policies of the Playford governments, while far from sufficient for reform, helped to create a post-war society in which these types of social law reforms were possible.

Second, the effect of the malapportionment of electoral districts maintained throughout the Playford era can be seen in analysis of parliamentary voting patterns on the reform Bills, and in the very fact that an LCL government was in power between 1968 and 1970 although the Labor Party received a majority of the state-wide vote at the 1968 election. As I have shown, rural and regional members (whose parliamentary dominance was ensured by the malapportionment) were the only politicians to vote against the abortion legislation, and were less likely to vote to legalise homosexual acts in 1972. Although the Hall government reformed the House of Assembly electoral distribution in 1969, the limited franchise and malapportioned districts in the Legislative Council remained in effect until the 1975 election. This affected the passage of Murray Hill's homosexual law reform Bill in 1972, when the heavily conservative Council voted in favour of an amendment that reversed the burden of proof for consensual homosexual acts. The effects were still felt in 1973, when Peter Duncan's first Bill to fully legalise homosexual acts was twice blocked by the LCL-dominated Council. The contrast to the easy passage of Duncan's second Bill, introduced soon after the 1975 election at which the Legislative Council reforms took effect, was dramatic. The members of the progressive faction of the LCL, the Liberal Movement, not only actively supported the moral law reforms but also assisted in the passage of progressive social legislation by supporting the Hall and Dunstan governments' electoral reforms.

Finally, it could be suggested that the progressive attitude dominant in post-Playford South Australia was, in part, a reaction to the social conservatism of the lengthy Playford era.⁹ The causation is evident in some areas of reform, such as the overturning of laws

⁹ See Judith Raftery, 'Introduction', in Bernard O'Neil, Judith Raftery and Kerrie Round (eds), *Playford's South Australia: Essays on the History of South Australia 1933-1968*, Adelaide: Association of Professional Historians Inc, 1996, p.1; Clare Parker and Paul Sendziuk, 'It's Time: The Duncan Case and the Decriminalisation of Homosexual Acts in South Australia, 1972', in Yorick Smaal and Graham Willett

that retained six o'clock pub closing decades after ending in some other states, and the relaxation of laws against gambling. However, these types of reforms merely brought South Australia into line with other jurisdictions and were not, relatively speaking, progressive. It is harder to assess the extent to which the truly progressive or pioneering reforms were a reaction to earlier conservatism. It is tempting to argue in favour of a pendulum effect, in which particularly conservative laws and attitudes gave way to particularly liberal progressive policies, before reverting to a more moderate position between the two extremes. In retrospect, this appears to be what occurred, but it is very difficult to prove the motive. Certainly, Don Dunstan later wrote that his desire to establish a liberal social democracy in South Australia was influenced by the "Calvinist gloom" of the state in the middle decades of the twentieth century,¹⁰ but his ideology and therefore his vision for the state were unlikely to have been influenced solely by the nature of Playford's South Australia. In any case, Dunstan was far from the only progressive member of parliament. The moderate faction of the Liberal and Country League, which in later years formalised as the faction and then the party known as the Liberal Movement, played a very significant role in assisting the passage of progressive social reform. As I have noted, this was evident in the origins and passage of the homosexual acts Bill in 1972, especially in the Legislative Council, but could also be seen in 1969 when Robin Millhouse championed abortion law reform several years before a formal split in the LCL. Having two ideological strains present in the LCL was not unusual in conservative politics—a division between social conservatism and libertarianism is often evident—but dissatisfaction had intensified during Playford's lengthy rule.¹¹ The older LCL parliamentarians who had served long terms (Lyell McEwin entered parliament in 1934, even prior to Playford becoming premier) tended to maintain the outlook of the Playford governments, while many of the younger members such as Hall, Millhouse and Hill represented a new generation and were more likely to advocate liberal positions on social and moral issues. The generational shift was evident in the direction adopted by the Young Liberals during the 1960s, who felt a responsibility to campaign for progressive reform and who introduced the first motion to suggest

(eds), *Out Here: Gay and Lesbian Perspectives VI*, Melbourne: Monash University Publishing, 2011, p.28; Rod Oxenberry, 'Community Welfare', in Andrew Parkin and Allan Patience (eds), *The Dunstan Decade: Social Democracy at the State Level*, Melbourne: Longman Cheshire, 1981, p.52.

¹⁰ Don Dunstan, *Felicia: The Political Memoirs of Don Dunstan*, Melbourne: Macmillan, 1981, pp.22-3.

¹¹ Dean Jaensch and Joan Bullock, *Liberals in Limbo: Non-Labor Politics in South Australia 1970-1978*, Melbourne: Drummond, 1978, pp.9-12, 206-7.

abortion law reform at the 1968 annual meeting of the state LCL. Therefore, the argument that the progressiveness evident in South Australian politics from the mid 1960s was a reaction against Playford's style of governance is most convincing within his own party.

The divisions in the LCL were made apparent by the free or 'conscience' votes afforded to members on the abortion and homosexual law reforms. This is common practice with votes on 'life and death' or other moral issues, especially as attitudes on these issues do not divide neatly along the largely economic-based distinctions that characterise the two major parties.¹² John Warhurst and Vance Merrill argue that a free vote is advantageous for parties as it avoids internal conflict and potential splits in the party—though the LCL was already affected by internal problems—but that it leaves individual parliamentarians open to campaigns from activists.¹³ That both reforms were introduced as private members' Bills, and that the premiers appeared reluctant to publicly endorse the reforms beyond their parliamentary speeches, demonstrate the parties' desire to disassociate themselves from any formal public position on the controversial issues. Warhurst has also argued that there "is really no such thing as an absolutely free vote. Parliamentarians ... are never really free from their community responsibilities or from their personal values or from their political parties."¹⁴ I have shown that Labor members' vote on the Hill Bill in 1972 appeared to be somewhat less than free, and there is a suggestion that some LCL members in 1969, particularly in the Legislative Council, supported the abortion Bill because it was introduced by their Attorney-General (albeit as a private member's Bill). Even when it does not appear that any party pressure was exerted, politicians sought to balance their personal views on the issue not only with the views of the electorate but also on their understanding of the role of law and principles of lawmaking. The overwhelming number of members who spoke to the Bills, particularly during the abortion debates in

¹² John Warhurst and Vance Merrill, 'The Abortion Issue in Australia: Pressure Politics and Policy', *The Australian Quarterly*, vol.54 no.2, 1982, pp.126-7.

¹³ *Ibid.*, p.126.

¹⁴ John Warhurst in *Canberra Times*, 12 April 2002, cited in Deirdre McKeown and Rob Lundie, *Free Votes in Australian and some Overseas Parliaments*, Commonwealth Parliamentary Library Current Issues Brief no.1, 2002-03, p.1, available at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib0203/03CIB01, accessed 13 March 2013.

1969, demonstrates how differently a ‘free’ vote and its debates operate from a more conventional party-line position on other legislation.¹⁵

In order to understand the factors that influenced parliamentarians’ views and arguments, it is necessary to look to the nature of the society that the politicians represented. Prior to World War II, South Australia (like most of the nation) was overwhelmingly ethnically homogenous. The enormous scale of immigration in the years following the War led to a more ethnically and culturally diverse population, which can allow greater acceptance of difference and tolerance towards a larger range of religious and cultural traditions. Several politicians referred to the need to make laws suitable for a pluralistic society, as the state had rapidly become after the War. Christian morality no longer had an exclusive claim over the state’s laws, though the churches played a role in shaping the discourse about abortion and homosexual acts and their possible legalisation. The positions of the three major denominations—Anglican, Catholic and Methodist—were in part influenced by each church’s history within the state.

The Anglican Church was consistently the largest in terms of followers, and claimed much of the state’s ‘elite’, including, at least nominally, many parliamentarians. The theology followed by the South Australian Anglican hierarchy was more liberal than the evangelical, ‘low-church’ Anglicanism that dominated in Sydney and in isolated church communities in Adelaide such as Holy Trinity during and following Lance Shilton’s term as Rector. Senior Anglicans in South Australia did not tend to express firm positions on moral issues during the 1960s and 1970s, though were very broadly in support of separating law and morality. Some members of the church certainly disapproved of the direction the law was taking. It is difficult to meaningfully characterise the role of the Anglican Church during the debates, and Graham Willett has argued that the position of the churches did not necessarily “carr[y] much weight in society” on attitudes towards sexuality.¹⁶ I suggest that the influence of the church was most relevant to individual

¹⁵ See also John Warhurst, ‘Conscience Voting in the Australian Federal Parliament’, *Australian Journal of Politics and History*, vol.54 no.4, 2008, pp.579-96; Darryn Jensen, ‘Faith, Conscience and Legislation’, *University of Queensland Law Journal*, vol.27 no.2, 2008, pp.85-101.

¹⁶ Graham Willett, ‘Into the Present: Anglicanism and Homosexuality in the 1970s’, in Colin Holden (ed.), *People of the Past? The Culture of Melbourne Anglicanism and Anglicanism in Melbourne’s Culture*, Melbourne: University of Melbourne, Department of History, 2000, pp.28-9.

politicians: in particular, it is notable that both Robin Millhouse and Murray Hill, sponsors of the two Bills, were practising Anglicans.

The Catholic Church was arguably the least influential of the three churches, and had been since the earliest years of the colony. Catholics were not just fewer in numbers but also weaker in influence, and until after World War II held very few senior political or judicial positions in the state.¹⁷ The South Australian Catholic Church was also less politicised than its counterparts in some other states (most notably Victoria, home of Archbishop Daniel Mannix), and at the time of the Labor Party split in 1955 was led by Archbishop Matthew Beovich who refused to formally align his church with the newly-formed and largely Catholic Democratic Labor Party. There was a substantial growth in Catholic numbers after the War with large numbers of European immigrants, but they did not yet hold influential positions in the community. By the early 1970s, Catholic Labor politicians such as Des Corcoran and Len King held senior positions in the state parliament, but they did not have sufficient numbers to make an impact on moral legislation as a Catholic bloc, as demonstrated by Terry McRae's failed 1972 attempt to overturn part of the 1969 abortion legislation. Additionally, the divergence of opinion on the role personal faith should play in lawmaking meant that the votes of members such as Joe Jennings did not always conform to the position of their Catholic peers.

The strength of the Methodist Church was the most evident difference between South Australia and other states. Methodists outnumbered Catholics in South Australia, and were consistently outspoken on issues of public morality during the early twentieth century. The shift towards a more liberal Methodist theology from the 1950s was significant in the contribution of the Church to moral reform from the 1960s; Arnold D. Hunt writes that the "ecclesiastical turbulence" of the time included "a call to the church to discard its legalistic morality and to operate pragmatically and 'situationally' on the principle of love or human concern".¹⁸ While the Church and many of its members

¹⁷ See David Hilliard, 'Religion in Playford's South Australia', in Bernard O'Neil, Judith Raftery and Kerrie Round (eds), *Playford's South Australia: Essays on the History of South Australia 1933-1968*, Adelaide: Association of Professional Historians Inc, 1996, p.255.

¹⁸ Arnold D. Hunt, *This Side of Heaven: A History of Methodism in South Australia*, Adelaide: Lutheran Publishing House, 1985, p.385; Alan D. Gilbert, *The Making of Post-Christian Britain: A History of the Secularisation of Modern Society*, London: Longman, 1980. See also works such as Joseph Fletcher, *Situation Ethics: The New Morality*, Philadelphia: Westminster Press, 1966, and John A.T. Robinson, *Christian Freedom in a Permissive Society*, London: SCM, 1970.

continued to oppose liberalisation of laws regarding liquor and gambling, its position on private behaviour significantly shaped the debates on homosexuality and, particularly, abortion. Methodists were not necessarily a strong presence in parliament (though it is impossible to ascertain the religious beliefs of every member) but as I noted in Chapter 3, the widely-reported liberal Methodist position alerted South Australians to the fact that there was not a unified Christian view on abortion and provided an important counterargument to the strong Catholic views.

The churches were more vocal on abortion than homosexuality because although both contravened Christian teaching, the nature of the two sins was substantially different. The difference is demonstrated most starkly within the Catholic Church, which spoke vocally against murdering an unborn child, but advocated pastoral support for those tempted by homosexual urges. The adage ‘love the sinner, hate the sin’ succinctly summarises the majority Christian position on homosexuality; indeed, the phrase was used by Anglican Bishop Dr T.T. Reed in February 1972.¹⁹ However, it can also be identified in religious views on unwanted pregnancies. If a woman became pregnant out of wedlock, then the churches believed she should be assisted to care for her child rather than be condemned as a criminal. Fornication was not criminal, and nor did the churches argue that it should be; the woman should be given assistance. However, abortion was a much greater transgression as, according to Catholic teachings, it involved the murder of an innocent human being that could not be anything but a serious criminal offence. This is why abortion was considered a more urgent matter and the church campaigned more forcefully against its legalisation. The presence of abortion legislation in the South Australian parliament at the same time as the homosexual reform Bill, and coming soon after the original abortion reform, may have contributed further to the Catholic Church’s understated response to homosexual law reform while its attention was focused elsewhere. However, it is unlikely that the position of the church would have been different. Homosexuality was seen as a sin, not a crime, and treatment and abstention were considered suitable responses. The different approaches of the South Australian Catholic Church to abortion and homosexuality reflects the teachings of the Vatican, reinforced in the 1960s by series of official statements on moral issues. The Second Vatican Council, held between 1962 and 1965 and commonly known as Vatican II, issued a Declaration on Religious Freedom [*Dignitatis Humanae*] that advocated awareness of

¹⁹ *Advertiser*, 17 February 1972, p.20.

pluralism in a way that permitted the local attitude towards homosexual law reform.²⁰ In contrast, the 1968 papal encyclical *Humanae Vitae* [Of Human Life: On the Regulation of Birth] strictly forbade contraception and abortion.

Despite the importance of local factors, it would be careless to suggest that the progressiveness evident in South Australia in the decade after Playford was isolated to the state. A thorough assessment of the liberal trend that occurred in the developed world from the 1960s is impossible here, but the global climate is too important to overlook, though difficult to measure in any meaningful way. Extensive activist demonstrations in North America and Europe in the late 1960s had profound consequences and may well have altered how radicals and reformists alike engaged with governments and lawmaking. The exact circumstances of the passage of the reforms is unique to South Australia, yet the fact that both pieces of legislation were based on British Acts from 1967 shows that, although pioneering with Australia, the state was not acting alone but formed part of an international trend. There also exists an argument that the post-war capitalist boom contributed to the relaxation of state intrusion into private behaviour. Jeffrey Weeks explicitly argues that homosexual law reform in Britain “was a product of the long post-war boom in capitalist society”²¹ and authors such as Allen Matusow and Todd Gitlin have highlighted what Matusow calls the “cultural implications of affluence” which eroded social discipline and the authority of traditional powers such as the churches.²² Eric Hobsbawm argues that the “cultural revolution of the later twentieth century can ... best be understood as the triumph of the individual over society, or rather, the breaking of the threads which in the past had woven human beings into social textures”.²³ He contends that “[t]he world was now tacitly assumed to consist of several billion human beings defined by their pursuit of individual desire, including desires hitherto prohibited or frowned on, but now permitted – not because they had now become morally acceptable

²⁰ Pope Paul VI, Declaration on Religious Freedom (*Dignitatis Humanae*) on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious, 1965, available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html, accessed 1 February 2013.

²¹ Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*, London: Quartet, 1977, p.156.

²² Allen J. Matusow, *The Unraveling of America: A History of Liberalism in the 1960s*, New York: Harper & Row, 1984, p.306; see also Todd Gitlin, *The Sixties: Years of Hope, Days of Rage*, New York: Bantam, 1989, pp.17-30.

²³ Eric Hobsbawm, *The Age of Extremes: The Short Twentieth Century 1914-1991*, London: Abacus, 1995, p.334.

but because so many egos had them.”²⁴ John D’Emilio has drawn links between the rise of capitalism and the emergence of a homosexual identity, which could only emerge once “*individuals* began to make their living through wage labor, instead of as parts of an interdependent family unit”.²⁵ Individuals identifying as homosexuals permitted the creation of a homosexual community, which could then “organize politically” and fight for legal rights.²⁶ Additionally, Dennis Altman has suggested that diminishing social cohesion and the breakdown of the nuclear family during the post-war period contributed to the creation of the gay movement;²⁷ a point applied by others to the women’s movement and to more widespread efforts to control family sizes during this time as the woman’s role as mother and housewife became less rigid.²⁸ I cannot do full justice to these arguments here, except to note that the shift from the dominance of society to the dominance of the individual—and confirmation of Hobsbawm’s point that these individual desires had not necessarily become morally acceptable—can be seen in the arguments and language used in the debates about abortion and homosexuality in South Australia.²⁹

It is essential to identify this fundamental ideological shift in the developed world, not least because, as R.J. Holton notes, there has been a tendency to “assign an exaggerated autonomy to local affairs”³⁰ in studies of South Australian history. Such an approach overlooks external influences in favour of a theory of exceptionalism and what Derek Whitelock calls the state’s “sense of difference”, which encompasses an impossibly broad range of factors including the nature of the colony’s establishment, Adelaide’s physical

²⁴ *Ibid.*

²⁵ John D’Emilio, ‘Capitalism and Gay Identity’, in Ann Snitow, Christine Stansell and Sharon Thompson (eds), *Powers of Desire: The Politics of Sexuality*, New York: Monthly Review Press, 1983, p.104. Emphasis in original.

²⁶ *Ibid.*, p.102.

²⁷ Dennis Altman, *Homosexual: Oppression and Liberation*, Sydney: Angus & Robertson, 1972, pp.148-9.

²⁸ See Ben Fine, *Women’s Employment and the Capitalist Family*, London: Routledge, 1992, pp.134-51; Alvin Toffler, *Future Shock*, New York: Random House, 1970, pp.214-21; David F. Greenberg and Marcia H. Bystryn, ‘Capitalism, Bureaucracy and Male Homosexuality’, *Contemporary Crises*, no.8, 1984, pp.49-50.

²⁹ See also Gleeson, ‘Consenting Adults in Private’, p.25, on the difficulty of proving the ‘capitalism’ explanation.

³⁰ R.J. Holton, ‘Twentieth Century South Australia: From a Patrician to a Plebeian View’, in Eric Richards (ed.), *The Flinders History of South Australia: Social History*, Adelaide: Wakefield Press, 1986, p.554.

environment, middle-class respectability and progressive legislative reform.³¹ However, I caution that simply because my research could be interpreted as conforming to this view, I do not endorse that conceptualisation of South Australian history. A ‘sense of difference’ is a virtually indefinable concept and can be applied to any state or nation. It is a view that risks becoming self-fulfilling, and has been applied retrospectively and selectively; for some episodes in the state’s history it is accurate, for some it is not. The twin legalisation of abortion and homosexual acts is certainly one example of the state’s pioneering legislative agenda and could be cited as an example of exceptionalism, but I decline to use this one episode to make claims about greater themes in the state’s history. That this episode can be used in support of a certain narrative does not necessarily mean that the narrative is correct. Was South Australia’s convict-free past and its history of passing pioneering reforms (such as women’s suffrage in 1894) a factor in the passage of abortion and homosexual law reform? It is unlikely, and impossible to prove. The history of dissent and different balance of religious denominations may have played a part, but so have flukes of history and, indeed, geology: without a gold-rush, the state did not experience the influx of Irish Catholic immigration that was seen in Victoria. Progressive attitudes within the Liberal Party could have been influenced by an indefinable ‘moderate’ element in the South Australian middle class, but were more likely exacerbated by a generation dissatisfied with the lengthy period of social conservatism under Playford. The death of Dr Duncan, the clear catalyst for homosexual law reform, did not occur in South Australia by design. Had it occurred in, for instance, Victoria in 1972, homosexual law reform may well have occurred there first (however, I suggest that even without the Duncan case, homosexual law reform would very likely have been passed in the 1970s—after the 1975 election—in South Australia as it was strongly consistent with Dunstan’s programme of law reform). The confluence of many factors permitted the reforms to occur in South Australia when they did, but attributing them too fully to the state’s earlier history is highly problematic. The historical weakness of the Catholic Church is the most convincing of the factors, but I do not suggest that South Australia is any more different or exceptional than any other state, each of which can find pioneering reforms and unique social factors in its own history.

³¹ Derek Whitelock, *Adelaide: From Colony to Jubilee - A Sense of Difference*, Adelaide: Savvas, 1985.

The Slippery Slope

Just as this research may be used to argue for South Australian exceptionalism, I am also aware that social conservatives may draw upon this work to prove the existence of the ‘slippery slope’ in which it is argued that liberalisation of laws pertaining to one aspect of moral behaviour will inevitably lead to further undesirable liberal reforms.³² For instance, opponents of liberal abortion laws suggested that it would lead to euthanasia and a devaluing of the sanctity of life; opponents of homosexual rights argued that bestiality and paedophilia would soon be acceptable. Those who use slippery slope arguments often fear desensitisation to the moral importance of the issues once the law is changed.³³ These arguments were used during the course of the reform debates that I have discussed, and can on first inspection appear plausible when historical examples of progressive reform are cited. One progressive reform can seem to be followed by another, each more liberal than the last. However, criticisms have been identified with the logic of the slippery slope. Wibren van der Burg has cautioned against using slippery slope arguments “because the acceptance of the arguments so strongly depends on one’s basic outlook” and argues that it is almost always impossible to prove that doing ‘A’ will certainly lead to ‘B’.³⁴ Govert den Hartogh has noted that proponents of the slippery slope tend only to consider the moral implications of the future if the current reform is enacted, while ignoring the moral costs of the current situation.³⁵ Using the example of voluntary euthanasia, he argues:

when we use a slippery slope argument ... we deny some people their wish to avoid any more of the suffering which for them is necessary in living; and we do so not because there is anything improper in granting their wish, but because other people will erroneously do unacceptable things if such wishes are granted. But is it fair to require [this] ... in order to prevent other people from sinning?³⁶

³² Wibren van der Burg, ‘The Slippery Slope Argument’, *Ethics*, vol.102 no.1, 1991, p.43.

³³ Govert den Hartogh, ‘The Slippery Slope Argument’, in Helga Kuhse and Peter Singer (eds), *A Companion to Bioethics: Second Edition*, Oxford: Wiley-Blackwell, 2010, p.328.

³⁴ van der Burg, ‘The Slippery Slope Argument’, pp.61, 64-5; see also Georg Spielthener, ‘A Logical Analysis of Slippery Slope Arguments’, *Health Care Analysis*, vol.18, 2010, pp.148-63.

³⁵ den Hartogh, ‘The Slippery Slope Argument’, p.330.

³⁶ *Ibid.*, pp.330-1.

While the slippery slope argument should not always be discounted,³⁷ and, insofar as it is possible, sound lawmaking carries with it a responsibility to consider the possible future implications of the law under consideration, it is important that lawmakers examine the function and morality of the law at the present time, rather than considering the potential attitudes of a society that might exist at an unspecified time in the future.

This was the decision made by a majority of South Australian parliamentarians when they argued that women should not continue to suffer by undergoing unsafe abortions, and that the legal intrusion into men's sex lives was unwarranted. They did not pass judgement on the morality of their community, either at the time or in the future, but voted instead on the basis of what they understood to be the valid role of the criminal law. Implicit in the position of those who opposed reform was the belief that the status quo was acceptable, and that the hardships endured by pregnant women and men who had sex with men were justifiable in order to preserve the morality of society from declining. This was fundamentally an ideological position on the part of each individual parliamentarian. However, it is clear that public opinion was shifting towards the same conclusion reached by the parliament, and the ideological position of parliamentarians as individuals cannot always easily be separated from their role as representatives of their society. This is why the public discussion of abortion and homosexuality was so vital to enabling their legalisation: society had to publicly acknowledge the activities before law reform could even be debated, let alone passed, by the representatives of that society. The passage of each reform was dependent upon the particular composition of the parliament, but it was public discussion that allowed it to reach parliament at all.

³⁷ See van der Burg, 'The Slippery Slope Argument', pp.63-5; Eric Lode, 'Slippery Slope Arguments and Legal Reasoning', *California Law Review*, vol.87 no.6, pp.1469-1544.

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