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# **THE INFLUENCE OF FEMINISM ON PUBLIC POLICY**

**ABORTION AND EQUAL PAY  
IN AUSTRALIA AND  
THE REPUBLIC OF IRELAND**

**by**

**Elizabeth Shannon**

**BA(Hons)**

**Submitted in fulfilment of  
the requirements for the degree of  
Doctor of Philosophy**

**University of Tasmania**

**July 1997**

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## ABSTRACT

Feminism is a major force for change in late twentieth century liberal democratic political systems. This thesis is concerned with determining the factors involved in successful feminist policy intervention. It achieves this by developing a set of indicators by which to identify the presence of feminist influence and an analytical model by which to explain the influence of feminism on public policy. These are then applied to the development of abortion and equal pay policy, between the mid 1960s and the mid 1990s, in Australia and the Republic of Ireland.

The model contains three factors: the material, normative and analytical aspects of feminist *activity*; the political, social and economic systems of national *receptivity*; and the intensity and scope of conflict involved with particular policy *types*. An examination of the lengthy history of feminist activism in Australia and Ireland contrasts a highly conflictual policy (abortion) with one which is less conflictual (equal pay); compares national variations in terms of predisposition to feminist influence; and chronicles the ebb and flow of feminist policy intervention. The centrality of feminist influence is traced, throughout this thesis, by materialist and discursive indicators underpinning the analytical model.

The presence and strength of feminist coalitions in the policy subsystems; the spread of acceptance of some of the principal tenets of feminism within the policy discourse; the passage of policy that would fulfil feminist goals; and the impacts of that policy toward achieving those goals; these all provide evidence of feminist policy influence. This thesis argues that, according to these indicators, there has been considerable feminist influence on public policy within abortion and equal pay policy in Australia and the Republic of Ireland. The conclusions drawn from this study provide a more accurate description of the perseverance of feminist activists; suggest that cumulative change has been achieved across time, across policies, and across nations; and pin-points the particular factors that have been essential to successful feminist policy intervention.

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## ACRONYMS AND ABBREVIATIONS

AA	Affirmative Action
AAC	Anti-Amendment Campaign
ACF	advocacy coalition framework
ACT	Australian Capital Territory
ACTU	Australian Council of Trade Unions
AFBPW	Australian Federation of Business and Professional Women
AFWV	Australian Federation of Women Voters
AIM	‘Action, Information, Motivation’ Feminist Group
ALP	Australian Labor Party
ALRA	Abortion Law Reform Association
AMA	Australian Medical Association
APFA	Abortion Providers Federation of Australia
ARC	Abortion Rights Coalition
ARNA	Abortion Rights Network of Australia
ATSI	Aboriginal and Torres Strait Islander
AWA	Australian Workplace Agreement
BCA	Business Council of Australia
CAEP	Council for Action on Equal Pay
CAI	Confederation of Australian Industry
CAP	Common Agricultural Policy
CAR	Commonwealth Arbitration Reports
CBC	Children by Choice
CEDAW	Convention on the Elimination of All form of Discrimination Against Women
CII	Confederation of Irish Industry
CR	consciousness raising
CSW	Council for the Status of Women
DELR	Department of Equality and Law Reform
DIR	Department of Industrial Relations
DPP	Director of Public Prosecutions
DWC	Dublin Well-Woman Centre
EC	European Community
EEA	Employment Equality Agency



EEC	European Economic Community
EMS	European Monetary System
EU	European Union
FIE	Federation of Irish Employers
FPA	Family Planning Association
FUE	Federated Union of Employers
GP	General Practitioner
HLPS	Human Life Protection Society
HREOC	Human Rights and Equal Opportunity Commission
IBEC	Irish Business Employers Conference
ICTU	Irish Congress of Trade Unions
IFPA	Irish Family Planning Association
ILO	International Labour Organisation
ILRM	Irish Law Report Monthly
IPCC	Irish Pregnancy Counselling Centre
IR	The Irish Reports
IRT	Irish Law Times
IU	Irishwomen United
IUD	inter-uterine device
IWLM	Irish Women's Liberation Movement
MEP	Member of European Parliament
MRA	Minimum Rates Adjustment
NCW	National Council of Women
NESB	non-English speaking background
NH&MRC	National Health and Medical Research Council
NPEC	National Pay Equity Coalition
NSM	new social movement
NSW	New South Wales
NT	Northern Territory
NWAC	National Women's Advisory Council
ODC	Open Door Counselling
OECD	Organisation for Economic Cooperation and Development
PAC	Pregnancy Advisory Centre
PESP	Programme for Economic and Social Progress
PLAC	Pro-Life Amendment Campaign

PLC	Pro-Life Campaign
POA	Professional Officers Association
QLD	Queensland
REAC	Repeal the Eighth Amendment Campaign
RTÉ	Radio Telefon Éireann
RTL	Right to Life
SA	South Australia
SCSW	Second Commission on the Status of Women
SDA	Sex Discrimination Act
SEP	Structural Efficiency Principle
SIPTU	Services Industrial Professional Technical Union
SPUC	Society for the Protection of the Unborn Child/Unborn Children
TAS	Tasmania
TCD	Trinity College Dublin
TD	<i>Teachtaí Dála</i> (member of the Dáil)
UAW	Union of Australian Women
UCD	University College Dublin
UN	United Nations
USI	Union of the Students of Ireland
VIC	Victoria
WA	Western Australia
WAA	Women's Action Alliance
WAAC	Women's Abortion Action Campaign
WAC	Women's Abortion Campaign
WCA	Women's Campaign for Abortion
WEF	Women's Emergency Fund
WEL	Women's Electoral Lobby
WHF	Women's Health Foundation
WHO	World Health Organisation
WLM	Women's Liberation Movement
WPA	Women's Political Association
WRCC	Women's Right to Choose Campaign
WRCG	Women's Right to Choose Group
WWWW	Women Who Want to be Women

## GLOSSARY OF IRISH GAELIC TERMINOLOGY

<i>Bunreacht na hÉireann</i>	Constitution of the Republic of Ireland
<i>Cumann na mBan</i>	Women's Branch of Sinn Féin
<i>Dáil Éireann or Dáil</i>	Lower House of Parliament
<i>Fianna Fáil</i>	political party
<i>Fine Gael</i>	political party
<i>Garda Síochána</i>	police force
<i>Oireachtas</i>	President, Upper and Lower Houses of Parliament
<i>Seanad Éireann or Seanad</i>	Irish Senate (Upper House)
<i>Tánaiste</i>	Deputy Prime Minister
<i>Taoiseach</i>	Prime Minister
<i>Teachta Dála</i>	member of Parliament
<i>Saorstát Éireann</i>	Irish Free State
<i>Sinn Féin</i>	political party
<i>Uachtarán</i>	President

## INTRODUCTION

The rise of the contemporary feminist movement, and its subsequent engagement with politics and public policy, raises questions as to how, and how much, feminist influence affects policy outcomes and impacts. This thesis aims to determine the factors involved in effective feminist policy intervention. It achieves this by developing an analytical model with which to explain the influence of feminism on public policy. This model is applied to abortion and equal pay policy in Australia and the Republic of Ireland (Ireland) enabling some conclusions to be drawn about feminist policy intervention across time, across policies, and across nations.

The two national sites, Australia and Ireland, have been chosen because they are similar enough in their political, social and economic systems to be comparable, yet different enough to ensure that the conclusions reached by this study would provide general principles for feminist policy practice. It is widely accepted, within feminist literature, that the feminist experience in one country can provide ‘lessons’ for feminists elsewhere.<sup>1</sup> The concept of a comparison between the influence of feminism on public policy in Australia and Ireland also has some historical precedents. ‘First wave’ feminists from both countries shared ideas and activists, after Australian suffragists visited Ireland and established an on-going correspondence between the two movements.<sup>2</sup> In contemporary times both feminist movements have shared an influential early literature (albeit one dominated by British and American writers), international organisational links, and an informal exchange of activists between nations.

The two policy areas, of abortion and equal pay, have been central to contemporary international feminism. Equal pay has been defined as a ‘benchmark’ of women’s rights,<sup>3</sup> and as ‘the most direct and significant indicator of equity’,<sup>4</sup> by feminists in both countries. Similarly, the centrality of abortion policy to contemporary feminism has been compared to ‘what the suffrage issue had been to the feminist movement around the turn of the century’.<sup>5</sup> In the comparative public policy literature, cross-national study is considered where ‘the causes of the problem are similar, and the same policies are introduced, yet the

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<sup>1</sup> Hester Eisenstein, ‘Speaking for Women? Voices from the Australian Femocrat Experiment,’ *Australian Feminist Studies* 14, (Summer 1991), 29-42, 30.

<sup>2</sup> Cliona Murphy, *The Women’s Suffrage Movement and Irish Society in the Early Twentieth Century*, (London: Harvester Wheatsheaf, 1989), 8, 63, 67.

<sup>3</sup> Catherine Hoskyns, ‘“Give Us Equal Pay and We’ll Open Our Own Doors” - A Study of that Impact in the Federal Republic of Germany and the Republic of Ireland of the European Community’s Policy on Women’s Rights,’ *Women, Equality and Europe*, M. Buckley and M. Anderson (eds.), (London: Macmillan, 1988), 33-55.

<sup>4</sup> Gillian Whitehouse, *Employment Equity and Labour Organisation: The Comparative Political Economy of Women and Work*, Unpublished Thesis (PhD.), Department of Government, University of Queensland, January 1995, 111.

<sup>5</sup> Drude Dahlerup, ‘Introduction,’ In *The New Women’s Movement: Feminism and Political Power in Europe and the USA*, Drude Dahlerup (ed.), (London: Sage, 1986), 10.

results vary'.<sup>6</sup> This is certainly the case here if, as Charlesworth states, 'the oppression of women is universal'<sup>7</sup> yet similar policies result in a variation between nations in the ability of women to control their reproductive and productive labour.

### **Developing a Model of Analysis**

The first two chapters of this thesis are concerned with developing a three-factor model of the influence of feminism on public policy. This model is derived from two separate, but overlapping, bodies of work: feminist studies and policy studies.

The feminist studies literature provides conceptual tools with which to analyse feminism itself. Its physical (or material) dynamics as a social movement; its multiple normative philosophies; and its discursive (or analytical) perspectives on both the social world and on the production of knowledge itself are discussed. Feminist policy activism has drawn upon all three aspects of feminism: material, normative, and analytical, and these may be used to describe the *activity* of national feminism over time.

Policy studies literature provides another set of resources for this thesis in that it provides the basis for the development of an analytical model which is able to account for the effects of the political, social, and economic differences between countries. This is the second factor in the three-factor model: the *receptivity* of the national site. It enables a comparison of feminist activity between Australia and Ireland and an evaluation of the possibility for cumulative change across policies, versus the likelihood of a reversion to 'patriarchal equilibrium'.

In addition, policy studies literature also supplies the elements of a model explaining the differences between policies in terms of the scope and intensity of conflict and the strategies used to reduce conflict. This is the third and last factor in the three-factor model: the effects of policy *type*. The completed three-factor model is used to develop a series of initial propositions regarding feminist policy activism.

### **Comparing Feminist Influence**

The influence of feminism, between the mid 1960s and the mid 1990s, on equal pay and abortion policy in Australia and Ireland, is traced within the following six chapters of this thesis. Throughout these chapters the influence of feminism is identified through a number of indicators: by the presence and strength of feminist coalitions in the policy subsystems; the spread of acceptance of some of the principal tenets of feminism within the policy discourse; the passage of policy that would fulfil feminist goals; and the impacts of that policy toward achieving those goals.

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<sup>6</sup> Andre Przeworski, 'Methods of Cross-National Research, 1970-83: An Overview,' In *Comparative Policy Research: Learning from Experience*, M. Dierkes, H. Weker and A. Antal (eds.), (Great Britain: Gower Publishing, 1987), 31-49, 37.

<sup>7</sup> Hilary Charlesworth, 'Women and International Law,' *Australian Feminist Studies* 19, (Autumn 1994), 115-128, 119.

This thesis argues that Irish feminism is both a manifestation of, and a causal factor in, what has been called the ‘new’ Ireland. This is an emergent, European, secular, pluralist, urban and class-conscious society which stands in continuing conflict with the traditional, peripheral, Catholic, homogeneous, rural and austere ‘old’ Ireland.<sup>8</sup> The tensions between the ‘two Irelands’ manifest as the ‘decomposition of the traditional political culture’, the ‘introduction of a secularising agenda’, and a ‘recurrent fiscal crisis’.<sup>9</sup> This is the context within which both equal pay and abortion policy is formed.

Within Australia, also, policy dynamics take place within a national context of conflict between a ‘narrow’ and a ‘broad’ basis of acceptance, heterogeneity and citizenship. The ‘narrow’ Australia provided a relatively egalitarian and fair society for those who were lucky enough to be included: it excluded the majority of women, aboriginals, and other members of the Asia-Pacific region. The ‘broad’ Australia allows for an expanded range of acceptable beliefs and behaviours, and is indisputably associated with contemporary feminism, both as a symptom and a cause of change. The tensions between the ‘narrow’ and the ‘broad’ Australias are evident in the incorporation of political interests, the introduction of a cultural pluralism, and a retreat from affluence.

The concluding chapter of this thesis brings theory and practice together. The initial propositions arising from the three-factor model are examined against the weight of evidence presented in the case studies to determine the factors involved in effective feminist policy intervention across time, across policies, and across nations.

### **Conclusions, Contributions, Limitations and Further Research**

The contributions and limitations of this study are outlined, along with avenues for further research, in the final chapter of this thesis. Examining thirty years of policy, even after the decision to limit the comparators to two countries and two policy areas, requires that some of the finer details within the case studies to be overlooked in favour of points of greater critical importance. The concentration on policy, in itself, prevented more wide-ranging discussion of the development of feminism. In spite of these limitations, this longitudinal, cross-national, cross-policy comparison, spanning thirty years of feminist policy activism, provides an opportunity to learn from the past in order that future feminist policy interventions are informed, inspired, and effective.

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<sup>8</sup> Basil Chubb, *The Government and Politics of Ireland*, (Third edition), (London: Longman, 1992), 1-35.

<sup>9</sup> Ellen Hazelkorn and Henry Patterson, ‘The New Politics of the Irish Republic,’ *New Left Review* 207 (September/October), 49-69, 50.

# **PART 1**

## **FEMINISM AND PUBLIC POLICY**

## CHAPTER 1

### THREE ASPECTS OF CONTEMPORARY FEMINISM

Contemporary feminists have turned their attention to analysing and understanding every feature of the modern world. Given the scope of the feminist project in the late twentieth century any one study can capture only a small part of this world-view. The primary organising principle around which this examination of feminism is constructed emphasises those aspects of feminism which interact with public policy.<sup>10</sup> The first two chapters of this thesis are concerned with developing a three-factor model with which to analyse the influence of feminism on public policy.

In giving primacy to understanding the *activity* of feminism in any particular country ('national feminism'), the political, social and economic systems of that country are posited to make up the *receptivity* of the national site. This does not imply a lack of resistance or constraints but an assessment of the suitability of that socio-geographical site to feminist action. Similarly, the *type* of policy in question provides both opportunities and constraints for feminist action. Each of these three factors needs to be explicated and the relationships between them must be set out. This chapter, however, concentrates on feminist *activity*, conceptualised as the result of the 'three aspects of contemporary feminism': material dynamics, normative philosophies, and analytical perspectives.

Originally described as 'womanism', feminism was, and continues to be, an international *women's movement*.<sup>11</sup> The feminist movement, like other social movements, varies in the number of active members as generationally-based, 'cycles of protest' mobilise, proliferate and disperse over time.<sup>12</sup> This aspect of contemporary feminism is to do with the basic material resources of the social movement and has implications for the changing visibility and scope of feminist influence on public policy. The ability to influence public policy will partly depend upon the apparent strength of the feminist women's movement.

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<sup>10</sup> The term 'public policy' has been used in a multitude of ways. Policy been used as a label for a field of activity; an expression of intent; a specific proposal; the decisions (or non-decisions) of government (or that of agencies connected with government); a formal authorisation (or rationalisation after the event); a program (a 'package of legislation, organisation and resources'); an output of activity (what is actually delivered); an outcome (the impact) of activity (both intended and unintended); a process over time (involving two or more of the above) or a theory or model (deemed to be implicit in most policies). Brian Hogwood and Lewis Gunn, *Policy Analysis for the Real World*, (Oxford: Oxford University Press, 1984), 13-15. See also Richard Rose, 'Comparing Public Policy: An Overview,' *European Journal of Political Research* 1 (1973), 67-94; and Hugh Heclo, 'Review Article: Policy Analysis,' *British Journal of Political Science* 2 (January, 1972), 82-108.

<sup>11</sup> Lisa Tuttle, *Encyclopedia of Feminism*, (London: Arrow Books, 1987), 107.

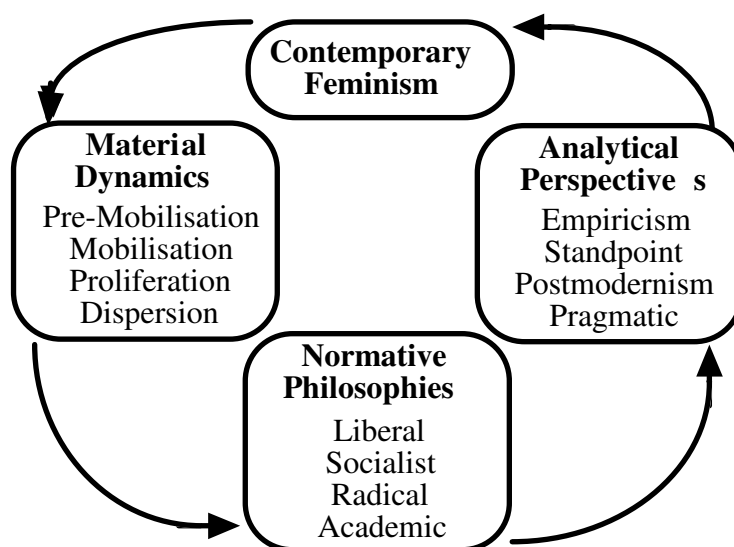
<sup>12</sup> Jaggar notes, for example, that while contemporary feminism emerged as a distinct phenomenon in the 1960s it had roots which extended back almost 300 years before that time. Alison Jaggar, *Feminist Politics and Human Nature*, (USA: Rowman and Littlefield, 1988), 27.



Not only does the feminist movement vary, over time, but feminism also contains significant normative and theoretical variation, within itself, at any one time. Normatively, feminism encompasses a number of political philosophies, each related to a set of preferred modes of social action. The dominance of a particular normative type of feminism, therefore, either nationally or in relation to a particular policy, has implications for the strategies used by feminists in seeking to influence public policy.

The material and normative aspects of contemporary feminism have provided a basis for the development of a number of feminist perspectives for the analysis of knowledge creation itself. These analytical perspectives have implications for the way in which feminists define the policies they seek to influence. Feminist interpretation of policy (analytical perspectives), therefore, provides the orientation for various types of strategic action (based on normative philosophies) of varying levels of scope and visibility (based on material dynamics). The combination of these three aspects of contemporary feminism, illustrated in Figure 1.1 below, describe the *activity* of feminism in the policy process.

**FIGURE 1.1 Aspects of Contemporary Feminism**



Each of these aspects will be elaborated on in this chapter. The three aspects of feminism typology also follows Burton's definition of feminism as 'activist and interventionist', as 'develop(ing) constructs for analysing the social world in order to understand how it can be changed', and as 'change(ing) social theory itself'.<sup>13</sup>

<sup>13</sup> Clare Burton, *Subordination: Feminism and Social Theory*, (Sydney: Allen and Unwin, 1985), xi.

## 1. MATERIAL DYNAMICS OF CONTEMPORARY FEMINISM

Explaining the feminist movement as a new social movement (NSM) adds to our understanding of the material dynamics of feminism over time and how this affects the scope and visibility of feminist influence on public policy. Understanding the cycle of protest also helps explain variation in the opposition to feminism over time.

### Feminism as a New Social Movement

Early social movement theorists described NSMs as examples of deviant political behaviour, resulting from anomic conditions of social stress and the breakdown of social structures, leading to revolutionary, non-rational, collective behaviour.<sup>14</sup> Later theories saw NSMs, more positively, as extensions of conventional politics with unconventional means or alternative values.<sup>15</sup> More recent theories presented the 'new politics' of the NSMs as quite distinct from conventional politics and as needing a separate category of political action.<sup>16</sup>

Pakulski builds on this last conceptualisation to suggest that NSMs are 'anti-systemic' in the sense of mobilising in opposition to conventional social norms and political institutions.<sup>17</sup> NSMs may include formal organisations but are not defined by them. They may undertake political activity but their ultimate aim is to change the 'hearts and minds' of 'the people': they are value oriented, not economically based. Their most obvious defining characteristics include the use of emotive slogans and symbols, mass protests, and theatrical actions which 'give movements a quasi-religious appearance'.<sup>18</sup> In fact they occupy much of the same 'territory' as does religion within the social and cultural life of society as they carry out the 'politics of moral protest'.<sup>19</sup> Signals which allow members of NSMs to identify other members, supporters or sympathisers include 'political orientations, lifestyles, aesthetic tastes, intellectual habits and even forms of dress, patterns of speech and dietary norms'.<sup>20</sup> This allows members of NSMs to 'infiltrate' existing institutions and organisations whilst maintaining their normative cohesion. NSMs also display a generational dynamic which causes movement numbers to wax and wane in cycles of protest.

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<sup>14</sup> For examples, see Neil Smelser, *Theory of Collective Behaviour*, (London: Routledge and Kegan Paul, 1962) and Hannah Arendt, *The Origins of Totalitarianism*, (Glencoe: Free Press, 1966).

<sup>15</sup> Richard Inglehart, *The Silent Revolution: Changing Values and Political Styles Among Western Publics*, (Princeton: Princeton University Press, 1977).

<sup>16</sup> See Alan Touraine, 'An Introduction to the Study of Social Movements,' *Social Research* 52(4), (Winter, 1985), 749-788; and Claus Offe, 'New Social Movements: Challenging the Boundaries of Institutional Politics,' *Social Research* 52(4), (Winter 1985), 168-184.

<sup>17</sup> Jan Pakulski, *Social Movements*, (Melbourne: Cheshire, 1991), 49.

<sup>18</sup> *Ibid.*, 35.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.* 78.

Dahlerup's influential typology of contemporary feminism is influenced by this 'new politics' category of social movement theory.<sup>21</sup> She suggests contemporary feminism has particular material dynamics expressed as three stages of development. The first stage is one of mobilisation: emergence, 'consciousness raising' and direct action around a particular issue. The second stage is one of proliferation: expanding influence through a broad-based mobilisation across a number of issues and the creation of a new radical counter-culture. The third stage is one of dispersion: original movement organisations either consolidate or decline, new centres emerge, and the movement becomes increasingly specialised and professionalised.<sup>22</sup> Later writers have suggested a fourth stage: a pre-mobilisation period.

The concept of pre-mobilisation has some support in historical studies that have shown that the feminist movement has continued during periods of apparent inactivity.<sup>23</sup> These 'traditional feminists' lobbied for women's rights and interests, within formal hierarchical organisational structures, and within the dominant 'traditional' norms.<sup>24</sup> This acknowledgment that 'the break between the movements of the 1960s and those of the earlier part of the century is not as sharp as previously thought' involves a rejection of the 'immaculate conception' theory of contemporary feminism.<sup>25</sup> Within Dahlerup's typology traditional feminists may be thought of as the 'dispersed' members of previous cycles of protest. Pre-mobilisation is a broader concept, however, which also includes the potential activists available for the new feminist mobilisation.

Randall suggests there are three factors contributing to contemporary feminist mobilisation: the conflicts experienced by individual women which enabled them to 'recognise their own oppression'; an environment which facilitated the 'revival of feminism'; and 'specific events that triggered the revival'.<sup>26</sup> The first of these factors is related to the conflict between women's improved access to occupational and educational opportunities, during the 1950s and 1960s, and the coexistent limitations to that access caused by 'a host of discriminatory practices'.<sup>27</sup> Similarly, the availability of the oral contraceptive pill increased heterosexual women's control of their fertility, an advance not reflected in the

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<sup>21</sup> D. Dahlerup, 'Introduction,' 22.

<sup>22</sup> Ibid.

<sup>23</sup> Suzanne Staggenborg, *The Pro-Choice Movement*, (New York: Oxford University Press, 1991), 8.

<sup>24</sup> Marian Sawer and Abigail Groves, "'The Women's Lobby': Networks, Coalition Building and the Women of Middle Australia,' *Australian Journal of Political Science* 29 (1994), 435-459, 446.

<sup>25</sup> Linda Connolly, 'The Women's Movement in Ireland, 1970-1995,' *Irish Journal of Feminist Studies* 1(1), (Spring 1996), 43-77, 49.

<sup>26</sup> Vicky Randall, *Women and Politics*, (London: Macmillan, 1982), 146.

<sup>27</sup> Gisela Kaplan, *Contemporary Western European Feminism*, (Sydney: Allen and Unwin, 1992), 12.

‘entrenched moral values’ held by some influential decision-makers and opinion-shapers.<sup>28</sup>

Environmental factors necessary for mobilisation include what Freeman describes as ‘submerged networks’.<sup>29</sup> These exist before the visible feminist movement has appeared and are able to be co-opted to the new ideas of the incipient movement. Contemporary feminism built upon the submerged networks created by the anti-war/anti-conscription movement, in the United States (US) and Australia, and the republican/civil rights movement in Ireland. During the beginnings of a cycle of protest involving a number of NSMs, these ‘early riser’ movements provide models of action, resources and potential activists for later movements.<sup>30</sup>

The specific events which triggered the mobilisation of contemporary feminism differed in each country. Freeman describes mobilisation as a response to a ‘crisis’ which galvanises the network into spontaneous action in a new direction.<sup>31</sup> Subsequent organising, however, is necessary to then weld the spontaneous groups into a movement.<sup>32</sup> In typical NSM fashion, slogans, banners and symbols of identification, such as badges, were used to create feminist group identity during this period of mobilisation. At a deeper level, however, the processes of small-group ‘consciousness raising’ connected individual women’s experiences of gender-based conflict to the emerging normative philosophies of the new movement.

This small group work was also the primary means by which contemporary feminism spread into new segments of the population.<sup>33</sup> Women’s class, race, ethnicity, sexuality and age cohorts had exposed them to different historical traditions and contemporary life situations, predisposing them to gravitate towards different normative and political philosophies within feminism. This led to organisational and operational diversity, and action on a multiplicity of issues, within a broad feminist orientation.<sup>34</sup>

As feminism has proliferated into increasingly diverse small groups it has also fragmented into a multitude of ‘identity politics’ with a problematic relationship to each other.<sup>35</sup> While this has lent a broader scope to feminist concerns it has also presented obstacles to unified feminist action. In addition, feminists who have engaged with ‘mainstream’ institutions have become increasingly specialised and professionalised within the political and administrative arms of

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28 Ibid., 13.

29 Jo Freeman, ‘The Origins of the Women’s Liberation Movement,’ In *Changing Woman in a Changing Society*, Joan Huber (ed.), (Chicago: University of Chicago Press, 1973), 30-49, 32.

30 S. Staggenborg, *The Pro-Choice Movement*, 7.

31 J. Freeman, ‘The Origins of the Women’s Liberation Movement,’ 32.

32 Ibid., 40.

33 Jo Freeman, *The Politics of Women’s Liberation*, (New York: David McKay, 1975), 151.

34 L. Connolly, ‘The Women’s Movement in Ireland, 1970-1995,’ 58.

35 Joni Lovenduski and Vicky Randall, *Contemporary Feminist Politics*, (Oxford: Oxford University Press, 1993), 11.

government or state services, also leading to a reduction in the public profile of the autonomous feminist movement. The continuing importance of informal structures ('networks') of feminism and the emergence of generational differences between the '1970s feminists' and the '1990s feminists' indicate the presence of an extended proliferation/dispersion period for contemporary feminism.<sup>36</sup>

### Anti-Feminist Movements

Many NSMs give rise to reactionary movements which mobilise against the original liberatory impulse.<sup>37</sup> Anti-feminists support the traditional social order and reject the claim of feminists to represent women's interests. The anti-feminist movement displays typical NSM dynamics, also going through the stages of pre-mobilisation, mobilisation, proliferation and dispersion. Many anti-feminist groups have emerged from religious organisations and have used these as an initial network for mobilisation.<sup>38</sup> These groups are concerned to defend traditional 'family values' against a perceived rise in unbridled secularity and sexuality. Opposition to abortion has been a major point of mobilisation for these anti-feminists.<sup>39</sup>

Other anti-feminist groups have their roots in conservative political parties.<sup>40</sup> These groups perceive the feminist movement as a threat to women's *economic* security and status and within the family. It is in this sense that feminists are 'devaluing' the position of the full-time wife and mother.<sup>41</sup> Opposition to women's participation in the labour market, child care, equal pay, and affirmative action measures are points of mobilisation for these women.

Some feminist theorists have attempted to map out a continuum of gender ideologies, which contain both feminist and anti-feminist orientations, and which underpin women's political mobilisation.<sup>42</sup> Their model suggests that (1) response to male domination would indicate women's ideological predisposition to feminism/anti-feminism and (2) the perceived importance of sex-gender

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<sup>36</sup> See, for example, Kathy Bail (ed.), *DIY Feminism*, (Sydney: Allen and Unwin, 1995).

<sup>37</sup> See Tahi Mottl, 'The Analysis of Countermovements,' *Social Problems* 27(5), (1980), 620-635 and Mayer Zald and Bert Useem, *Movement and Countermovement: Loosely Coupled Conflict*, (CRSO Working Paper 276, 1982).

<sup>38</sup> Bernadette Hayes, 'The Impact of Religious Identification on Political Attitudes: An International Comparison,' *Sociology of Religion* 56(2), (1995), 177-194.

<sup>39</sup> Mary Jo Neitz, 'Family, State and God: Ideologies of the Right-to-Life Movement,' *Sociological Analysis* 42(3), (1981), 265-276; Kristin Luker, *Abortion and the Politics of Motherhood*, (Berkeley: University of California Press, 1984).

<sup>40</sup> Andrea Dworkin, *Right-Wing Women*, (London: The Women's Press, 1983).

<sup>41</sup> Robyn Rowland, 'Women Who Do and Women Who Don't Join the Women's Movement,' *Women's Studies International Forum* 8(4), (1985), 249-254, 251.

<sup>42</sup> Najma Chowdhury and Barbara Nelson with Kathryn Carver, Nancy Johnson and Paula O'Loughlin, 'Redefining Politics: Patterns of Women's Political Engagement from a Global Perspective,' In *Women and Politics Worldwide*, Barbara Nelson and Najma Chowdhury (eds.), (New Haven: Yale University Press, 1994), 3-24, 20.

differences would indicate women's predisposition to public activism. While suggesting that an individual may have 'different gender ideologies for different realms of life', Chowdhury et. al. suggest that women who rejected both male domination and the importance of gender differences would act for 'gender system change' and strongly support feminism.<sup>43</sup> Women who rejected male domination but accepted the importance of gender differences would see men and women as inhabiting 'separate spheres' This 'pre-disposes women toward a mildly pro-feminist 'social housekeeping' activism'.<sup>44</sup>

Those women who accepted male domination and the importance of gender differences would see each sex as having 'distinct obligations' and, while these women would not 'engage politically in ways that question male dominance', they are also unlikely to mobilise against feminism either.<sup>45</sup> Women who accepted male domination without necessarily accepting the importance of gender differences would be in the position of justifying 'male privilege'. It is this last group which would be most predisposed to mobilise against feminism. As anti-feminist groups are most successful when there is such a 'high correlation between attitudes to women and the political ideology of the day', the mobilisation of these groups has been facilitated by a 'shift to the political right' and the impact of economic recessions.<sup>46</sup>

### **The Effects of Material Dynamics on Feminist Policy Influence**

In summary, understanding feminism as a NSM explains many of the material dynamics of the movement, as well as contributing to an understanding of the influence of feminism on public policy over time. This is illustrated in **Table 1.1** below.

**TABLE 1.1. The Effects of Material Dynamics on Feminist Policy Influence**

	<b>Narrow Scope (Few Issues)</b>	<b>Broad Scope (Many Issues)</b>
<b>High Visibility</b>	Mobilisation	Proliferation
<b>Low Visibility</b>	Pre-Mobilisation	Dispersion

The pre-mobilisation stage contains the remains of the previous cycle of feminist protest as the influence of small number of feminist groups on a few issues is limited in scope and visibility. At the point of mobilisation a new generation of feminists coalesce into groups around a few specific areas. The energy and novelty of this 'new' phenomenon brings feminist influence into the public spotlight and increases its visibility. As the movement grows in strength and proliferates this visible influence spreads across many issues. Eventually the very

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., 17.

diversity of the agenda leads to a dispersion, which may be facilitated by an anti-feminist movement arising in opposition, and feminist influence again becomes less public and less apparently influential. As the ability to influence public policy depends partly upon the strength of the feminist movement, proliferation is the time of greatest influence and pre-mobilisation the time of least influence, within a cycle of protest. The material dynamics of feminism thus provides an explanation for the variation in the strength of feminist policy activity over time.

## 2. NORMATIVE PHILOSOPHIES OF FEMINISM

Understanding the difference between the major normative philosophies of feminism gives us an insight into the rationale behind different types of strategic feminist action. Contemporary feminism has never been a unitary phenomenon but its tendency toward fragmentation has become more marked over time. As the contemporary feminist movement has proliferated across more diverse sections of society the tension between the ‘articulation of difference within feminism’ and the ‘aggregation of women as an oppressed group’ has increased.<sup>47</sup> In 1973, for example, Freeman suggested that it was ‘structure and style rather than ideology’ that characterised differences within feminism.<sup>48</sup> By 1995, however, Ang could confidently state that recent developments within feminism ‘has not resulted in a new feminist consensus and never will’.<sup>49</sup>

While the increased diversity within feminism creates challenges for feminists wishing to influence public policy through co-ordinated action it also broadens the pool of resources available and the strategies for change which may emerge from this base. Both historical and contemporary feminists have drawn upon existing political philosophies, such as liberalism and socialism, and these have been augmented by the new approaches of radical and academic feminism. These are described as normative philosophies as they provide guidelines for social action which goes well beyond that of formal politics.<sup>50</sup>

### Liberal Feminism

Liberalism grew out of the political climate of the French Revolution as the liberal theorists of the seventeenth and eighteenth centuries contested ‘the divine right of monarchs and aristocrats to political rule’ and asserted the rights of the citizen.<sup>51</sup> The majority of the ‘first wave’ of suffragists were liberal feminists and

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<sup>47</sup> J. Lovenduski and V. Randall, *Contemporary Feminist Politics*, 89.

<sup>48</sup> J. Freeman, ‘The Origins of the Women’s Liberation Movement,’ 33.

<sup>49</sup> Ien Ang, ‘I’m a Feminist But ... ‘Other’ Women and Postnational Feminism,’ In *Transitions: New Australian Feminisms*, Barbara Caine and Rosemary Pringle (eds.), (Sydney: Allen and Unwin, 1995), 57-73, 68.

<sup>50</sup> As the Irish and Australian feminist movements are discussed in some detail in later chapters of this thesis the discussion in this section relies on sources primarily from Britain and the US.

<sup>51</sup> Hester Eisenstein, *Contemporary Feminist Thought*, (Sydney: Allen and Unwin, 1984), xv.

this strand of feminism persisted over time within subsequent groups that pre-date contemporary feminism.<sup>52</sup> The unequal treatment of women as a group, regardless of individual merit, violates the liberal commitment to freedom, inalienable rights, and the independent development of all citizens.<sup>53</sup> Women's subordination may be seen as a case of 'imperfect citizenship' where the state has been 'captured' by men.<sup>54</sup>

Strategies which aim to address this include advocating a system of preferential treatment for women (affirmative action) in order to establish a 'counterfactual meritocracy' as well as the traditional democratic techniques such as lobbying, the use of law, and rational argument.<sup>55</sup> Liberal feminists have also been particularly successful in gaining 'space' for women's policy machinery within the bureaucratic institutions of government. Feminist bureaucrats (femocrats) worked from 'within' to gain funding and institutional support for radical or socialist feminist non-government initiatives and services. The ability to form stable, autonomous feminist organisations and to provide authoritative, national representation of women's interests to government has also been important.<sup>56</sup> Under the banner of citizenship, liberal feminists have explored 'issues that used to be dealt with as economic or social policy', as well as ones traditionally seen as 'women's issues'.<sup>57</sup> Liberal feminist strategies focus upon the overt decision-making processes within the existing institutions of society but maintain an awareness of the covert nature of power wielded within state processes.<sup>58</sup> This has caused some radical feminists to suggest that liberal feminism has outgrown its origins.<sup>59</sup> This has been rejected by other theorists who state that the interpretation of liberalism, upon which socialist feminist and radical feminist criticisms have been based, has been too narrow.<sup>60</sup>

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<sup>52</sup> See Miriam Schneir, (ed.) *Feminism, The Essential Historical Writings*, (New York: Random House, 1972); and Alice Rossi, (ed.), *The Feminist Papers: From Adams to de Beauvoir*, (New York: Bantam, 1974).

<sup>53</sup> A. Jaggar, *Feminist Politics and Human Nature*, 176.

<sup>54</sup> Suzanne Franzway, Dianne Court, R. W. Connell, *Staking a Claim, Feminism, Bureaucracy and the State*, (Sydney: Allen and Unwin, 1989), 14.

<sup>55</sup> *Ibid.*, 182-193.

<sup>56</sup> M. Sawer and A. Groves, 'The Women's Lobby', 446.

<sup>57</sup> Anne Phillips, 'Must Feminists Give Up on Liberal Democracy?' In *Feminism and Equality*, Anne Phillips (ed.), (Oxford: Basil Blackwell, 1987), 92-111, 97.

<sup>58</sup> *Ibid.*, 105.

<sup>59</sup> Zillah Eisenstein, *The Radical Future of Liberal Feminism* (Second edition), (Boston: Northeastern University Press, 1986), 3.

<sup>60</sup> Marian Sawer, 'Reclaiming Social Liberalism: The Women's Movement and the State,' In *Women and the State: Australian Perspectives*, R. Howe (ed), (Journal of Australian Studies Special Edition 37, 1993), 1-21, 7.



## Socialist Feminism

Socialism was developed in response to the industrial revolution of the nineteenth century and added a demand for economic rights to liberalism's demand for political rights.<sup>61</sup> While socialist feminists were prominent among the 'first wave' feminists, there was no strong, independent socialist-feminist movement.<sup>62</sup> Socialist feminists were active within socialist parties, however, forming an unbroken tradition of activism from the nineteenth century to the present day.<sup>63</sup>

Socialist feminism is concerned with both capitalist and patriarchal oppression.<sup>64</sup> Capitalism is predicated upon a class-based division of labour, benefiting those who own the means of production, and leading to the universal oppression of the proletariat. Patriarchy is predicated upon a biological-sexual division of labour, benefiting men as a 'sex-class', and leading to the universal oppression of women.<sup>65</sup> The relationship between the two systems of domination remains much debated. In their origins, patriarchy could be seen as a consequence of capitalism,<sup>66</sup> or capitalism a result of patriarchy.<sup>67</sup> The recurrent interaction between capitalism and patriarchy may also be theorised as being either reinforcing,<sup>68</sup> or conflicting,<sup>69</sup> in their interests. Marxist concerns with the legitimisation of capitalist social relations,<sup>70</sup> production and reproduction,<sup>71</sup> and alienation,<sup>72</sup> have also provided elements of a socialist feminist theoretical framework.

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<sup>61</sup> H. Eisenstein, *Contemporary Feminist Thought*, xv.

<sup>62</sup> M. Schneir, (ed.) *Feminism, The Essential Historical Writings*, 335.

<sup>63</sup> Joyce Stevens, *Taking the Revolution Home*, (Melbourne: Sybylla Press, 1987), 12.

<sup>64</sup> See Sheila Rowbotham, *Women, Resistance and Revolution*, (Great Britain: Penguin, 1972). For a discussion of how socialist feminism differs from Marxism see A. Jagger, *Feminist Politics and Human Nature*, Chapter 10. Other sources include: Zilla Eisenstein (ed.), *Capitalist Patriarchy and the Case for Socialist Feminism*, (New York: Monthly Review Press, 1978); Rosalind Petchesky, *Reproductive Freedom: The Social and Political Dimensions of Birth Control*, (New York: Longman, 1985); and Mary O'Brien, *The Politics of Reproduction*, (London: Routledge and Kegan Paul, 1986).

<sup>65</sup> Millet popularised the concept of patriarchy in Kate Millet, *Sexual Politics*, (New York: Avon Books, 1971). The idea of a sex-class was introduced by Shulamith Firestone, *The Dialectic of Sex*, (London: Paladin, 1972).

<sup>66</sup> Barbara Ehrenreich, 'Towards a Socialist Feminism,' *Heresies* 1 (1977), 4-7.

<sup>67</sup> Nancy Hartsock, 'The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism,' In *Discovering Reality*, Sandra Harding and Merrill Hintikka (eds.), (Dordrecht: Reidel, 1983), 283-310, 305.

<sup>68</sup> Christine Delphy, *Close to Home*, Diana Leonard (trans. and ed.), (London: Hutchinson, 1984).

<sup>69</sup> Sylvia Walby, *Patriarchy at Work*, (Cambridge: Polity Press, 1986); Sylvia Walby, *Theorising Patriarchy*, (Oxford: Basil Blackwell, 1990).

<sup>70</sup> C. Burton, *Subordination*, xiii.

<sup>71</sup> M. O'Brien, *The Politics of Reproduction*, 15.

<sup>72</sup> A. Jagger, *Feminist Politics and Human Nature*, 308.

Strategies which arise from this consider both public and private dynamics, in tandem, and focus attention on the connection between women's control of their productive and reproductive labour. An awareness of the manner in which the commonality of women's interests are divided along class lines has led socialist feminists to a concern with other forms of social stratification. Recognising these differences among women, socialist feminists still believe in an over-arching commonality of interest, that of opposition to the dominant capitalist patriarchy. While theoretically informed, socialist feminist action has primarily been concerned with improving the material position of women, both through autonomous women's services and through work within unions. During the 1980s, the term 'materialist feminism' gained some use as a way of differentiating socialist feminist philosophy from traditional Marxism, particular socialist political parties, and the emerging 'discursive' feminism.<sup>73</sup>

### Radical Feminism

Radical feminism drew upon the major insight of the psychoanalytic theorists of the late nineteenth and early twentieth centuries: that the 'individual psychic formation' is inexorably connected to the 'creation and reproduction (or transformation) of the social order'.<sup>74</sup> The emergence of radical feminism is a modern development and an essential characteristic of contemporary feminism.<sup>75</sup> Radical feminism explains women's subordination as the result of patriarchy: the domination of men over women.

While liberal feminism was based on an assertion of asexual personhood, portraying the subject of feminism as an androgynous individual fighting for equality, and while Marxism subsumed gender as one position among the many in the general struggle against social hierarchies of all types, radical feminism insisted on the distinct nature of female experience and the feminine subject.<sup>76</sup>

The primary strategy associated with radical feminism is the women-only consciousness raising group which bridges the gap between 'private' and 'public' realms and establishes a commonality of women's experience from the ground-up.<sup>77</sup> This small group work also contributed to 'many of the crucial elements of the new knowledge about women's situation' including the high incidence of

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<sup>73</sup> Rosemary Hennessy, *Materialist Feminism and the Politics of Discourse*, (New York: Routledge, 1993), xi.

<sup>74</sup> H. Eisenstein, *Contemporary Feminist Thought*, xv-xvi.

<sup>75</sup> One of the best early works is by Robin Morgan (ed.) *Sisterhood is Powerful: An Anthology of Writings From the Women's Liberation Movement*, (New York: Vintage Books, 1970).

<sup>76</sup> Harriet Bradley, *Fractured Identities: Changing Patterns of Inequality*, (Cambridge: Polity Press, 1996), 89.

<sup>77</sup> Carol Hanisch, 'The Personal is Political,' In *Notes From the Second Year: Women's Liberation, Major Writings of the Radical Feminists*, Shulamith Firestone and Anne Koedt (eds.), (New York: Radical Feminists, 1970), 152-157.

domestic violence and sexual assault against women.<sup>78</sup> This led to an agenda for action to prevent male violence and provide 'women's services' such as refuges and crisis support.<sup>79</sup> It also led to a greater exploration of the processes of cultural legitimization which supported domestic and sexual violence against women.<sup>80</sup>

The specific positioning of radical feminism as determined by and validating women's own subjective experience meant that radical feminism has provided a basis for the development of many other significant feminisms.<sup>81</sup> These included various lesbian/gay feminisms,<sup>82</sup> black/post-colonial feminisms,<sup>83</sup> spiritual/pagan/Wicca feminisms,<sup>84</sup> some ecological feminisms (eco-feminism),<sup>85</sup> and peace feminisms.<sup>86</sup> Over time these developed strong identities of their own and conflicting perspectives and analyses. Some radical feminist theorists responded by attempting to create a 'meta' level on which women could still maintain solidarity.<sup>87</sup> This was largely unsuccessful and, by the mid-1980s, radical feminism was criticised for its emphasis on psychology at the expense of material factors, a false universalism, and political ineffectiveness.<sup>88</sup> By the mid-1990s the inability of radical feminism to develop lasting institutional structures

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78 H. Eisenstein, *Contemporary Feminist Thought*, 37.

79 J. Lovenduski and V. Randall, *Contemporary Feminist Politics*, 67.

80 Susan Brownmiller, *Against Our Will: Men, Women and Rape*, (New York: Simon and Schuster, 1975); Robin Morgan, 'Theory and Practice: Pornography and Rape,' In *Take Back the Night: Women on Pornography*, Laura Lederer, (ed.) (New York: William Morrow, 1980), 139-140; and Andrea Dworkin, *Pornography: Men Possessing Women*, (New York: Perigee, 1981).

81 H. Bradley, *Fractured Identities: Changing Patterns of Inequality*, 89.

82 Early influential works include Ti-Grace Atkinson, *Amazon Odyssey*, (New York: Links, 1974); Jill Johnston, *Lesbian Nation: The Feminist Solution*, (New York: Touchstone, 1974); and Adrienne Rich, 'Compulsory Heterosexuality and Lesbian Existence,' *Signs* 5(4), (Summer 1980), 631-660.

83 Examples include Cherrie Moraga and Gloria Anzaldúa (eds.) *This Bridge Called My Back: Writings by Radical Women of Colour*, (Watertown, MA: Persephone Press, 1981); Gloria T. Hull, Patricia Bell and Barbara Smith (eds.), *All the Women are White, All the Blacks are Men, But Some of Us are Brave*, (New York: Feminist Press, 1982); and Bernice Johnson Reagon, 'Gender & Race: The Ampersand Problem in Feminist Thought,' In *Inessential Woman: Problems of Exclusion in Feminist Thought*, Elizabeth Spelman (ed.), (Boston: Beacon Press, 1988), 114-132.

84 Examples include Charlene Spretnak (ed.), *The Politics of Women's Spirituality*, (New York: Anchor, 1982); Starhawk, *Truth or Dare: Encounters with Power, Authority and Mystery*, (San Francisco: Harper and Row, 1987); and Elanor Haney, *Vision and Struggle: Meditations on Feminist Spirituality and Politics*, (Portland, ME: Astarte Shell Press, 1989).

85 See, for example, Susan Griffin, *Woman and Nature: The Roaring Inside Her*, (New York: Harper and Row, 1984); and Maria Mies and Vandana Shiva, *Ecofeminism*, (Melbourne: Spinifex, 1993).

86 See, for example, Adrienne Harris and Ynestra King (eds.), *Rocking the Ship of State: Toward a Feminist Peace Politics*, (Boulder, CO: Westview, 1989);

87 See, for example, Mary Daly, *Gyn/Ecology: The Metaethics of Radical Feminism*, (Boston: Beacon, 1978).

88 H. Eisenstein, *Contemporary Feminist Thought*, xii.

meant that a visible radical feminist presence had largely disappeared. The exception to this trend was the continued mobilisation and organisation of lesbian feminists, both autonomously and in partnership with gay male activists, on a broad range of issues in the 1980s and 1990s.<sup>89</sup> Many individual radical feminists also continue to be active in women's services, women's studies programs, and other institutions influenced by feminism.

### Academic Feminism

Academic feminism, like radical feminism, is a distinctively contemporary form of feminism and the most recent to develop. The Women's Studies courses of the 1970s, the 'reflex of a social movement upon the world of learning and scholarship', were the first official acknowledgment of an academic feminist presence.<sup>90</sup> Academic feminism is concerned with the social construction and reproduction of knowledge; particularly as this relates to women. It is concerned with 'the lived experience of women; a project which is change-oriented and liberatory; a challenge to 'universal' and 'gender-neutral' accounts of the world'.<sup>91</sup> Its 'politically critical stance calls into question the assumptions about approach and methodologies of all of the disciplines that it draws upon'.<sup>92</sup> Women in academe, as in other important social institutions, are relatively disadvantaged in comparison with their male colleagues.<sup>93</sup> Yet through their institutional positions academic feminists are able to engage in strategic, rather than on-going, policy intervention and are able to create knowledge-based resources: critiques for change. Academic feminists have also been amongst the first feminists to utilise the new information technologies to create discursive/activist communities via electronic mail or world wide web sites.

Two minority streams within academic feminism, postmodern and poststructural feminism, have had less impact on public policy debates. Postmodernist feminist thought sees liberal, socialist and radical feminisms as a single 'homogeneous, monolithic' and 'totalising feminist discourse'.<sup>94</sup> This rejection of 'essentialism' and insistence on individuality provides no basis for collective action.<sup>95</sup> Similarly, poststructuralist thought alters the focus of analysis to that of

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<sup>89</sup> Verity Burgmann, *Power and Protest*, (Sydney: Allen and Unwin, 1993); Sheila Jeffreys, *The Lesbian Heresy*, (Melbourne: Spinifex, 1993); Miranda Morris, *The Pink Triangle*, (Sydney: University of New South Wales Press, 1995).

<sup>90</sup> Susan Magarey, Lyndall Ryan, and Susan Sheridan, 'Women's Studies in Australia,' In *Australian Women: Contemporary Feminist Thought*, (Sydney: Allen and Unwin, 1994), 285-295, 285.

<sup>91</sup> Anne Byrne, Pat Byrne, Ann Lyons, 'Inventing and Teaching Women's Studies,' *Irish Journal of Feminist Studies* 1(1), 78-99, 80.

<sup>92</sup> S. Magarey, L. Ryan, and S. Sheridan, 'Women's Studies in Australia,' 291.

<sup>93</sup> One of the most interesting recent publications on this topic is that edited by Louise Morley and Val Walsh, *Feminist Academics: Creative Agents for Change*, (London: Taylor and Francis, 1995).

<sup>94</sup> Teresa de Lauretis, 'Feminist Studies/Critical Studies: Issues, Terms, and Context,' In *Feminist Studies/Critical Studies*, Teresa de Lauretis (ed.), (London: Macmillan), 1-19, 15.

<sup>95</sup> J. Lovenduski and V. Randall, *Contemporary Feminist Politics*, 88-89.

‘discourse ... as an event, which includes the speaker, words, hearing, location, language, and so on’.<sup>96</sup> This suggests that there is no ‘thing’ for the collective to act upon. Postmodernist and poststructuralist feminisms have been criticised as the co-option of feminism by ‘mainstream’ academia,<sup>97</sup> and described as ‘a reflection of the growing fragmentation’ of feminism as a political movement.<sup>98</sup> More optimistically, however, postmodern and poststructuralist approaches are still taught within the context of ‘speaking out *within* and *against* feminism’ by academic feminists.<sup>99</sup> The institutional positions of academic feminists, as a whole, provide not only the opportunity for activism in the present but the ability to contribute to the ‘social reproduction’ of the feminism of the future.

### The Effects of Normative Philosophy on Feminist Policy Influence

The diversity within feminism has particular effects on feminist policy advocacy.<sup>100</sup> Acknowledging this diversity enables a greater explanation of the varying strategies used by feminists to influence public policy. **Table 1.2**, below, illustrates this.

**TABLE 1.2. The Effects of Normative Philosophy on Feminist Policy Influence**

<b>Defining Characteristics</b>	<b>Academic</b>	<b>Liberal</b>	<b>Socialist</b>	<b>Radical</b>
<b>Mode of Organisation</b>	Discursive Community	Lobby Group, Femocrat	Women’s Group, Trade Union	New Social Movement
<b>Target of Change</b>	Insiders: intelligentsia Outsiders: next generation	Insiders: elite decision-makers Outsiders: broader public		Outsiders: grassroots feminists, clients of women’s services
<b>Reactive Strategy</b>	Analysis of policy, Strategic Intervention	Incremental Change, Input into policy outputs, impacts		Manipulation of symbols, policy discourse
<b>Proactive Strategy</b>	Create knowledge-based resources, critiques for change	Create networks of change within existing structures	Create relevant platforms and policies of change	Create alternative services, culture for change

<sup>96</sup> Linda Alcoff, ‘The Problem of Speaking for Others,’ In *Feminist Nightmares: Women at Odds*, (New York: New York University Press, 1994), 285-309, 303.

<sup>97</sup> T. de Lauretis, ‘Feminist Studies/Critical Studies,’ 2.

<sup>98</sup> Aafke Komter, ‘Gender, Power and Feminist Theory,’ In *The Gender of Power*, Kathy Davis, Monique Leijenaar and Jantine Oldersma (eds.), (London: Sage, 1991), 42-62.

<sup>99</sup> Teresa de Lauretis, ‘Eccentric Subjects: Feminist Theory and Historical Consciousness,’ *Feminist Studies* 16(1), (Spring 1990), 115-150, 133.

<sup>100</sup> Martha Ackelsberg, ‘Feminist Analyses of Policy,’ *Comparative Politics* 24 (1992), 477-493; Mary Hawkesworth, ‘Policy Studies Within a Feminist Frame,’ *Policy Sciences* 27, 97-118, 102.

All of the above feminist groups share some modes of organisation, targets of change, and strategies but the attributes listed above are most characteristic of their particular type of feminism. In addition, although these are distinct analytical categories, successful feminist policy intervention most often requires a coalition of feminists across these normative philosophies to achieve success.<sup>101</sup> This does not imply that feminists are always most successful when co-operating to express a single policy position. Multiple strategies, some in apparent contradiction, may be used within a single coalition. The strategic influence of liberal feminists may, for example, be strengthened by their appearance as a 'moderate and reasonable' alternative to radical feminist activists. The contention between the two types of group strategies serves to benefit the overarching goals of the feminist coalition in terms of better outcomes for women. The normative philosophies of feminism thus provides an explanation for the multiple, sometimes contradictory, strategies used by feminist policy activists.

### 3. ANALYTICAL PERSPECTIVES OF FEMINISM

As the material feminist movement provides the human resources of feminism; and its normative philosophies provide the strategic guidelines for social action; so do feminist analytical perspectives provide the knowledge-based resources for change: interpretative definitions and analytical tools for making sense of 'the world'. While theories of the acquisition and communication of knowledge are not the most obvious component of feminist policy intervention it must be remembered that this 'world' includes policy making and feminist influence upon it. Three distinct types of feminist epistemology have been identified: feminist empiricism, feminist standpoint theories and feminist postmodernism.<sup>102</sup> This thesis includes a fourth category: a 'pragmatic' approach which utilises some of the elements of all the others, depending on the nature of the subject to be examined. This pragmatic approach is most common in feminist policy studies and is positioned within the broader social science approach of a theoretically informed analysis of empirical action.

#### Feminist Empiricism

The first of these analytical perspectives, feminist empiricism, does not challenge the basic precepts of the scientific method: gaining knowledge by the objective observation of experience.<sup>103</sup> This epistemology has been associated with a quantitative methodology across the social sciences and has been used to gain information about the material aspect of feminism, in particular.<sup>104</sup> Feminist

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<sup>101</sup> J. Freeman, *The Politics of Women's Liberation*, 228.

<sup>102</sup> M. Hawkesworth, 'Policy Studies Within a Feminist Frame,' 97-118.

<sup>103</sup> See Helen Longino, *Science as Social Knowledge*, (Princeton, NJ: Princeton University Press, 1990) and Lynn Hankinson Nelson, *Who Knows: From Quine to a Feminist Empiricism*, (Philadelphia: Temple University Press, 1990).

<sup>104</sup> For examples see Eric Plutzer, 'Work, Life, and Women's Support of Feminism,' *American Sociological Review* 53(4), (August 1988), 640-649; Lee Ann Banaszak and Eric Plutzer,

empiricism aims to eliminate sexism as a bias which violates scientific objectivity.<sup>105</sup> This can be achieved by ‘stricter application of existing methodological norms of scientific and philosophical inquiry’.<sup>106</sup>

This attack on ‘bad science’ has been criticised by Harding as refusing to recognise its own radicalism: that it is actually an attack on the ‘value-free’ basis of empiricist science.<sup>107</sup> Shrader-Frechette attempts to overcome these criticisms by testing for objectivity by ‘evaluating the predictive and explanatory power of our claims and subjecting them to intelligent debate by the relevant epistemic or scientific community and by persons likely to be affected by the claims’.<sup>108</sup> Linking the last point to the democratisation of public policy, Shrader-Frechette suggests that ‘there is no reason to assume that members of the relevant knowledge community cannot debate the value-laden assumptions related to sexist bias’.<sup>109</sup> This comment reveals one of the standard ‘gaps’ in empiricism: its ‘blindness’ to the working of power, particularly covert or implicit power.<sup>110</sup> This limitation extends even to feminist empiricism and so limits the utility of this analytical perspective in dealing with policy.

### Feminist Standpoint

In contrast, feminist standpoint theory is much more sensitive to the effects of covert and implicit power. This analytical perspective developed from the work of socialist feminists drawing on Marx’s tenet that social being determines

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‘Contextual Determinants of Feminist Attitudes: National and Subnational Influences in Western Europe,’ *American Political Science Review* 87(1), (March 1993), 556-568; Lee Ann Banaszak and Eric Plutzer, ‘The Social Bases of Feminism in the European Community,’ *Public Opinion Quarterly* 57 (1993), 29-53; and Ruth Fassinger, ‘Development and Testing of the Attitudes Toward Feminism and the Women’s Movement Scale,’ *Psychology of Women Quarterly* 18 (1994), 389-402.

<sup>105</sup> Barbara Marshall, *Engendering Modernity*, (Boston: Northeastern University Press, 1994), 154.

<sup>106</sup> Mary Hawkesworth, ‘Knowers, Knowing, Known: Feminist Theory and Claims of Truth,’ *Signs: Journal of Women in Culture and Society* 14(3), (1989), 533-537, 535.

<sup>107</sup> Sandra Harding, ‘Rethinking Standpoint Epistemology: What is ‘Strong Objectivity’?’ In *Feminist Epistemologies*, Linda Alcoff and Elizabeth Potter (eds.), (New York, Routledge, 1994), 49-82, 53.

<sup>108</sup> Kristin Shrader-Frechette, ‘Feminist Epistemology and its Consequences for Policy,’ *Public Affairs Quarterly* 9(2), (April 1995), 155-173, 162.

<sup>109</sup> *Ibid.*, 166.

<sup>110</sup> For general critiques of the application of power see Stephen Lukes, *Power: A Radical View*, (London: Macmillan, 1974); and Peter Bachrach and Morton Baratz, *Power and Poverty*, (New York: Oxford University Press, 1970). For a application to feminist policy see Jennifer Marchbank, ‘Nondecision-Making ... A Management Guide to Keeping Women’s Interest Issues Off the Political Agenda,’ In *Stirring It: Challenges for Feminism*, Gabriele Griffin, Marianne Hester, Shirin Rai and Sasha Roseneil (eds.), (London: Taylor and Francis, 1994), 59-69; and Kathy Davis, Monique Leijenaar and Jantine Oldersma (eds.) *The Gender of Power*, (London: Sage, 1991).

consciousness.<sup>111</sup> Within historical materialism it is the proletariat who is capable of ‘using observation and reason to grasp the true form of social relations’.<sup>112</sup> Substituting women for the proletariat provides a ‘vantage point which can ground a powerful critique of ... the capitalist form of patriarchy’.<sup>113</sup> Feminist standpoint asks ‘how and to what extent a female knower might alter traditional ‘ways of knowing’’.<sup>114</sup> This epistemology is associated with qualitative methodologies in general and attempts a deeper understanding of the implications of policy and politics on women.<sup>115</sup> It deliberately incorporates feelings and intuition ‘elements marginalised or invisibilised (*sic*) by the traditional Western epistemic construction’.<sup>116</sup> This does not invalidate the idea of rationality but suggests that it needs to be balanced by ‘a variety of knowledge generating contexts’ which ‘traditional epistemology renders invisible’.<sup>117</sup> It is a ‘post-positivist approach’ in that it is ‘based on understanding agency operations from insiders’ or stakeholders’ perspectives’.<sup>118</sup>

Shrader-Frechette finds three weaknesses in this analytical perspective.<sup>119</sup> The first difficulty with this proposition, however, is the positing of a unitary feminist view, abstracted from other forces of stratification which affect women: class, race, ethnicity, sexuality and age. The second difficulty is that, even within a single social position, women may still have different ‘standpoints’, the individual is not just the sum total of her socio-economic placing. The third difficulty is the assumption that the view from the ‘bottom’ will be less ‘partial and perverse’ than that of the top. In response to this critique a revised feminist standpoint suggests that there is ‘no single feminist standpoint’ but that the goal of an ‘engaged, accountable positioning remains eminently potent’.<sup>120</sup> This leads to the cultivation of a ‘strong objectivity’ where one recognises the historical and

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<sup>111</sup> For examples of this perspective see Dorothy Smith, *The Everyday World as Problematic: A Feminist Sociology*, (Boston: Northeastern University Press, 1987); and Nancy Hartsock, *Money Sex and Power: Toward a Feminist Historical Materialism*, (Boston: Northeastern University Press, 1984).

<sup>112</sup> Sandra Harding, ‘The Instability of the Analytical Categories of Feminist Theory,’ *Signs: Journal of Women in Culture and Society* 11(4), 645-664, 654.

<sup>113</sup> N. Hartsock, ‘The Feminist Standpoint,’ 284.

<sup>114</sup> Stefanie Rixecker, ‘Examining the Discursive Context of Policy Design: A Matter of Feminist Standpoint Epistemology,’ *Policy Sciences* 27 (1994), 119-142, 124.

<sup>115</sup> Qualitative studies include Janet Billson, ‘The Progressive Verification Method,’ *Women’s Studies International Forum* 14(3), (1991), 201-215; Janet Billson, ‘Keepers of the Culture: Attitudes Toward Women’s Liberation and the Women’s Movement in Canada,’ *Women and Politics* 14(1), (1994), 1-34.

<sup>116</sup> S. Rixecker, ‘Examining the Discursive Context of Policy Design,’ 124.

<sup>117</sup> Ibid.

<sup>118</sup> Marisa Kelly and Steven Maynard-Moody, ‘Policy Analysis in the Post-Positivist Era: Engaging Stakeholders in Evaluating the Economic Development Districts Program,’ *Public Administration Review* 53(2), (March/April 1993), 135-142, 135.

<sup>119</sup> K. Shrader-Frechette, ‘Feminist Epistemology and its Consequences for Policy,’ 156-158.

<sup>120</sup> Donna Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature*, (New York: Routledge, 1991), 196.



socially situated contexts of the researcher.<sup>121</sup> Revised standpoint theory holds that any critically unexamined, socially dominant standpoint is limited by an 'inability to generate the most critical questions about received belief'.<sup>122</sup>

### **Feminist Postmodernism**

Feminist postmodernism distances itself from the previous two analytical perspectives in that it specifically rejects the goal of an 'improved, specifically feminist science and epistemology'.<sup>123</sup> Feminist postmodernism also rejects the idea of a standpoint which allows even a mediated objectivity. While a standpoint achieved through 'science and politics' is socially mediated, postmodern perspectives are unmediated.<sup>124</sup> Instead it is suggested that there are a 'myriad of positions and knowledges, none of which can be privileged'.<sup>125</sup> Postmodernist approaches have been associated with a poststructuralist methodology which emphasises the importance of ideas (policy discourse). A postmodernist approach to policy analysis examines the discursive construction of identity: how are particular identities privileged in relation to others within public policy?<sup>126</sup>

This approach has been criticised as lacking explanatory power when applied to the material, rather than the discursive, world. It has been suggested that feminist postmodernism has neither the strength of the liberal/empirical critiques of the political systems, nor of Marxist-based critiques of class systems, nor that of feminist standpoint critiques of gender systems.<sup>127</sup> Yet the feminist postmodern perspective is a valuable reminder to continue to question apparently acceptable truths to uncover their hegemonic aspects, poststructuralist interpretation is limited by the fact that policy involves the allocation of material goods as well as authority and legitimacy.

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<sup>121</sup> Sandra Harding, *Whose Science? Whose Knowledge? Thinking From Women's Lives*, (New York: Cornell University Press, 1991), 142; S. Rixecker, 'Examining the Discursive Context of Policy Design,' 126.

<sup>122</sup> S. Harding, 'Rethinking Standpoint Epistemology,' 55.

<sup>123</sup> Sandra Harding, 'Feminism, Science, and the Anti-Enlightenment Critiques,' In *Feminism/Post-Modernism*, Linda Nicholson (ed.), (New York: Routledge, 1990), 83-106, 99.

<sup>124</sup> S. Rixecker, 'Examining the Discursive Context of Policy Design,' 124.

<sup>125</sup> B. Marshall, *Engendering Modernity*, 155.

<sup>126</sup> Sanford Schram, 'Postmodern Policy Analysis: Discourse and Identity in Welfare Policy,' *Policy Sciences* 26 (1993), 249-270.

<sup>127</sup> Najma Chowdhury and Barbara Nelson with Nancy Johnson and Paula O'Loughlin, 'Research Design and Practice: Methodological Issues in Feminist Comparative Politics Research,' In *Women and Politics Worldwide*, Barbara Nelson and Najma Chowdhury (eds.), (New Haven: Yale University Press, 1994), 25-40, 37.

## Feminist Pragmatic

A 'pragmatic approach', which draws upon all the above approaches, has been evident in the past as feminists have attempted to sensitise existing methodological tools.<sup>128</sup> The use of the term 'pragmatic' here indicates a clear recognition that 'the integration of knowing and doing is necessary for building feminist theories of knowledge'.<sup>129</sup> It inclines toward the meaning of the word as a 'useful' approach rather than simply 'expedient'. It adapts and applies various analytical perspectives with an eye to developing the sharpest 'critical edge', the most potent critique, for furthering feminist understanding and intervention in the particular policy being dealt with.

The strength of the pragmatic, social science approach is evident in both the short-term, where groups may need to argue the feminist position on a number of grounds in relation to a particular policy, and in the long-term, when the accumulated knowledge about feminism and public policy becomes available through an examination of feminist policy studies. It also draws upon a social science tradition of philosophical pragmatism which states that 'the meanings of objects reside in the behaviour directed toward them and not in the objects themselves'.<sup>130</sup> Read 'policy' for 'objects' and the ability of the pragmatic analytical perspective of feminism, to uncover hitherto hegemonic power structures and to re-define particular policies in a way that exposes their gendered nature becomes clear.

## The Effects of Analytical Perspectives on Feminist Policy Practice

Feminist methodology and epistemology has attempted to develop an authentic 'voice' for feminist social analysis, drawing upon existing empiricist, Marxist, or postmodern theories, or combinations thereof. The choice of analytical perspective will determine how a feminist coalition attempts to interpret (define and analyse) public policy themselves and how they attempt to use information in changing that policy. This typology is illustrated in **Table 1.3** below.

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<sup>128</sup> It has also been recommended as a goal toward which future policy studies should be oriented. Peter DeLeon, 'Reinventing the Policy Sciences: Three Steps Back to the Future,' *Policy Sciences* 27(1994), 77-95.

<sup>129</sup> N. Chowdhury and B. Nelson with N. Johnson and P. O'Loughlin, 'Research Design and Practice,' 37.

<sup>130</sup> Jerome Manis and Bernard Meltzer, 'Intellectual Antecedents and Basic Propositions of Symbolic Interactionism,' In *Symbolic Interaction: A Reader in Social Psychology* (Third edition), Jerome Manis and Bernard Meltzer (eds.), (Boston: Allyn and Bacon, 1978), 1-9, 3.

**TABLE 1.3. The Effects of Analytical Perspectives on Feminist Policy Practice**

<b>Empiricism</b> Quantitative Methodology Positivist	<b>Standpoint</b> Qualitative Methodology Post-positivist	<b>Postmodernism</b> Discursive Methodology Poststructuralist
<b>Pragmatic</b> Draws from all three Social Science perspective		

As discussed above, a postmodern feminist analysis, using a discursive, post-structuralist methodology, could define policy as a discourse of ideas, and examine the way in which policy was being discussed in the media through fictional and non-fictional accounts. A standpoint feminist analysis, using a qualitative, post-positivist methodology, could explore how individual women felt that policy affected their lives. An empiricist approach, using a quantitative, positivist methodology, could be concerned either with the socio-structural background to policy or with the material effects of that policy on a particular individual. A social science approach shows a pragmatic ability to draw from all three approaches in defining and analysing policy. The analytical perspectives of feminism thus provides an explanation for the multiple interpretations of policy held by feminist policy activists.

#### **4. FEMINIST POLICY STUDIES**

The model of the three aspects of feminism, put forward in this thesis as constituting the *activity* of national feminism, may be further investigated by an examination of a number of feminist policy studies. Feminist activity does not exist in a vacuum, however, and the other two factors of the three-factor model, *receptivity* of the national site and the effect of policy *type* may also be broached at this point.

##### **Feminist Activity**

Freeman's (1975) examination of a decade of activism in the US, and Gelb and Palley's (1982) examination of four separate policy areas, also in the US, provide insights into the activity of national feminism.<sup>131</sup> When compared, both studies agree on a number of points. They both saw the feminist movement as a social movement and identified several normative philosophies within feminism. Both studies reported that these multiple feminisms led to the use of a wide variety of organisational structures and practices. Both agreed that feminist groups attempted to mobilise the support of feminists within government and the

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<sup>131</sup> J. Freeman, *The Politics of Women's Liberation*; and Joyce Gelb and Marian Palley, *Women and Public Policies*, (Princeton: Princeton University Press, 1982).

government agencies with which they were involved. The studies differed, however, in their interpretation of the interaction between different types of feminists. Freeman, in the 1970s, saw feminist groups as essentially driven by conflict as the more radical feminists pressured the leaders of the more 'respectable' liberal feminist groups to 'more strongly feminist' positions. This resulted in an increased acceptability for moderate feminist positions.<sup>132</sup> Gelb and Palley, in the 1980s, emphasised the cooperation between feminist groups as increasingly specialised groups responded to the pressure to be more 'professional' in their approaches.<sup>133</sup>

In spite of these different perceptions both studies reached the same conclusion: regardless of inter-group dynamics, successful feminist intervention required a coalition of grass-roots feminists, national women's organisations, and 'feminist-friendly' allies. Both studies also emphasised the role of feminist groups in providing technical information to government agencies or sponsors in their attempt to influence policy outcomes. Gelb and Palley indicated the importance of the definition of policy as a strategy through the 'manipulation of symbols'. This was particularly so when a 'countermovement' had arisen in order to oppose feminist interests.<sup>134</sup> Freeman emphasised the importance of building up a 'policy system' of interested participants over time: a process usually described in the 1990s as 'networking'.<sup>135</sup>

These studies emphasise the *activity* of national feminism and, when analysing the influence of feminism on public policy, they support the three aspects of feminism typology presented in this thesis. Other studies, however, concentrate on quite different variables. Randall (1982), Lovenduski (1986), Kaplan (1991), and Chowdhury et. al. (1994) provide insights into the effects of national and international political, economic and social systems on the ability of feminists to influence public policy.<sup>136</sup> An examination of these studies provides some indications of the sorts of elements determining the *receptivity* to feminism within the national site of policy.

### **National *Receptivity***

All the studies emphasised the centrality of the political system while drawing attention to different particular aspects. At the same time they suggested that the variation and change within both national and international political systems will affect the ability of feminism to influence public policy. Randall suggested that the characteristics of the political system which have 'most consistently shaped the political construction of women's options' are 'the nature of the dominant

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<sup>132</sup> J. Freeman, *The Politics of Women's Liberation*, 235-236.

<sup>133</sup> J. Gelb and M. Palley, *Women and Public Policies*, 174.

<sup>134</sup> *Ibid.*, 7, 10.

<sup>135</sup> J. Freeman, *The Politics of Women's Liberation*, 228.

<sup>136</sup> V. Randall, *Women and Politics*; Joni Lovenduski, *Women and European Politics: Contemporary Feminism and Public Policy*, (Amherst: University of Massachusetts Press, 1986); G. Kaplan, *Contemporary Western European Feminism*; N. Chowdhury and B. Nelson with K. Carver, N. Johnson and P. O'Loughlin, 'Redefining Politics.'

interests', the degree of centralisation and concentration of power; the scope of government; and the impact of feminism upon government.<sup>137</sup> Lovenduski also noted the degree of centralisation and the scope of government action as significant.<sup>138</sup> She suggested that the strength and skilfulness of feminists in particular policy areas, the attitude of political parties towards feminism, and the strength of parties within the political system are also important.<sup>139</sup> Kaplan suggested that the type and ideology of the political system and the relative wealth of a country structure policy options.<sup>140</sup> While pointing to national political ideologies and practices relating to women as important Chowdhury et. al. also emphasised the effects of international factors which, in combination with an increased regionalisation ('ethnic, communal, and regional forces that seek to alter the nature of national control of politics'), lead to a loss of national capacity to determine policy direction.<sup>141</sup>

Social attitudes, social structures, and the social system generally was also considered to be an important influence on policy outcomes in all four studies. Randall related social policy to the state's requirement for 'political order or stability', in particular, those policies which strengthen the 'patriarchal nuclear family'.<sup>142</sup> Lovenduski pointed to the political influence of religion, as did Kaplan, who suggested that the strength of this depends on the role religion plays in the running of a state and the Churches' openness to change.<sup>143</sup> Chowdhury et. al. discussed the growth of religious fundamentalism and the growth of international feminism as significant, and opposing, forces.<sup>144</sup> Like the political system, therefore, the social system was perceived open to variation and change in its receptivity to feminist influence.

The effects of the economy, economic institutions and the economic system were not seen as important as some of the other national and international systems by most of the feminist studies. Randall suggested a very broad interpretation of 'economic prosperity' as pursued through policies to do with employment, education and population.<sup>145</sup> Lovenduski noted the importance of macro-economic forces and the obstacles to women's equality within the labour market.<sup>146</sup> Kaplan defined the economic sphere as depending on the technological

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<sup>137</sup> V. Randall, *Women and Politics*, 129-137.

<sup>138</sup> Ibid., 248-249.

<sup>139</sup> Ibid., 295.

<sup>140</sup> G. Kaplan, *Contemporary Western European Feminism*, 59.

<sup>141</sup> N. Chowdhury and B. Nelson with K. Carver, N. Johnson and P. O'Loughlin, 'Redefining Politics,' 7.

<sup>142</sup> V. Randall, *Women and Politics*, 135.

<sup>143</sup> G. Kaplan, *Contemporary Western European Feminism*, 59.

<sup>144</sup> N. Chowdhury and B. Nelson with K. Carver, N. Johnson and P. O'Loughlin, 'Redefining Politics,' 8-9.

<sup>145</sup> V. Randall, *Women and Politics*, 135.

<sup>146</sup> J. Lovenduski, *Women and European Politics*, 255.

progress and standard of living in a country.<sup>147</sup> Chowdhury et. al. considered both the domestic economic position of a country, as defined by the per capita gross national product, and the impact of 'international economic forces' as affecting domestic policy, particularly, those which promote 'macroeconomic stabilisation' and 'internal structural transformation'.<sup>148</sup> The discussion of economic policy in these studies illustrates the multiplicity of analytical perspectives taken by the feminist policy analysts. 'Mainstream' economic analysis, for example, contains few, if any, quantitative indicators of 'prosperity', as were discussed by Randall, or knowledge-based indicators, such as were specified by Kaplan. Like other national and international systems, however, the economic system was considered to be subject to change over time, affecting its relative receptivity to feminist influence.

### **Policy Type**

While, overall, the studies by Freeman, and Gelb and Palley, emphasised quite different factors than did Randall, Lovenduski, Kaplan, and Chowdhury et. al., all of the studies listed above had one element in common. They all considered the *type* of policy under consideration to be an important factor in the success of feminist initiatives.

While Kaplan and Chowdhury et. al. each had their own particular way of defining policy types, the other four studies borrowed from 'mainstream' policy studies in their definitions, referring to Lowi's categorisation of three policy types - distributive, regulatory and redistributive - when discussing the scope of conflict arising from policy change.<sup>149</sup> All of the studies examined stated the advisability of minimising conflict. Gelb and Palley also emphasised the importance of containing potential policy conflict 'within clear bounds' as a strategy for success.<sup>150</sup> Making a similar point, Freeman stressed the importance of incremental, rather than radical, policy reform as a critical factor in determining success.<sup>151</sup> Gelb and Palley state that the gendered nature of the policy was significant here: when an issue was perceived as a reformist 'role equity' one, rather than a radical 'role change', success was most likely.<sup>152</sup>

### **Top Down versus Bottom Up Studies**

But while all the studies mentioned policy type, the question remains as to why some studies gave emphasis to the development of feminism itself, while others

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<sup>147</sup> G. Kaplan, *Contemporary Western European Feminism*, 59.

<sup>148</sup> N. Chowdhury and B. Nelson with K. Carver, N. Johnson and P. O'Loughlin, 'Redefining Politics,' 4.

<sup>149</sup> Theodore Lowi, 'American Business, Public Policy, Case-Studies and Political Theory,' *World Politics* 16 (1964), 677-715; Theodore Lowi, 'Four Systems of Policy, Politics, and Choice,' *Public Administration Review* 32, (1972), 298-310.

<sup>150</sup> J. Gelb and M. Palley, *Women and Public Policies*, 12.

<sup>151</sup> J. Freeman, *The Politics of Women's Liberation*, 228.

<sup>152</sup> J. Gelb and M. Palley, *Women and Public Policies*, 7.

emphasised the impact of national and international systems. To a large degree these feminist policy studies reflect a division within the academic field of policy implementation studies and their differences may be explained as the difference between 'top-down' and 'bottom-up' approaches.

The 'top-down' approach focuses on a policy decision taken by government officials and follows the implementation processes of that policy in order to determine to what extent stated objectives were achieved.<sup>153</sup> The strength of the top-down approach is the ability to identify the 'structures which constrain women (and) interlock with one another'.<sup>154</sup> Top-down approaches also enable international comparisons. The top-down studies reviewed here suggest that systemic factors support or limit feminist influence along political, social and economic lines.

The 'bottom-up' approach focuses on the actors who operate at the 'street-level' of implementation and the strategies they use to achieve their perception of stated policy objectives.<sup>155</sup> The strength of 'bottom-up' approaches lies in their explanatory power in relation to the effects of feminism as a social movement, coalition formation, and effective feminist strategies. Bottom-up approaches provide a regional or national approach to the analysis of feminist action. The discussion of feminist policy studies, above, suggests that neither the top-down nor the bottom-up approach is, by itself, able to capture all of factors which affect the influence of feminism on public policy. A combination of top-down and bottom-up approaches is required.

## 5. CONCLUSION

In explaining and expanding the 'three aspects of feminism' this chapter has shown that each of these has particular implications for the influence of feminism on public policy: the *activity* of national feminism. The material aspect of feminism shows its greatest strength during the time of movement proliferation. The normative aspect of feminism shows its greatest strength when multiple strategies are utilised by coalitions of feminists. The analytical aspect of feminism shows its greatest strength when a pragmatic use is made of accumulated knowledge.

An examination of some feminist policy studies also indicated that the national site of policy will vary, in its *receptivity* to feminism, in terms of its political, social and economic systems. The *type* of policy under consideration will also

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<sup>153</sup> See, for example, Randall Ripley and Grace Franklin, *Bureaucracy and Policy Implementation*, (Homewood, ILL: Dorsey Press, 1982); and Paul Sabatier and Daniel Mazmanian, *Implementation and Public Policy*, Illinois: Scott, Foresman and Company, 1983).

<sup>154</sup> Terri Apter and Elizabeth Garnsey, 'Enacting Inequality: Structure, Agency, and Gender,' *Women's Studies International Forum* 17(1), (1994), 19-31, 28.

<sup>155</sup> See, for example, Michael Lipsky, 'Street-level Bureaucracy and the Analysis of Urban Reform,' *Urban Affairs Quarterly* 6(1971), 391-409; and Richard Elmore, 'Backward Mapping: Implementation Research and Policy Decisions,' *Political Science Quarterly* 94(4), (Winter 1979-1980), 601-616.

vary, in terms of its capacity for conflict, thus also affecting the success of feminist influence. Neither of these latter two factors were, however, spelt out in any great detail. In addition, the feminist policy studies discussed appeared limited by their use of *either* top-down *or* bottom-up approaches.

Developments within ‘mainstream’ policy studies have offered more sophisticated models, which combine elements of both approaches, albeit without a feminist emphasis. The next chapter explores these ‘mainstream’ approaches, the potential use for feminist analysis and expands on the national *receptivity* and policy *type* factors of the three-factor model of the influence of feminism on public policy.



## CHAPTER 2

### POLICY THEORY

An examination of feminist policy studies has reinforced the importance of policy *type* and national *receptivity* on the *activity* of national feminism. These are central factors affecting the influence of feminism on public policy but are not yet clearly set out in sufficient detail. By examining a number of models of policy analysis, then taking a closer look at one particular model, this chapter brings together the insights of feminism and policy theory to complete the three-factor model which will be used in the rest of this thesis.

#### 1. SOME MODELS OF POLICY ANALYSIS

A combination of top-down and bottom-up approaches is required to capture all the factors which affect the influence of feminism on public policy. The widely-used policy community, network, and subsystem models all contain elements of both approaches. Institutional models, in contrast, attempt a synthesis of the two approaches by examining an intermediate level of action.

##### **Institutional Approaches**

Ostrom's 'institutional rational choice' framework looks at policy on three levels: the operational level (bottom-up), the collective choice level (intermediate) and the constitutional level (top-down). These are 'nested' within each other and actions at one level affect all other levels.<sup>156</sup> Simply put, in relation to policy, each level contains factors which structure the 'action situation' (policy decision): the rules or institutional arrangements; attributes about the state of the world being acted upon (the policy problem); and characteristics of the community within which action is proceeding (the dominant norms and preferences). This framework emphasises the importance of understanding the effects of institutional arrangements in determining policy outcomes.

Moe's 'politics of structural choice' model also views institutional arrangements as a major determinant of public policy outcomes but suggests that this occurs within a 'political control structure' which links these intermediate institutions with the formal political and legislative process (top-down) and activist interest

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<sup>156</sup> Key writings in the development and application of the institutional rational choice framework include Larry Kiser and Elinor Ostrom, 'The Three Worlds of Action,' In *Strategies of Political Inquiry*, Elinor Ostrom (ed.), (Beverly Hills: Sage, 1982), 179-222; Elinor Ostrom, 'A Method of Institutional Analysis,' In *Guidance, Control and Evaluation in the Public Sector*, Franz-Xaver Kaufmann, Giandomenico Majone, Vincent Ostrom, with the assistance of Wolfgang Wirth (eds.), (New York: Walter de Gruyter, 1986), 459-475; and Elinor Ostrom, *Governing the Commons*, (Cambridge: Cambridge University Press, 1990).

groups (bottom-up).<sup>157</sup> Although both institutional approaches resolve the top-down versus bottom-up dilemma, and remain important influences on some of the other approaches examined here, their utility in this study is limited by their emphasis on formal institutions. As the previous chapter pointed out, a large part of the *activity* of national feminism occurs outside formal institutions, thus requiring a model which permits the examination of both institutional and non-institutional actors as well as cross-institutional alliances.

## Policy Communities

In policy community models it is the consistency of interaction over time and a common interest in policy, rather than formal institutions, which bind policy actors together. Richardson and Jordan's policy community model describes the close, on-going, consensual relationship between government departments and organised groups which developed as a way of facilitating government intervention, across a range of policy issues, through an accommodation of interests.<sup>158</sup> While Pross broadened this concept to distinguish between a relatively small set of policy decision-makers - the 'sub-government' - and a larger 'attentive public', policy communities were still defined as being distinctive in their 'highly integrated' nature, and their relationships based on a 'commonly understood belief system, code of conduct and established pattern of behaviour'.<sup>159</sup> Both Kingdon and Rhodes have used this concept of policy community as part of their own models of policy analysis.<sup>160</sup>

Wilks and Wright, Atkinson and Coleman, and Coleman and Skogstad, however, use the term policy community in a different way. Wilks and Wright use the term to describe the groups of actors involved with a particular policy sector and use the term 'policy networks' to describe the relationships between policy communities.<sup>161</sup> Atkinson and Coleman, and Coleman and Skogstad, also use the terms policy community and policy network this way, but emphasise the determining role of state institutions.<sup>162</sup> All the policy community models

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<sup>157</sup> Terry Moe, 'The Politics of Structural Choice: Toward a Theory of Public Bureaucracy,' In *Organization Theory: From Chester Barnard to the Present and Beyond*, Oliver Williamson (ed.), (New York: Oxford University Press, 1990), 116-153.

<sup>158</sup> J. J. Richardson and Grant Jordan, *Governing Under Pressure*, (Oxford: Martin Robertson, 1979). See also Grant Jordan, 'Sub-Governments, Policy Communities and Networks: Refilling the Old Bottles?' *Journal of Theoretical Politics* 2(3), (1990), 319-338.

<sup>159</sup> Paul Pross, *Group Politics and Public Policy*, (Toronto: Oxford University Press, 1986), 107.

<sup>160</sup> John Kingdon, *Agendas, Alternatives, and Public Policies*, (Boston: Little Brown, 1984); R. A. W. Rhodes, 'Power-Dependence, Policy Communities and Intergovernmental Networks,' *Public Administration Bulletin* 9, (1985), 4-30.

<sup>161</sup> Stephen Wilks and Maurice Wright 'Conclusion: Comparing Government-Industry Relations: States, Sectors, and Networks,' In *Comparative Government-Industry Relations*, Stephen Wilks and Maurice Wright (eds.), (Oxford: Oxford University Press, 1987), 274-313.

<sup>162</sup> Michael Atkinson and William Coleman, 'Strong States and Weak States: Sectoral Policy Networks in Advanced Capitalist Economies,' *British Journal of Political Science* 19(1), (1989), 264-287; William Coleman and Grace Skogstad, 'Policy Communities and Policy

incorporate top-down and bottom-up approaches in their analysis. The emphasis of the first set of policy community models upon common beliefs across participating groups, however, does not adequately describe highly conflictual policy activity. The second set of policy community models deal more adequately with conflict but less so with policy issues that are not state-dominated. Neither set of policy community models, for example, would be able to adequately describe the interactions around abortion policy in Ireland or Australia. The inability of policy community models to adequately capture the importance of this particular policy *type* precludes their use in this thesis.

## Policy Networks

One use of the term 'network', in relation to policy communities, has already been discussed. The original network concept, Heclo's issue network, was conceptualised as a loose and open set of relationships which included a large number of participants.<sup>163</sup> The most common usage of 'network', however, has been as a generic term for a range of relationships involving government and interest groups. Rhodes' 'power dependence' framework included both the policy community and the issue network as two of five different types of policy network.<sup>164</sup> Jordan and Schubert, and Van Waarden, also use network as a generic term although they each have different criteria for distinguishing between types of network.<sup>165</sup> Milward and Wamsley have used the term in a slightly different way again. For them the policy network is the flow of information, individuals and resources within a larger policy subsystem.<sup>166</sup> Yet this last concept of policy network shares with all others an emphasis upon material

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Networks: A Structural Approach,' In *Policy Communities and Public Policy in Canada: A Structural Approach*, William Coleman and Grace Skogstad (eds.), (Mississauga, Ontario: Copp Clark Pitman, 1990), 14-33. For a comparison of their definition against others see also Michael Atkinson and William Coleman, 'Policy Networks, Policy Communities and the Problems of Governance,' *Governance* 5(2), (April 1992), 154-180.

<sup>163</sup> Hugh Heclo, 'Issue Networks and the Executive Establishment,' In *The New American Political System*, Anthony King (ed.), (Washington: American Enterprise Institute, 1978), 87-124.

<sup>164</sup> For an outline of the framework and its comparison with other types of networks see R. A. W. Rhodes, 'Power-Dependence, Policy Communities and Intergovernmental Networks'; R. A. W. Rhodes, 'Policy Networks: A British Perspective,' *Journal of Theoretical Politics* 2(3), (1990), 293-317; R. A. W. Rhodes and David Marsh, 'New Directions in the Study of Policy Networks,' *European Journal of Political Research* 21, (1992), 181-205.

<sup>165</sup> Frans Van Waarden, 'Dimensions and Types of Policy Networks,' *European Journal of Political Research* 21, (1992), 29-52; Grant Jordan and Karen Schubert, 'A Preliminary Ordering of Policy Network Labels,' *European Journal of Political Research* 21 (1992), 7-27.

<sup>166</sup> H. Brinton Milward and Gary Wamsley, 'Policy Subsystems, Networks and the Tools of Public Management,' In *Public Policy Studies: A Multi-Volume Treatise*, Robert Eyestone (ed.), (Greenwich, Connecticut: JAI Press, 1985), 3-22; H. Brinton Milward and Gary Wamsley, 'Policy Subsystems, Networks and the Tools of Public Management,' In *Policy Implementation in Federal and Unitary Systems*, Kenneth Hanf and Ted Toonen (eds.), (Dordrecht: Martinus Nijhoff, 1985), 105-130.

(resource) interdependency.<sup>167</sup> This emphasis on material cohesiveness, rather than normative exchanges, allows the policy network model to express conflict in a way the policy community could not.

The policy network model has been criticised, however, for not taking into account the influence and variance of the political, social, and economic factors which structure the different network dependencies.<sup>168</sup> While Atkinson and Coleman, and Coleman and Skogstad, base their network types on the differing levels of state capacity and autonomy, and interest organisational development, they do not provide a rationale for why these differences occur across policy sectors. There is no context for national *receptivity* to particular influences. The stated importance of these factors in feminist policy studies means that policy network models are of limited use in this thesis.

### Policy Subsystems

Two policy subsystem models specifically incorporate these contextual factors in their frameworks. Milward and Wamsley's political economy framework contains a policy subsystem which comprises the policy network (described above); the context in which the network operates (the political economy system); and the choice of 'regulatory tools' (the particular programs which implement policy).<sup>169</sup> Sabatier and Jenkin-Smith's advocacy coalition framework (ACF) also contains a policy subsystem, which is set out in some detail and incorporates coalitions, conflict, debate, and learning over time, and two sets of contextual (systemic) factors which provide a broader political, economic, and social context for subsystem action.<sup>170</sup> Both subsystem models include top-down, bottom-up, and intermediate levels of institutionalised and non-institutionalised action, and accommodate conflict over policy, within a contextual, systemic, background. As such they both fulfil many of the requirements discussed above. When comparing the two subsystem models, in terms of their use in this thesis, a number of points emerge in favour of the ACF.

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<sup>167</sup> Keith Dowding, 'Model or Metaphor? A Critical Review of the Policy Network Approach,' *Political Studies* XLIII (1995), 136-158, 146.

<sup>168</sup> Barbara Jolly and Ian Holland, 'Making Sense of Policy Networks and Policy Communities,' Paper presented to the *Australasian Political Studies Association Annual Conference*, Melbourne, 29 September - 1 October 1993, 15.

<sup>169</sup> See the previous two H. Milward and G. Wamsley articles on 'Policy Subsystems, Networks and the Tools of Public Management,'; and Gary L. Wamsley, 'Policy Subsystems as a Unit of Analysis in Implementation Studies: A Struggle for Theoretical Synthesis,' In *Policy Implementation in Federal and Unitary Systems*, Kenneth Hanf and Ted Toonen (eds.), (Dordrecht: Martinus Nijhoff, 1985), 71-96.

<sup>170</sup> For one of the earliest articles see Paul Sabatier, 'Top-Down and Bottom-Up Approaches to Implementation Research: Analysis and Suggested Synthesis,' *Journal of Public Policy* 6 (1), (1986), 21-48. For one of the most recent see Hank Jenkins-Smith and Paul Sabatier, 'Evaluating the Advocacy Coalition Framework,' *Journal of Public Policy* 14 (1994), 175-203.

The ACF incorporates many of the positive aspects of the community, network and subsystem models discussed above<sup>171</sup> and was specifically designed to resolve the divergence between top-down and bottom-up approaches to policy analysis.<sup>172</sup> It also deliberately incorporates some of the insights of Ostrom's institutional approach.<sup>173</sup> The overall purpose of the ACF, to provide a testable, concise, 'viable causal theory' of policy change which helps 'policy activists' understand the policy process and shows 'how individuals with solid information can make a difference over time',<sup>174</sup> is congruent with Burton's definition of feminism as an 'activist and interventionist' approach which develops 'constructs for analysing the social world in order to understand how it may be changed'.<sup>175</sup> As such the ACF is both a respected model of policy analysis and amenable to use for feminist purposes.

The systemic factors provided by the ACF include all three of those identified by top-down feminist policy studies as important to national *receptivity* and the emphasis on coalitions picks up an important point identified by bottom-up feminist policy studies regarding successful feminist *activity*. The ACF sets out a dozen hypotheses regarding the relationship between the system, subsystem, and policy change over time.<sup>176</sup> As the three-factor model of the influence of feminism on public policy is explicitly concerned with this relationship, of the two policy subsystem models which have been examined, it is the ACF which

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<sup>171</sup> For comparisons of the ACF with community, network and subsystem models see K. Dowding, 'Model or Metaphor? A Critical Review of the Policy Network Approach'; M. Atkinson and W. Coleman, 'Policy Networks, Policy Communities and the Problems of Governance'; Kenneth Hanf and Laurence O'Toole, 'Revisiting Old Friends: Networks, Implementation Structures and the Management of Inter-Organizational Relations,' *European Journal of Political Research* 21, (1992), 163-180; and Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, (Oxford: Oxford University Press, 1995).

<sup>172</sup> P. Sabatier, 'Top-Down and Bottom-Up Approaches to Implementation Research' and Paul Sabatier, 'What Can We Learn From Implementation Research?' In *Guidance, Control and Evaluation in the Public Sector*, Franz-Xaver Kaufmann, Giandomenico Majone, Vincent Ostrom, with the assistance of Wolfgang Wirth (eds.), (New York: Walter de Gruyter, 1986), 129-168.

<sup>173</sup> In spite of being a 'subsystem' model, the ACF is more often compared to the institutional rational choice model than to other subsystem, network or community models. See Paul Sabatier, 'Toward Better Theories of the Policy Process,' *Political Science and Politics* 24(2), (June 1991), 147-156; Hank Jenkins-Smith, 'Alternatives Theories of the Policy Process: Reflections on Research Strategy for the Study of Nuclear Waste Policy,' *Political Science and Politics* 24(2), (June 1991), 157-166; Paul Sabatier, 'The Suitability of Several Models for Comparative Analysis of the Policy Process,' *Revised Version of a Paper Presented at the Conference on the Comparative Observation of Governmental Activity*, Universit  Laval, Quebec, Canada, September 10-12, 1993. Revision April 1994; Edella Schlager, 'Policy Making and Collective Action: Defining Coalitions Within the Advocacy Coalition Framework,' *Policy Sciences* 28 (1995), 243-270; and Edella Schlager and William Blomquist, 'A Comparison of Three Emerging Theories of the Policy Process,' *Political Research Quarterly* 49 (September 1996), 651-672.

<sup>174</sup> C. Lave and J. March, *An Introduction to Models in the Social Sciences*, cited in H. Jenkins-Smith and P. Sabatier, 'Evaluating the Advocacy Coalition Framework,' 197.

<sup>175</sup> C. Burton, *Subordination*, xi.

<sup>176</sup> A complete list of all ACF Hypotheses is contained in **Appendix 1**.

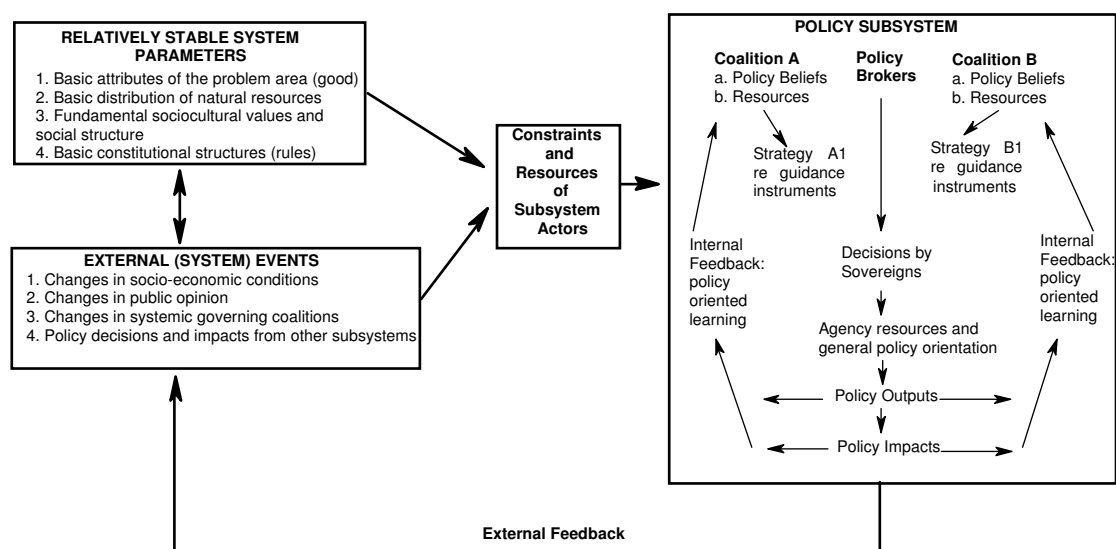
bears the most promise for this thesis. While the ACF is not a feminist-influenced model of the policy process it provides a sound foundation from which to build. The next step in developing the three-factor model of the influence of feminism on public policy is to examine the ACF in more detail.

## 2. ACF SYSTEMIC FACTORS

The relationship between the system, subsystem and policy change over time is set out in the explanatory diagram of the ACF, illustrated in **Figure 2.1**, below.

At the top left-hand side of the diagram four ‘relatively stable system parameters’ are listed. According to the ACF, these factors act to limit the alternatives available and determine the parameters of change. While these parameters do change, themselves, the process is so slow that it ‘usually requires decades’.<sup>177</sup> The *basic attributes of the problem area* (distinguishing between public and private goods) affects the policy problem's ability to be quantified and explained.

**FIGURE 2.1. The Advocacy Coalition Framework**



Source: Paul Sabatier and Hank Jenkins-Smith, ‘The Advocacy Coalition Framework: Assessment, Revisions and Implications for Scholars and Practitioners’, In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview, 1993), 211-235, 224.

This may be related to the emphasis given to policy *type* by feminist policy studies. The *basic distribution of natural resources* affects ‘a society's overall wealth and viability of different economic sectors’,<sup>178</sup> and along with the *fundamental cultural values and social structure* and *basic constitutional*

<sup>177</sup> Paul Sabatier, ‘Policy Change Over a Decade or More,’ In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 13-39, 27.

<sup>178</sup> Ibid., 21.

*structures (rules)*, may be related to the economic, social and political aspects of national *receptivity* within the three-factor model of the influence of feminism on public policy.

Yet, unlike the three-factor model, the ACF differentiates systemic factors on their ability to change over time. The ACF therefore includes a set of 'external system events' which may, through their rapid and substantial variance, stimulate policy change within the subsystem as advocacy coalitions try to anticipate or respond to them.<sup>179</sup> These are listed as *changes in socio-economic conditions*, *changes in public opinion*, *changes in systemic governing conditions* and the *policy decisions and impacts from other subsystems*.<sup>180</sup> They are, as their names imply, concerned with economic, social, political and policy change.

These two set of external factors combine to produce differential opportunities and constraints across the policy subsystem actors. The subsequent effects of the policy subsystem upon dynamic systemic factors is represented by external feedback loop. Thus policy is conceptualised as being locked into a dynamic, interconnecting framework, which includes both contextual systemic factors and the actors and processes contained within the policy subsystem.

### **ACF Systemic Factors and the Three-Factor Model**

The purpose of this examination of the ACF is to use it as a basis from which to build a model of the influence of feminism on public policy. This discussion of ACF systemic factors has three implications for developing such a model.

The clear emphasis on contextualising systemic factors is one of the real strengths of the ACF. There is, however, no explanation given for the *choice* of systemic factors used. The feminist policy studies discussed in the previous chapter identified some contextual factors that were similar to those provided by the ACF in that they were to do with the effects of national political, social and economic systems. Yet feminist studies also pointed to the importance of the attitude of government towards feminism; the scope and capacity of government action; and the social and political strength of religion. International factors were named as particularly significant in some studies. The ACF, like all theories, bears the marks of its origins (environmental regulatory policy in the US) in its conceptualisation of the relevant systemic factors. While the ACF systemic factors provide a good basis from which to work it may be more useful, for a model of the influence of feminism on public policy, to contain categories of systemic factors which generate questions relating to the status of women in a particular national setting.

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<sup>179</sup> This is expressed in ACF Hypothesis 5: Changing the policy core attributes of a government action program requires both: i) significant perturbations external to the subsystem (eg changes in the socio-economic conditions, system-wide governing coalitions, or policy outputs from other subsystems); and ii) skilful exploitation of those opportunities by the (previously) minority coalition within the subsystem. Paul Sabatier and Hank Jenkins-Smith, 'The Advocacy Coalition Framework: Assessment, Revisions and Implications for Scholars and Practitioners', In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview, 1993), 211-235, 221.

<sup>180</sup> P. Sabatier, 'Policy Change Over a Decade or More,' 22.

The second implication which may be drawn from the ACF systemic factors is to do with the introduction of a dynamic of change over time. Rather than simply stating that political, social or economic factors do change the ACF shows the value of postulating as to how they change in specific ways. The three-factor model should also draw out what implications these differing rates of change have for the influence of feminism on public policy. At the same time, considering the importance of policy *type*, providing a general set of contextual factors may not be particularly useful. Feminist studies suggest that the policy problem itself may have a strong impact in determining what systemic factors are relevant out of any given bank of categories. This leads to the third implication to be drawn from this examination of ACF systemic factors - regarding the nature of policy *type*. Feminist policy studies put more emphasis upon this than is evident within the ACF.<sup>181</sup> In the three-factor model of the influence of feminism of public policy, policy *type* is examined separately, and it is not discussed within the systemic factors.

### Systemic Factors, National *Receptivity*, and Implications for Feminist Policy

**Table 2.1**, below, provides a list of systemic factors based on a synthesis between the findings of previous feminist policy studies and the ACF systemic factors.

**TABLE 2.1. Systemic Factors, National *Receptivity*, and Implications for Feminist Policy**

NATIONAL SYSTEMS	STRUCTURAL FACTORS	DYNAMIC FACTORS	IMPLICATIONS FOR POLICY
<b>Political</b>	The centrality and complexity of the national <i>Constitution</i> ; the structure and relative powers of the <i>elected government</i> and the <i>appointed judiciary</i> .	Altered by changes through the <i>electoral cycle</i> ; <i>party politics</i> , subnational and international factors.	Political system will always be important but is there an adequate representation of women's interests within?
<b>Social</b>	Fundamental socio-cultural values and social structures: the relative strength and institutionalisation of <i>secular</i> or <i>religious</i> beliefs and development of pluralism.	Modified by changes in public opinion: in particular the effects of <i>liberatory NSMs</i> as against 'new right' or religious <i>traditionalist groups</i> ; subnational and international factors	Social system will only be crucial to some policy areas (eg. abortion policy). Does it realistically reflect women's experience?
<b>Economic</b>	Natural physical and human <i>resources</i> . The concentration and composition of private <i>capital</i> .	Distribution and development of national resources; the degree of <i>corporatism</i> and <i>centralisation</i> , subnational and international factors.	Economic system will only be crucial to some policy areas (eg. equal pay policy). Does it provide for a fair reward for women's work?

<sup>181</sup> Sabatier states that while differences based on policy type exist 'they are not deemed important enough to include' in the ACF. P. Sabatier, 'Policy Change Over a Decade or More,' 36.



The tension between stable structures formed by historical or geographical forces and dynamic agencies open to influence by feminists is evident in each of these pairs of factors. Within the political system, therefore, the adequate representation of women's interests would be more easily achieved within party politics than within the appointed judiciary; the electoral cycle would be more responsive to women's demands than the written constitution; and the effects of policy decisions at State or Territory level (within a federal system) or international level (in either federal or unitary systems) would be likely to stimulate change in ways which at least potentially benefit women. This is not entirely straightforward: if the appointed judiciary hold powers which are much greater than those of elected politicians, for example, the increased *permeability* of this dynamic factor is impaired by its reduced *capacity*. The political system is, however, central to policy-making and affects all policy areas. The issue of representation similarly spills over into all national institutions including social and economic organisations.

Within the social system a realistic reflection of women's contemporary experience would be more likely to be expressed by new social movements than institutional religion; a pluralist culture rather than a homogeneous one; and, as in all the national systems, changes at subnational or international level introduce the possibility for advancement in the status of women. At the same time, however, although change in the social system is generally facilitated by social movements and resisted by institutionalised religion, there is no guarantee that these changes will be compatible with the objects of feminism. Feminism is only one of a number of competing social movements within a cycle of protest, a cycle which has also thrown up countermovements, with an anti-feminist and traditionalist agenda. The social system has primary significance for some policies (such as abortion policy) but is implicated as a secondary factor in political and economic policies.

The natural physical and human resources of a country are relatively slow to change and, although the development and distribution of natural resources are more open to influence, the concentration and composition of private capital may also limit the effect of that influence. This is the case when certain sectors of the economy are tightly controlled by a few elite groups or by trans-national corporations. Then the impact of policy change at international levels of governance becomes significant. On a national level, however, the degree of corporatism and centralisation of decision-making are important to determining the national *receptivity* to feminist influence. The proviso in this case is the relative difficulty to effect change within the economic system, more than either of the other two systems, due to the traditional relegation of women to the 'private sphere' of activity. As the political system impacts on both public and private spheres, and the social system is based on the private, the economic sphere presents the greatest overall resistance to feminist intervention. At the same time, the economic system has the narrowest ambit amongst the three national systems: while the structure and dynamics of the economic system have primary significance for policy areas such as equal pay it is not significantly implicated in others (such as abortion policy).

Kaplan suggests that when women make advances in one or two of these systems (which she refers to a 'spheres') there are reverses in the others as the patriarchal

orientation of all three systems adjust to stabilisation ('the seesaw effect').<sup>182</sup> Less pessimistically, this thesis suggests that this tendency for 'patriarchal equilibrium' is susceptible to cumulative change if feminists reach a critical level of national *activity*. The systemic factors comprising the *receptivity* of the national site will create commonalities across subsystems within the same country.

The inclusion of the effects of NSMs in the social system recognises that the *activity* of national feminism will have an effect that is wider than any particular subsystem and will itself form a contextual background for feminist interventions in particular policy subsystems. The level of feminist involvement within a particular subsystem will depend upon the policy *type*.

### 3. THE ACF POLICY SUBSYSTEM

A great deal of information underlies the ACF policy subsystem diagram, particularly when referring to the concepts of 'policy beliefs' and 'policy-oriented learning'. The background to policy beliefs (the ACF model of the individual) is discussed below, separately from the policy subsystem, as it has implications which flow beyond subsystem limits and, as a model, is not integral to understanding subsystem dynamics. Policy-oriented learning is discussed here but it is noted that it holds implications not only for the policy subsystem but for policy *type* as well.

Looking back at **Figure 2.1** it may be seen that the ACF 'advocacy coalitions' are the core actors of the policy subsystem. These coalitions are formed by individuals who show a significant degree of coordinated activity over time and share 'basic values, causal assumptions, and problem perceptions', that is, a common belief system.<sup>183</sup> They act to 'advocate' their interpretation of policy. While the direction of coalition action (strategies) will be determined by shared policy beliefs, coalition ability to influence outcomes will be dependant upon resources such as 'money, expertise, number of supporters, and legal authority'.<sup>184</sup> Coalition strategies include seeking institutional changes at the specific policy intervention level ('guidance instruments').<sup>185</sup> Conflicting

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<sup>182</sup> G. Kaplan, *Contemporary Western European Feminism*, 57-59.

<sup>183</sup> P. Sabatier, 'Policy Change Over a Decade or More,' 25.

<sup>184</sup> *Ibid.*, 29.

<sup>185</sup> My previous research, on women's shelters in Southern Tasmania, provided some evidence that coalitions will even reach *outside* the subsystem, in an attempt to alter systemic factors, when attempting to fulfil their aims. This contradicts Sabatier's expectation that relatively stable system parameters would *not* be the target of coalition strategies. On the basis of that research, I concluded that this variation was due to the policy *type*, the ACF having previously been used to analyse resources policy, not social policy. This present study confirms and expands my original findings. Elizabeth Shannon, *Advocacy Coalition Frameworks, Policy Oriented Learning and the Provision of Crisis Accommodation for Women in Southern Tasmania*, Unpublished Thesis (BA Hons), Department of Political Science, University of Tasmania, November 1993.

coalition strategies are mediated by policy brokers who are more concerned with 'preserving subsystem stability' than with achieving particular policy goals.<sup>186</sup>

The policy process continues with the resulting decisions by (top-down) sovereigns (the legislative or administrative arms of the state, the judiciary, or those professionals who wield a 'legitimate authority') becoming influenced by the (bottom-up) implementing agency's resources and policy orientation (institutional arrangements). The policy outputs (at the operational level) result in policy impacts: measurable effects on the policy problem in question.<sup>187</sup> Coalition members' perceptions of policy outputs and impacts contribute to an internal feedback loop: a process of policy-oriented learning within the coalition.<sup>188</sup>

Policy-oriented learning within coalitions involves improving the 'mechanisms' of coalition strategies, increasing understanding of the 'logical and causal relationships' within policy beliefs, attempting to identify important 'policy variables', and responding to challenges and change.<sup>189</sup> The ACF identifies policy oriented learning within an advocacy coalition as 'relatively unproblematic'.<sup>190</sup> This learning process may also occur between coalitions, but is less common, and is not included as a process within the subsystem diagram.<sup>191</sup> This second form of learning is highly conditional and ultimately requires the argument developed by one coalition to be so convincing that even opposing coalitions and policy brokers accept its validity.<sup>192</sup>

The concept of policy-oriented learning (both within and between coalitions) is limited by what the ACF describes as the 'ambiguity of experience': the 'real-world' confusion and conflict which means that 'coalitions are constantly arguing

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<sup>186</sup> P. Sabatier, 'Policy Change Over a Decade or More,' 27.

<sup>187</sup> It is in the model of the policy process that the ACF is most influenced by Ostrom's institutional rational choice model.

<sup>188</sup> Hank Jenkins-Smith and Paul Sabatier, 'The Dynamics of Policy-Oriented Learning,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 40-56, 42.

<sup>189</sup> Ibid., 42-43.

<sup>190</sup> Ibid. 48.

<sup>191</sup> The complete model of the process of policy-oriented learning between advocacy coalitions is illustrated in **Appendix 2**.

<sup>192</sup> The requirements for policy-oriented learning are summarised in ACF Hypotheses 6 and 9. (6) Policy-oriented learning across belief systems is most likely when there is an intermediate level of informed conflict between the two. This requires that: i) each coalition has the technical resources to engage in such a debate and that ii) the conflict be between secondary aspects of one belief system and core elements of the other, or, alternatively, between important secondary aspects of the two belief systems. (9) Policy-oriented learning across belief systems is most likely when there exists a forum which is: i) prestigious enough to force professionals from different coalitions to participate; and ii) dominated by professional norms. Paul Sabatier, 'Coalition Coordination and Stability in Public Policy: Testing an Expanded Version of the Advocacy Coalition Framework on San Francisco Bay/Delta Water Policy, 1960-1994', *Proposal to the National Science Foundation*, August 15, 1994, 7. Jenkins-Smith outlines the requirements in terms of analytical forum, levels of conflict, and analytical tractability in policy debates in Hank Jenkins-Smith, *Democratic Politics and Policy Analysis*, (Pacific Grove, CA: Brooks/Cole, 1990), 103.

about the advisability of different strategies' and trying out many strategies simultaneously 'in the hope that a few will fall on fertile soil'.<sup>193</sup> Policy-oriented learning is also limited in that it describes a 'policy refining process' of incremental change rather than radical change.<sup>194</sup> Finally policy-oriented learning only explains change in those aspects of a coalition's belief system which are 'susceptible to change on the basis of scientific and technical analysis'.<sup>195</sup> In spite of these limitations a number of researchers have undertaken studies on policy-oriented learning and its impact on policy.<sup>196</sup>

### Policy-Oriented Learning and Policy Type

The ACF model of the policy subsystem has two implications for the development of the three-factor model of the influence of feminism on public policy. The first flows from the relationship of policy-oriented learning and policy type.

There is some debate within the policy studies literature as to the subject, process, and object of policy 'learning',<sup>197</sup> and there are numerous alternative models.<sup>198</sup>

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<sup>193</sup> H. Jenkins-Smith and P. Sabatier, 'The Dynamics of Policy-Oriented Learning,' 44.

<sup>194</sup> ACF Hypothesis 4: The policy core attributes of a governmental program are unlikely to be significantly revised as long as the subsystem advocacy coalition which instituted the program remains in power within that jurisdiction - except within the change is imposed by a hierarchically superior jurisdiction. P. Sabatier, 'Coalition Coordination and Stability in Public Policy,' 7.

<sup>195</sup> H. Jenkins-Smith and P. Sabatier, 'The Dynamics of Policy-Oriented Learning,' 41.

<sup>196</sup> In addition to the sources already cited which specifically mention learning, see Paul Sabatier and Kenneth Hanf, 'Strategic Interaction, Learning and Policy Evolution: A Synthetic Model,' In *Policy Implementation in Federal and Unitary Systems*, Kenneth Hanf and Ted Toonen (eds.), (Dordrecht: Martinus Nijhoff, 1985), 301-333; Paul Sabatier, 'Knowledge, Policy-Oriented Learning, and Policy Change: An Advocacy Coalition Framework,' *Knowledge: Creation, Diffusion, Utilization* 8(4), (June 1987), 649-692; Paul Sabatier, 'An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein,' *Policy Sciences* 21 (1988), 129-168; Hank Jenkins-Smith, 'Analytical Debates and Policy Learning: Analysis and Change in the Federal Bureaucracy,' *Policy Sciences*, 21 (2-3), (1988), 169-211; John Weyant, 'Is There Policy-Oriented Learning in the Analysis of Natural Gas Issues?,' *Policy Sciences* 21 (2-3), (1988), 239-261; Ralph Chapman, 'Policy-Oriented Learning and Institutional Structures in the Resource Policy Arena,' *Paper for the Coastal Zone Inquiry, Resource Assessment Commission*, July 1991; Glyn Davis and Patrick Weller, *Strategic Management in the Public Sector: Managing the Coastal Zone*, (Canberra: Commonwealth of Australia, 1993); and Ken Lertzman, Jeremy Rayner and Jeremy Wilson, 'Learning and Change in the British Columbia Forest Policy Sector: A Consideration of Sabatier's Advocacy Coalition Framework,' *Canadian Journal of Political Science* XXXIX(1), (March 1996), 111-133.

<sup>197</sup> See Colin Bennett and Michael Howlett, 'The Lessons of Learning: Reconciling Theories of Policy Learning and Policy Change,' *Policy Sciences* 23 (1992), 275-294; and Louse White, 'Policy Analysis as Discourse,' *Journal of Policy Analysis and Management* 13(3), (1994), 506-525.

<sup>198</sup> See, for example, Hugh Heclo, *Modern Social Politics in Britain and Sweden: From Relief to Income Maintenance*, (New Haven: Yale University Press, 1974); Lloyd Etheredge, 'Governmental Learning: An Overview,' In *The Handbook of Political Behaviour*, Vol. 2, S. L. Long (ed.), (New York: Pergamon, 1981); Richard Rose, 'What is Lesson-Drawing,'

The ACF model has been criticised as both not placing enough emphasis on learning,<sup>199</sup> and putting too much emphasis on learning.<sup>200</sup> Bennett and Howlett, for example, suggest that learning is only ‘a partial corrective to theories of policy change based on notions of power and conflict’ and see knowledge and information as ‘one more ‘resource’ that identifies the powerful from the non-powerful’.<sup>201</sup> In fact, the ACF makes no reference to theories of power, but acknowledges that some advocacy coalitions may have a greater difficulty in maintaining an effective presence over time than others as the political resources available to different coalitions are affected by systemic factors.<sup>202</sup> It also acknowledges conflict between coalitions and the importance of mediation and compromise.

If the ACF does under-estimate the importance of power and conflict in the policy process and over-estimate the importance of learning it is still possible to rectify this, within the three-factor model of the influence of feminism on public policy, by emphasising the importance of policy *type*. Feminist policy studies have already noted the usefulness of Lowi’s ‘arenas of power’ model in indicating the scope and intensity of conflict.<sup>203</sup> Lowi’s model complements the ACF model of policy-oriented learning as it already points out that differing levels of conflict differentially affect the ability to learn.<sup>204</sup>

Lowi contends that ‘policy determines politics’: that the ‘political relationship is determined by the type of policy at stake, so that for every type of policy there is likely to be a distinctive type of political relationship’.<sup>205</sup> As Lowi defines policies ‘in terms of their impact or expected impact on the society’ there are three major categories of public policies in the scheme: distributive, regulatory, and redistributive.<sup>206</sup> Distributive policies involve benefits which can be disaggregated and dispensed, more or less in isolation, without apparent costs and without any general rule. This leads to individualised, low-level conflict which is

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*Journal of Public Policy* 11 (1991), 3-30; and Peter Hall, ‘Policy Paradigms, Social Learning and the State,’ *Comparative Politics* (April 1993), 275-296.

<sup>199</sup> Otto Singer, ‘Policy Communities and Discourse Coalitions,’ *Knowledge, Creation, Utilization* 11(4), (June 1990), 428-458, 439.

<sup>200</sup> C. Bennett and M. Howlett, ‘The Lessons of Learning,’ 290; George Hoberg, ‘Putting Ideas in Their Place: A Response to ‘Learning and Change in the British Columbia Forest Policy Sector’,’ *Canadian Journal of Political Science* XXXIX(1), (March 1996), 135-148.

<sup>201</sup> C. Bennett and M. Howlett, ‘The Lessons of Learning,’ 290-291.

<sup>202</sup> P. Sabatier, ‘Policy Change Over a Decade or More,’ 29.

<sup>203</sup> In addition to the studies discussed previously, Lowi’s model has been usefully applied to abortion policy by Raymond Tatalovich and Byron Daynes, ‘The Lowi Paradigm, Moral Conflict, and Coalition-Building: Pro-Choice Versus Pro-Life,’ *Women and Politics* 13(1), (1993), 39-66.

<sup>204</sup> See ACF Hypothesis 6 above.

<sup>205</sup> T. Lowi, ‘American Business, Public Policy, Case-Studies and Political Theory,’ 688.

<sup>206</sup> *Ibid.* Later adjustments to the model added another policy type, that of ‘constituent’ policy, but this is seldom used in policy studies. For Lowi’s modification see Theodore Lowi, ‘Four Systems of Policy, Politics, and Choice’. For a rationale for discarding the later fourth category see Aynsley Kellow, ‘Promoting Elegance in Policy Theory: Simplifying Lowi’s Arenas of Power,’ *Policy Studies Journal* 16(4), (Summer, 1988), 713-724.

centralised, often through government agencies.<sup>207</sup> In this type of policy subsystem one would be likely to find highly stable coalitions which are, however, virtually irrelevant to the larger policy outcomes.<sup>208</sup> Regulatory policies involve a direct choice as to which group will benefit and which group will bear the costs. This leads to decentralised conflict, between coalitions, often through political lobbying.<sup>209</sup> In this policy subsystem one would find less stable coalitions, based on shared interests, who are highly relevant to policy outcomes.<sup>210</sup> Redistributive policies involve 'broad categories of private individuals' and leads to conflict between elites and counter-elites (ie. social classes).<sup>211</sup> This is centralised, often through peak associations which form stable power structures highly relevant to policy outcomes.<sup>212</sup>

In its emphasis on policy *type* and power relations this typology provides a valuable corrective to the ACF model of policy-oriented learning. Two useful modifications to Lowi's 'arena's of power' have been provided by Kellow, who examines the differing public and private sources of benefits and costs,<sup>213</sup> and Miller, looks at the differences between economic and social regulatory policy types.<sup>214</sup> Lowi's model has also been criticised for its 'gender-blindness'<sup>215</sup> and, as feminist policy studies have indicated that the amount of gender role change involved also determines the amount of conflict likely to arise, the addition of Gelb and Palley's typology (discussed earlier) to a model of policy *type* would also be useful.<sup>216</sup> Finally, this thesis argues that policies also differ in the likelihood of feminist involvement: feminists are highly likely to become involved with 'gender specific' policies, issues perceived to affect women only, and least likely to engage with 'gender neutral' policies. The type of allies available for feminist coalitions also depends upon this component of policy *type*: when engaging in action for gender-specific policy change (such as abortion policy) the primary allies available to feminists are those which are perceived as secondary interests in society (such as doctors and professional groups). Primary interests (such as unions and political parties) are available as primary allies within feminist coalitions only when engaging in gender-marked policy activity (such as equal pay).

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<sup>207</sup> T. Lowi, 'American Business, Public Policy, Case-Studies and Political Theory,' 690.

<sup>208</sup> Ibid., 713.

<sup>209</sup> Ibid., 690-691.

<sup>210</sup> Ibid., 713.

<sup>211</sup> Ibid., 691.

<sup>212</sup> Ibid., 713.

<sup>213</sup> A. Kellow, 'Promoting Elegance in Policy Theory,' 718.

<sup>214</sup> Hugh Miller, 'Weber's Action Theory and Lowi's Policy Types in Formulation, Enactment and Implementation,' *Policy Studies Journal* 18 (4), (Summer 1990), 887-905.

<sup>215</sup> Meredith Newmann, 'The Gendered Nature of Lowi's Typology; or Who Would Guess You Could Find Gender Here?' In *Gender, Power, Leadership and Governance*, Georgia Duerst-Lahti and Rita Mae Kelly (eds.), (Ann Arbor: University of Michigan Press, 1995), 259-271.

<sup>216</sup> J. Gelb and M. Palley, *Women and Public Policies*.

## A Model of Policy Type

The concept of policy-oriented learning is both useful and limited. Its limitations in regard to the workings of power may be resolved by the incorporation of a model of policy *type* in the three-factor model of the influence of feminism on public policy. This model of policy *type* integrates the insights of Lowi's model (and its subsequent modifications) regarding power relations, Gelb and Palley's model regarding gender conflict and this thesis' assertion regarding feminist involvement. It is illustrated in **Table 2.2** below.

The *type* of policy under examination will determine the level of feminist involvement, the level of gender-based conflict, and the power relations within the subsystem. Because of the effects of policy *type*, subsystems dealing with the same policies will contain similar coalitions and conflicts, across nations; the promotion of policy definitions that reduce conflict will make up a coalition strategy; and tensions around policy definitions will also spring from the historical placement of those policies and their contemporary development.

**TABLE 2.2. Policy Type, Conflict, and Feminist Involvement**

	<b>POLICY TYPE</b>		
<b>Feminist Involvement</b>	<b>Gender-Neutral</b> No apparent gender implications. May not be taken up as a feminist issue or taken up under an extended feminist analysis. (eg. peace and environment issues).	<b>Gender-Marked</b> Affects more women than men or affects women more intensely than men. Feminists act in coalition with primary interests, such as trade unions and political parties. (eg. child care, aged care).	<b>Gender-Specific</b> Affects women only. Likely to be taken up by feminist groups. Primary allies are secondary interests, such as doctors and professional groups. (eg. reproductive rights, rape, domestic violence).
<b>Gender Conflict (Gelb and Palley)</b>		<b>Role Equity</b> Extends rights enjoyed by other groups to women. Incremental change, narrow in its implications, little cost, controversy or opposition.	<b>Role Change</b> Extends the rights enjoyed by women as a group. Radical change, broad implications, entails cost, controversy and overcoming opposition.
<b>Power Relations (Lowi, Kellow and Miller)</b>	<b>Distributive</b> Private benefits, public costs. Individualised, low-level conflict which is centralised, often through government agencies. Highly stable power structures: but irrelevant to the larger policy outcomes	<b>Redistributive</b> Public benefits, public costs. Conflict centralised, often through peak associations, between broad categories of elites and counter-elites. Stable power structures: relevant to policy outcomes.	<b>Regulatory</b> <i>Economic</i> private benefits, private costs. <i>Social</i> : public benefits, private costs. Both involve decentralised conflict between coalitions, often through political lobbying. Relatively unstable coalitions: relevant to policy outcomes.

Sources: Theodore Lowi, 'American Business, Public Policy, Case-Studies and Political Theory,' *World Politics* 16 (1964), 677-715; Aynsley Kellow, 'Promoting Elegance in Policy Theory: Simplifying Lowi's Arenas of Power,' *Policy Studies Journal* 16 (4), (Summer 1988), 713-724; Hugh Miller, 'Weber's Action Theory and Lowi's Policy Types in Formulation, Enactment and

Implementation,' *Policy Studies Journal* 18 (4), (Summer 1990), 887-905; Joyce Gelb and Marian Palley, *Women and Public Policies*, (New Jersey: Princeton University Press, 1982).

### **The ACF Subsystem and the Three Factor Model**

The second implication which may be drawn from an examination of the ACF subsystem model for the three-factor model developed by this thesis is to do with the basic processes of the ACF policy subsystem. Many of the conclusions of the feminist studies examined in Chapter 1 support the utility of the ACF model of the policy subsystem. At the most basic level, feminist policy studies emphasise the importance of 'networking' with other interested participants over time, thus supporting the ACF conception of the policy subsystem itself. The importance of coalitions was noted by feminist policy studies: successful feminist intervention requires a coalition of grass-roots feminists, national women's organisations and 'feminist-friendly' allies. The advocacy coalition belief systems have some analogies with the *normative* philosophies of feminism in that they both specifically affect the choice of strategies used in attempting to influence policy. The ACF also mentions coalition resources, which in terms of feminism, may be seen as the *material* strength of the feminist movement.

The ACF subsystem policy process also provides a clear model by which to analyse policy activity by identifying coherent groups of policy actors and breaking the process up into clearly defined stages. Although this makes it a valuable tool for analysis, as a step-by-step process, it is less useful when a large number of policies are being considered or a long period of time is being examined. The same can be said about the process of policy-oriented learning. The emphasis on policy-oriented learning in the ACF is partly due to its ability to provide an explanation for coalition interaction: coalitions seek to learn, in order to realise their policy goals, as determined by their shared belief systems.<sup>217</sup> There is a clear applicability here to the *analytical* perspective of feminism which provides knowledge-based resources for feminist policy action.

This raises an important point about the policy subsystem. It is within the policy subsystem that the three-factor model of the influence of feminism on public policy is played out. This is the arena in which the *activity* of national feminism, the *receptivity* of the national site of policy and effects of policy *type* come together to show the effects of the influence of feminism on public policy. It is not an explanatory factor within the conceptual three-factor model but the *ground* upon which these may be seen.

## **4. OTHER ASPECTS OF THE ACF**

This examination of the ACF has already enriched the three-factor model of the influence of feminism on public policy by its contribution to detailing the systemic factors making up the *receptivity* of the national site of policy; the connection between policy-oriented learning and the importance of policy *type*; and the concept of the policy subsystem as the *ground* upon which the three

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<sup>217</sup> H. Jenkins-Smith and P. Sabatier, 'The Dynamics of Policy-Oriented Learning,' 44.



factors became visible during the policy process. There are two further aspects to the ACF which are of value in further developing the three-factor model: an examination of the ACF model of the individual and a consideration of the ACF's epistemology and methodology.

### **The Model of the Individual**

Members of advocacy coalitions ('policy elites') are assumed to have a 'relatively complex and internally consistent understanding of the policy area(s) of interest to them' and their belief systems reflect this.<sup>218</sup> The ACF model of the individual is important in providing a deeper motivation for both coalition mobilisation and policy formulation.<sup>219</sup> This model has three sections. 'Deep core' beliefs are the result of socialisation, are very hard to change, and provide the basis for coalition formation. As these norms are assumed to be relatively stable, over periods of a decade or more, so too is coalition composition within the policy subsystem.<sup>220</sup> 'Policy core' beliefs involve individual (normative) attitudinal change and (cognitive) decision-making and are crucial to policy preference formation, aggregation, and decision-making. Individuals are theorised to make decisions with reference to their individual preferences and 'information processing' capacity as well as the preferences of their 'reference group' within an environment structured by contextual factors.<sup>221</sup> The 'secondary aspects' of belief systems are the most easily influenced and involve instrumental decisions which implement the individual's basic normative and cognitive orientations.<sup>222</sup> The connection between the nature of belief systems and coalition formation has been fruitfully explored by a considerable number of researchers utilising the ACF.<sup>223</sup>

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<sup>218</sup> The complete ACF model of belief systems is illustrated in **Appendix 3**.

<sup>219</sup> P. Sabatier, 'Policy Change Over a Decade or More,' 28. ACF Hypotheses 1, 2, and 3 emphasise the longevity of coalition beliefs, membership, alliances and the limited ability of coalitions to change their belief systems. These are (1) On major controversies within a policy subsystem when core beliefs are in dispute, the line-up of allies and opponents tends to be rather stable over periods of a decade or so; (2) Actors within an advocacy coalition will show substantial consensus on issues pertaining to the policy core, although less so on secondary aspects; (3) An actor (or coalition) will give up secondary aspects of his (its) belief system before acknowledging weaknesses in the policy core. Source: P. Sabatier, 'Coalition Coordination and Stability in Public Policy,' 7.

<sup>220</sup> P. Sabatier, 'Policy Change Over a Decade or More,' 30.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid., 28.

<sup>223</sup> Paul Sabatier, Susan Hunter and Susan McLaughlin, 'The Devil Shift: Perceptions and Misperceptions of Opponents,' *Western Political Quarterly* 41 (September 1987), 449-476; Paul Sabatier and Susan McLaughlin, 'Belief Congruence of Governmental and Interest Group Elites With Their Constituencies,' *American Politics Quarterly* 16(1) (January 1988), 61-98; Paul Sabatier and Susan Hunter, 'The Incorporation of Causal Perceptions into Models of Elite Belief Systems,' *Western Political Quarterly* 42 (September 1988), 229-261; Paul Sabatier and Susan McLaughlin, 'Belief Congruence Between Interest-Group Leaders and Members: An Empirical Analysis of Three Theories and a Suggested Synthesis,' *Journal of Politics* 52(3) (August 1990), 914-935; Paul Sabatier and Anne Brasher, 'From Vague Consensus to Clearly Differentiated Coalitions: Environmental Policy at Lake Tahoe, 1964-1985,' In *Policy Change and Learning: An Advocacy Coalition*

The ACF model of the individual not only rejects the traditional behavioural theories of American political science but also rejects the 'new economic imperialism' of the self-maximising individual acting only on the basis of short-term self interest.<sup>224</sup> When applying the ACF, however, some researchers have found that the relative cohesion of beliefs varies across different types of subsystem coalitions.<sup>225</sup> They found that 'purposive groups', such as environmental groups, showed little change in their beliefs while the beliefs of 'material groups', such as developers, varied considerably.<sup>226</sup> The implications of this difference between the belief systems of purposive groups and material groups is not pursued within the ACF beyond the comment that

... environmental and other purposive groups are essentially selling an ideology - a tightly integrated set of beliefs - and thus group leaders will be encouraged to adhere (at least in their public pronouncements) to all aspects of the belief system lest they risk losing members.<sup>227</sup>

This comment seems to illustrate a lack of understanding about the nature of 'purposive groups'. As the environmental groups in question are actually NSMs it is unlikely that they see themselves as 'selling an ideology' and more likely that their members are more strongly committed to 'the politics of moral protest'. The sorts of strategies pursued by coalitions involving these groups will reflect this difference as NSM members are more likely to carry out altruistic activities

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*Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 177-208; Paul Sabatier and Matthew Zafonte, 'Are Bureaucrats and Scientists Neutral? Two Models Applied to San Francisco Bay/Delta Water Policy,' Paper Presented at the *Annual Meeting of the International Political Science Association*, Berlin, Germany, August 23-26, 1994.

- 224 For an overview of the behavioural tradition in North American social science, with particular reference to political science and policy studies, see Laurence Chalip, 'Policy Research as Social Science: Outflanking the Value Dilemma,' *Policy Studies Review* 5(2), (November 1985), 267-308; Rita Mae Kelly, 'Trends in the Logic of Policy Inquiry: A Comparison of Approaches and a Commentary,' *Policy Studies Review* 5(3), (February 1986), 520-528; and David Robertson, 'The Return to History and the New Institutionalism in American Political Science,' *Social Science History* 17(1), (Spring 1993), 1-36. For a critique of the 'new economic imperialism' see William Ascher, 'Policy Sciences and the Economic Approach in a 'Post-Positivist' Era,' *Policy Sciences* 20(1), (April 1987), 3-9.
- 225 Hank Jenkins-Smith and Gilbert St. Clair, 'The Politics of Offshore Energy: Empirically Testing the Advocacy Coalition Framework,' In *Policy Change and Learning*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 149-176.
- 226 P. Sabatier and H. Jenkins-Smith, 'The Advocacy Coalition Framework: Assessment, Revisions, and Implications,' 225. This is encapsulated in ACF Hypotheses 10 and 11: (10) Elites of purposive groups are more constrained in their expression of beliefs and policy positions than elites from material groups. (11) Within a coalition, administrative agencies will usually advocate more centrist positions than their interest-group allies. P. Sabatier, 'Coalition Coordination and Stability in Public Policy,' 7.
- 227 Paul Sabatier and Hank Jenkins-Smith, 'The Advocacy Coalition Framework: An Assessment,' *Paper Presented at the Department of Political Science, University of Amsterdam*, 4 February 1997, 20.

involving personal cost or even danger.<sup>228</sup> This is not recognised within the ACF although Sabatier and Jenkins-Smith have suggested that coalitions containing material groups are more likely to have ‘collective action’ problems whereby some coalitions attempt to ‘free ride’ on the efforts of others.<sup>229</sup>

The ACF model of the individual also emphasises the importance of both normative socialisation and rational cognition. Both of these concepts have been challenged by feminist writers. Connell suggests that socialisation, the ‘acquisition and internalisation of social norms’, puts too great an emphasis on the ‘continuity between social context and personality, and the homogeneity of the personality itself’.<sup>230</sup> Gender identity is less consensually produced than coerced, emerging as ‘the effect of an encounter with power and necessity, rather than normative prescriptions’.<sup>231</sup> Feminism attempts to expose the contradictions in normative socialisation and to shift the perspective to uncovering ‘relationships of control, of domination and subordination’.<sup>232</sup>

Feminist analysts also suggest that ‘reason and emotion cannot and should not be divorced from one another precisely because knowledge creation incorporates the use of feelings and intuition’.<sup>233</sup> Instead, it is a ‘combination of conscious and unconscious thoughts and emotions that makes up our sense of ourselves, our relation to the world and our ability to act in that world’.<sup>234</sup> Relations of domination and subordination may be expressed subconsciously in every-day interactions,<sup>235</sup> and ‘raising consciousness’, that is increasing feminist awareness of the meaning of these unconsidered actions, empowers women to resist oppressive behaviour.<sup>236</sup> NSMs already harness the emotional power of symbols and images to mobilise support and to expose the conflict between existing norms. Yet none of these strategies are suggested in the ACF hypotheses even

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<sup>228</sup> The chapters in this thesis on abortion policy, in particular, illustrate this.

<sup>229</sup> They were responding, in particular, to E. Schlager, ‘Policy Making and Collective Action: Defining Coalitions Within the Advocacy Coalition Framework’; and E. Schlager and W. Blomquist, ‘A Comparison of Three Emerging Theories of the Policy Process’. P. Sabatier and H. Jenkins-Smith, ‘The Advocacy Coalition Framework: An Assessment,’ 26.

<sup>230</sup> R. W. Connell, *Gender and Power*, (Sydney: Allen and Unwin, 1987), 191.

<sup>231</sup> Ibid.

<sup>232</sup> C. Burton, *Subordination*, xiv.

<sup>233</sup> S. Rixecker, ‘Examining the Discursive Context of Policy Design,’ 124.

<sup>234</sup> J. Lovenduski and V. Randall, *Contemporary Feminist Politics*, 66.

<sup>235</sup> This includes verbal and non-verbal communication. See Robin Lakoff, *Language and Woman's Place*, (New York: Harper Colophon, 1975); Deborah Tannen, *Talking From 9 to 5*, (London: Virago, 1994); and Nancy Henley and Jo Freeman, ‘The Sexual Politics of Interpersonal Behaviour,’ In *Women: A Feminist Perspective* (Fifth edition), Jo Freeman (ed.), (California: Mountain View, 1995), 79-91. Some writers also believe the subconscious is the mode by which patriarchal ideology is reproduced within the individual. See Juliet Mitchell, *Psychoanalysis and Feminism*, (Victoria: Penguin, 1975), 413.

<sup>236</sup> This may include specific feminist psychoanalytical techniques relating to the perception of the subconscious. Some writers believe the subconscious is a point of resistance to patriarchal ideology. T. de Lauretis, ‘Eccentric Subjects: Feminist Theory and Historical Consciousness,’ 125.

though strategies involving the collection of data, controlled experimentation and technical information are listed.<sup>237</sup>

### **A Model of Social Action and its Implications for Policy**

The ACF belief systems model provides a rationale for coalition mobilisation and stability and policy formation, that is, for organised collective action. Yet the model is itself anomalous to the rest of the framework in that it is essentially individualist with coalitions described as based on the aggregation of individual preferences. It would seem more consistent that, in a model which looks at coalitions as its main actors, instead of a model of the individual, there should be a model of social action. Social action theorists emphasise the social construction of the self: how the personal identity is continually created through interaction with others and a reflexive consideration of one's own actions.<sup>238</sup> This does not conflict with the idea of coalitions formed through shared belief systems but does provide a stronger motivation for collective action as here the group is considered to be necessary to the production of self identity. The different cohesiveness of belief systems and different propensity to collective action by groups within coalitions could be explained as a product of the interactions which make up a particular 'subculture'.<sup>239</sup>

Social action theory also suggests a more subtle understanding of how socialisation interacts with powerlessness and constraint by emphasising the unequal access to the forces of social reproduction (such as educational institutions) by groups wishing to change social opinion.<sup>240</sup> The symbolic interactionist strand of social action theory, as its name implies, deals with more than normative and cognitive processes, but with the production of meaning by the interpretation of culturally produced symbols.<sup>241</sup>

Rather than a detailed model of the individual it is of greater use for this thesis to contain a model of social action. This maintains that individuals are primarily social beings and form their sense of self through their interactions with the rest

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<sup>237</sup> See ACF Hypotheses 7, 8, and 12. (7) Problems for which accepted quantitative data and theory exist are more conducive to policy-oriented learning than those in which data and theory are generally qualitative, quite subjective, or altogether lacking. (8) Problems involving natural systems are more conducive to policy-oriented learning across belief systems than those involving purely social or political systems because in the former many of the critical variables are not themselves active strategists and controlled experimentation is more feasible. (12) Even when the accumulation of technical information does not change the views of the opposing coalition, it can have important impacts on policy - at least in the short term - by altering the views of policy brokers or other important government officials. P. Sabatier, 'Coalition Coordination and Stability in Public Policy,' 7.

<sup>238</sup> Tony Bilton, Kevin Bonnett, Philip Jones, Ken Sheard, Michelle Stanworth and Andrew Webster, *Introductory Sociology*, (London: Macmillan, 1981), 734-735.

<sup>239</sup> *Ibid.*, 734.

<sup>240</sup> *Ibid.*, 32.

<sup>241</sup> J. Manis and B. Meltzer, 'Intellectual Antecedents and Basic Propositions of Symbolic Interactionism,' 6. Later versions of the theory move even further beyond the cognitive/normative framework. See, for example, Norman Denzin, *Symbolic Interactionism and Cultural Studies*, (Cambridge: Blackwell, 1992).

of 'society'. This 'society' also interacts with the individual to sustain social action. *Organised* social action involves forming groups to engage in sustained collective action. This forms the basis of NSMs, coalitions and policy subsystems. *Disorganised* social action is also possible, however, and is usually a sign of some sort of 'crisis' at subsystem or systemic level. At its most active level, this produces spontaneous demonstrations, riots and other mass protests. At its most passive level, this is expressed by a public fascination (usually via the media) with a particular person or incident, which seems in some way to symbolise some aspect of the 'collective consciousness' of the time. In this thesis 'crises' are seen as positive or negative turning points in the level of systemic or subsystem understanding and definition of an issue. They invoke a response from all the modes of individual decision making and call forth both organised and disorganised social action.

### ACF Epistemology and Methodology

The last lesson which may be learnt from the ACF may be drawn from a closer examination of its epistemology and methodology. The ACF is firmly based in epistemological empiricism and quantitative methodology: elite panel surveys (extensive questionnaires using Likert scales to evaluate preferences and subjecting these to extensive statistical analysis), supplemented by interviews, and the content analysis of policy documents are the building blocks of theory.<sup>242</sup> The strength of this approach is exemplified in the development of the ACF from an analysis of data collected over decades of research.

At the same time two problems with this methodology have emerged. Firstly, the difficulty in obtaining reliable and valid measurements of the belief systems of subsystem elites *over time* remains substantial, as *core beliefs* may not be expressed in public documents.<sup>243</sup> Secondly, although advocacy coalitions are theorised to show a 'non-trivial degree of coordinated activity over time', up to this point no empirical evidence has been collected to show that this occurs.<sup>244</sup> So, paradoxically, while the goal of the ACF is to examine policy change over time, recommending extended longitudinal analysis, this quantitative methodology is not particularly helpful. This has led to a large number of 'qualitative' research projects using the ACF as an organising heuristic in order to explain subsystem dynamics,<sup>245</sup> or policy change.<sup>246</sup>

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<sup>242</sup> Hank Jenkins-Smith and Paul Sabatier, 'Methodological Appendix: Measuring Longitudinal Change in Elite Beliefs Using Content Analysis of Public Documents,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 237-256.

<sup>243</sup> H. Jenkins-Smith, 'Alternatives Theories of the Policy Process: Reflections on Research Strategy for the Study of Nuclear Waste Policy,' 165.

<sup>244</sup> E. Schlager, 'Policy Making and Collective Action: Defining Coalitions Within the Advocacy Coalition Framework,' 245.

<sup>245</sup> Joseph Stewart Jr., 'Policy Models and Equal Educational Opportunity,' *Political Science and Politics* 24(2), (June 1991), 167-173; Anthony Brown and Joseph Stewart Jr., 'Competing Advocacy Coalitions, Policy Evolution and Airline Deregulation,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 83-103; Richard Barke, 'Managing

## The Implications of ACF Epistemology and Methodology

It would appear that while the ACF recommends a particular methodology this advice is seldom heeded even by researchers who follow the 'pure' model. As this thesis uses the ACF as a basis for development it is free to accept or reject this element of the model. During the discussion of feminist analytical perspectives, this thesis argued that a feminist pragmatic approach is best able to grasp the most useful elements from the epistemological and methodological points of view. Following on from this the methodology of this thesis included historical research, structured interviews with policy elites, content analysis of policy documents, and a certain amount of interpretive analysis.<sup>247</sup>

Indicators of the influence of feminism on public policy include the presence and strength of feminist coalitions in the policy subsystems; the spread of acceptance of some of the principle tenets of feminism within the policy discourse; the passage of policy which would fulfil feminist goals; and the impacts of that policy toward achieving those goals. This form of operationalisation is not without precedent and,<sup>248</sup> in this thesis, is contained within contextual parameters so as to allow for international comparison.

## 5. CONCLUSION: THE THREE-FACTOR MODEL

The inability of existing theories to express the full impact of the rise of the contemporary feminist movement is a constant theme in academic feminist writing:

We have stretched the intended domains of these theories, reinterpreted their central claims, or borrowed their concepts and categories to make visible women's lives and feminist views of gender relations. After our

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Technological Change in Federal Communications Policy: The Role of Industry Advisory Groups,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 129-146.

<sup>246</sup> H. Theodore Heintz, 'Advocacy Coalitions and the OCS Leasing Debate: A Case Study in Policy Evolution,' *Policy Sciences* 21 (1988), 213-238; Hanne Mawhinney, 'An Advocacy Coalition Approach to Change in Canadian Education,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993), 59-82; John Munro, 'California Water Politics: Explaining Policy Change in a Cognitively Polarized Subsystem,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview Press, 1993): 105-127.

<sup>247</sup> I will base this on my participant observation of the feminist movement in Australia since 1975.

<sup>248</sup> Dahlerup suggests there are three 'signs' of feminist influence on established politics: the ideas of the movement become absorbed by society; the leaders of the movement are co-opted into the mainstream of politics and society; and the former marginal groups (women) succeeds in gaining access and influence. D. Dahlerup, 'Introduction,' 16.

labours, these theories often do not much resemble what their nonfeminist creators and users had in mind, to put the point mildly.<sup>249</sup>

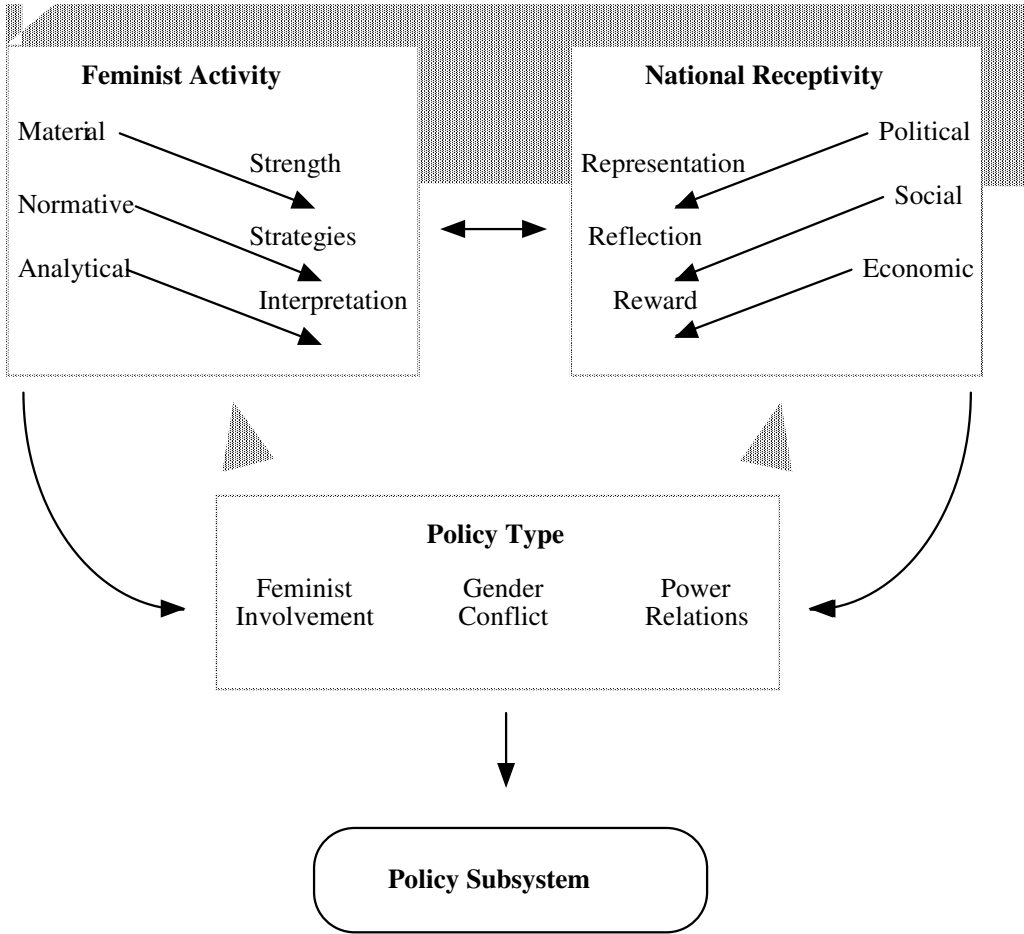
The three-factor model of the influence of feminism on public policy is no exception to this rule. The previous two chapters of this thesis have drawn upon feminist, and policy, theory and case studies to explicate each of the three factors and their interactions with each other. The complete three-factor model of the influence of feminism on public policy is illustrated in **Figure 2.2** below.

The *activity* of national feminism is the result of the ‘three aspects of contemporary feminism’: material dynamics, normative philosophies, and analytical perspectives (see **Figure 1.1**). The material dynamics of feminism determine the visibility and scope of feminist influence upon public policy. The strength of this feminist women’s movement varies over time (see **Table 1.1**). The normative philosophies of feminism determine the strategies used by feminist groups to influence public policy and varies depending upon the mix of groups within the coalition (see **Table 1.2**). The analytical perspectives of feminism determine the coalition’s interpretation of public policy: their attempts to define, analyse, and use information in attempting to change that policy (see **Table 1.3**).

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<sup>249</sup> S. Harding, ‘The Instability of the Analytical Categories of Feminist Theory,’ 646.

**FIGURE 2.2 The Three-factor Model of the Influence of Feminism on Public Policy**



The *receptivity* of the national site of policy is the result of three ‘systemic factors’: political, social, and economic (see **Table 2.1**). Each national system contains both stable and dynamic factors, differing in their strength or weakness (capacity) and their permeability to feminist activity. Each of these systemic factors has implications for policy relating to the status of women: the (political) representation of women’s interests, the (social) reflection or women’s experience, and the (economic) reward for women’s work. These implications go beyond any particular subsystem and therefore form similarities across subsystems within the same country. While a tendency for ‘patriarchal equilibrium’ exists, cumulative change can be achieved if feminist *activity* reaches a *critical point*. The importance of these *crises* in tipping the balance of power at system or subsystem level was noted in the section discussing social action. They mark turning points in mass understanding and definition of a issue and have significant implications for the perception of policy *type*.

The *type* of policy in question is determined by its impact on society (‘power relations’), the degree of feminist involvement, and the scope and intensity of gender conflict (see **Table 2.2**). The level of conflict generated, whether through gender-related or power-related, will affect the ability of coalitions of policy actors to engage in policy learning. Coalitions will try to redefine policy in order



to reduce conflict within the subsystem. Because of the effects of policy *type*, subsystems dealing with the same policies will contain similar coalitions and conflicts across nations.

The policy subsystem is the *ground* upon which these three factors are played out in the day-to-day policy process. This process is best illustrated by the policy subsystem model contained within the ACF (see **Figure 2.1**). Attempting to capture the empirical interactions involved in feminist influence on public policy involves a feminist pragmatic epistemology and a methodology which, as discussed above, looks for both material and discursive indicators. The interactions which occur within the policy subsystem feedback to feminist *activity* and national *receptivity*, again through policy *type*.

This model does not claim to be anything more than a conceptual tool for analysis. As mentioned above, the subsystem conflicts of policy decision-making and implementation, the production of policy outputs and impacts, and the evaluative process of learning from past experience is accurately and comprehensively discussed in the ACF. The strength of the three-factor model presented in this thesis is that it is the only model of policy analysis that has been specifically designed to analyse the influence of feminism on public policy across policy subsystems, across nations, and across time. A number of propositions may also be drawn from this model. These are listed in **Table 2.3** below.

The policy subsystem is the *ground* upon which the three-factor model of the influence of feminism on public policy is played out. During the next six chapters of this thesis, the policy activity which has occurred over the last thirty years, in relation to equal pay and abortion, will be described and examined for evidence of feminist influence. The presence and strength of feminist coalitions in the policy subsystems; the spread of acceptance of some of the principal tenets of feminism within the policy discourse; the passage of policy that would fulfil feminist goals; and the impacts of that policy toward achieving those goals; these are all indicators which underpin the three-factor model. In the final chapter of this thesis the utility of this model will be assessed by comparing the propositions generated by the model with the evidence presented in the case studies.

**TABLE 2.3. Propositions Drawn From the Three-Factor Model of the Influence of Feminism on Public Policy**

<ol style="list-style-type: none"> <li>1. The material dynamics of the feminist cycle of protest will determine the strength (visibility and scope) of feminist policy activity.</li> <li>2. Feminist strength is greatest during the time of movement proliferation as this is the point of broadest scope and highest visibility.</li> <li>3. The normative philosophies of feminism will determine the strategies used to influence public policy.</li> <li>4. Feminist strategies are most effective when a number of strategies are used simultaneously by coalitions of feminist groups.</li> <li>5. The analytical perspectives of feminism will determine the way in which feminists attempt to interpret (define and analyse) public policy.</li> <li>6. Feminist analytical perspectives are of most importance when pragmatic use is made of accumulated knowledge.</li> <li>7. The overall significance of the material, normative, and analytical aspects of feminism is to show the <i>activity</i> of national feminism <i>across time</i>.</li> <li>8. Each national system raises questions as to the status of women: the adequate (political) representation of women's interests, the realistic (social) reflection of women's experience, and the fair (economic) reward for women's work.</li> <li>9. While national dynamic factors are more open to feminist influence ('permeability'), the strength or weakness ('capacity') of these factors will affect the ability of feminism to influence public policy.</li> <li>10. Although national systemic factors tend to a 'patriarchal equilibrium', cumulative change is possible if feminists reach a critical level of <i>activity</i>, or a <i>crisis</i> occurs, which tips the balance of power, at system or subsystem level.</li> <li>11. The overall significance of the <i>receptivity</i> of the national site of policy is to show how national political, social and economic systemic factors create <i>similarities across subsystems</i>.</li> <li>12. Coalitions will try to redefine policy in order to reduce conflict.</li> <li>13. The overall significance of policy <i>type</i> is to create <i>similarities across nations</i>.</li> </ol>
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# **PART 2**

## **IRELAND**

## CHAPTER 3

### ENDURING CHANGE: THE 'OLD' AND THE 'NEW' IRELANDS

Ireland is ... nothing if not contradictory and confusing. It is at once a developed industrial society, with increasingly secular tendencies, and a traditionalist 'anachronism' in the Western world. Both dimensions coexist in a state of volatile tension, which creates particular problems for Irish women ...<sup>250</sup>

The tension to which Smyth refers has been more broadly characterised as one between the 'old' and the 'new' Irelands. The 'old Ireland' was small, peripheral, rural, insular, austere, homogeneous, and geographically, politically and historically dominated by Britain, and by anti-British nationalism. This patriarchal, pre-industrial, pre-class society was confined by its national traditions and the traditions of the Catholic Church. It tended toward authoritarianism, anti-intellectualism, and a sense of loyalty verging on the clannish.<sup>251</sup> In contrast the 'new Ireland' is an emerging, modern, industrialised, European, relatively prosperous, urban, class-conscious, egalitarian, secular and pluralist society.<sup>252</sup> The differences are perhaps over-dramatised here but on-going tensions between the 'two Irelands' do exist. They manifest within the political system as a 'decomposition of traditional political culture', within the social system as the introduction of a 'secularising agenda', and within the economic system as a 'recurrent fiscal crisis'.<sup>253</sup> This is the context within which equal pay and abortion policies are formed and, as such, provides both constraints and resources for subsystem action.

#### 1. DECOMPOSITION OF TRADITIONAL POLITICAL CULTURE

The constitutional structure of the Irish political system, the *Bunreacht na Éireann* (Constitution of Ireland), is deeply rooted in two of the most dominant elements of the 'old Ireland': the nationalist struggle to escape British political rule and Catholic social hegemony. While the major political parties also share this history they are necessarily more dynamic and open to change through the electoral cycle - thus more permeable to feminist influence. As all policy is formed within the parameters of the political system the degree to which

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<sup>250</sup> Ailbhe Smyth, 'States of Change: Reflections on Ireland in Several Uncertain Parts,' *Feminist Review* 50 (Summer, 1995), 24-43, 38.

<sup>251</sup> B. Chubb, *The Government and Politics of Ireland*, 1-22.

<sup>252</sup> *Ibid.*, 23-35.

<sup>253</sup> E. Hazelkorn and H. Patterson, 'The New Politics of the Irish Republic,' 50.

women's interests are represented within that system affects the capacity of feminists to bring about change.

### **The Political Structure of the 'Old Ireland'**

The development of the Irish Constitution has reflected the political development of the modern State. The 1916-1923 Irish Revolution saw two Constitutions emerge.<sup>254</sup> The revolutionary 1919 *Constitution of the Dáil Éireann* was replaced by the 1922 *Constitution of the Irish Free State*, when Ireland became a 'divided nation' under the Anglo-Irish Treaty of December 1921, which partitioned Northern Ireland off from the rest. The current structure of Irish government is set out in the 1937 *Bunreacht na hÉireann* (Constitution of Ireland); a document which forms the central source of political and legal authority.<sup>255</sup>

This Constitution provides specific details as to the structure, processes and relative powers of the government and judiciary. Although a constitutional republic the government of Ireland is based on the Westminster model of liberal democracy. The Oireachtas (Government) consists of the Uachtarán (President) as Head of State, and two Houses of Parliament. The Upper House, the Seanad Éireann, is presently composed of 60 members. The Lower House, the Dáil Éireann, has 166 members, referred to as TDs (Teachtaí Dála, members of the Dáil) or Deputies.<sup>256</sup> The Dáil is considered to be more authoritative than the Seanad while the Uachtarán (President) has traditionally been a largely symbolic position.<sup>257</sup>

The High and Supreme Courts may decide the validity of any law in its relation to the Constitution. The High Court consists of 17 judges including the President of the Court. The Supreme Court consists of the Chief Justice and four other judges. While High Court rulings may be appealed the Supreme Court is the final arbiter of disputes within the Republic. The Oireachtas may be prohibited from enacting unconstitutional legislation by the Supreme Court and must abide by its determinations.<sup>258</sup>

The Constitution itself may only be amended by a Bill which has been passed in both Houses of the Oireachtas, approved by the people in a referendum, and signed into law by the Uachtarán.<sup>259</sup> It was not until 1972 that this arduous procedure was followed in full. The 1972 amendment was significant in that it

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<sup>254</sup> These dates include the establishment of the Free State in 1921 and the Civil War that followed. Tom Garvin, 'The Anatomy of a Nationalist Revolution: Ireland, 1858-1928,' *Comparative Studies in Society and History* 28(3), (July, 1986), 468-501, 475.

<sup>255</sup> B. Chubb, *The Government and Politics of Ireland*, 37-53.

<sup>256</sup> M. McManus, 'Ireland,' In *The Civil Service in Liberal Democracies: An Introductory Survey*, J. E. Kingdon (ed.), (London: Routledge, 1990), 90-118, 92.

<sup>257</sup> R. B. Finnegan, *Ireland: The Challenge of Conflict and Change*, (Boulder, Colorado: Westview Press, 1983), 86.

<sup>258</sup> As set out in Article 34 of the Constitution. Government of Ireland, *Bunreacht na hÉireann: The Constitution of Ireland*, (Dublin: The Stationery Office, 1990), 110-119.

<sup>259</sup> As set out in Articles 46-47 of the Constitution. Government of Ireland, *Bunreacht na hÉireann: The Constitution of Ireland*, 152-157.

removed the ‘special position’ of the Catholic Church from the Constitution. Article 45.1 originally read ‘(t)he State recognises the special position of the Holy Catholic Apostolic and Roman Catholic Church as guardian of the faith professed by the great majority of the citizens’. Referenda approved the following alternative wording: ‘The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion’.<sup>260</sup>

The present Constitution contains a number of other Articles which reflect the Catholic social teaching of 1937. The place of women in Irish society, for example, is set out in Article 41.2:

- (a) In particular, the State recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
- (b) The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.<sup>261</sup>

The Constitution does, however, grant some rights to women as citizens. Article 9.1.3 states that ‘no person may be excluded from Irish nationality and citizenship by reason of the sex of such person’.<sup>262</sup> Similarly, Article 40 states that ‘All citizens, as human persons, shall be held equal before the law’.<sup>263</sup> Article 45.2 of the Constitution also sets out the right to work in explicit terms:

That the State shall, in particular, direct its policy towards securing

That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupation find the means of making reasonable provision for their domestic needs.<sup>264</sup>

Other points in Article 45 set out a broad framework to promote the ‘common good’, prevent ‘unjust exploitation’ and ‘safeguard with especial care the economic interests of the weaker sections of the community’.<sup>265</sup> These Articles could have been used to ensure full political, social and economic equality and to

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<sup>260</sup> Ibid., 144.

<sup>261</sup> Ibid., 138.

<sup>262</sup> Government of Ireland, *Bunreacht na hÉireann: The Constitution of Ireland*, 48.

<sup>263</sup> Ibid., 126.

<sup>264</sup> Ibid., 148.

<sup>265</sup> Ibid., 148-153.

outlaw any kind of sex discrimination. That they have not been so interpreted is a result of the relative conservatism of the judiciary.<sup>266</sup>

### **The Dynamics of Change: 'New Politics' in Ireland**

It is a mark of the strength of the traditional political culture that the major cleavage between the two main political parties has, historically, been determined by their attitude to the 1921 Anglo-Irish Treaty. Fianna Fáil, the anti-Treaty party, has dominated the government of Ireland since 1932, enjoying sixteen years of unbroken rule between 1932 and 1948 and again between 1957 and 1973. The basis of support has varied, originally coming from those people who had given their allegiance to Sinn Féin before 1932, later from a diverse cross-section of the population.<sup>267</sup> Fine Gael is the successor to Cumann na hGaedheal - the original pro-Treaty party - and while support for Fine Gael is also diffused across social strata it has been described as a party of the centre-right.<sup>268</sup> At the same time, as Fine Gael has generally governed in coalition, it has been more open to change in party policy and to some of the influences of the 'new politics'.

Although the Labour Party was founded in 1912, as an adjunct of the Irish Council of Trade Unions, it may be argued to have avoided some of the ethos of the 'old politics'. The Labour Party took no stand on Partition, continuing to organise as the rest of the trade union movement did, in all of the 32 counties of Ireland.<sup>269</sup> Until the 1960s, the Labour party was a relatively minor party, with support largely drawn from rural agricultural labourers.<sup>270</sup> In the period of change toward the 'new Ireland', however, it has been able to draw support from Dublin to a much greater extent. It attracted increasing support in the 1980s and 1990s gaining approximately 19 per cent of the vote and 32 seats in the Dáil in 1992.

Two minor parties are significant in Irish politics and reflect the emergence of 'new politics'. The Republican-oriented Sinn Féin split to form the increasingly class-based Workers Party, which also split, to form the Democratic Left.<sup>271</sup> The formation of the Progressive Democrats was also the result of a split, a break-away from Fianna Fáil, in 1985. The Progressive Democrats programme has been described as a combination of right-wing economic policies and liberal-pluralist social policies.<sup>272</sup> They have had early success due to the fact that a number of

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<sup>266</sup> Gemma Hussey, *Ireland Today*, (London: Townhouse Viking, 1993), 420.

<sup>267</sup> R. B. Finnegan, *Ireland: The Challenge of Conflict and Change*, 92.

<sup>268</sup> Yvonne Galligan, 'Party Politics and Gender in the Republic of Ireland,' In *Gender and Party Politics*, Joni Lovenduski and Pippa Norris (eds.), (London: Sage, 1993), 147-167, 148.

<sup>269</sup> Michael Gallagher, *The Irish Labour Party in Transition 1957-1982*, (Manchester: Manchester University Press, 1982), 3.

<sup>270</sup> *Ibid.*, 8-23.

<sup>271</sup> Michael Holmes, 'The Establishment of the Democratic Left,' *Irish Political Studies* 9 (1994), 148-156, 148.

<sup>272</sup> B. Chubb, *The Government and Politics of Ireland*, 98.

sitting TDs were part of the original grouping and they held their seats in subsequent elections.<sup>273</sup>

The ideologies and increasing importance of small parties illustrate the decomposition of the traditional political culture in Ireland. The importance of the ‘nationalist cleavage’ has receded before increased differences between secular and traditional religious values and between urban and rural representation. The Labour Party, the Progressive Democrats and the Democratic Left parties all represent constituencies which are more urban and secular than those of either Fianna Fáil or Fine Gael.<sup>274</sup> The progress made by the smaller parties is reflected in the election results of the last 30 years, listed in **Table 3.1**, below.

The table shows the year of the election, the party or parties which formed Government, the Taoiseach (Prime Minister) heading the Government and, as any particular period of Government may be referred to by its position in relation to the establishment of the Free State, the ‘number’ of the Dáil.

The other factor in the decomposition of the traditional political culture has been Ireland’s increasing involvement with Europe. When Ireland became a Member State of the (then) European Economic Community (EEC) it ceded some of the powers of governance to this ‘supranational legal system’.<sup>275</sup>

**TABLE 3.1. Irish Election Results 1965-1997**<sup>276</sup>

Year	Governing Party/Coalition	Taoiseach	Dáil
1965	Fianna Fáil	Seán Lemass	18
1969	Fianna Fáil	Jack Lynch	19
1973	Fine Gael/Labour	Liam Cosgrave	20
1977	Fianna Fáil	Jack Lynch	21
1981	Fine Gael/Labour	Garret FitzGerald	22
1982 (Feb.)	Fianna Fáil	Charles Haughey	23
1982 (Nov.)	Fine Gael/Labour	Garret FitzGerald	24
1987	Fianna Fáil	Charles Haughey	25
1989	Fianna Fáil/Progressive Democrats	Charles Haughey	26
1992	Fianna Fáil/Labour	Albert Reynolds	27
1997	Fianna Fáil/Progressive Democrats	Bertie Ahern	28

This table has been compiled from both Basil Chubb, *The Government and Politics of Ireland*, (Third edition), (London: Longman, 1992), 136; Michael Gallagher and Michael Laver (eds.), *How Ireland Voted 1992*, (Dublin: PSAI Press, 1993); and Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 543, June 30, 1997.

<sup>273</sup> Ibid., 95.

<sup>274</sup> Y. Galligan, ‘Party Politics and Gender in the Republic of Ireland,’ 148.

<sup>275</sup> Paul McCutcheon, ‘The Legal System,’ In *Ireland and European Community Membership Evaluated*, Patrick Keatinge (ed.), (London: Pinter, 1991), 209-229, 209.

<sup>276</sup> The 1992 Fianna Fáil/Labour Coalition government collapsed at the end of 1994 and a new ‘Rainbow Coalition’, involving the Fine Gael, Labour, and Democratic Left parties, was negotiated without returning to the polls. This Coalition, under the leadership of Fine Gael’s John Bruton, was then able to govern for a further three years.



The insertion of Article 29.4.3 into the Constitution reads, in part:

... No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.<sup>277</sup>

Membership has reduced the power of both the Oireachtas and the judiciary - an unintended consequence of accession.<sup>278</sup> Domestic disputes may now be referred to the European Court of Justice under Article 177 of the *Treaty of Rome*.<sup>279</sup> This has occurred in both the abortion and equal pay subsystems.

### **An Adequate Representation of Women's Interests?**

The proportional representation of women within the political system is the first step in the adequate representation of women's interests. Yet politics in Ireland have been largely male dominated. In the first general elections after the emergence of the contemporary feminist movement, in 1973, only 4 women were elected to the Dáil: making a total of 2.8% of Deputies. This improved, from 1977, but until 1992, did not exceed 10 per cent of Dáil Deputies.<sup>280</sup> The Seanad has had a better record in terms of gender equity. In 1973 there were only 4 women in the Seanad but this was 6.6 per cent of the total number of Senators. After the 1977 election representation of women reached the 10 per cent mark. It remained between 10-15 per cent until the election of November 1982 when the numbers again fell. The Seanad regained a representation rate of 10 per cent in 1989 and has remained above that level since.<sup>281</sup>

Since 1970 feminist groups, such as the Women's Political Association, have played a vital role in supporting aspiring women politicians in their campaigns.<sup>282</sup> In 1983 the Fine Gael/Labour Party Coalition Government set up the first Joint

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<sup>277</sup> Government of Ireland, *Bunreacht na hÉireann: The Constitution of Ireland*, 98.

<sup>278</sup> *Ibid.*, 225.

<sup>279</sup> P. McCutcheon, 'The Legal System,' 220.

<sup>280</sup> *Ibid.*, 152.

<sup>281</sup> Yvonne Galligan, 'The Legislative Process,' In *Gender and the Law in Ireland*, Alpha Connelly (ed.), (Dublin: Oak Tree Press, 1993), 28-46, 42. For other overviews of the position of women in Irish politics see Joy Rudd, 'On the Margins of the Power Elite: Women in the Upper Echelons,' In *Power, Conflict and Inequality*, Mary Daly, Liam O'Dowd and James Wickham (eds.), (Dublin: Turoe Press, 1982), 159-170, 163-165; R. Darcy, 'The Election of Women to Dáil Éireann: A Formal Analysis,' *Irish Political Studies* 3 (1988), 63-76; and Liz Fawcett, 'The Recruitment of Women to Local Politics in Ireland: A Case Study,' *Irish Political Studies* 7 (1992), 41-55.

<sup>282</sup> Ailbhe Smyth, 'Women and Power in Ireland: Problems, Progress, Practice,' *Women's Studies International Forum* 8(4), 255-262, 258.

Committee on Women's Rights.<sup>283</sup> Although Oireachtas Committees have no permanent existence, and have to be reconstituted at the beginning of each new Parliament, the Committee has been in existence since that time. The Committee operates on a submission model and feminist groups have made extensive use of this point of contact to the political process.<sup>284</sup> The Reports and Recommendations of the Committee provided a point at which women could influence the political process in spite of their minimal numbers in the Oireachtas.<sup>285</sup>

While the office of President has few actual powers the election of feminist Mary Robinson as the first woman President of Ireland, on 9 November 1990, was a significant symbolic step forward in the representation of women. Academic analysis of the election results show an 'extremely high' correlation between support for Robinson and a progressive social attitudes.<sup>286</sup> Her support was disproportionately urban and her campaign was certainly directed toward the 'new Ireland'. The importance of this as a victory for women, in particular, was underscored by the new President in her victory speech:

I was elected by men and women of all parties and none, by many with great moral courage, who stepped out from the faded flags of the Civil War and voted for a new Ireland, and above all by the women of Ireland, *mna na hEiréann*, who instead of rocking the cradle, rocked the system...<sup>287</sup>

Ireland's accession to the (then) EEC did not improve Irishwomen's representation in a numerically proportional sense. Feminists have generally influenced European policy and politics indirectly through trade unions and left political party activity.<sup>288</sup> The establishment of the European Parliament Committee on Women's Rights in 1984 gave women's interests some permanent official status. The Committee works mainly through the Action Programmes for Equal Opportunities for Women.<sup>289</sup> National obligations arising from EU membership, in relation to gender equity, have become part of the resources of

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<sup>283</sup> *Dáil Debates*, 7 July 1983, cc. 2509-2514.

<sup>284</sup> Evelyn Mahon, 'State Feminism in Ireland,' *Paper presented to the American Political Science Association*, New York, September 1-4 1994, 10-11.

<sup>285</sup> *Ibid.*, 14.

<sup>286</sup> Eoin O'Sullivan, 'The 1990 Presidential Election in the Republic of Ireland,' *Irish Political Studies* 6 (1991), 85-98, 96.

<sup>287</sup> Ailbhe Smyth, 'A Great Day for the Women of Ireland ...' The Meaning of Mary Robinson's Presidency for Irish Women,' *Canadian Journal of Irish Studies* 18(1), 61-75, 61.

<sup>288</sup> Catherine Hoskyns, 'Women, European Law and Transnational Politics,' *International Journal of the Sociology of Law* 14, (1986), 299-315, 301.

<sup>289</sup> Claire Duchén, 'A Continent in Transition: Issues for Women in Europe in the 1990s,' *Women's Studies International Forum* 15(1), 1992, 1-5; Claire Duchén, 'Understanding the European Community,' *Women's Studies International Forum* 15(1), 1992, 17-19.

Irish feminist groups as well as a source of external pressure on the Oireachtas.<sup>290</sup> This has been a significant advantage within the equal pay policy subsystem. It has been suggested that '(a)fter farmers, Irish women in employment have probably benefited most from entry to the EEC'.<sup>291</sup> More generally, Ireland's membership of the EU has been viewed as an opportunity for Irishwomen to negotiate more equitable outcomes than would have been possible within the confines of Ireland, alone.

## 2. INTRODUCTION OF A SECULARISING AGENDA

The late 1960s and early 1970s saw a wave of mass social movements emerge around the industrialised world. At this time the re-vitalisation of the Irish Republican Army (IRA) and the Irish feminist movement sought to challenge the historic compromises made by the 'old Ireland': while the IRA re-engaged the historic guerilla war against British political rule, contemporary Irish feminists defied the norms and values of Catholic social hegemony. The continuing war in Northern Ireland has had broad social, as well as political, implications. The balance of power between the Catholic Church and the contemporary feminist movement has had specific implications in setting the parameters for the emergent abortion policy subsystem.

### The Social Structure of Religious Nationalism

The teachings of the male-dominated, patriarchal, Roman Catholic Church provided the fundamental values and social structure of 'old Ireland'. The historical 'religious nationalism' of Ireland goes back as far as the 16th century when the Tudor monarchs began to impose Protestantism on the Irish people as part of a strategy of colonisation.<sup>292</sup> While the Church itself was somewhat ambivalent during the Irish Revolution,<sup>293</sup> it became an integral part of the Irish Free State. This was particularly so in all levels of teaching and education and in nursing and hospitals. The Church was well-placed to do this, as it had in its possession a 'large body of well-educated professionals' (the clergy), a 'well-

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<sup>290</sup> Brigid Laffan, 'Women,' In *Ireland and European Community Membership Evaluated*, Patrick Keatinge (ed.), (London: Pinter, 1991), 244-251, 245.

<sup>291</sup> Joint Committee on Secondary Legislation of the European Communities, *Report on Proposals Relating to Equality of Opportunity*, (PL. 2704, 1984), 123.

<sup>292</sup> Previously, the Roman Catholic Church had supported the English invasion of Ireland, a process which began in the mid 1100s when the English Pope Adrian IV 'gave' Henry II 'the whole of Ireland'. The following Pope, Alexander III, confirmed this and congratulated Henry on his successful crusades against the Celtic Christian Church. Subsequent Popes 'repeatedly issued warnings to the Irish clergy and people about their duty to obey the King of England'. Mary Condren, *The Serpent and the Goddess*, (New York: HarperCollins, 1989), 138-140.

<sup>293</sup> Margaret Ward, *Unmanageable Revolutionaries*, (London: Pluto Press, 1983), 142-149.

established institutional structure' (the parish system), and an established means of communication (Mass and home visits) .<sup>294</sup>

Ireland has continued to have a high level of institutional support for the Church. Even into the 1990s well over 90 per cent of the population identified as Roman Catholic.<sup>295</sup> While attendance at Mass on a weekly or more frequent basis has declined slightly, from 88 per cent of the population in 1981 to 85 per cent in 1990, it remains twice that for the rest of Europe.<sup>296</sup> The same survey data found, however, that only 36 per cent of respondents believed that it was proper for the Church to speak out regarding government policy.

... a relatively clear distinction seems to be drawn by many respondents between the general moral influence that the church can legitimately have and more specific attempts to influence Government policy<sup>297</sup>

This withdrawal of religious influence from politics is part of the 'agenda of secularisation' of the new Ireland.<sup>298</sup> In the 'old Ireland' the Catholic influence on Irish society was fundamental. Today, while the Catholic Church cannot be regarded as just one among other interests, Ireland can no longer be regarded as a theocratic state.<sup>299</sup>

### **The Dynamics of Change: Contemporary Irish Feminism**

The rise of contemporary Irish feminism was one of the most significant of the social changes inherent in the 'new Ireland'.

While progress has been uneven, Irish feminism has presented the only coordinated and sustained challenge to the prevailing ethos, successfully

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<sup>294</sup> Liam O'Dowd, 'Church, State and Women: The Aftermath of Partition,' In *Gender in Irish Society*, Chris Curtin, Pauline Jackson and Barbara O'Connor (eds.), (Galway: Galway University Press, 1987), 3-36, 12-13.

<sup>295</sup> The most important of the minority faiths are the Church of Ireland, the Religious Society of Friends in Ireland (Quakers), Presbyterian Church of Ireland, the Lutheran Church in Ireland, the National Spiritual Assembly of the Baha'i (Ireland), the Methodist Church in Ireland and the Salvation Army. Monitoring Committee, *Second Progress Report of the Monitoring Committee on the Implementation of the Recommendations of the Second Commission on the Status of Women*, (Dublin: Brunswick Press, 1996), 99-101.

<sup>296</sup> Michael Hornsby-Smith and Christopher Whelan, 'Religious and Moral Values,' In *Values and Social Change in Ireland*, Christopher Whelan (ed.), (Dublin: Gill and Macmillan, 1994), 7-44, 21.

<sup>297</sup> Ibid., 42.

<sup>298</sup> Brian Girvin, 'Social Change and Political Culture in the Republic of Ireland,' *Parliamentary Affairs* 46(3), (July 1993), 380-389; E. Hazelkorn and H. Patterson, 'The New Politics of the Irish Republic,' 64.

<sup>299</sup> M. McManus, 'Ireland,' 91.

exploiting the contradictions in the position of the Catholic Church and the nature of democracy in Ireland.<sup>300</sup>

'First wave' feminism had emerged in Ireland during the 1890s.<sup>301</sup> Traditional feminists provided a direct linkage between 'first wave' and 'second wave' feminism: the Women Graduates Association, the Irish Housewives' Association and the Business and Professional Women's Club, all represented women's interests.<sup>302</sup> Other groups, such as the National Association of Widows in Ireland, formed later (in 1967) and had the dual aim of providing emotional support to its members as well as lobbying to upgrade their status.<sup>303</sup> Smyth suggests that these groups were both fore-runners and catalysts for the mobilisation of the contemporary feminist movement.<sup>304</sup>

Feminist theory in Ireland was strongly influenced by developments in the United States and Britain.<sup>305</sup> The mass media have played an important part in this process.<sup>306</sup> In the late 1960s and 1970s, secularisation was facilitated by the 'opening up' of Irish society to overseas influences through radio and television.<sup>307</sup> While Irish feminism may be categorised along the lines of liberal, socialist and radical, it has been suggested that Irish feminists have 'blurred the boundary lines between radicalism and reformism', or perhaps, just had the 'pragmatic ability to disregard them'.<sup>308</sup> Consequently, despite this division of the

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300 E. Hazelkorn and H. Patterson, 'The New Politics of the Irish Republic,' 65.

301 See Louise Ryan, 'Women Without Votes: The Political Strategies of the Irish Suffrage Movement,' *Irish Political Studies* 9 (1994), 119-139; Dana Hearne, 'The Irish Citizen 1914-1916: Nationalism, Feminism and Militarism,' *Canadian Journal of Irish Studies* 18(1), (July 1992), 1-14; Frances Gardiner, 'Political Interest and Participation of Irish Women 1922-1992: The Unfinished Revolution,' *Canadian Journal of Irish Studies* 18(1), (July 1992), 15-39; Maryann Valiulis, 'Defining Their Role in the New State: Irishwomen's Protest Against the Juries Act of 1927,' *Canadian Journal of Irish Studies* 18(1), (July 1992), 43-60; Rosemary Cullen Owens, *Smashing Times*, (Dublin: Attic Press, 1984); Leah Levenson and Jerry Natterstad, *Hanna Sheehy-Skeffington: Irish Feminist*, (USA: Syracuse University Press, 1986), Margaret Ward, *Unmanageable Revolutionaries*, (London: Pluto Press, 1983).

302 Hilda Tweedy, *A Link in the Chain*, (Dublin: Attic Press, 1992), 8-9.

303 Nuala Fennell and Mavis Arnold, *Irishwomen Into Focus*, (Dublin: Women's Affairs, 1987), 6.

304 Ailbhe Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' *Women's Studies International Forum* 11(4), (1988), 331-341, 332.

305 Marian Larragy, 'Irish Feminism - Looking Back, Looking Forward,' *Spare Rib* 215 (August 1990), 38-43.

306 Tom Inglis, *Moral Monopoly: The Catholic Church in Modern Irish Society*, (Dublin: Gill and Macmillan, 1987), 90-93.

307 It is only through the media that a more multi-cultural ethos may be developed. Ireland continues to have an extremely homogeneous population. Only 2.7 per cent of the population of the Irish Republic are non-nationals, 2 per cent of which are nationals of other European countries. *Irish Times*, 3 July 1996, 1.

308 A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 333.

contemporary Irish feminist movement into ideologically separate entities, a substantial amount of co-ordinated activity occurred.

### *Irish Liberal Feminists*

Irish liberal feminists mobilised around the issue of equal pay and the early actions of the Commission on the Status of Women are discussed, in detail, in the following chapter. The Council for the Status of Women (CSW) was formed in 1973 and provided the organisational base for a national coalition of women's organisations, spanning all feminisms, from 'traditional' through to 'radical'.<sup>309</sup> CSW aims included both 'equal opportunity' and 'raising consciousness'.<sup>310</sup> The CSW first received one-off governmental funding to run the International Women's Year Conference in 1975. Later it received money from the (then) EEC to organise seminars and, between 1977 and 1981, it received small annual grants from the Irish government.<sup>311</sup> In 1982 the CSW formalised its connections with government and received permanent funding.<sup>312</sup> At that time there were 38 women's organisations affiliated to the CSW.<sup>313</sup> By 1995 this had grown to over 130 women's organisations.<sup>314</sup>

Other liberal feminist groups were established: the Women's Progressive Association, later known as the Women's Political Association (WPA), was formed in 1970,<sup>315</sup> AIM (Action, Information, Motivation) in 1971,<sup>316</sup> and Cherish (for single parents and their children) in 1972.<sup>317</sup> The national Women's Talent Bank was set up in 1974 by the National Federation of Business and Professional Women's Clubs and the WPA. 'Women Elect' was also formed in 1975 to provide electoral funds for women running for the Dáil.<sup>318</sup>

It has been suggested that the relationship between feminism and the state in Ireland has been characterised by a 'willingness, from the very beginning, to use

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<sup>309</sup> In late 1995 the CSW was renamed the National Women's Council of Ireland.

<sup>310</sup> *Administration*, 'Council for the Status of Women,' *Special Issue: International Women's Year* 23(1), (1975), 95-96.

<sup>311</sup> Although originally known as the European Economic Community (EEC), it became the European Community (EC) from 1978 and the European Union (EU) in 1993.

<sup>312</sup> N. Fennell and M. Arnold, *Irishwomen Into Focus*, 15.

<sup>313</sup> M. Larragy, 'Irish Feminism - Looking Back, Looking Forward,' 39.

<sup>314</sup> *Dáil Debates*, 9 November 1995, cc. 13.

<sup>315</sup> Catherine Rose, *The Female Experience: The Story of the Woman Movement in Ireland*, (Galway: Arlen House, 1975), 69.

<sup>316</sup> *Ibid.*, 74.

<sup>317</sup> *Ibid.*, 75.

<sup>318</sup> N. Fennell and M. Arnold, *Irishwomen Into Focus*, 23.

state machinery'.<sup>319</sup> At the same time, however, there has been an on-going debate as to the most strategic relationship between feminism and the state.<sup>320</sup>

### *Irish Radical Feminists*

In 1970 the Irish Women's Liberation Movement (IWLM) was formed and 'functioned in a classic radical feminist mode'.<sup>321</sup> The 1971 the manifesto of the group, *Irishwomen: Chains or Change*, set out the six basic demands of Irishwomen's liberation: equal rights in law; equal pay; removal of the marriage bar; justice for widows, deserted wives, and unmarried mothers; equal educational opportunities; the right to contraception; and 'one family, one house'.<sup>322</sup> During the early 1970s the influence of international feminist theory was strongest, as was the emphasis on revolutionary direct action against a 'social system which confined women to an inferior oppressed position'.<sup>323</sup>

The original IWLM 'Founders' Group' began to disband in 1971 and a number of offshoot 'self-help, aid, and single-issue groups' were formed.<sup>324</sup> An ideological rejection of patriarchal institutions and a commitment to work with women led Irish radical feminists to establish women's shelters, for women and children escaping domestic violence, and rape crisis centres. To this purpose, Irishwomen's Aid (later Women's Aid) was formed in 1974 and the Rape Crisis Centre was founded in 1977. These new women's services remained without state recognition or funding until the early 1980s.<sup>325</sup> Irish radical feminism, like radical feminism elsewhere, has also provided a ground for the development of lesbian/gay feminisms, spiritual/pagan feminisms, eco-feminisms, and peace feminisms.

### *Irish Socialist Feminists*

When Irishwomen United (IU) formed in 1974, the majority of IU members had no connections with the original IWLM, coming instead from 'revolutionary and radical left groups, the republican movement, community action projects and the trade union movement'.<sup>326</sup> This included the Revolutionary Marxist Group, the Movement for a Socialist Republic, the Communist Party of Ireland, the Socialist

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<sup>319</sup> Ailbhe Smyth, 'The Women's Movement in the Republic of Ireland 1970-1990,' In *Irish Women's Studies Reader*, Ailbhe Smyth (ed.), (Dublin: Attic Press, 1993), 245-269, 333.

<sup>320</sup> See Yvonne Fitzsimons, 'Women's Interest Representation in the Republic of Ireland: The Council for the Status of Women,' *Irish Political Studies* 6 (1991), 37-51; Evelyn Mahon, 'State Feminism in Ireland'.

<sup>321</sup> A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 334.

<sup>322</sup> Smyth describes this as the 'Socialist/republican element' inserted in recognition that 'equality would mean very little for women who lived in overcrowded, unsanitary and insecure conditions'. A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 335.

<sup>323</sup> Ursula Barry, 'Women in Ireland,' *Women's Studies International Forum* 11(4), (1988), 317-322, 320.

<sup>324</sup> *Ibid.*, 335.

<sup>325</sup> Marian Larragy, 'Irish Feminism - Looking Back, Looking Forward,' 38-43.

<sup>326</sup> A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 337.

Workers Movement, the Irish Republican Socialist Party and the International Lesbian Caucus.<sup>327</sup> The IU *Charter*, although based on the Working Women's Charter drawn up by the Irish Transport and General Workers Union, was 'noticeably more radical than the IWLM aims'.<sup>328</sup> In spite of this, the *Charter* did not include abortion rights, although 'individual IU activists did raise and debate the issue publicly'.<sup>329</sup> IU utilised many of the same methods as IWLM, picketing the Archbishop of Dublin's house, occupying the offices of the Federated Union of Employers (regarding equal pay), invading 'men only' bathing and sports clubs, and interrupting the Taoiseach, Liam Cosgrave, during his International Women's Year speech.<sup>330</sup>

The second half of the 1970s saw two contradictory tendencies in Irish feminism. On one hand, a stronger alliance between different streams of the contemporary feminist movement formed, during the equal pay campaign. On the other hand, the Irish contemporary feminist movement followed the usual NSM dynamics, proliferating into many small action groups. The early to mid 1980s saw the mobilisation of anti-feminist groups, conducting successful campaigns against abortion and divorce, through referendums in 1983 and 1986. While slow progress was made by liberal feminists, working within the political and administrative arms of government, radical and socialist feminist groups fragmented to the point where many found it difficult to avoid a 'sense of disillusionment and demoralisation'.<sup>331</sup>

#### *Irish Academic Feminism*

It was at this time, in 1983, that a Women's Forum was set up, within the University College Dublin (UCD), to develop a Women's Studies programme. From this, the UCD Women's Education, Research and Resource Centre (WERRC), was formed. Women's Studies has since been offered at the University Colleges of Cork and Galway, at Maynooth College, at Trinity College Dublin and the University of Limerick.<sup>332</sup> Women's Studies has continued to develop, despite continuing institutional precariousness within the University department system, and continuing discrimination against female academics in 'third level' (tertiary or 'higher') education. Women's Studies programmes are also offered in a number of community-based centres.<sup>333</sup>

This institutional diversity also assists in ensuring a 'fit' between the concerns of the academic and broader communities. The research and activity program carried out by third level institutions reflects this, including both formal, scholarly

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<sup>327</sup> N. Fennell and M. Arnold, *Irishwomen Into Focus*, 11.

<sup>328</sup> Ibid.

<sup>329</sup> A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 338.

<sup>330</sup> N. Fennell and M. Arnold, *Irishwomen Into Focus*, 12.

<sup>331</sup> A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 340; E. Mahon, 'Women's Rights and Catholicism in Ireland,' 76-77.

<sup>332</sup> Anne Byrne, Pat Byrne and Ann Lyons, 'Inventing and Teaching Women's Studies,' *Irish Feminist Studies* 1(1), (Spring 1996), 78-99, 82.

<sup>333</sup> Ibid., 511.



research and informal, issues-based learning. Projects have included conducting workshops with the Tallaght Travellers Development Group,<sup>334</sup> negotiating official 'observer' status at the 1995 United Nations Women's Conference in Beijing, and co-ordinating protests on abortion rights.<sup>335</sup> The question of difference between women, a preoccupation of academic feminism, has been debated across the streams of Irish feminism, through its exposition in the Attic press LIP publications.<sup>336</sup> These have explored the issues of poverty, class, sexuality and national Partition in an articulate, yet accessible, form.<sup>337</sup> The increasing diffusion of Irish feminism as a NSM has seen new groups form to give specific voice to black and migrant Irishwomen.<sup>338</sup>

Unlike many other countries, including Australia, Ireland has seen a 'successful relationship' between the grassroots feminist movement and academic feminists within Women's Studies.<sup>339</sup> Postmodern feminism has been less influential within the Irish Academy than the Australian and the emphasis has been on combining theory and practise in a relevant fashion.

### *European Feminism*

Irish feminists are also increasingly part of a European-wide network of feminist organisations operating in the 1990s. The European Women's Lobby was established, in September 1990, to provide permanent representation for women at European level, to lobby, to exchange information and to develop transnational campaigns.<sup>340</sup> The European Trade Union Confederation Women's Committee attempts to co-ordinate action on women's economic position, across all EU Member States.<sup>341</sup>

### *Anti-Feminist Groups*

The moves towards contraception reform in the 1970s mobilised anti-feminist NSMs in reaction and opposition to the new Ireland, in general, and feminism in

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<sup>334</sup> 'Travellers' are a distinct subgroup of Irish society which are subject to discrimination and disadvantage. Travelling People Review Body, *Report*, (Dublin: The Stationery Office, 1983).

<sup>335</sup> Various articles from *WERRC Newsletter* (May 1995).

<sup>336</sup> Kate Gray, 'The Attic LIPs: Feminist Pamphleteering for the New Ireland,' *Éire-Ireland* XXIX(I), (Spring 1994), 105-122.

<sup>337</sup> A. Smyth, 'The Women's Movement in the Republic of Ireland 1970-1990,' 266.

<sup>338</sup> Gretchen Fitzgerald, 'Reflections on Racism and the Irish,' In *A Dozen Lips*, (Dublin: Attic Press, 1994), 249-268; Mary Russell, 'Irish and Black Need Apply,' *Irish Times* 20 June 1995, 11.

<sup>339</sup> Anne Mulvey, 'Irish Women's Studies and Community Activism,' *Women's Studies International Forum* 13(4), (1992), 507-516, 507.

<sup>340</sup> Catherine Hoskyns, 'The European Women's Lobby,' *Feminist Review* 38, Summer 1991, 67-69; J. De Groote, 'European Women's Lobby,' *Women's Studies International Forum* 15(1), 1992, 49-50.

<sup>341</sup> Irish Congress of Trade Unions, *Executive Council Report*, Women's Biennial Conference, January 1996, 13.

particular.<sup>342</sup> Many of the anti-abortion groups discussed in Chapter 5 have an anti-feminist agenda that goes beyond divorce, abortion and contraception issues to specifically embrace male domination in the secular and spiritual spheres. Irish anti-feminist groups are strongly supported by the Catholic Church and lay-Catholic organisations such as the Knights of St. Columbus.<sup>343</sup>

### **A Realistic Reflection of Women's Experience?**

The promotion of a secular agenda by Irish feminists has little to do with the inherent secularism or spirituality of feminism but is an attempt to modify socio-cultural values and social structures to provide a more realistic reflection of women's 'lived experience'. Within Ireland a strong national tradition of Catholicism, the continuing predominance of the Catholic faith, and an orthodoxy of religious practice support dominant norms which have legitimised the oppression of women.<sup>344</sup> In comparison to the rest of Europe, Ireland is more conservative regarding issues such as sexuality, marriage and divorce, although showing a more liberal attitude to gender role equality.<sup>345</sup> This disjunction between the 'private' and the 'public' sphere has had significant implications for the relative fortunes of the equal pay and abortion policy subsystems.<sup>346</sup>

Religious belief affects women's employment decisions: directly and indirectly.<sup>347</sup> It affects those decisions she makes herself, as well as those made by family members, and affects social attitudes towards women, especially married women, working.<sup>348</sup> In the early 1980s many of the attitudinal barriers to married women working were still in existence. In a country with high unemployment and high emigration, 'jobs continued to be viewed as something to be rationed and shared'.<sup>349</sup> It was also considered to be 'bad for young children'

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<sup>342</sup> Gerardine Meaney, 'Sex and Nation: Women in Irish Culture and Politics,' In *A Dozen Lips*, (Dublin: Attic Press, 1994), 188-204, 188-189.

<sup>343</sup> The Knights of St. Columbanus have been described as 'a patriarchal, secretive, Catholic fundamentalist network of influential men who seek to exert power and influence through infiltration of hostile groups and organisations, anonymous lobbying, and the targeting of individuals hostile to their orthodoxy.' Emily O'Reilly, *Masterminds of the Right*, (Dublin: Attic Press, 1988), 21.

<sup>344</sup> Evelyn Mahon. 'Ireland: A Private Patriarchy?,' *Environment and Planning* 26, (1994), 1277-1296, 1281.

<sup>345</sup> Richard Breen, Damian Hanna, David Rottman and Christopher Whelan, *Understanding Contemporary Ireland*, (Dublin: Gill and Macmillan, 1990), 106.

<sup>346</sup> E. Mahon. 'Ireland: A Private Patriarchy?,' 1279-1281.

<sup>347</sup> This is reviewed in Evelyn Lehrer, 'The Effects of Religion on the Labor Supply of Married Women,' *Social Science Research* 24 (1995), 281-301; and Max Haller and Franz Hoellinger, 'Female Employment and the Change of Gender Roles: The Conflictual Relationship Between Participation and Attitudes in International Comparison,' *International Sociology* 9 (1), (March 1994), 87-112.

<sup>348</sup> Jean Larson Pyle, *The State and Women in the Economy*, (Albany: State University of New York Press, 1990).

<sup>349</sup> Eileen Trauth, 'Women in Ireland's Information Industry: Voices from Inside,' *Eire-Ireland* XXX (3), (Fall 1995), 133-151, 147.

to have working mothers.<sup>350</sup> The predominant view was that married women should be discouraged from working.<sup>351</sup> These attitudes reflected widely-held, traditional ideas about the primacy of the male 'bread-winner'.<sup>352</sup>

This influence of Catholicism on pay equity is relatively minor, however, in comparison to that exerted in relation to abortion policy. The linkage between Catholicism and individual beliefs opposing abortion has been well documented.<sup>353</sup> The majority of Irish respondents to the 1981 and 1990 European Values Surveys were much less supportive of abortion as a valid choice than other Europeans. Most were only willing to approve of abortion in a situation where the mother's life was at risk.<sup>354</sup> While the effects of Catholicism, as a nationally dominant faith, may be contradictory there is no doubt that the Church has significantly determined the parameters of the debate.<sup>355</sup> The disjunction of that debate and the lived reality of women's lives may be suggested by the increasing number of Irish Catholic women presenting for abortion services in Britain.<sup>356</sup>

Rather than modifying Church teachings, the Pope John Paul II has hardened Church opposition. The 1993 *Veritas Splendor* emphasised 'natural law' and sexual morality and described every contraceptive act as 'intrinsically evil'.<sup>357</sup> During the 1994 UN International Conference on Population and Development, Nobel laureate Mother Theresa stated that 'abortion was the worst of all evils',<sup>358</sup> while the Holy See wished to make more than 200 changes to the draft conference resolutions paper.<sup>359</sup> Ireland, along with other predominantly Catholic EU

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<sup>350</sup> Ibid.

<sup>351</sup> Margaret Fine-Davis, *Women and Work in Ireland, A Social Psychological Perspective: A Summary of the Main Findings*, (Dublin: Council for the Status of Women, 1983), 28.

<sup>352</sup> The primacy of married male breadwinner was, however, a gendered concept in itself. Approval of higher rates of pay for married men (as compared with married women) were expressed by 86.7 per cent of men, but only 51 per cent of women in the late 1960s. Commission on the Status of Women, *Interim Report on Equal Pay*, (Dublin: The Stationery Office, 1971), 31-32.

<sup>353</sup> Ted Jen, John O'Donnell and Clyde Wilcox, 'A Contextual Analysis of Catholicism and Abortion Attitudes in Western Europe,' *Sociology of Religion* 54(4), (1993), 375-383, 382; M. Hornsby-Smith and C. Whelan, 'Religious and Moral Values,' 35.

<sup>354</sup> M. Hornsby-Smith and C. Whelan, 'Religious and Moral Values,' 36.

<sup>355</sup> For example a study of 11 countries (including Ireland) found that non-Catholics within predominantly Catholic countries were more likely to approve of legal abortion than non-Catholics in predominantly Protestant countries. T. Jen, J. O'Donnell and C. Wilcox, 'A Contextual Analysis of Catholicism and Abortion Attitudes in Western Europe,' 375.

<sup>356</sup> Mary Cummins, 'Most Women in Abortion Study are Churchgoers,' *Irish Times*, 12 August 1991.

<sup>357</sup> Karen Woodward, 'Contra Contraception: Back to the Battlements,' *Newsweek*, September 1993, 82.

<sup>358</sup> Marian Fletcher, 'Mother Theresa Condemns Birth Talks,' *Weekend Australian*, September 3-4, 1994, 16.

<sup>359</sup> Ian Williams, 'Decadent Document Unites Religious Foes,' *Weekend Australian*, 27-28 August 1994, 16.

members, such as Italy and Spain, decided to follow Brussels, rather than Rome on this issue.<sup>360</sup>

In response, the Pope denounced the 'structures of sin', such as 'international institutions, foundations, and associations which systematically campaign for the legalization and spread of abortion in the world'.<sup>361</sup> He also introduced a new type of sin: 'social sin'.<sup>362</sup>

A civil law authorising abortion or euthanasia ceases by that fact to be a true, morally binding civil law ... it is never licit to obey it or to take part in a propaganda campaign in favour of such a law, or vote for it.<sup>363</sup>

A 'Christian pro-choice' stance, which dissolves the linkage between Catholicism and anti-abortion attitudes, has been articulated within Ireland,<sup>364</sup> as has a 'feminist morality', in opposition to the 'moral authority' of the Catholic Church.<sup>365</sup> The disjunction between Catholic social theory and the on-going experience and practice of Irish Catholic women has led to a move for reform which has spread to the Church itself.<sup>366</sup> In return, the 1995 *Evangelium Vitae* attempted to create a 'new feminism': 'free from individualism' and favouring 'unselfish giving and willing service'.<sup>367</sup> The Catholic Church has also provided support for a number of international anti-abortion organisations.<sup>368</sup> These competing norms and values, around the social role of women, have implications for the legitimacy of feminist demands for change and the ability of feminists to gain support for policy proposals.

The continuing war in Northern Ireland has also had an impact on this aspect of policy-making. In the late 1960s, the example of the Civil Rights movement in

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<sup>360</sup> Ibid.

<sup>361</sup> Karen Woodward, 'Life, Death and the Pope,' *Newsweek*, April 1995, 60-63, 63.

<sup>362</sup> Catholic Church, *Catechism of the Catholic Church, English Translation for Australia* (Homebush: St. Pauls, 1994), Para 2276.

<sup>363</sup> James Murray, 'Pope Takes Moral Cudgel to the 'Culture of Death',' *Australian*, 7 April 1995, 15.

<sup>364</sup> Linda Hogan, 'Procreative Choice: A Feminist Theological Comment,' In *The Abortion Papers: Ireland*, Ailbhe Smyth (ed.), (Dublin: Attic Press, 1992), 175-185.

<sup>365</sup> Ruth Riddick, 'Towards a Feminist Morality of Choice,' In *The Abortion Papers: Ireland*, Ailbhe Smyth (ed.), (Dublin: Attic Press, 1992), 186-193; Dolores Dooley, 'Abortion and Moral Disagreement,' In *The Abortion Papers: Ireland*, Ailbhe Smyth (ed.), (Dublin: Attic Press, 1992), 166-174.

<sup>366</sup> An example of this is the 1989 formation of the Working Group on Women in the Church. Monitoring Committee, *Second Progress Report of the Monitoring Committee on the Implementation of the Recommendations of the Second Commission on the Status of Women*, 98.

<sup>367</sup> Catherine Armitage, 'Pope Tells Women to Adopt 'New Feminism,' *Australian*, 31 March 1995, 1-2, 1.

<sup>368</sup> **Appendix 4** lists abortion lobby groups with international connections.

Northern Ireland and the resurgence of Republicanism in the South politicised many Irishwomen, bringing them into liberatory movements.<sup>369</sup> Yet feminist demands may be seen as less legitimate, less important, than the urgent need to resolve the 'National Question'.<sup>370</sup> It has not only raised the question of whether to focus energy on nationalist or feminist issues, but also affected the strategies adopted in pursuing change. It has been suggested that Partition has strengthened politically and socially conservative forces as well as contributing to the under-development of the economy.<sup>371</sup>

### 3. RECURRENT FISCAL CRISIS

Ireland's economic decline, since the early 1970s, has been both the cause and effect of an increased integration with the global economy. Irish governments, employer groups, and unions have attempted to control the economic system through a series of semi-corporatist 'social partnerships'; a pattern very different from the traditional 'voluntarism' of Irish industrial relations.<sup>372</sup> The ability of these structures to incorporate 'women's interests' as well as 'worker's interests' has affected feminist action for pay equity.

#### The Structure of the Irish Economy

The Republic of Ireland is a relatively small country with a population of 3.5 million in an area of 70,282 sq km.<sup>373</sup> Ireland was, historically, a rural nation heavily dependent on agriculture. After Partition, the Irish Free State was left with a very small industrial base, the majority of development having been concentrated in the North. The agricultural population is largely made up of owner-occupiers of small farms who continue to constitute an important political interest group in both local and national government. During the 1930s the Fianna Fáil government pursued a protectionist, import-replacement policy, leading to the establishment of many new industries.<sup>374</sup> By the 1950s, industrial employment had grown by approximately 80 per cent, in spite of an 'economic

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<sup>369</sup> A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 332.

<sup>370</sup> Carol Coulter, 'Ireland: Between the First and Third Worlds,' In *A Dozen Lips*, (Dublin: Attic Press, 1994), 93-116, 97.

<sup>371</sup> U. Barry, 'Women in Ireland,' 317-318.

<sup>372</sup> 'Voluntarism' as in decided without coercion from the state. Commission of Inquiry on Industrial Relations, *Report*, (Dublin: The Stationery Office, 1981), 10; Brigid Laffan, 'Industrial Relations,' In *Ireland and European Community Membership Evaluated*, Patrick Keatinge (ed.), (London: Pinter, 1991), 232-255, 232.

<sup>373</sup> P. Snyder, 'Ireland,' In *European Women's Almanac* (New York: Columbia University Press, 1992) 189-204.

<sup>374</sup> Brian Hillery, 'The Institutions of Industrial Relations,' In *Irish Industrial Relations in Practice*, Thomas Murray and William Roche (eds.), (Dublin: Oak Tree Press, 1994), 1-15, 2.

war' waged by Britain against Ireland.<sup>375</sup> This was a social revolution, as well as an economic revolution, as industrialisation 'involved an enormous change in living standards over just one generation'.<sup>376</sup>

The Whitaker Plan, developed in 1958, signalled a change in government policy, from import-substituting, to export-led industrialisation.<sup>377</sup> This new strategy was premised on the rapid removal of tariffs, limitation of state-owned industry, and high foreign investment.<sup>378</sup> A second economic plan (1963-1970) continued this strategy which, in the short-term, could be judged an economic success. In the long-term, however, the results for Irish-owned industry were 'disastrous' as half the jobs held in 1973 were lost by 1986.<sup>379</sup> The 'weak linkages' between the foreign-owned branch plants and the Irish economy has been the underlying cause of continuing macro-economic problems.<sup>380</sup> Yet little has changed.<sup>381</sup> Although most state aid goes to export promotion in the agricultural and industrial sectors,<sup>382</sup> the services sector has shown strong growth since the 1970s and, in 1993, accounted for just over 60 per cent of total employment.<sup>383</sup> At the same time, however, the decline in agriculture and manufacturing industries has not been offset by the growth in services.<sup>384</sup> Ireland has the lowest share of services output and the highest industrial share in the EU,<sup>385</sup> leading to a slower than average economic growth and contributing to a higher than average income inequality.<sup>386</sup> In the 1990s, exports account for 56 per cent of GDP, in comparison with the EU average of 22 per cent.<sup>387</sup> As an export-led economy, Ireland is easily influenced by fluctuations in world trade patterns, making it difficult for governments to control the domestic economy. The particular composition and concentration of private capital within Ireland also has much the

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<sup>375</sup> Denis O'Hearn, 'The Irish Case of Dependency: An Exception to the Exception?', In *Development and Under-Development*, M. A. Seligson and J. T. Passé-Smith (eds.), (Boulder and London: Lynne Rienner, 1990), 295-313, 297.

<sup>376</sup> Jenny Beale, *Women in Ireland: Voices of Change*, (Great Britain: Macmillan, 1986), 1.

<sup>377</sup> R. B. Finnegan, *Ireland: The Challenge of Conflict and Change*, 47.

<sup>378</sup> D. O'Hearn, 'The Irish Case of Dependency: An Exception to the Exception?', 297.

<sup>379</sup> *Ibid.*, 299.

<sup>380</sup> Rory O'Donnell, *Ireland and Europe: Challenges for a New Century*, (Dublin: Economic and Social Research Institute, 1993), 26.

<sup>381</sup> Mary O'Sullivan, 'Manufacturing and Global Competition,' In *The Economy of Ireland*, J. W. O'Hagan (ed.), (Dublin: Gill and Macmillan, 1995), 249-281, 349.

<sup>382</sup> John Fingleton, 'Competition and Efficiency in the Services Sector,' In *The Economy of Ireland*, J. W. O'Hagan (ed.), (Dublin: Gill and Macmillan, 1995), 296-327, 309.

<sup>383</sup> *Ibid.*, 304.

<sup>384</sup> R. Breen, D. Hanna, D. Rottman and C. Whelan, *Understanding Contemporary Ireland*, 148.

<sup>385</sup> *Ibid.*, 305.

<sup>386</sup> D. O'Hearn, 'The Irish Case of Dependency: An Exception to the Exception?', 300-309.

<sup>387</sup> R. O'Donnell, *Ireland and Europe: Challenges for a New Century*, 25.

same effect: the high percentage of foreign investment creates particular problems in economic regulation and control.

Unemployment levels have remained high, by international standards, and have been characterised by a high proportion of long-term unemployed.<sup>388</sup> Despite a number of programmes for full employment total employment has remained relatively stable since the 1960s.<sup>389</sup> In the wake of a short-lived 'population explosion', which has given Ireland the youngest population in Europe,<sup>390</sup> emigration rose from - 8,000 to - 31,000 between 1980 and 1990.<sup>391</sup> High levels of emigration are 'not only symptoms, but also causes, of the country's poor economic performance'.<sup>392</sup>

The impact of entering the (then) EEC in 1973 was not only an economic milestone, but politically important in placing Ireland in a European partnership rather than the de facto partnership with Great Britain.<sup>393</sup> Having negotiated a 'transition period' of five years before the elimination of tariffs, and other trade restrictions which protected Irish goods, EEC entry was, initially, very advantageous to the important primary industries sector. In 1978, real income, per person in farming, was 40 per cent higher than in 1972, the year before entry.<sup>394</sup> By the end of the transition period, however, Ireland's entry into the European Monetary System (EMS) and the pressure to limit production in the face of the EEC food surpluses combined to depress the potential of the Irish agricultural sector.<sup>395</sup> By 1986 agricultural income had fallen back to 1972 level.<sup>396</sup>

On entry the Irish also received special dispensations to continue their policy of industrial development. Initially, the manufacturing sector also benefited from EEC entry, in terms of an increased export growth rate (over 11 per cent per annum between 1973 and 1985). The increased openness of the Irish economy, however, meant that manufactured imports also rose and Irish industry suffered accordingly.<sup>397</sup>

These macro-economic problems were exacerbated during the 1973 and 1979 oil price increases. By 1979 the servicing of government debt appropriated 25 per

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<sup>388</sup> Organisation for Economic Co-operation and Development, *OECD Economic Surveys: Ireland 1995*, (OECD: France, 1996), 43.

<sup>389</sup> Charles McCarthy, *The Decade of Upheaval: Irish Trade Unions in the Nineteen Sixties*, (Dublin: Institute of Public Administration, 1973), 28.

<sup>390</sup> Rosheen Callender, 'Women and Work: The Appearance and Reality of Change,' *Labour Market Review* 1 (June 1990), 18-36.

<sup>391</sup> Paul Tansey, *Making the Irish Labour Market Work*, (Dublin: Gill and Macmillan, 1991), 4.

<sup>392</sup> R. O'Donnell, *Ireland and Europe: Challenges for a New Century*, 29.

<sup>393</sup> R. B. Finnegan, *Ireland: The Challenge of Conflict and Change*, 47.

<sup>394</sup> Kieran Kennedy, Thomas Giblin and Deirdre McHugh, *The Economic Development of Ireland in the 20th Century*, (London: Routledge, 1988), 83.

<sup>395</sup> *Ibid.*, 84.

<sup>396</sup> *Ibid.*, 83.

<sup>397</sup> *Ibid.*, 84.

cent of total tax revenue.<sup>398</sup> When Ireland joined the EMS in 1979, and linked the value of the punt to the Deutschmark, this narrowed the scope for tackling economic problems though domestic fiscal policy as exchange controls were gradually phased out.<sup>399</sup> Britain's initial refusal to join the EMS, while remaining Ireland's single most important trading partner, meant a serious decline in Irish export competitiveness. In response to such pressures, Ireland devalued the punt in 1983, 1986 and 1992.<sup>400</sup> In 1985, in spite of a series of governments adopting policies of 'fiscal rectitude', the servicing of public debt had risen to 35 per cent of total tax revenue.<sup>401</sup>

Promises of EC support, to raise the standard of living in Ireland to that of other members, were largely honoured and Ireland has received a great deal of EU structural funds.<sup>402</sup> At the same time EU membership puts 'definite limits' on Ireland's economic policy autonomy.<sup>403</sup>

### **The Dynamics of Irish Industrial Relations**

Influenced by the prevailing social and political environment, and the relative strength of labour and capital, the pattern of wage fixing in Ireland has swung between centralised and de-centralised structures, and the pattern of economic decision-making has swung irregularly between volunteerism and neo-corporatism, over the last 35 years.

#### *Trade Unions*

The Irish trade union movement is highly diverse, leading to a multiplicity of unions, often with overlapping jurisdiction in the same industry or firm. The largest single union is the Services Industrial Professional Technical Union (SIPTU), a general union, not limited by occupation or industry. SIPTU was originally formed in 1909, as the Irish Transport Workers Union, later known as the Irish Transport and General Workers Union and renamed SIPTU in 1990 after an amalgamation with the Federated Workers' Union of Ireland. While trade unions have been active in Ireland since the nineteenth century, the most important union peak body, the Irish Congress of Trade Unions (ICTU), was formed in 1959.<sup>404</sup> In 1995 over 95 per cent of total trade union membership belong to unions affiliated with the ICTU.<sup>405</sup>

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<sup>398</sup> Ibid., 78.

<sup>399</sup> William Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' In *Irish Industrial Relations in Practice*, Thomas Murray and William Roche (eds.), (Dublin: Oak Tree Press, 1994), 126-205, 181.

<sup>400</sup> Ibid., 182.

<sup>401</sup> Ibid., 80.

<sup>402</sup> R. B. Finnegan, *Ireland: The Challenge of Conflict and Change*, 47.

<sup>403</sup> R. O'Donnell, *Ireland and Europe: Challenges for a New Century*, 40.

<sup>404</sup> W. E. J. McCarthy, J. F. O'Brien and V. G. Dowd, *Wage Inflation and Wage Leadership*, (Dublin: Economic and Social Research Institute, 1975), 174.

<sup>405</sup> B. Hillery, 'The Institutions of Industrial Relations,' 7.



### *Employers Associations*

Until 1993, the Federation of Irish Employers (FIE), later known as the Federated Union of Employers (FUE), represented employers' interests in 'all matters relating to industrial relations and labour matters'.<sup>406</sup> While assisting in the formation of other employer groups, such as the Joint Consultative Committee of Employers organisations, the FUE remained the major employers organisation with representatives on 41 bodies at regional or national level and on 11 international bodies.<sup>407</sup> The Construction Industry Federation was the next largest employer body and represented firms in the building industry.<sup>408</sup> The Confederation of Irish Industry (CII) represented industry in matters of 'trade, economics, taxation, and development'.<sup>409</sup> The Irish Business Employers Conference (IBEC) was formed in January 1993 from the amalgamation of the FIE and CII.<sup>410</sup>

### *The State*

While the first Dáil set up a Department of Labour in 1919,<sup>411</sup> the early Free State was antagonistic to industrial conflict and came to regard it as 'highly subversive'.<sup>412</sup> The large agricultural population also meant the lack of a strong class basis for Irish political parties. This has made them 'poor bargaining partners for both unions and employer'.<sup>413</sup> Instead, the state has generally seen its role as providing the auxiliary facilities to support voluntary agreements developed by the parties themselves. Irish labour law reflects this, being predicated on the formation of an individual contract between employer and employee, and has 'very little to say about collective agreements'.<sup>414</sup> With the exception of agreements registered with the Labour Court by Joint Industrial Councils, under the *Industrial Relations Act*, 1946, collective agreements on wages, salaries and conditions of employment have not been legally binding on either side.<sup>415</sup>

This began to change towards the end of the 1960s, when a number of major industrial disputes occurred, providing incentives for a more formalised and structured bargaining system.<sup>416</sup> From 1970 to 1978 a series of national pay agreements were negotiated by the Employer-Labour Conferences. In 1979

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<sup>406</sup> B. Chubb, *The Government and Politics of Ireland*, 111.

<sup>407</sup> W. E. J. McCarthy, J. F. O'Brien and V. G. Dowd, *Wage Inflation and Wage Leadership*, 122.

<sup>408</sup> *Ibid.*, 111.

<sup>409</sup> *Ibid.*

<sup>410</sup> B. Hillery, 'The Institutions of Industrial Relations,' 8.

<sup>411</sup> W. Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' 139.

<sup>412</sup> *Ibid.*

<sup>413</sup> *Ibid.*, 134.

<sup>414</sup> Commission of Inquiry on Industrial Relations, *Report*, 15.

<sup>415</sup> *Ibid.*

<sup>416</sup> *Ibid.*, 9.

tripartite negotiations led to a *National Understanding for Economic and Social Development*. A second *National Understanding* was negotiated in 1980 to 1981. A third *National Understanding* broke down in 1982. The National Understandings 'broadened the role of tripartite negotiation to the areas of employment, pay, taxation, health, education and social welfare policies'.<sup>417</sup> Through this process the State had intervened in industrial relations 'to a degree scarcely conceivable a couple of decades earlier'.<sup>418</sup>

Between 1982-1987 decentralised pay bargaining at the level of the individual firm returned as the state reverted to a 'broadly non-interventionist approach'.<sup>419</sup> The Irish form of corporatism was most highly developed in the 1988-1990 *Programme for National Recovery*, the 1991-1993 *Programme for Economic and Social Progress*, and the 1994-1997 *Programme for Competitiveness and Work*.<sup>420</sup> In 1996, active 'social partners' were listed as the ICTU, the Construction Industry Federation, IBEC, the Irish Creamery Milk Suppliers Association, the Irish Co-operative Organisation Society and the Irish Farmers' Association.<sup>421</sup>

Institutionally, 'the system has developed in an ad hoc manner' and there is not one overall body to which all claims arising out of the employment relationship can be brought. In addition to the Labour Court, the District Court and the Employment Appeals Tribunal hear employment cases.<sup>422</sup> The *Industrial Relations Act*, 1969 made provision for the appointment of Rights Commissioners also associated with the Labour Court. The Commissioners are relatively limited in power and mainly concerned with suspensions and dismissals not rates or pay or conditions.<sup>423</sup> In the 1990s, enterprise level bargaining remains dominant, in comparison to levels of occupational or industry level bargaining.<sup>424</sup>

### **A Fair Reward for Women's Work?**

The most common measures used to describe the integration of women in the labour market are gender earnings differentials, labour force participation, and

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<sup>417</sup> Brian Wilkinson, 'Corporatism, Industrial Relations and Labour Law in Ireland', *International Contributions to Labour Studies* 4 (1994), 95-114, 97.

<sup>418</sup> W. Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' 154.

<sup>419</sup> *Ibid.*, 172.

<sup>420</sup> *Ibid.*, 182.

<sup>421</sup> Monitoring Committee, *Second Progress Report of the Monitoring Committee on the Implementation of the Recommendations of the Second Commission on the Status of Women*, 81-82.

<sup>422</sup> Nuala Butler, 'Statutory Employment Protection,' In *Irish Industrial Relations in Practice*, Thomas Murray and William Roche (eds.), (Dublin: Oak Tree Press, 1994), 325-351, 326.

<sup>423</sup> B. Hillery, 'The Institutions of Industrial Relations,' 14.

<sup>424</sup> Jill Rubery and Colette Fagan, 'Equal Pay Policy and Wage Regulation Systems in Europe,' *Industrial Relations Journal* 25(4), (1994), 281-292, 284.

occupational segregation.<sup>425</sup> These three factors are interrelated. The relatively high rates of unemployment have acted to discourage the participation of Irishwomen in the workforce. Although this participation has increased, it is more often interrupted by child-bearing and caring responsibilities, causing women to have less labour market experience overall. This directly contributes to the gender wage gap.<sup>426</sup> The result, an increased dependence on male economic support within the family, has had a broader 'conservatising' influence as many women have voted to 'protect the family and their position within it'.<sup>427</sup>

The majority of women also continue to work in a relatively narrow range of occupations and are disproportionately represented in part-time work. Part-time work is characterised by a marginal attachment to the labour market, high occupational segregation, low pay and poor conditions.<sup>428</sup> As part-time work is seen as a method of balancing work and family responsibilities, by employers and employees alike, the contemporary position of women in the labour market reflects their perceived social role 'as women' (and therefore as mothers) to the detriment of their role as workers.

This conflation of 'woman' and 'mother', and the identification of women workers as 'women' rather than as 'workers' by governments, employers and (male) unions, is evident in the difficulties found in the campaign for equal pay. At first glance, pay equity is a redistributive, economic policy problem: a demand put forward by national union organisations on behalf of their members, within the institutions of industrial relations. This conceptualisation is inadequate, however, in that it ignores the social differentiation in the status of *women* workers. The history of equal pay in Ireland is that it has often been considered to be a sectional interest, pursued at the expense of other demands, a desirable objective subject to many constraints. Women's groups have not been able to present submissions before the Labour Court, or similar bodies, during wage cases nor were they included in any of the central national decision-making forums. In this sense women's interests remain woefully under-represented within the institutions of industrial relations.

Women are also under-represented within trade unions although the ICTU Women's Committee, Equality Network and Women's Conferences provide

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<sup>425</sup> Other indicators include the degree of labour market discouragement; the extent of under-employment, unemployment, and long term unemployment; the extent of self employment; the length of workplace experience and security of tenure; and the extent of non-wage employment benefits. S. F. Lambert and R. Petridis, *Occupational Segregation and Female Employment Over the Business Cycle*, (Canberra: Australian Government Publishing Service, 1994).

<sup>426</sup> Sarah Rummery, 'The Contribution of Intermittent Labour Force Participation to the Gender Wage Differential,' *The Economic Record* 68 (203), (1992) 351-364.

<sup>427</sup> Evelyn Mahon, 'From Democracy to Femocracy: the Women's Movement in the Republic of Ireland,' In *Irish Society: Sociological Perspectives*, Patrick Clancy, Sheelagh Drudy, Kathleen Lynch and Liam O'Dowd (eds.), (Dublin: Institute of Public Administration, 1995), 675-708, 693.

<sup>428</sup> Gerard McMahon, *Ireland Out of Step: Low Pay, the Minimum Wage and the European Social Charter: International Practice and Experience*, (Dublin: Irish Council of Trade Unions, 1990).

specific networks for women.<sup>429</sup> The participation of women in trade unions has remained static throughout the 1980s and 1990s: slightly less than half of all female workers were members of unions. This is slightly less than the male average.<sup>430</sup>

Women in management have tended to organise autonomously with minimal assistance from employer's organisations. The Irish Business and Professional Women's Club has been joined by newer groups such as *Network*. As the name implies, the focus of the new groups has been to build an 'old girls network' in the professions, industry, business and the arts. This professional promotions activity has not extended into overtly political lobbying on behalf of women, as a whole, with the exception of a strong support of positive (affirmative) action initiatives.<sup>431</sup>

At European level, the *Treaty of Rome*, founding document of the (then) EEC, represents women's interests in employment through a number of Articles formulated to ensure the equal treatment of women and men. The most significant of these is Article 119 which enshrines the principle that men and women should receive equal pay for equal work. While remaining a 'dead letter' until the early 1970s, when it was activated by a series of test cases, the ruling of the European Court of Justice in the second of these cases established the binding nature of Article 119.<sup>432</sup> The 1975 Directive on equal pay for men and women, which enshrines the principle of equal pay for equal work, was adopted to enforce this ruling.<sup>433</sup> While other equity Directives have been adopted,<sup>434</sup> the only other Memorandum on equal pay for equal work was published by the EU in June 1994.<sup>435</sup> It is a non-binding legal instrument but was 'aimed at re-launching the debate on equal pay at European level.'<sup>436</sup>

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<sup>429</sup> Irish Congress of Trade Unions, *Implementation of Equality Report*, 'Programme for Progress', *Evaluation Report to Women's Conference 1992*, (Dublin: ICTU, 1992), 8-10.

<sup>430</sup> Ibid., 16.

<sup>431</sup> Network, *Women in Management Directory 1988-1989*, (Dublin: Network, 1988).

<sup>432</sup> Catherine Hoskyns, 'The European Community's Policy on Women in the Context of 1992,' *Women's Studies International Forum* 15(1), 1992, 21-28.

<sup>433</sup> Directive 75/117/EEC, OJ L 45/75.

<sup>434</sup> The 1976 Directive on equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions (76/207/EEC, OJ L 39/76). The 1978 Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security (79/7/EEC, OJ L 6/79). This was upgraded in 1986 by Directive 86/378/EEC, OJ L 225/88. The 1986 Directive on equal treatment between men and women who are self-employed (86/613/EEC, OJ L 359/86). The 1992 Directive on protection at work of pregnant mothers and workers who have recently given birth (92/85/EEC, OJ L 348/92).

<sup>435</sup> Directorate-General For Research: European Parliament, *Fact Sheets on the European Parliament and the Activities of the European Union* Luxembourg: Office for Official Publications of the European Community, 1994, 351.

<sup>436</sup> Irish Congress of Trade Unions, *Executive Council Report*, 11.

#### 4. AN OVERVIEW OF SYSTEMIC/SUBSYSTEM INTERACTION

Political, social and economic systemic factors, at national and international level, combine to provide varying resources for subsystem coalitions. The interaction between the Irish systemic factors and the two policy subsystems under examination are illustrated in **Table 3.2** below

**TABLE 3.2. Overview of Irish Systemic Factors and Policy Subsystems**

TABLE 0.2: Overview of Irish Systemic Factors and Policy Subsystems					
S/SYSTEM	Social	Abortion	Political	Equal Pay	Economic
YEAR					
1968					
1969					
1970	A ‘Secularising’ (and Feminist) Agenda Emerges	Pre-Subsystem Activity: Contraception as a Policy Problem	Some State Feminism Introduced	Legislating for Equality	Reduced Growth, Mild Corporatism
1971					
1972					
1973					
1974					Destabilisation
1975				Equal Pay Protests	Downturn
1976				Implementation Difficulties	‘Fiscal Crisis’, Continued Corporatism
1977					
1978					
1979	Pope’s Visit to Ireland				PAYE Protests
1980	‘Religious Nationalism’  Reasserts Dominance	Constitutional Conservatism	Electoral Destabilisation	Equality  Stalled	Continued Downturn,  Move to Firm-level Wage Bargaining
1981					
1982		Referendum	Decomposition of Traditional Political Culture, State Feminism Introduced		
1983		Judicial Conservatism			
1984					
1985					
1986			Mary Robinson Elected	Mild Recovery, Return to (a stronger) Corporatism	
1987					
1988					
1989					
1990					
1991			State Feminism Institutionalised	Recent Gains	
1992		‘X’ Case, Two More Referenda			
1993					
1994	Fr. Brendan Smyth Case				
1995	Increased	Legislation			
1996	Secularisation				

The contraception campaign signalled the emergence of 'a secularising agenda' in the Irish social system. Legislation allowing some importation and sale of contraceptives was passed in 1979, the same year as Pope John Paul II made his first visit to Ireland. This was the cue for a revival of religious nationalism and, as such, was a 'crisis' in the sense discussed in Chapter 2. The subsequent successful campaign to insert an anti-abortion clause in the Irish Constitution was furthered by a period of political destabilisation and consolidated by a series of conservative judicial determinations. A series of crises, in 1992, forced the government to commit itself to clarifying the legal position of abortion through legislation. This did not occur, however, until after the first of a series of scandals involving paedophile priests became public (the Fr. Brendan Smyth case). After this crisis in Irish Catholicism a significantly more secular Ireland emerged and legislation asserting the right to, information on, and travel for, an abortion was finally passed, in 1995.

The interconnection between the social system and the abortion policy subsystem is mirrored in the relationship between the economic system and the equal pay policy subsystem. While the Third Plan for Economic Development (1969-1972) provided a much reduced rate of economic growth, and heralded a 20 year cycle of financial instability, demands for pay equity led the government to pass legislation implementing equal pay for women. An increasing exposure to the international economy through the 1973 accession to the EEC, and the EMS in 1979, led to an impending fiscal crisis. This inspired the government to renege on equal pay claims in 1975-1976 causing a crisis in the equal pay policy subsystem. While the government was unsuccessful in avoiding its own legislation, implementation difficulties dogged pay equity until 1982, when progress simply stalled. Similarly, the 1979 Tax Demonstrations were a measure of the increasing frustrations of the waged 'pay as you earn' (PAYE) taxed public and marked a public manifestation of the 'fiscal crisis'. This began a move away from the existing mild form of corporatism and centralised wage bargaining. After a return to a stronger form of corporatism in 1988 the economy also underwent a mild recovery. More recent gains in pay equity, from 1991, have been linked to both the industrial relations system and the political system.

The positioning of the political system in the centre of the diagram, between both policy subsystems, reflects the centrality of Ireland's liberal democratic government as a mediator of demands from the economic and social systems. The political system is actually spread throughout all of the systems and subsystems, through its judicial and industrial relations functions, and the central column reflects the gender-focused initiatives undertaken by various governments, particularly those which institutionalise the interests of women in government itself. This commences in 1970 with the first inquiry into the status of women. The rapid election and demise of three governments in 18 months, in 1981-1982, created a political crisis which, in combination with both social and economic unrest, destabilised the traditional political culture. At this time Garret Fitzgerald's Fine Gael/Labour Party Coalition government were able to achieve significant reform on gender issues, in spite of a conservative turn in the social and economic systems. The brief period of Fianna Fáil/PDs Coalition Government (1989-1992) continued a policy of gender-based reform and this was intensified in the two subsequent governments. Similarly, the election of Mary Robinson as President in 1990 was a remarkable event, signaling a 'sea-change' in Ireland's consciousness. It was an indication that the divergent tendencies

between the ‘new’ and the ‘old’ Irelands could no longer be restrained. The more liberal tenor of the Irish political system was reflected in the increased institutionalisation of state feminism and the establishment of the Department of Equality and Law Reform (DELRL).<sup>437</sup>

### **Assessing Irish National *Receptivity***

This chapter has examined the political, social and economic systems of Ireland, with particular reference to their impact on the status of women. Particular systemic factors have been assessed with an eye to determining their permeability to feminist influence and their capacity to effect change. The social system has, itself, provided the basis for the feminist movement as changes in public opinion gave rise to liberatory NSMs.

When developing an overview of the interaction between national systems and policy subsystems, this chapter suggests that the contraception campaign led to the formation of the abortion policy subsystem and the developments within this subsystem were strongly connected with those of the broader social system. Similar connections between the economic system and the equal pay policy subsystem have been discussed as has the centrality of the political system.

The character of the Irish political, social, and economic systemic factors in developing a particular mix of national *receptivity* have, therefore, been outlined and provide a contextual background for the activities of the subsystems under discussion. The next chapter begins to take a closer look at these subsystems by chronicling the events within the Irish equal pay policy subsystem.

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<sup>437</sup> The ebb and flow of feminism within the political system has been evident, however, as the recent 1997 elections saw this Department abolished.

## CHAPTER 4

### THE IRISH EQUAL PAY POLICY SUBSYSTEM

Historically, equal pay was treated as a regulatory, rather than redistributive, policy problem due to the identification of women workers as ‘women’ rather than ‘workers’ by governments, employers and (male) unions. For example, many early Irish unions were sex-segregated: the first Irishwomen’s unions were formed in Dublin in 1880, and the Textile Operatives’ Society, established in 1893, became a permanent member of the Irish trade union movement.<sup>438</sup> The Irish Women Workers Union (IWWU) followed in 1911.<sup>439</sup> The women’s unions’ campaigns were supported by the Irish Women’s Suffrage and Local Government Association and the Irish Women’s Franchise League.<sup>440</sup> These early feminists were more forthcoming with their support than the male union members of this time (although some of the more prominent union leaders were determined to put the issue on the movement’s agenda).<sup>441</sup> This is unsurprising, given that equal pay policy *type* is both gender-marked (ie. likely to stimulate broad coalitions between feminists and others) and concerned with role equity (a traditional concern of liberal feminists).

The proclamation of a Republic precipitated a difficult and repressive time for women workers. Catholic social principles promoted the strict legislation of women’s work; a ‘family wage’ for men; separate university courses for men and women; jury service to be limited for women; and a ‘family’, rather than individual, vote (to be held by the male).<sup>442</sup> While all of these measures were not actually implemented, the failure to develop a textiles industry in Southern Ireland and the passage of the *Conditions of Employment Act* 1936 limited the number of women employed in any particular industry, and led to a very low female participation rate in paid employment.<sup>443</sup>

In the 1950s, many women’s unions lost strength as their members were ‘concentrated in areas of declining membership’.<sup>444</sup> At the first meeting of the united ICTU, in 1959, a Women’s Advisory Committee was appointed.<sup>445</sup> They

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<sup>438</sup> Theresa Moriarty, *Work in Progress*, (Dublin: Irish Labour History Society, 1994), 8.

<sup>439</sup> The IWWU lasted until 1984, when it was absorbed into the Federated Workers Union of Ireland. This union, in turn, became part of SIPTU. T. Moriarty, *Work in Progress*, 16.

<sup>440</sup> L. Ryan, ‘Women Without Votes: The Political Strategies of the Irish Suffrage Movement,’ 122.

<sup>441</sup> R. Owens, *Smashing Times*, 76.

<sup>442</sup> L. O’Dowd, ‘Church, State and Women,’ 16-17.

<sup>443</sup> E. Mahon. ‘Ireland: A Private Patriarchy?,’ 1280-1282.

<sup>444</sup> Mary E. Daly, ‘Women, Work and Trade Unionism,’ In *Women in Irish Society: The Historical Dimension*, Margaret MacCurtain and Donncha Ó Corrán (eds.), (Dublin: Women’s Press, Arlen House, 1978), 71-81, 74.

<sup>445</sup> Ibid.



had the unenviable task of finding a way to progress toward equal pay after a long period of stagnation. In the Transportable Goods Industries, for example, the average female wage had remained at 53 per cent of the male rate between 1939 and 1960.<sup>446</sup>

The contemporary activities of the equal pay policy subsystem may be divided into three phases. The first phase, between 1968 and 1982, saw legislative initiatives lead to some significant advances in pay equity. This progress diminished between 1982 and 1987, a time of political destabilisation, social conservatism and a return to decentralised wage bargaining. Between 1987 and 1996, a return to centralised bargaining and a series of semi-corporatist agreements between Government, the ICTU and the FUE saw equity issues appear on the main industrial agenda again. Most importantly, after over a decade of stagnation, the ‘wage gap’ between men and women began diminishing from 1991. The influence of feminism within each of these three phases is assessed according to the indicators set out in Chapter 2.

## 1. LEGISLATING FOR EQUALITY: 1968-1982

### Anti-Discrimination (Pay) Act 1974

#### *The Commission on the Status of Women: Putting Equal Pay onto the Policy Agenda*

During the mid to late 1960s a number of ‘traditional feminist’ groups began to take up the task of improving the status of women. While the National Association of Widows demanded a better wage for working widows,<sup>447</sup> the only two Irish women’s groups to have international affiliations, the Irish Housewives’ Association and the (then) Business and Professional Women’s Club, began to organise in response to a UN Directive recommending the establishment of national commissions on the status of women.<sup>448</sup> Their first meeting, called in January 1968, resulted in an *ad hoc* Committee on the Status of Women. This group researched and presented a *Report on the Status of Women* to the Fianna Fáil Government. The major recommendation of this non-government *Report* was that an official, government-sponsored, Commission on the Status of Women be established to inquire into the position of women in Ireland. In March 1970, the governmental Commission on the Status of Women was established, with the following terms of reference:

To examine and report on the status of women in Irish society, to make recommendations on the steps necessary to ensure the participation of women on equal terms and conditions with men in the political, social,

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<sup>446</sup> Ibid., 77.

<sup>447</sup> C. Rose, *The Female Experience: The Story of the Woman Movement in Ireland*, 64.

<sup>448</sup> Y. Fitzsimons, ‘Women’s Interest Representation in the Republic of Ireland,’ 38.

cultural and economic life of the country and to indicate the implications generally - including the estimated cost - of such recommendations.<sup>449</sup>

The Commission itself was headed by senior civil servant, Dr. Thekla Beere, and contained representatives from the major interests in Irish society, including representatives from the ICTU, FUE and the Economic and Social Research Institute. Shortly after the Commission was established the Minister for Finance requested an interim report on equal pay. The August 1971 *Interim Report on Equal Pay* also included recommendations to abolish sex-differentiated and marriage differentiated pay scales in the public service, the 'marriage bar' and other restrictions on women's employment, and to introduce a system of (non-sexist) job evaluations.<sup>450</sup> The bulk of the Commission's *Final Report*, published in December 1972, also concentrated on equal pay and employment opportunities, but made recommendations on an additional wide variety of topics, including family planning, marriage counselling, education and cultural affairs, women's participation in politics and public life, the legal status of women, taxation and social welfare.<sup>451</sup> Both the *Interim* and *Final Reports* may be seen as manifestos setting out the details of women's place in the new Ireland. Both *Reports* recommended that equal pay be legislated for and fully implemented by 1977.<sup>452</sup>

The Commission's *Interim* and *Final Reports* were assembled through extensive consultation with over 100 national and international organizations, individuals, and government bodies.<sup>453</sup> Pragmatic alliances were made between the traditional, liberal, and radical feminist groups as equal pay became one of the defining demands of the emerging contemporary Irish feminist movement.<sup>454</sup> The impact of the *Reports* was immediate and significant. The 1972 Employer-Labour Conference agreed to an initial decrease of 17.5 per cent of female/male wage differentials on the basis of the *Interim Report* alone.<sup>455</sup> This was followed by a further reduction in female/male wage differentials, by 33.3 per cent, the following year.<sup>456</sup>

After the February 1973 elections, the new Fine Gael/Labour Party coalition government showed its support for these initiatives by passing the *Civil Service (Employment of Married Women) Act* 1973, thus removing the 'marriage bar' on

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<sup>449</sup> Commission on the Status of Women, *Interim Report on Equal Pay*, 7.

<sup>450</sup> Ibid., 91-94.

<sup>451</sup> Commission on the Status of Women, *Report to the Minister for Finance*, (Dublin: The Stationery Office, 1972), 227-240.

<sup>452</sup> Commission on the Status of Women, *Interim Report on Equal Pay*, 46, 53, 91-92; Commission on the Status of Women, *Report to the Minister for Finance*, 227-228.

<sup>453</sup> Commission on the Status of Women, *Report to Minister for Finance*, 30.

<sup>454</sup> Y. Galligan, 'The Legislative Process,' 36; A. Smyth, 'The Women's Movement in the Republic of Ireland 1970-1990,' 257.

<sup>455</sup> G. Hussey, *Ireland Today*, 362.

<sup>456</sup> Irish Congress of Trades Unions, *Twentieth Annual Report*, (Dublin: Brindley-Dollard, 1978), 173.

women in the public service.<sup>457</sup> Michael O'Leary, the new Minister for Labour, also established the Women's Representative Committee (WRC) in 1974. The Committee was to monitor progress towards the implementation of the Commission's *Final Report* and represent women's interests to government.<sup>458</sup> It contained a similar mix of interests to those represented on the earlier Commission as well as representation from the CSW.<sup>459</sup>

#### *The Dáil and Seanad Debates: Formulating Legislation*

The first equal pay Bill, entitled the *Conditions of Employment (Equal Pay) Bill*, was introduced on the 3 July 1973. It did not come up for a Second Stage reading (the stage at which most debate occurs) until 26 February 1974 at which time it was withdrawn and the *Anti-Discrimination (Pay) Bill* was introduced. Article 2(1) of the Bill guaranteed the entitlement to equal pay in the following terms:

Subject to this Act, it shall be a term of the contract under which a woman employed in any place that she shall be entitled to the same rate of remuneration as a man who is employed in that place by the same employer ... if both are employed on like work.<sup>460</sup>

The Bill was complaints-based in that it depended on claimants applying for equal pay on a case by case basis. These claims would be investigated by Equal Pay Officers, attached to the Labour Court, under the authority of the Equal Pay Commissioner. The recommendations of the Equal Pay Officers were not binding, however, and could be appealed to the Labour Court. Only the Court's decisions had power of statute. The Bill also contained a deadline for the implementation of equal pay: 31 December 1975, not 1977, as had been recommended in the *Reports*.

Dáil debates indicate that Fianna Fáil had been preparing equality legislation since 1972.<sup>461</sup> The Commission's *Final Report* was identified as a causal factor leading to legislation, in addition to an increase in the number of women in the workforce and congruence with other government initiatives (the removal of the marriage bar, improvement of facilities for deserted wives and the introduction of

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<sup>457</sup> Deirdre Curtin, *Irish Employment Equality Law*, (Dublin: Roundhall Press, 1989), 105.

<sup>458</sup> Women's Representative Committee, 'Women's Representative Committee,' *Administration* 32(1), (1975), 96.

<sup>459</sup> Ibid.

<sup>460</sup> Evelyn Landau, *The Rights of Working Women in the European Community*, (Luxembourg: Office for Official Publications of the European Community, 1985), 69.

<sup>461</sup> *Dáil Debates*, 26 February 1974. cc. 1484-1488. To what extent the European dimension inspired this activity is highly debatable. As yet there was no coordinated move for implementation of Article 119 on equal pay. The first of the Defrenne cases, which attempted to establish the binding nature of Article 119 EEC before the European Court of Justice, had been heard the previous year (Case 80/70 Defrenne I, (1971) ECR 445. The 1971 Defrenne case was unsuccessful, however, being judged to be outside the scope of the Article. Antione Jacobs and Hans Zeijen, *European Labour Law and Social Policy*, (Tilburg University Press, 1993), 85.

benefits and allowances for unmarried mothers).<sup>462</sup> The Minister also flagged further legislation to protect against unfair dismissals and to promote equal opportunity.<sup>463</sup> The requirements of the forthcoming EEC Directive, on equal pay for work of equal value was given as the reason for the relatively short closure date on implementation.<sup>464</sup> The Government was, however, accused of ‘pandering to the ICTU’ in this matter.<sup>465</sup> Finally concerns over the short-term cost to the public sector, in particular, were raised.<sup>466</sup>

The Bill was criticised for providing a large number of total exceptions as well as a defence for differential pay on ‘grounds other than sex’ and a call was made to consult with women’s organisations, such as the IWWU, in order to improve this wording.<sup>467</sup> During the Committee and Report Stages (which follow on from the Second Stage) the criticism of the Bill by the ICTU, employers organisations and ‘some women’s organisations’ was also noted.<sup>468</sup> Five amendments were carried during the Seanad debate.<sup>469</sup> The amended Bill was passed by the Dáil on 25 June and was signed into law in July 1974.<sup>470</sup>

The transcripts of the debates which occurred during the passage of this legislation strongly suggest that the political lobbying by feminist groups and the ICTU were the forces which spurred the Oireachtas into action. Rather than dragging its feet, the Fine Gael/Labour Coalition Government established the position of Equal Pay Commissioner before the legislation had even gone through official channels, indicating a real willingness to provide for wage equity.<sup>471</sup>

### *Implementing Equal Pay Policy*

Unfortunately the role of the Equal Pay Commissioner, as he perceived it, was not to promote equal pay but to award it only in circumstances where the work was of ‘proven equal value’.<sup>472</sup> Only three public recommendations were made by the Commissioner but it is clear that he was not, in policy implementation terms, a

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<sup>462</sup> *Dáil Debates*, 5 March 1974. cc. 2030-2031.

<sup>463</sup> *Ibid.* cc. 2032.

<sup>464</sup> The *Anti-Discrimination (Pay) Act*, 1974 preceded the 1975 European Council Directive on equal pay (75/117/EEC, OJ L 45/19). It was, however, introduced after the 1974 EEC Social Action Programme, which promised the adoption of a series of Directive to enforce equal pay and equal treatment of men and women (Council Resolution of 21 January, *Bulletin of the European Communities*, Supplement 2/74). The Irish Act was, therefore, drafted to fulfil the provisions likely to be included in the Directives. C. Hoskyns, ‘Give Us Equal Pay and We’ll Open Our Own Doors,’ 48.

<sup>465</sup> *Dáil Debates*, 5 March 1974. cc. 2132.

<sup>466</sup> *Dáil Debates*, 13 March 1974. cc. 230.

<sup>467</sup> *Dáil Debates*, 5 March 1974. cc. 2065.

<sup>468</sup> *Dáil Debates*, 21 May 1974. cc. 1804.

<sup>469</sup> *Seanad Debates*, 6 June 1974. cc. 512-528.

<sup>470</sup> *Dáil Debates*, 25 June 1974. cc. 1454-1465.

<sup>471</sup> Before the legislation was in place, the Commissioner operated under the clause 10 of the National Agreement of the 1972 Employer-Labour Conference.

<sup>472</sup> D. Curtin, *Irish Employment Equality Law*, 102.

‘committed and skilled official’.<sup>473</sup> The 1973 *Bakery and Flour Confectionery Report*, as the first case considered, was significant in setting guidelines for the implementation of equal pay. One hundred women working as confectioners claimed equal pay with a male colleague. This was denied on the basis that while some of the women may have been doing ‘like work’, it ‘did not warrant the application of an equal pay award to the entire industry’.<sup>474</sup> The second report issued by the Commissioner, in August 1974, did grant equal pay but the scope of the claim was limited to only six women.<sup>475</sup> The third report, produced in July 1975, affected a large number of women telephonists and rejected equal pay.<sup>476</sup> Although the *Conditions of Employment Act* 1936 prohibited women from participating in industrial work at night this was used as a justification for pay inequalities.<sup>477</sup>

Another obstacle to implementing equal pay legislation was a lack of support from ‘constituencies and critical sovereigns’. The FUE lobbied for an amendment deferring implementation of the Act and a derogation from Ireland’s EEC obligations and attempted to block implementation by refusing to participate in the Equal Pay Review Committee.<sup>478</sup> It was only in July 1975, however, when employer and union representatives within the Joint Industrial Council for the footwear industry agreed that discussions on equal pay would be postponed until June 1976, that a formal request was made to the Minister for Labour for a corresponding delay in implementing the Act.<sup>479</sup> The Minister referred the matter to the Labour Court in October 1975. The Irish Productivity Centre conducted a rapid evaluation of the possible effects of equal pay on the footwear industry and predicted the loss of 500-700 jobs.<sup>480</sup> In response, on 17 December 1975, the

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<sup>473</sup> One of the ‘six conditions for effective implementation’ discussed in Paul Sabatier and Daniel Mazmanian, ‘Policy Implementation’ In *Encyclopedia of Policy Studies*, Stuart Nagel (ed.), (New York: Marcel Dekker, 1983), 143-169.

<sup>474</sup> *Report of the Equal Pay Commissioner (under clause 10 of the National Agreement of 1972 of the Employer/Labour Conference) to the Labour Court and the Joint Industrial Council for the Bakery and Flour Confectionery Industry*, 24 September 1973, cited in D. Curtin, *Irish Employment Equality Law*, 101.

<sup>475</sup> *Report of the Equal Pay Commissioner (under clause 10 of the National Agreement the Employer/Labour Conference) to the Labour Court and the parties - An Foras Taluntais and the Irish Transport and General Workers Union*, 14 August 1974.

<sup>476</sup> *Report of the Equal Pay Commissioner (under clause 10 of the National Agreement the Employer/Labour Conference) to the Labour Court and the General Council of the Civil Service Conciliation and Arbitration Scheme on the question of whether women in their grade of Telephonists in the Department of Posts and Telegraphs are performing the same or similar jobs of equal value as men in their grade of male night telephonists in that Department*, July 1975.

<sup>477</sup> The ban on night work was not removed until the enforcement of the *Employment Equality (Employment of Women) Order* 1986 (SI No. 112 of 1987).

<sup>478</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report* (Dublin: Brindley-Dollard, 1976), 189.

<sup>479</sup> D. Curtin, *Irish Employment Equality Law*, 107.

<sup>480</sup> Ibid.

Taoiseach announced his intentions to amend the *Anti-Discrimination (Pay) Act*, in order to:

... provide exceptions where employers and trade unions agreed that it would result in redundancies and such agreement was certified by the Labour Court or where unions and employers disagreed as to the effects but an independent assessor found that payment would be a real risk to the employment or the viability of the enterprise.<sup>481</sup>

At the same time implementation was also deferred within the public sector. The Taoiseach also announced his Government's intention to apply to the EEC for a partial derogation from the Equal Pay Directive, in accordance with Article 135, of the Treaty of Accession.<sup>482</sup>

This had the effect of bringing the issue onto the public agenda again and a campaign of lobbying, negotiating, and strike action was undertaken by feminist groups and the ICTU.<sup>483</sup> Pressure was also put on the Government as, early in 1976, it was taken before the High Court by Senator Mary Robinson representing Civil Service employee (and feminist) Joy O'Farrell. As the proposed amendment had not yet been passed, and could not be until after the Dáil reassembled on 21 January, it was still illegal for any employer not to grant equal pay.<sup>484</sup> Senator Robinson successfully challenged the constitutionality of this 'attempt to deprive women of their rights'.<sup>485</sup>

In response, on 21 January 1976, the Government announced that it would implement equal pay in the public service but retain the marriage differential. Single women were to be paid as single men, married women to be paid as married men and widows paid as widowers, thus fulfilling the letter of the law.<sup>486</sup> This represented a cost of £2.5 million as opposed to £10 million, as married workers were paid considerably more and there were very few married women within the Civil Service, only three years after the marriage bar had been lifted.<sup>487</sup>

The ICTU issued a statement condemning this 'astonishing' decision and also forwarded a submission to the EEC opposing the Government's derogation application.<sup>488</sup> On 19 February 1976, the ICTU met with the EEC Task Force, which was to compile information on the cost of the implementation of equal pay

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<sup>481</sup> Ibid.

<sup>482</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report*, 185.

<sup>483</sup> J. Beale, *Women in Ireland*, 146.

<sup>484</sup> D. Curtin, *Irish Employment Equality Law*, 108.

<sup>485</sup> Marianne Heron, *Sheila Conroy: Fighting Spirit*, (Dublin: Attic Press, 1993), 140.

<sup>486</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report*, 185.

<sup>487</sup> D. Curtin, *Irish Employment Equality Law*, 109.

<sup>488</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report*, 185.

and the employment implications in individual industries and sectors.<sup>489</sup> The ICTU complaint, that the government was in breach of Article 119 of the Treaty of Rome and of Directive 75/117/EEC in respect to women employed in the public service, was forwarded to the EEC on 23 February 1976. The ICTU also took action to bring the matter to the ILO, with reference to Convention 100, concerning *Equal Remuneration for Men and Women Workers for Work of Equal Value*.<sup>490</sup>

Hilda Tweedy, of the Irish Housewives Association, went to Strasbourg to personally lobby the EEC against the Irish derogation.<sup>491</sup> Women's groups also continued to publicly lobby for full equal pay, mounting a 'massive' Equal Pay Campaign, targeting both the trade unions and the government.<sup>492</sup> Feminists mobilised enormous support for equal pay, gathering 36,000 signatures, within 10 days, to a petition on the issue.<sup>493</sup> IU, in particular, carried out a series of 'imaginative, witty and effective direct actions' during the campaign, keeping attention focused on the issue.<sup>494</sup>

While appreciating that the Government had taken this course of action in response to the worsening macro-economic position of Ireland as a whole, and, in particular, to the increasing problem of national debt, the Fianna Fáil Opposition consistently opposed any postponement of equal pay.<sup>495</sup> Cracks in the Coalition were also obvious. The Fine Gael leader, Garret Fitzgerald, suggested the Labour Party Minister was using the report from the footwear industry as 'an excuse' for introducing this amending Bill as even 'the Labour Court have reservations in their findings' and neither the WRC nor the ICTU had been consulted, only the employers' organisations.<sup>496</sup>

The legislation containing the proposed amendments to limit equal pay was introduced by the Minister for Labour, Michael O'Leary, for the Second Stage debate on 11 February 1976.<sup>497</sup> That same day, the EEC met with the Irish Minister for Foreign Affairs, to receive his request for a derogation.<sup>498</sup> In April, the EEC formally rejected the Government's application, on the basis that the Government had not supplied sufficient detail of either the sectors which were in

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<sup>489</sup> Ibid., 190.

<sup>490</sup> Ibid., 184.

<sup>491</sup> Evelyn Owens, 'Interview,' *Equality News* 5 (Winter 1995/96), 8-9, 8.

<sup>492</sup> C. Hoskyns, 'Give Us Equal Pay and We'll Open Our Own Doors,' 49; J. Beale, *Women in Ireland*, 146; A. Smyth, 'The Contemporary Women's Movement in the Republic of Ireland,' 339.

<sup>493</sup> Ibid.

<sup>494</sup> A. Smyth, 'The Women's Movement in the Republic of Ireland 1970-1990,' 262.

<sup>495</sup> *Dáil Debates*, 11 March 1975. cc. 1833-1834; 24 April 1975. cc. 464-468; 8 May 1975. cc. 1558-1560; 8 July 1975. cc. 862-863; 9 December 1975. cc. 1079-1080.

<sup>496</sup> *Dáil Debates*, 11 February 1976. cc. 1644-1645.

<sup>497</sup> Ibid., cc. 1644-1650.

<sup>498</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report*, 189.

severe crisis or the financial difficulties experienced in the public sector.<sup>499</sup> On May 5 the Minister for Labour informed the Dáil that the EEC had rejected their request.<sup>500</sup> While it may be argued that domestic pressures were, at least initially, more significant in placing equality on the agenda, mobilising support for new policies, and formulating legislation, it must be said that the interpretation and implementation of the resulting legislation owed its strength to Ireland's membership in the (then) EEC.<sup>501</sup>

The onset of the 1977 elections saw a change of heart by the Fine Gael-Labour Party Coalition and an attempt to 'woo the women's vote'.<sup>502</sup> In addition to the last minute passage of the *Employment Equality Bill* on 13 June, two days before the election, the Minister for the Public Service (and Minister for Finance), Richie Ryan, announced that arrangements were being made for back-pay to 1 January 1977.<sup>503</sup> The ICTU continued to press for full equal pay, with no marriage differential, and full back-pay to 31 December 1975.<sup>504</sup> When the Fine Gael/Labour Party Coalition lost government, many ICTU members believed that their poor record on equal pay was a significant factor in their removal from office.<sup>505</sup> The ICTU continued to pursue the issue of back-pay, both domestically and internationally, throughout 1977 and 1978. Eventually the Public Services Committee agreed to the ICTU demands, on the condition that the action taken by the ICTU on this matter in the High Court would be dropped, and the ICTU would also withdraw its complaint to the EEC and ILO.<sup>506</sup> In any case neither of these organisations had shown any inclination towards intervention.<sup>507</sup>

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<sup>499</sup> *Commission Decision of 14 April 1976 rejecting the application by Ireland for authorisation to derogate, as a protective measure pursuant to Article 135 of the Act of Accession, from the rules of equal pay between men and women* COM(76)657 final.

<sup>500</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report*, 191.

<sup>501</sup> Ita Mangan, 'The Influence of EC Membership on Irish Social Policy and Social Services,' *Social Europe: EC Social Policy and Ireland*, Séamus Ó Cinnéide (ed.), (Dublin: Institute of European Affairs, 1993), 60-81, 72.

<sup>502</sup> Irish Times, 15 June 1977, cited in A. Smyth, 'Women and Power in Ireland: Problems, Progress, Practice,' 257.

<sup>503</sup> Irish Congress of Trades Unions, *Twentieth Annual Report*, 173.

<sup>504</sup> *Ibid.*, 174.

<sup>505</sup> Irish Congress of Trades Unions, *Nineteenth Annual Report*, (Dublin: Brindley-Dollard, 1977), 412, 416.

<sup>506</sup> On 4 June 1977 the ICTU received a reply from the EEC Director-General of Social Affairs stating their complaint was being investigated and was awaiting the results of a case before the European Court of Justice. On 23 November the ICTU wrote again expressing their concern about the delay and their disappointment at the inaction of the EEC. Irish Congress of Trades Unions, *Nineteenth Annual Report*, 163-164.

<sup>507</sup> This was consistent with the minimalist approach by the EEC on the issue. Three EEC Directives were eventually adopted on the issue. Yet none of these had been fully implemented in any Member State by 1978. Proceedings against individual Member States were not instigated until 1980. Tim Callan and Anne Wren, *Male-Female Wage Differentials: Analysis and Policy Issues*, (Dublin: Economic and Social Research Institute, 1994), 72.



Weaknesses in the Act itself also formed an on-going obstacle to equal pay. As a complaints-based procedure the burden of proof was placed on the worker, not on the employer, who could justify wage differentials for 'reasons other than sex'.<sup>508</sup> This lack of 'clear and consistent objectives',<sup>509</sup> within the Act, meant that many women, working in the lowest paid sectors of the workforce, feared 'rocking the boat' when the process did not guarantee any improvements as a result of taking out a claim.<sup>510</sup> Equal pay cases were also to be decided on the basis of comparability between work done by a woman and work done, or formerly done, by a man. The Act was, therefore, irrelevant to sex-segregated areas of employment. This basic flaw, showing a lack of 'adequate underlying causal theory',<sup>511</sup> limited pay equity to a fraction of women workers. One of the unintended effects of the Act was to polarise the female workforce: women in the larger, union-organised, mixed-sex employments gained improvements in wages and conditions while women in small, unorganised, single-sex employments were either unaffected or unsuccessful under the Act.<sup>512</sup> Union representation was no guarantee of equal pay, however, and was used to defend male privilege in some cases.<sup>513</sup> The Labour Court accepted the 'threat of industrial action' as a valid reason for withholding pay equity.<sup>514</sup>

A very technical interpretation of the Act also posed a barrier to the implementation of equal pay. Questions were raised as to whether the claimant was 'employed' under the Act,<sup>515</sup> whether it was the 'same place',<sup>516</sup> the 'same

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<sup>508</sup> This included age and length of service, more onerous attendance liability, extra qualifications and grading structure. The Labour Court, *Thirty-Fifth Annual Report*, (Dublin: The Stationery Office, 1981), 153-158. Other grounds accepted for the continuance of unequal pay included 'compassion' (usually in regard to ill health) in *Nitrigin Éireann Teoranta v ITGWU* (EP2/1977: DEP4/1977), *Central Bank of Ireland v One Female Cleaner* (EP48/80) and *Coras Iompair Éireann v Two Female Waiting Room Attendants* (EP46/81). that of a 'personal' rate for that individual, or the capacity of a particular individual to perform extra duties. 'Personal' rates were accepted in *Irish Dunlop Ltd v Cronin* (EP39/1978: DEP4/1979), *Boart Hardmetals Europe Ltd v Three Women Canteen Assistants* (EP64/80), *Data Products (Dublin) Memories Ltd v Simpson* (EP20/1978): DEP1/1979), *Hanson Ltd v McLoughlin* (EP45/1979). Capacity to perform extra duties was accepted in *Nitrigin Éireann Teoranta v Byrne* (EP49/1979) and *Coombe Lying-In Hospital v Mrs. Winifred Bracken* (EP14/80).

<sup>509</sup> 'Clarity and consistency of objectives' is one of the 'six conditions for effective implementation'. The others are: an adequate underlying causal theory; the existence of a sympathetic agency with the ability to apply sanctions and incentives; committed and skilled officials; support from constituency groups and critical sovereigns and; the absence of systemic shifts undermining the policy. Paul Sabatier and Daniel Mazmanian, 'Policy Implementation' In *Encyclopedia of Policy Studies*, Stuart Nagel (ed.), (New York: Marcel Dekker, 1983), 143-169.

<sup>510</sup> Rosheen Callender, 'Women and Work: The Appearance and Reality of Change,' 19.

<sup>511</sup> See P. Sabatier and D. Mazmanian, 'Policy Implementation,' 143-169.

<sup>512</sup> Padraigín Ní Mhurchú, 'Women at Work', *Industrial Relations in Practice*, H. M. Pollack (ed.), (Dublin: O'Brien Press, 1981), 36-54, 44.

<sup>513</sup> *Brooks Thomas Ltd v ASTMS* (EP6/1977: DEP7/1977).

<sup>514</sup> The Labour Court, *Thirty-Fifth Annual Report*, 152.

<sup>515</sup> In the *Department of Public Service v Robinson* (EP36/1978: DEP7/1979) it was determined that Senator Robinson's election to the Senate did constitute employment under

employer',<sup>517</sup> or if she was receiving 'remuneration'.<sup>518</sup> The meaning of 'like work' is a case in point. There are three meanings of 'like work' under Section 3 of the *Anti-discrimination (Pay) Act*. Section 3(a) covers 'exactly the same work', 3(b) covering 'similar work' and Section 3(c), 'work of equal value'. While 3(a) and 3(b) have also been questioned,<sup>519</sup> the most controversial subsection is 3(c). The Labour Court has supported a comparison between 'the demands of physical work with the concentration required of particular skills'.<sup>520</sup> Yet Section 3(c) of the 1974 Act is particularly vulnerable to 'subjective assessment'.<sup>521</sup> This is especially so as the Act does not incorporate any reference to job evaluation schemes.<sup>522</sup> A counter-intuitive understanding of the concept of 'like work' was established fairly early on, for example, when in 1978 a woman who had been involved in the claim for equal pay was promoted and, therefore, lost her entitlement.<sup>523</sup> In its determination the Labour Court considered that the Act does not cover situations where the claimant is doing 'more or better work'.<sup>524</sup> This decision acted in opposition to the spirit of the Act but illustrates the sort of technical, legalistic, types of interpretation common amongst the relatively conservative institutions of industrial relations. In this sense, there was no 'sympathetic agency with the ability to apply sanctions and incentives to induce compliance' in the implementation of equal pay policy.<sup>525</sup>

This particular factor was exacerbated as private employers continued to refer clearly-established claims to the Equal Pay Officer, then appeal the decisions, which meant resubmitting the whole claim to the Labour Court. At the same time the Labour Court itself was limited. It could not amend Joint Industrial Council or

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the Act, but a solicitor, who was a partner in a firm was not covered. *Moore & Co. v Flanagan* (EP13/1978, DEP12/1978).

- 516 In *PMPA v Three Women Insurance Officials*, it was determined that staff salaries which were centrally determined by a national company meant that all employees could be compared, even if not in the same town.
- 517 In *Clonskeagh Hospital v Two Telephonists* (EP40/1979) the claimants were successful in comparing with a male telephonist in another hospital as the Equality Officer accepted that both hospitals were administered by the Eastern Health Board.
- 518 Positive decisions were reached in *ICE v IT&GWU* (DEP4/1987), *Metropole Hotel v Seven Female Waitresses* (EP19/1986, DEP4/1987), *Lissadell Towels Ltd. v IT&GWU* (EP10/1986, DEP3/1989).
- 519 Successful cases under each Section include 3(a): *Department of Posts and Telegraphs v Kennefick* (EP9/1979, DEP2/1980) and 3(b): *Toyota Motors Distributors Ireland Ltd. v Kavanagh* (EP17/1985, DEP1/1986) and *Dowdall O'Mahony & Co. Ltd. v 9 Female Employees* (EP2/1987, DEP6/1987).
- 520 The Labour Court, *Thirty-Fifth Annual Report*, 145.
- 521 Caroline Fennell, 'Irish Employment Equality Law: Book Review,' *Irish Law Times* (February), 54-57, 56.
- 522 *Ibid.*, 146.
- 523 *Department of Agriculture v ITGWU* (EP28/1978: DEP6/1979).
- 524 The Labour Court, *Thirty-Fifth Annual Report*, 150.
- 525 See P. Sabatier and D. Mazmanian, 'Policy Implementation,' 143-169.

Employer-Labour Conference established rates of pay.<sup>526</sup> In 1977 the Employer-Labour Conference wage agreement even contained an Article 16 providing that ‘parties agree that the matter of equal pay will not be pressed by means of industrial action’.<sup>527</sup> By 1981, due to a continuing ‘absence of effective sanctions and enforcement machinery’, it could be said that the Act had ‘not had an overly strong impact’.<sup>528</sup>

While the formulation, legislative passage and implementation of the *Anti-Discrimination (Pay) Act* 1974 was a massive step forward for the position of women, it was a deeply flawed piece of legislation. Some of these characteristics were to be rectified, however, in the *Employment Equality Act* 1977.

## **The Employment Equality Act 1977**

### *Putting the Issue onto the Agenda*

Many of the steps in enacting the second major piece of equality legislation occurred during the conflict over implementing the *Anti-Discrimination (Pay) Act* 1974. The original *Anti-Discrimination (Employment) Bill* was published on 17 October 1975. Although introduced before the *Unfair Dismissals Bill*, 1977 it eventually became the third in a series of legislation for equity.<sup>529</sup> Feminist groups and the ICTU were approached by the government for their comments at this time, beginning a process that was to continue as the Bill underwent the usual Stages, in both Houses of the Oireachtas.<sup>530</sup> The Act’s passage through the Oireachtas was just before a general election suggesting that the Coalition Government believed this would be a popular ‘vote-winner’ for them.

### *The Dáil and Seanad Debates: Formulating Legislation*

The *Anti-Discrimination (Employment) Bill* was introduced to the Dáil as prohibiting direct and indirect discrimination against an employee, or prospective employee, on the grounds of sex or marital status, in recruitment for employment or in training, in conditions of employment or in the provision of opportunities for promotion. While the Second Stage was originally scheduled for 11 November 1975,<sup>531</sup> it was over a year later that it was finally debated, on 1 December 1976.<sup>532</sup> The Minister for Labour, Michael O’Leary, presented the Bill as both preventing discrimination and assisting women in gaining equal

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<sup>526</sup> Irish Congress of Trades Unions, *Nineteenth Annual Report*, 303.

<sup>527</sup> *Seanad Debates*, 25 May 1977. cc. 1104.

<sup>528</sup> P. Ní Mhurchú, ‘Women at Work,’ 48-49.

<sup>529</sup> The *Unfair Dismissals Act* 1976 was signed into law on 1 April 1977 while the *Anti-Discrimination (Employment) Bill* was still in the Dáil Committee Stage.

<sup>530</sup> Irish Congress of Trades Unions, *Eighteenth Annual Report*, 129.

<sup>531</sup> *Dáil Debates*, 9 December 1975. cc. 1079-1080.

<sup>532</sup> *Dáil Debates*, 2 December 1976. cc. 1214.

opportunities.<sup>533</sup> After having passed the Second Stage, the Bill was scheduled for the Committee Stage, on 15 December 1976.<sup>534</sup>

The Bill was not, in fact, considered until 9 March 1977 and spent over a month in Committee before finally being passed on 27 April 1977. This was largely due to the many amendments presented by the Minister for Labour, including the introduction of a proposed implementing body, the Employment Equality Agency.<sup>535</sup> Significantly, the definition of ‘like work’ within the Bill was interpreted more widely than in the previous, 1974 Act.<sup>536</sup> The Bill contained many exemptions, however, including all shiftwork, the Garda Síochána, the Prison Service, the Local Appointments Commission and the Civil Service Commission.<sup>537</sup> An unsuccessful and, in retrospect, somewhat ridiculous attempt to exempt lighthouses was also made.<sup>538</sup> Finally, even the name of the Bill was amended, to the *Employment Equality Act*.<sup>539</sup> The Report Stage was ordered, for 10 May 1977, but this again entailed several meetings to examine a further 26 amendments.<sup>540</sup> When it was put to the Dáil in its Final Stage, it was suggested that ‘(n)o Bill in this House has ever changed so much from its introduction to its Final Stage as has this Bill’.<sup>541</sup> The timing of the legislation, on the eve of a general election, was attributed to ‘the pressure put on the Minister by various women’s organisations’,<sup>542</sup> and ‘suggested a Government desperate to woo the woman’s vote’.<sup>543</sup> The Bill was passed and sent up to the Seanad on 25 May 1977.

In a situation where the Dáil was about to be dissolved, ‘even the smallest amendment’ to the Bill would have prevented it from being enacted and members of the Seanad expressed a great deal of criticism as to the initial long delay, leading to this ‘eleventh hour’ rush.<sup>544</sup> Senator Evelyn Owens pointed out, however, that at least part of the delay was through the ‘commendable practice’ of consulting with women’s organisations.<sup>545</sup> Senator Lyons spoke against the Bill,

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<sup>533</sup> *Dáil Debates*, 1 December 1976. cc. 1023-1029.

<sup>534</sup> *Dáil Debates*, 2 December 1976. cc. 1215.

<sup>535</sup> *Dáil Debates*, 9 March 1977. cc. 1121-1140 and 1144-1149; 24 March 1977. cc. 349-356, 359-361 and 402; 27 April 1977. cc. 1657-1676 and 1678-1682.

<sup>536</sup> *Dáil Debates*, 24 March 1977. cc. 356-359.

<sup>537</sup> *Dáil Debates*, 27 April 1977. cc. 1564-1569; 1617-1623.

<sup>538</sup> *Ibid.* cc. 1571-1576 and 1613-1616.

<sup>539</sup> *Ibid.* cc. 1677-1678.

<sup>540</sup> *Dáil Debates*, 18 May 1977. cc. 1050-1051.

<sup>541</sup> *Ibid.* cc. 1055.

<sup>542</sup> *Ibid.* cc. 1056.

<sup>543</sup> *Ibid.* cc. 1056.

<sup>544</sup> *Seanad Debates*, 25 May 1977. cc. 1100.

<sup>545</sup> *Ibid.* cc. 1089.

from a Catholic perspective, the only member of the Oireachtas to do so.<sup>546</sup> Due to the time constraints, the Bill was put through the Committee, Report, and Final Stages in one day, without any amendments.<sup>547</sup>

Dáil and Seanad records suggest that, like the *Anti-Discrimination (Pay) Act* 1974, the passage of the *Employment Equality Act* 1977 was largely driven by domestic pressure; pressure generated by the election cycle, the feminist movement, women working within institutions such as the ICTU and the government itself, and their allies.<sup>548</sup> While the EEC Directive 76/207/EEC, on equal treatment had been adopted the year before the Irish legislation was passed, the ‘European dimension’ was rarely mentioned in the debate.

#### *Implementation of Employment Equality Under the Act*

The *Employment Equality Act* 1977 emerged as a less flawed piece of legislation than the *Anti-Discrimination (Pay) Act* 1974, showing both an ‘adequate underlying causal theory’ and ‘clear and consistent objectives’.<sup>549</sup> This was partly as a result of the extensive process of consultation with women’s groups, and partly through the experience gained through the implementation of the 1974 Act. Discrimination in overtime, safety, redundancy, dismissal, the terms and conditions of workplace agreements, advertising, application forms, interviews, age limits for positions, and vocational training (beyond the statutory school leaving age of 16 years) have been successfully challenged under the Act.<sup>550</sup> Cases involving discrimination in dress, mobility and transfer, and seniority have been less successful.<sup>551</sup>

The Act has been extended, by interpretation, in three important areas. There was an initial view that discrimination against pregnant women was not covered by the Act since there was no male equivalent.<sup>552</sup> This was rejected in 1991 by an Equality Officer who held that the requirement of not being pregnant was one with which 100 per cent of the male sex could comply and affected a substantially

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<sup>546</sup> Ibid. cc. 1097-1098.

<sup>547</sup> Ibid. cc. 1117.

<sup>548</sup> Evelyn Mahon traces specific connections between the early autonomous feminist movement and feminist organisation within trade unions as the ‘individuals involved in pressure groups are likely to active in a number of campaigns simultaneously’. Evelyn Mahon, ‘Women’s Rights and Catholicism in Ireland,’ *New Left Review* 166 (November-December 1987), 53-78, 61.

<sup>549</sup> See P. Sabatier and D. Mazmanian, ‘Policy Implementation,’ 143-169.

<sup>550</sup> In order: *Cork Corporation v Cahill and Others* (EE17/1984), *Tayto Ltd. v O’Keefe and Others* (EE13/1985), *Michael O’Neill and Sons Ltd. v Two Female Employees* (DEE1/1988), *Irish TV Rentals v Brady* (EE5/1985, DEE8/1985), *The Employment Equality Agency v Packard Electric Ireland Ltd., the IT&GWU, and the AT&GWU* (EE14/1985), *Cork Examiner Publications Ltd., Fitsimons Flynn & Co., An Employer v The Employment Equality Agency* (EE13/1990), *Barrington v The Medical Council* (EE9/1988), *Chaney v University College Dublin* (EE15/1983), *North Western Health Board v Martyn* (1987) IR 565 and *UCD v Corrigan* (EE13/1979, DEE6/1980).

<sup>551</sup> In order: *Norwich Union Insurance v 131 Female Clerical Staff* (EE19/1981), *NIHE v Bolton* (EE7/1984), and *Aer Lingus Teo v Labour Court and Ors.* (1990) ELR 113.

<sup>552</sup> *Long v Power Supermarkets Ltd T/A Quinnsworth* (EE 5/1988).

higher proportion of women than men.<sup>553</sup> That this was discrimination against pregnant women under Section 2 (c) of the Act was upheld by the Labour Court in 1993.<sup>554</sup> Sexual harassment was not specifically mentioned in the Act either, although a number of cases have been won on this issue since the first test case, in 1985.<sup>555</sup> Sexual harassment has since been considered to be a form of direct discrimination.<sup>556</sup> Finally, although positive (affirmative) action is not specifically covered in the Act either, Section 16 permits special (favourable) treatment of women in connection with pregnancy and childbirth, and Section 15 allows for some affirmative action in training women (or men) for non-traditional work.<sup>557</sup>

One of the reasons for the relatively favourable interpretation of the Act has been the active advocacy of the Employment Equality Agency (EEA), a set of 'committed and skilled officials', in policy terms. From 1 October 1977 the EEA was to oversee the administration of both the 1974 and 1977 Acts by providing general information; representing individuals before an Equality Officer of the Labour Relations Commission or before the Labour Court ('casework'); undertaking in-depth research into gender equality issues; and providing policy information to the relevant Minister.<sup>558</sup> The EEA has also had a role in educating other participants in the Irish industrial relations system on the desirability of pay equity.<sup>559</sup> In the period since its inception the 'casework' function has taken up the majority of the EEA's resources: representing individual, non-unionised women.<sup>560</sup> The EEA has been the subject of a great deal of criticism from the ICTU, especially the Women's Conferences, which have looked to the EEA to take on a more pro-active role in policy formation.<sup>561</sup> While the EEA has undertaken numerous reviews of both Acts for successive Governments during the last fifteen years, until 1996 Ministers have consistently failed to act on these numerous and detailed Reports.<sup>562</sup> The proposed *Employment Equality Bill*,

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<sup>553</sup> *Long v Power Supermarkets Ltd T/A Quinnsworth* (EE15/1991).

<sup>554</sup> *Long v Power Supermarkets Ltd T/A Quinnsworth* (DEE2/93).

<sup>555</sup> *A Worker v A Garage Proprietor* (EEO2/1985).

<sup>556</sup> Frances Meenan, *Working Within the Law: a Practical Guide for Employers and Employees*, (Dublin: Employment Equality Agency, 1993), 129.

<sup>557</sup> D. Curtin, *Irish Employment Equality Law*, 332.

<sup>558</sup> Employment Equality Agency, *1993 Annual Report*, (Dublin: Genprint, 1994), 19.

<sup>559</sup> R. Callender, 'Women and Work: The Appearance and Reality of Change,' 20.

<sup>560</sup> Kathleen Connolly, *Interview by the Author*, 21 June, 1995. Employment Equality Agency, Dublin, Ireland.

<sup>561</sup> Irish Congress of Trade Unions, *Report from the Women's Conference*, 15-16 February 1985, 3-4; Irish Congress of Trade Unions, *Report of Executive Council*, Women's Conference, 15-16 February 1985, 6; Irish Congress of Trade Unions: Women's Committee (Republic), *Report to the Women's Conference*, Malahide, Co. Dublin, 21-22 February 1986, 5; Irish Congress of Trade Unions, *Final Agenda: Women's Conference*, Malahide, Co. Dublin, 27-28 February 1987, 2, 10-11; Irish Congress of Trade Unions: Women's Committee (Republic), *Report to Women's Conference*, 1988, 26-27 February 1988, 6.

<sup>562</sup> See Irish Congress of Trades Unions, *Twenty-First Annual Report*, 153; Employment Equality Agency, *1989 Annual Report*, (Dublin: Genprint, 1990), 21; Employment Equality

published in July 1996, repeals the Acts of 1974 and 1977 and re-enacts them with substantial improvements.<sup>563</sup>

### Supplementary Initiatives

While the demand for maternity leave had been articulated by feminists in the early 1970s<sup>564</sup> until the removal of the ‘marriage bar’ in the Civil Service (a precedent followed by private firms) only 6 per cent of the labour force consisted of married women.<sup>565</sup> By 1980 this had increased to 15 per cent of the total labour force.<sup>566</sup> While nominally protected from dismissal as a result of pregnancy, under the *Unfair Dismissals Act 1977*,<sup>567</sup> without provisions to ensure maternity leave and reinstatement Irishwomen continued to be hampered by a ‘pregnancy bar’ in employment.<sup>568</sup> ICTU had also been pressing the government on the issue of paid maternity leave for a number of years but it was not until the second *National Understanding* was negotiated in 1980 that a Maternity Allowance Scheme was instituted.<sup>569</sup> The government, not the employer, was to provide a maternity allowance of 80 per cent of normal salary out of social insurance benefits. The *Social Welfare (Amendment) Act 1981* and the *Maternity Protection of Employees Act 1981* were introduced ‘largely because’ of pressure from the ICTU, the CSW, and the EEA and ‘last but by no means least, the fact that every other EEC country has already such legislation’.<sup>570</sup> The Bills were passed in April 1981 and it was, perhaps, no coincidence that the Fianna Fáil government went on to announce that an election was to be held the following month.

Until its revision in the 1980s, the income tax system also discriminated against the participation of married women in waged work by considering her income as the income of her husband. When added together, and taxed according to the

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Agency, *1991 Annual Report*, (Dublin: Genprint, 1992), 29; Employment Equality Agency, *1992 Annual Report*, (Dublin: Genprint, 1993), 16; Employment Equality Agency, *1993 Annual Report*, 21.

<sup>563</sup> The *Employment Equality Bill* did not fulfil its apparent promise, however, as it was struck down as being unconstitutional in May 1997.

<sup>564</sup> Commission on the Status of Women, *Interim Report on Equal Pay*, 88; Commission on the Status of Women, *Report to the Minister for Finance*, 111-116.

<sup>565</sup> E. Mahon, ‘Women’s Rights and Catholicism in Ireland,’ 56.

<sup>566</sup> Jean Pyle, ‘Female Employment and Export-led Development in Ireland: Labour Market Impact of State-reinforced Gender Inequality in the Household,’ *Women, Employment and the Family in the International Division of Labour*, S. Stichter and J. Parport (eds.) (London: Macmillan, 1987), 137-160, 144.

<sup>567</sup> Ailbhe Smyth, *Women’s Rights in Ireland: A Practical Guide*, (Dublin: Irish Council for Civil Liberties/Ward River Press), 1983, 38-39.

<sup>568</sup> J. Pyle, *The State and Women in the Economy*, 88.

<sup>569</sup> Irish Congress of Trades Unions, *Nineteenth Annual Report*, 165; Irish Congress of Trades Unions, *Twentieth Annual Report*, 177; Irish Congress of Trades Unions, *Twenty-Second Annual Report*, 114-115.

<sup>570</sup> *Seanad Debates*, 11 March 1981. cc. 1064-1091.

schedule for marrieds, this rapidly moved the couple into higher tax brackets.<sup>571</sup> 'Pay As You Earn' (PAYE) taxation was increased throughout the 1970s leading to the 'largest popular demonstrations against Government policy in the history of the State' in 1979.<sup>572</sup> The tax burden continued to grow, however, and between 1980 and 1984 personal taxes (income tax, health and social insurance contributions, and a number of levies) doubled. Between 1980 and 1990 they more than tripled.<sup>573</sup> While women's proportion of this was challenged in the 1982 *Murphy v the Attorney General* case, which found that sections of the *Income Tax Act 1967* were unconstitutional, higher tax rates remained a 'significant disincentive' for the participation of women in the labour market.<sup>574</sup>

## Policy Impacts

The statistics collected by the Central Statistics Office (CSO) are widely held to be inadequate for monitoring women's pay equity.<sup>575</sup> By the mid-1990s the industrial sector (manufacturing, mining, transportable goods industries and utilities) employed only one fifth of female employees and one third of all employees.<sup>576</sup> Yet data on these earnings are the only sort disaggregated by sex by the CSO. **Figure 4.1**, below, illustrates the significant gains that were made during the 1970s, through the average weekly earnings for full-time adults, in industry only.

While it is difficult to link any particular increase in pay equity to a particular legislation, or wage agreement,<sup>577</sup> it can be seen that the 1970s witnessed a steady reduction in male/female differentials.

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<sup>571</sup> J. Pyle, *The State and Women in the Economy*, 96.

<sup>572</sup> W. Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' 163.

<sup>573</sup> P. Tansey, *Making the Irish Labour Market Work*, 23.

<sup>574</sup> R. Callender, 'Women and Work: The Appearance and Reality of Change,' 34.

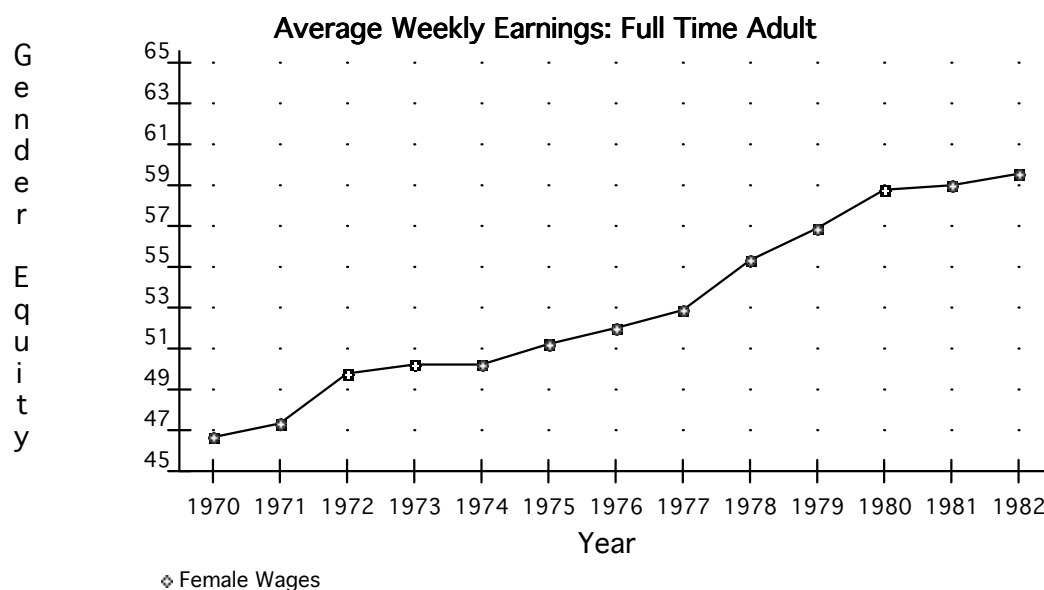
<sup>575</sup> See Steven Sandell, *Monitoring the Labour Market Progress of Women in Ireland: Statistics Needed for Employment Equality*, (Dublin: Employment Equality Agency, 1980); Government of Ireland, *United Nations Decade for Women: Equality, Development and Peace (1976-1985), National Report of Ireland*, (Dublin: Minister of State for Women's Affairs, 1985), 5, 38; Employment Equality Agency, *Women in Figures*, (Dublin: Employment Equality Agency, 1995), 13.

<sup>576</sup> Joe Durkin, *Women in the Labour Force*, (Dublin: Employment Equality Agency, 1995), 1.

<sup>577</sup> Organisation for Economic Co-operation and Development, 'Women's Activity, Employment and Earnings: A Review of Recent Developments,' *Employment Outlook*, (Paris: OECD, September 1988), 129-172, 170.



**FIGURE 4.1. Irish Female/Male Earnings (Gender Equity) Industrial Sector Only: 1970-1982**



Source: Central Statistics Office, *Irish Statistical Bulletin*, (Various Years).

### **The Influence of Feminism? 1968-1982 Assessed**

By using the indicators developed in Chapter 2 it is possible to trace the considerable influence that feminism had on this phase of the Irish equal pay policy subsystem. The first of these indicators, the presence and strength of feminist coalitions within the policy subsystem, was strongly evident as, between 1968-1982, the contemporary feminist movement mobilised around the issue of equal pay. With all the energy and visibility of an emerging NSM, they formed a vocal coalition, utilising the skills and strategies of traditional, liberal, socialist and radical feminists.

The second indicator of the influence of feminism, the spread of acceptance of some of the principal tenets of feminism within the policy discourse, is less evident. It is the contest over the definition of equal pay which stands out. While the union peak body, the ICTU, treated pay equity as a redistributive policy and showed considerable commitment to its achievement, individual unions and union representatives treated it as a regulatory issue, to be negotiated as a sectional interest. Governments also varied in their attitudes. Only the employers' groups and the feminist groups were consistent in their opposition to, or support of, the issue. This indicates that there were some firm pro- and anti- equal pay coalitions within the subsystem. This is borne out by an examination of 'benchmark' equal pay cases between 1976 and 1981 (listed in **Appendix 5**).

At the same time, however, the response by political parties to feminist issues during elections indicated that equality legislation was seen as an electorally popular move. This indicates that some change within the accepted policy discourse had occurred, as does the passage of policy which would fulfil feminist goals, the third indicator of the influence of feminism on public policy. Feminist influence clearly placed demands for pay equity into the political system through the election cycle: two of the three major pieces of equality legislation were passed just before an election. The progress toward achieving feminist goals, the last of the indicators, was evident in the real reduction in female/male wage relativities.

Within the economic system, the strength of feminism within the ICTU ensured that the union movement as a whole would defend women's interests, even if, within individual unions, these interests were being opposed. Like the political parties (particularly Fine Gael), the ICTU was suffering internal divisions as it grappled with the divisions between the 'old' and the 'new' Irelands. An inability to effect definitive structural change within the industrial relations system was a major limitation in this first phase of pay equity. This was compensated for by international factors, membership of the EEC in particular, which were vital to the implementation of equality legislation.

## **2. EQUALITY STALLED: 1982-1991**

### **Political Instability, Economic Crisis**

1981-1982 saw three general elections and three changes of government within an 18 month period. This political instability led to the collapse of the collective bargaining structures which had been in place since 1970 and which had, at times, assisted in implementing equal pay through the Employer-Labour Conferences.<sup>578</sup> At this time wage levels underwent a 'significant dispersion' in both the levels and timing of rises.<sup>579</sup> This resulted in a significant redistribution of wealth from employees to employers.<sup>580</sup> Between 1980-1987 living standards declined by 7-11 per cent.<sup>581</sup>

With inflation running at 20 per cent, marginal and low-paid workers were most disadvantaged, and women's wages suffered disproportionately.<sup>582</sup> While women made up only 23 per cent of full-time workers they made up 56 per cent of those full-time workers whose earnings were considered 'low pay'.<sup>583</sup> Part-time workers also suffered from low pay. By the 1990s, 70 per cent of all part-time

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<sup>578</sup> B. Wilkinson, 'Corporatism, Industrial Relations and Labour Law in Ireland,' 103.

<sup>579</sup> W. Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' 174.

<sup>580</sup> R. O'Donnell, *Ireland and Europe: Challenges For a New Century*, 76.

<sup>581</sup> W. Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' 191.

<sup>582</sup> G. McMahon, *Ireland Out of Step*, 5.

<sup>583</sup> Irish Congress of Trade Unions, *Mainstreaming Equality Programme 1993-98*, (Dublin: ICTU, 1992), 3.

workers were low paid, and over 80 per cent of part-time workers were women.<sup>584</sup> By 1991, it was estimated that Ireland had the highest proportionate level of low pay in the (then) European Community (EC).<sup>585</sup> It also had the least proportionate minimum wage protection in the EC.<sup>586</sup> Under the Joint Labour Committee system, which only covered five per cent of the employed labour force in 1989, minimum wages could be set for particular occupations but no national minimum wage was set in spite of continued ICTU pressure.<sup>587</sup>

This did not give rise to an increased industrial militancy, quite the opposite, strike activity declined to almost half that of the previous five year period.<sup>588</sup> This can be attributed to the tremendous increase in the numbers seeking work.<sup>589</sup> The combination of high unemployment rates, illustrated in **Figure 4.2** below, and decentralised wage bargaining led to ‘the most sustained and serious losses in trade union membership recorded since the 1920s’.<sup>590</sup>

Within this unfavourable economic context the case of *Murphy and Others v An Bord Telecom Éireann* was a ‘crisis point’ in the continuing implementation of equal pay policy. In 1983, an Equality Officer decided that the work performed by a group of women applying for equal pay was of a *higher* value than that of the male comparator, therefore they were not eligible for equal pay.<sup>591</sup>

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<sup>584</sup> Catherine Duffy, ‘Female Poverty, Powerlessness and Social Exclusion in Ireland,’ *Administration* 41(1), (Spring 1994), 47-66, 53.

<sup>585</sup> Gerard McMahon, ‘Pay Inequality in the 1990s: An Evaluation of Strategic Alternatives,’ *Administration* 40(2), (Summer 1992), 97-107, 98.

<sup>586</sup> *Ibid.*, 105.

<sup>587</sup> Irish Congress of Trade Unions, *Executive Council Report to Women’s Conference*, 1983, 5-6; Irish Congress of Trade Unions, *Report from the Women’s Conference*, 1985, 1-2; Irish Congress of Trade Unions, *Report of Executive Council*, 5; Irish Congress of Trade Unions: Women’s Committee (Republic), *Report to Women’s Conference*, (1986), 3; Irish Congress of Trade Unions: Women’s Committee (Republic), *Report to Women’s Conference*, (1988), 3; Irish Congress of Trade Unions, *Executive Council Report to Women’s Conference*, 26-27 February 1988, 1-12.

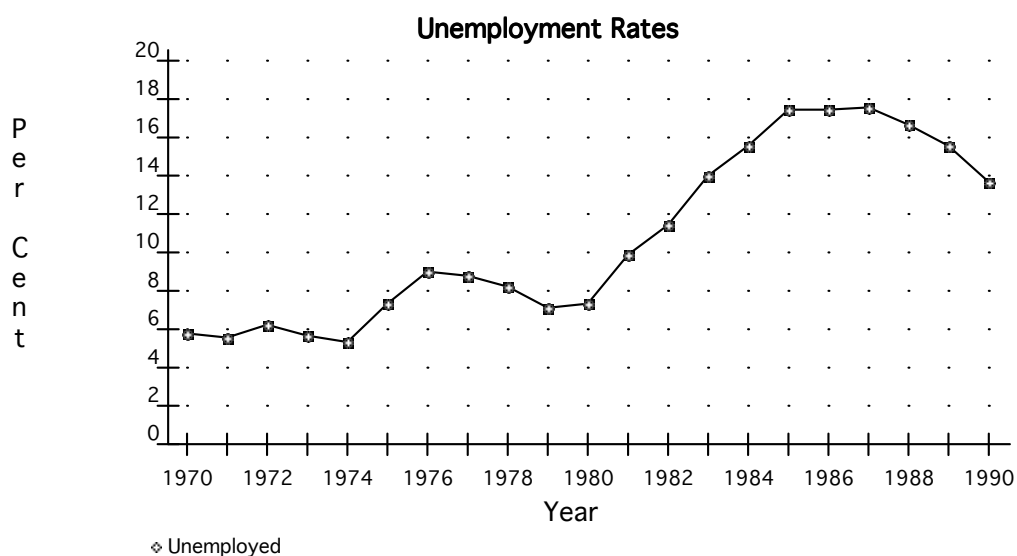
<sup>588</sup> R. Breen, D. Hannan, D. Rottman and C. Whelan, *Understanding Contemporary Ireland*, 176.

<sup>589</sup> *Ibid.*

<sup>590</sup> W. Roche, ‘Pay Determination, the State and the Politics of Industrial Relations,’ 178.

<sup>591</sup> *Murphy and Others v An Bord Telecom Éireann* (EP28/1983).

**FIGURE 4.2. Irish Unemployment Rates: 1970-1990**



Source: Organisation for Economic Co-operation and Development, *Labour Force Statistics 1970-1990*, (France: OECD, May 1992).

When the union appealed to the Labour Court, in 1984, the recommendation of the Equality Officer was upheld.<sup>592</sup> When referred to the High Court, in 1986, Justice Keane ruled that both the Equality Officer and Labour Court were correct.<sup>593</sup> This raised the question, however, as to whether the interpretation of the 1974 Act was reconcilable with the provisions of Article 119 in the EEC Treaty. Three questions were referred to the European Court of Justice for a preliminary ruling. On 4 February 1988 Advocate General Lenz, of the Court of Justice, held that Article 119 in the EEC Treaty must be interpreted as covering the case where a worker is engaged in work of a higher value than of the person with whom a comparison is made.<sup>594</sup> On 11 March 1988 Justice Keane referred the matter back to the Labour Court.<sup>595</sup> The Labour Court then found for the women - five years after the case had first been heard.<sup>596</sup> In 1990 the European Court of Justice confirmed that 'national courts are bound to interpret their national laws in the light of the wording and purpose of the relevant EEC

<sup>592</sup> *Murphy and Others v An Bord Telecom Éireann* (DEP6/1984).

<sup>593</sup> *Murphy and Others v An Bord Telecom Éireann* (1986) ILRM 483.

<sup>594</sup> Eilís Barry, 'Equal Pay: 'Like Work'/Work of Higher Value - A Major Development,' *Irish Law Times* (April 1988), 78-79, 79.

<sup>595</sup> *Murphy and Others v An Bord Telecom Éireann* High Court (unreported, April 1988).

<sup>596</sup> *Murphy and Others v An Bord Telecom Éireann* (DEP7/1988).

directive'.<sup>597</sup> The binding nature of the European judgement on Irish courts, in particular, was confirmed by the Supreme Court Justice Murphy in 1993.<sup>598</sup>

### The Consolidation of Feminist Influence

In spite of the unfavourable economic situation feminists within the ICTU continued in their attempts to make the union movement more relevant to women. The first ICTU equality programme, *The Equality Report*, was adopted in 1982 as a five year project. A second five year programme, *Programme for Progress*, was adopted at the 1987 Delegate Conference and aimed to facilitate the equality of women in the unions, the workforce, and society in general.<sup>599</sup>

At the same time feminists within the political and administrative arms of government were consolidating their positions within these institutions. The 24th Dáil, headed by a Fine Gael/Labour Party Coalition government, was elected in November 1982 and saw 14 women enter the Dáil.<sup>600</sup> Garret Fitzgerald, the Fine Gael Taoiseach, also 'recognised the political importance of women' and, to this end, the Ministry for Women's Affairs was established, with Nuala Fennell as Minister.<sup>601</sup> The Ministry was a junior one, within the Department of the Taoiseach, and had few resources within government. It also received considerable media criticism for its reform programs and considerable feminist criticism for its silence on issues such as divorce and abortion.<sup>602</sup> In spite of all the above limitations, however, between 1983 and 1987 the Ministry was responsible for publishing an impressive series of reports on the position of Irish women and instigating a number of improvements in their economic, legal and social status.<sup>603</sup> Those initiatives linked directly to women's experience in the

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<sup>597</sup> *Marleasing SA v La Comercial Internationale de Aliamentacion SA* (1990) ELR 4135, cited in F. Meenan, *Working Within the Law: a Practical Guide for Employers and Employees*, 124.

<sup>598</sup> *Nathan v Bailey Gibson Ltd., The Irish Print Union and the Minister for Labour* (1993) ELR 106, cited in F. Meenan, *Working Within the Law: a Practical Guide for Employers and Employees*, 124.

<sup>599</sup> Irish Congress of Trade Unions, *A Programme for Progress: Equality Report*, (Dublin: Brindley-Dollard, 1987), 2.

<sup>600</sup> Y. Galligan, 'The Legislative Process,' 42.

<sup>601</sup> E. Mahon, 'State Feminism in Ireland,' 6.

<sup>602</sup> *Ibid.*, 8.

<sup>603</sup> These included the passage of the *Domicile and Recognition of Foreign Divorces Act*, 1986; the *Irish Nationality and Citizenship Act* 1987; and the *Status of Children Act* 1988; an increase in the number of married women receiving higher social welfare benefits; a new family mediation scheme; the *Programme for Action in Education*; a special award scheme for mature age female students; funding for a sexual assault support service and a domestic violence refuge for women and children, in Dublin; cervical and breast cancer screening facilities were extended; some health insurance benefits were extended to the wives of insured male workers; and small grants were made available to women's organisations by the Ministry. E. Mahon, 'State Feminism in Ireland,' 7-8. See also the Interdepartmental Working Party on Women's Affairs and Family Law Reform, *Irish Women: An Agenda for Practical Action*, (Dublin: The Stationery Office, 1985); Nuala Fennell, 'Introduction,' *Women's Health Week*, (Dublin: Women's Affairs, 1986), v-vii; and Nuala Fennell and

labour force included an increase in the number of married women eligible for the Social Employment Scheme, the introduction of job-sharing and career breaks in the Civil Service, and the removal of the Gardai and Prison Service exemptions within the *Employment Equality Act 1977*.<sup>604</sup> Fennell also initiated a 'Women in Industry' campaign, a 'Women into Enterprise Scheme' and funded research, in conjunction with the Irish Development Authority.<sup>605</sup> The following Fianna Fáil government did not re-appoint a Minister for Women's Affairs. Instead, Maire Geoghegan Quinn was appointed Minister for EC Affairs, with special responsibility for Women's Affairs.

### A Period of Transition

While Fianna Fáil worked against gender equity in its abolition of the Women's Affairs Ministry it indirectly assisted pay equity by facilitating a return to corporatist decision-making and centralised wage fixing. The new government 'dragged the employers into the process' in 1987 and embraced corporatism with its *Programme for National Recovery*.<sup>606</sup> This agreement not only re-established centralised wage bargaining but also provided for tax reform, improved social policy provisions, protective employment legislation, industrial development, and programs to increase employment.<sup>607</sup> The 1989 Fianna Fáil/Progressive Democrats coalition government introduced the *Industrial Relations Act 1990* which restructured Irish industrial relations by establishing the Labour Relations Commission. This body took over many of the functions of the Labour Court and heard disputes under the *Industrial Relations Act 1969*; the *Unfair Dismissals Act (1977-1993)*, the *Maternity Protection of Employees Acts (1981 and 1991)* and the *Payment of Wages Act 1991*.<sup>608</sup>

The Working Party on Childcare Services for Working Parents in Ireland was formed in 1990 as was the Second Commission on the Status of Women (SCSW).<sup>609</sup> The SCSW was to 'make recommendations to achieve the full participation by women on equal terms with men in economic, social, political and cultural life'.<sup>610</sup> During its public consultations, the SCSW received 601

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Mavis Arnold, *Irishwomen Into Focus*, 29-45; in addition reports from the following are useful: 1983 Working Party on Child Care Facilities for Working Parents; the 1985 Committee on Minimum Legal Requirements and Standards for Daycare Services; and the 1985 Working Party on Women's Affairs and Family Law Reform, cited in Working Group on Childcare Facilities for Working Parents, *Report to the Minister for Equality and Law Reform*, (Dublin: The Stationery Office, 1994), 2.

<sup>604</sup> Nuala Fennell, *A Fair Deal for Women*, (Dublin: Women's Affairs, 1987).

<sup>605</sup> *Ibid.*, 7-8.

<sup>606</sup> Patrick Yeates, 'Phil Flynn: a Committed and Articulate Champion of Centralised Bargaining', *Irish Times*, 3 July, 1995, 4.

<sup>607</sup> *Ibid.*, 183.

<sup>608</sup> Labour Relations Commission, *Annual Report 1992*, (Dublin: The Stationery Office, 1992), 12.

<sup>609</sup> Irish Congress of Trade Unions, *Implementation of Equality Report*, 14.

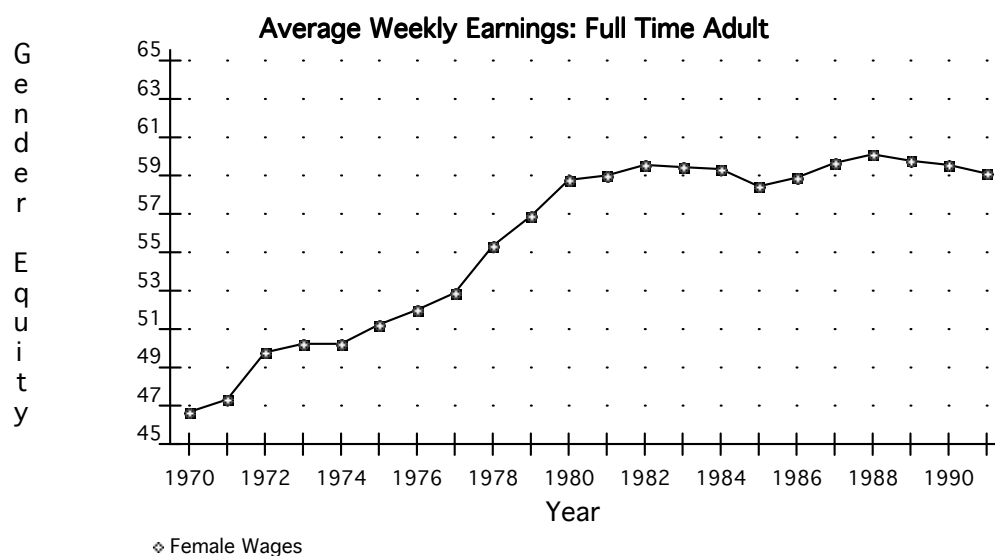
<sup>610</sup> Second Commission on the Status of Women, *A Guide to the Report*, (Dublin: Criterion Press, 1993), 5.

submissions which formed the basis for two interim statements to government, in April 1991 and in March 1992.<sup>611</sup> The SCSW presented its full report to the Government in February 1993.<sup>612</sup>

## Policy Impacts

In contrast to the generally expansive period between 1968 and 1982, the period between 1982 and 1991 was a period of relative stagnation for pay equity. This is illustrated in **Figure 4.3** below.

**FIGURE 4.3. Irish Female/Male Earnings (Gender Equity) Industrial Sector Only: 1970-1991**



Source: Central Statistics Office, *Statistical Bulletin* (Various Years).

## The Influence of Feminism? 1982-1991 Assessed

While feminist coalitions remained active in the policy subsystem, the divisive effects of the abortion debate (discussed in the following chapter) and the mobilisation of an anti-feminist movement ‘spilt-over’ into the equal pay policy subsystem, leading to a reduction of overall feminist coalition strength. Feminists continued to affect the policy discourse, in those areas that remained receptive to them, consolidating their positions within existing institutions and opposing employer resistance to pay equity. Feminist policy was still being legislated, under the influence of the Ministry for Women’s Affairs, but the measures which

<sup>611</sup> Ibid.

<sup>612</sup> It recommended the introduction of a program of positive action in non-traditional areas, and that a statutory Minimum Wage be phased in, from 1995. Other related areas of concern for women and work were job creation, research, atypical (home) working, sexual harassment, combining work and family responsibilities, public transport, the development of an employment policy and an employment strategy for women, equal opportunity initiatives and support for women entrepreneurs. Second Commission on the Status of Women, *Report to the Government*, (Dublin: The Stationery Office, 1993), 29-34; 104.

were put into place at this time were ones which had little direct relationship to pay equity. This general decline of feminist influence within the equal pay policy subsystem is mirrored by the 'equal pay plateau' evident in **Figure 4.3**. Between 1982 and 1991 there had been a slight increase in female/male relativities as the wages 'gap' began to widen again.

As the industrial relations system was not structured to address the needs of *women* workers, in particular, there was no institutional remedy for this lack of progress. Despair at the slow progress toward equal pay was expressed in the suggestion that 'at this rate of progress, we will achieve equal pay by the year 2050...'.<sup>613</sup> Here, again, in the face of the relative weakness of the national systemic factors Ireland's membership of the EC was significant in ensuring the continuing implementation of equal pay policy. While the years 1988 to 1991 began a 'changed general climate' which was 'less antagonistic towards women's aspirations',<sup>614</sup> overall, the character of this second phase of the equal pay policy cycle was one of relative stagnation.

### 3. RECENT GAINS: 1991-1996

#### An Improved Economic Climate

1991 was the beginning of the first decisive and sustained improvement in wage equity for women since 1980.<sup>615</sup> Under corporatist national agreement, the *Programme for Economic and Social Progress* (PESP), equality commitments included proposed amendments to equality legislation; expanded opportunities for women to take up careers in non-traditional areas; continued monitoring and development, by unions and management, of the equal opportunities policy and guidelines in the civil service; the extension of Government policy in relation to equal opportunities in semi-State bodies to local authorities and health boards; the establishment of 'Equality Focus Awards' to encourage employers in the private sector to adopt 'positive action' policies; the abolition of age limits in recruitment to the public service; increased health and family planning services; and the provision of child care services for working parents.<sup>616</sup>

The 1991 *Child Care Act* put this last commitment into practice, almost twenty years after the initial recommendations were put by Commission of the Status of Women. While the ICTU and feminist groups had been lobbying on this issue since that time, pressure for action on child care was increased in 1992 when the EC adopted a Recommendation on Childcare which required Member States to provide work-related child care facilities and family-friendly workplaces.<sup>617</sup> The *Worker Protection (Regular Part-time Employees) Act* 1991 assisted in the

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<sup>613</sup> *Irish Times*, 'Equal Pay Unlikely Until 2050,' 6 July 1989.

<sup>614</sup> Y. Fitzsimons, 'Women's Interest Representation in the Republic of Ireland,' 44.

<sup>615</sup> Central Statistics Office, *Statistical Bulletin*, (December 1991).

<sup>616</sup> Irish Congress of Trade Unions, *Implementation of Equality Report*, 12-13.

<sup>617</sup> Irish Congress of Trade Unions, *Report of the Executive Council: 1991-93*, (Dublin: ICTU, 1992), 14.



improvement of conditions for part-time workers and was especially significant for women who made up the bulk of such employees. Although negotiated under PESP, both this Act and the *Social Welfare (Employment of Inconsiderable Extent) S. I. No. 5* of 1991 may be interpreted as, in part at least, a reaction to 1989 rulings in the European Court of Justice.<sup>618</sup> These disallowed national legislation to exclude part-time workers from continued payment of wages in the event of illness, where the measure affects a considerably greater number of women than men, unless the Member State could show that the legislation was justified by objective factors unrelated to sex.<sup>619</sup>

Finally, the formation of the National Economic and Social Forum (NESF), in June 1993, was an attempt to broaden the basis for consensus in Ireland's corporatist approach. Containing 49 members, it included members of the Oireachtas, the social partners (trade unions, employers and farming organisations), women's groups, the unemployed and other traditionally disadvantaged groups. Fair representation of women on this (as on all government boards) meant that women must comprise at least 40% of representatives.<sup>620</sup>

The 1994-1997 *Programme for Competitiveness and Work*, also included a number of equality measures: reducing PAYE tax for those on low incomes and reducing marginal and average tax rates, increasing spending to areas in welfare, health, education and housing in return for relative wage restraint.<sup>621</sup> State-funded child care services have been expanded, number of tax rebates have also been introduced to encourage work-related child care, and the establishment of the Childcare Policy Unit within the Department of Health created an institutional base for the formulation and implementation of policy.<sup>622</sup>

One of the major results of neo-corporatist arrangements of the late 1980s to mid 1990s has been the rise in real disposable income. It has been estimated that from 1987 to 1992 the real take home pay of single workers rose by some 5 per cent and that of married workers by over 3 per cent. Since 1990 the real value of social welfare payments to most categories of recipients has also risen significantly.<sup>623</sup> Under the tripartite agreements unemployment has fallen, industrial conflict has declined, and union membership has increased.

Continuing difficulties with the implementation of equality legislation are evident, however, as conflict arose over the concept of 'indirect discrimination'

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<sup>618</sup> The two cases were *M. L. Ruzuis-Wilbrink v Bestuur van de Bedrijfsvereniging voor Overheidsdiensten* and *Rinner-Kuhn v F. W. W. Spezial-Gebäudereinigung GmbH & Co KG*.

<sup>619</sup> Eilís Barry, 'Part Time Workers: Equal Treatment and Work Related Social Welfare Rights,' *Irish Law Times* (April 1990), 68-78.

<sup>620</sup> National Co-ordinating Committee for the United Nations Fourth World Conference on Women, *National Report of Ireland*, 30.

<sup>621</sup> Organisation for Economic Co-operation and Development, *OECD Economic Surveys: Ireland 1995*, 32.

<sup>622</sup> Monitoring Committee, *Second Progress Report of the Monitoring Committee on the Implementation of the Recommendations of the Second Commission on the Status of Women*, 47-52.

<sup>623</sup> W. Roche, 'Pay Determination, the State and the Politics of Industrial Relations,' 191-194.

as it related to the 1974 Act.<sup>624</sup> In the 1990 *Packard Electric (Ireland) Ltd. v SIPTU* case, for example, a change in wage payment arrangements meant that 99.4 per cent of the males employed in the company were eligible for an extra lump-sum payment.<sup>625</sup> While a complaint of indirect discrimination was successful before the Equality Officer in 1990,<sup>626</sup> the decision was overturned in the Labour Court, in 1991. The Court held that the objective for the company (security for its pay-roll) was justified and unrelated to the sex of the employees.<sup>627</sup> A similar case involving part-time 'home-helps' was successful, however, when the Equality Officer found that the female claimants had been indirectly discriminated against and awarded equal pay to them.<sup>628</sup> The 'home-helps' case also touched on the issue of 'like work' and was considered to have 'wide implications' for comparable workers as the claimants were performing 'traditionally female work in a predominantly female employment characterised by low pay'.<sup>629</sup>

### **The Further Institutionalisation of Feminism**

In the 1990s, those sections of the autonomous feminist movement working on equal pay have been increasingly drawn into the institutions of government and the ICTU. This has been both a strength and weakness, while it allows these institutional resources to be utilised for gender equality, feminist influence has become increasingly more invisible.

Within the union movement, a series of priority areas for action in the 1990s were set out in 1992: that unions undertake initiatives for equal pay, equal opportunities, increased training, maternity, paternity, parental and family leave, increased child care, flexitime/job sharing agreements, better wages and conditions for part-time, temporary and contract workers, and act against low pay.<sup>630</sup> In evaluating how adequately the trade union agenda has reflected women's needs over the past 5 years, the ICTU was able to point to the equality measures achieved through the social partnerships but stated that 'overall developments on equality in the workplace have been hindered by the adverse economic and social conditions in society generally'.<sup>631</sup> The third 5 year ICTU Equality Programme: *Mainstreaming Equality* was released in 1993 with the

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<sup>624</sup> F. Meenan, *Working Within the Law: a Practical Guide for Employers and Employees*, 105.

<sup>625</sup> L. P. Flynn, 'Forgetting the Essential: Packard Electric (Ireland) Ltd v SIPTU,' *Irish Law Times* (June 1992), 144-146, 144.

<sup>626</sup> *Packard Electric (Ireland) Ltd. v SIPTU* (EP8/1990).

<sup>627</sup> *Packard Electric (Ireland) Ltd. v SIPTU* (DEP7/1991).

<sup>628</sup> *9 Part-time Home-Helps (IMPACT) v North Western Health Board* (EP13/92).

<sup>629</sup> Employment Equality Agency, *1992 Annual Report*, 15.

<sup>630</sup> Irish Congress of Trade Unions, *Implementation of Equality Report*, 3-7.

<sup>631</sup> *Ibid.*, 16.

gloomy prediction that, even if the 'full potential of equal pay legislation was realised, women's earnings would still be only 75 per cent of male earnings.<sup>632</sup>

Within the political and administrative arms of government, feminist influence has been expressed through a new department: the Department of Equality and Law Reform (DELIR). This was originally outlined in the Labour Party's 1992 election policy document *Manifesto for Equality*.<sup>633</sup> After the election of the Fine Gael/Labour Party coalition government a series of institutional, procedural and legislative initiatives were put into practice. The DELIR was formed. Cabinet procedures were altered to require that all proposals by government departments for change to existing policies must include a memorandum on the probable impact on women.<sup>634</sup> Equality legislation has proceeded: the *Maternity Protection Act* 1994 repealed and re-enacted, with amendments, the *Maternity Protection of Employee Acts* 1981-1991;<sup>635</sup> and the *Adoptive Leave Act* 1995 was introduced;<sup>636</sup> The DELIR also launched a national *Code of Practice: Measures to Protect the Dignity of Women and Men at Work*, to do with sexual harassment, in September 1994. The *Code* was drafted by the EEA with the co-operation of both business and union representatives.<sup>637</sup> It also gives form to an EC resolution, the *Recommendation and Code of Practice to Protect the Dignity of Women and Men at Work*, passed in May 1990.<sup>638</sup>

## Policy Impacts

**Figure 4.4**, below, illustrates that the stand-still which characterised the 1980s was finally broken in 1991 when significant improvements again began to be made. In 1995 research on male/female wage differentials suggested that 10 per cent of the remaining earnings gap between men and women resulted from the effects of current or past discriminatory practices.<sup>639</sup> The disproportionate number of women in low paid occupations was also cited as a significantly contributing factor. The rest of the continuing wage inequality could be accounted for by productivity related factors such as experience. Caring for children and other family members was seen as the main cause of this gendered difference in

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<sup>632</sup> Irish Congress of Trade Unions, *Mainstreaming Equality Programme 1993-98*, 4.

<sup>633</sup> Employment Equality Agency, 'Minister Mervyn Taylor: The Equality Interview,' *Equality News*, 3, Employment Equality Agency, April 1995, 8-9.

<sup>634</sup> Orla O'Farrell, 'Gender-proofing and Structural Funds,' *Equality News*, 3, Employment Equality Agency, April 1995, 6.

<sup>635</sup> Department of Equality and Law Reform, *Maternity Protection Act, 1994: Explanatory Leaflet*, Dublin, January 1995.

<sup>636</sup> Department of Equality and Law Reform, *Adoptive Leave Act, 1995: Explanatory Booklet*, (Dublin, March 1995).

<sup>637</sup> Employment Equality Agency, 'Code of Practice Launched,' *Equality News*, Employment Equality Agency, December 1994, 16.

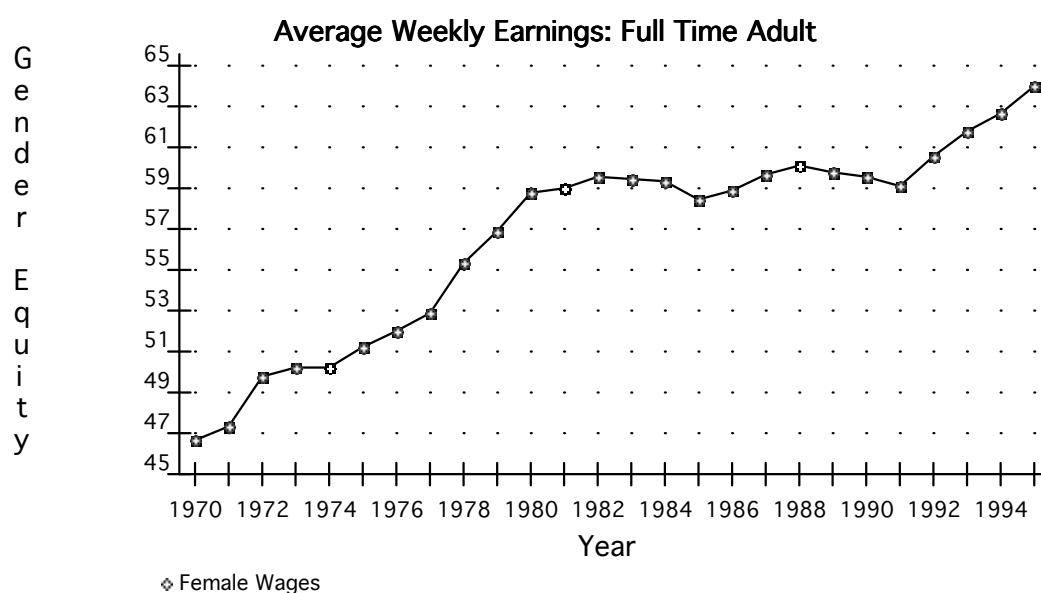
<sup>638</sup> Department of Equality and Law Reform, *Code of Practice: Measures to Protect the Dignity of Women and Men at Work*, (Dublin: Brunswick Press, September 1994).

<sup>639</sup> T. Callan and A. Wren, *Male-Female Wage Differentials*, 51.

experience.<sup>640</sup> These structural barriers to pay equality have proved extremely resistant to change.<sup>641</sup>

Other indicators of women's position within the labour force have also shown some improvement. By the early 1990s, 33 per cent of the total employed labour force were women, compared to 29 per cent in 1981.<sup>642</sup> One third of the growth in women's employment between 1987 and 1990 was part-time work.<sup>643</sup>

**FIGURE 4.4. Irish Female/Male Earnings (Gender Equity) Industrial Sector Only: 1970-1995<sup>644</sup>**



Source: Central Statistics Office, *Statistical Bulletin* (Various Years).

Participation rates for Irishwomen continued to vary. In 1992 a National Economic and Social Council report found that although 51 per cent of all single

<sup>640</sup> Ibid., 52.

<sup>641</sup> It is interesting to note that one element of the Fianna Fáil/Progressive Democrats programme for government, ratified in June 1997, was the promise of a national minimum hourly pay rate. Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 542, June 23 1997.

<sup>642</sup> Tim Callan and Brian Farrell, *Women's Participation in the Irish Labour Market*, (Dublin: National Economic and Social Council, 1992), 1.

<sup>643</sup> Ibid.

<sup>644</sup> The data before 1985 is based on CSO figures for 'transportable goods industries' (manufacturing, mining, quarrying and turf production). This was discontinued and from 1985 the data collected was based on figures for 'all industries' (transportable goods industries plus electricity, gas and water supply).

women participated in the labour force, only 25 percent of married women, and 7 per cent of widows, did so.<sup>645</sup>

### **The Influence of Feminism? 1991-1996 Assessed**

In this third phase of activity within the equal pay policy subsystem it becomes increasingly more difficult to identify the presence and strength of feminist coalitions, as the influence of autonomous feminist groups continued to decline, in favour of the dispersion of feminists throughout the equal pay policy subsystem as a whole. The influence of feminism became increasingly institutionalised, professionalised and, at the same time, less visible. This is partly a reflection of the dynamics of a NSM cycle of protest and partly as a result of the overlapping agendas of the feminist movement and the 'new Ireland'.

The DELR was a prime example of this tendency. Increased acceptance of some of the principal tenets of feminism within the policy discourse and the passage of policy which would fulfil feminist goals were both evident in the establishment of the DELR and its subsequent policy outputs. This was a considerable advance on the original Ministry of Women's Affairs in its increased scope, capacity and legitimacy.<sup>646</sup> Also significant was the review of the original equality legislation and the progress of that legislation through the Oireachtas.<sup>647</sup> Equal pay had certainly become established as a appropriate goal for which to aim during this time.

The progress toward achieving feminist goals, as indicated by the female/male relativities illustrated in **Figure 4.4**, again showed significant improvement. In an economically-based policy, such as equal pay, quantitative indicators such as those provided by female average weekly earnings are perhaps the most convincing evidence that progress had, indeed, been made. An examination of the broader context, within which the equal pay policy subsystem exists, shows that although the industrial relations system continued to exclude the specific representation of women's interests before the Labour Court and within national agreements, the EU continued to add to the pressure for pay equity. These systemic factors remained important influences upon the policy subsystem as a whole.

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<sup>645</sup> T. Callen and B. Farrell, *Women's Participation in the Irish Labour Market*, 1.

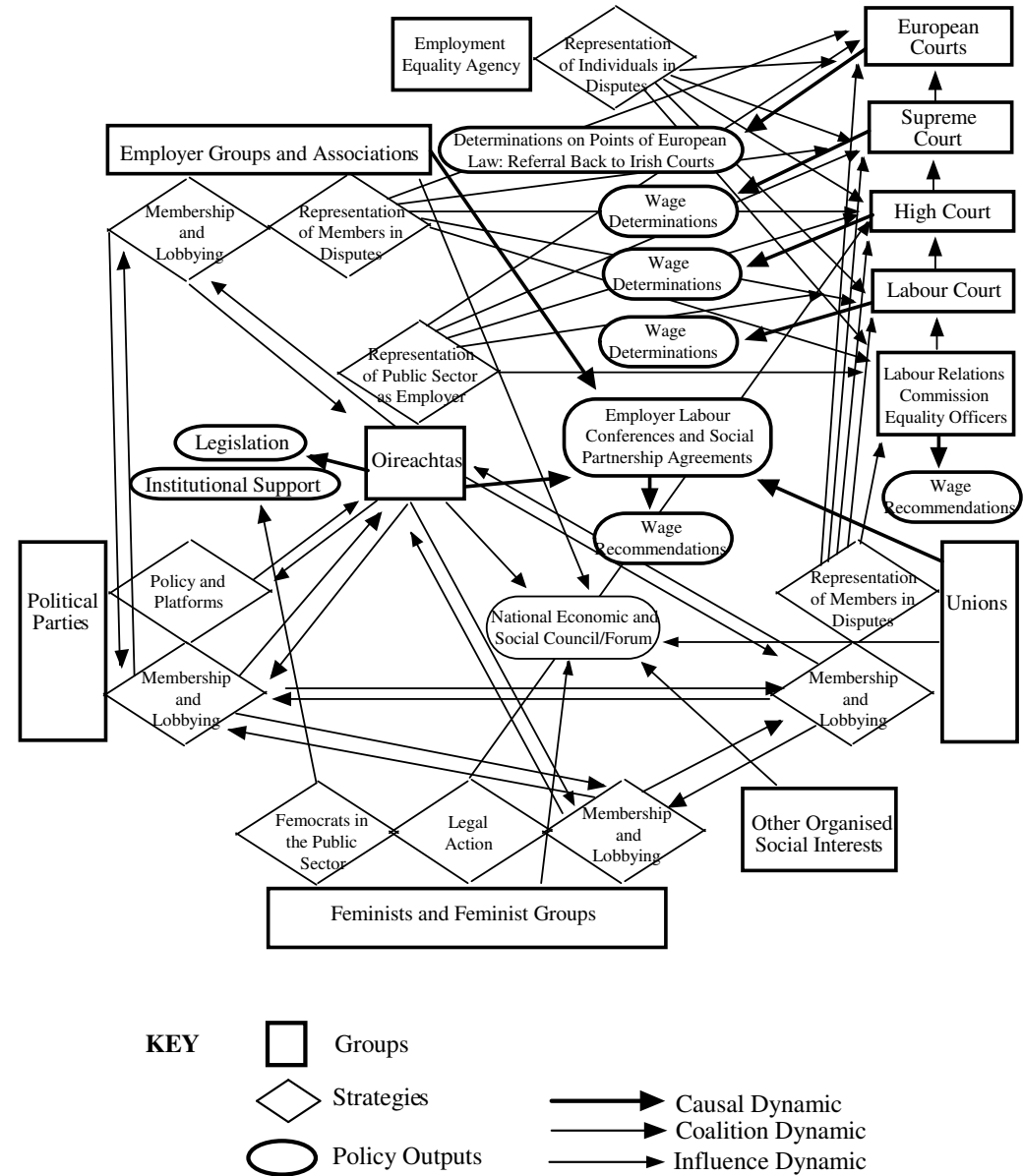
<sup>646</sup> In June 1997, however, the incoming Fianna Fáil/Progressive Democrats coalition government brought the DELR into the renamed Department of Justice and split employment equality issues away from other matters. These became the responsibility of the Ministry of Enterprise, Employment and Trade. Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 543, June 30, 1997.

<sup>647</sup> Having passed through the Dáil and Seanad, the Employment Equality Bill was referred to the Supreme Court by President Robinson in April 1997. The Court subsequently found the Bill was unconstitutional on three points. At the time of writing, both the future of this Bill and the subsequent Equal Status Bill have not been determined as they will have to be redrafted in line with Court determinations.

#### 4. FEMINISM AND EQUAL PAY POLICY IN IRELAND

This chapter has followed the policy process within the equal pay subsystem over a period of three decades. In order to provide an overview of the subsystem **Figure 4.5**, below, presents a ‘snapshot’ of equal pay policy-making.

**FIGURE 4.5. Irish Equal Pay Policy Subsystem Dynamics**



The decentralised Irish system of wage determination is highly fragmented and individualised, to the point where equal pay cases may involve a single employer in conflict with a small group of employees, or even an individual employee. Yet employers share common policy perceptions and act in a co-ordinated manner: the FUE, which is not involved in particular pay equity cases, opposed each piece

of equity legislation on the basis of an alleged 'disincentive effect' to employment growth.<sup>648</sup>

This complexity is exacerbated as either unions, or the EEA, may represent workers involved in a dispute before any one of the multiple policy brokers, such as the Equality Officers, the Labour Court or the civil judiciary.

Feminists have established long-standing coalitions with the more powerful actors in the Irish industrial relations system but have been unable to alter the institutional structures and processes within that system. The indirect nature of feminist influence is clearly set out as, with the exception of the Oireachtas, feminists have not been able to represent women before any of the multiple policy brokers. This is in direct contrast with the policy subsystem to be examined in the next chapter - that which has developed around the issue of abortion.

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<sup>648</sup> B. Wilkinson, 'Corporatism, Industrial Relations and Labour Law in Ireland,' 100.

## CHAPTER 5

### THE IRISH ABORTION POLICY SUBSYSTEM

The dynamics of the abortion policy subsystem were historically structured by the previous policy activity relating to the access to, and availability of, contraception. Within the context of the religious nationalism of old Ireland, it is not surprising that the *Criminal Law Amendment Act 1935*, section 17(1) prohibited sale, and importation for the purpose of sale or personal use all forms of ‘artificial’ contraception. In the 1960s doctors were allowed to prescribe ‘the Pill’ as a menstrual ‘cycle regulator’, and its use for contraception became increasingly widespread, if covert.<sup>649</sup> It became less covert when a number of medical practitioners joined together, in February 1969, to open the first Fertility Guidance Clinic in Dublin.<sup>650</sup> IWLM mobilised around the issue of contraception in 1970.<sup>651</sup> IU also took up the issue,<sup>652</sup> as did the Commission on the Status of Women, who addressed the issue of family planning in their 1972 *Report*.<sup>653</sup> From the mid 1970s feminists within the ICTU also lobbied for access to family planning services.<sup>654</sup>

Senator Mary Robinson’s 1971 *Criminal Law (Amendment) Bill* did not garner enough support for a full Oireachtas debate.<sup>655</sup> The 1973 *Family Planning Bill* led to the first full Oireachtas debate on the issue.<sup>656</sup> The 1974 *Family Planning Bill* reached the second stage in the Seanad before the Government announced it would publish its own Bill within a fortnight. The *Control on Importation, Sale and Manufacture of Contraceptives Bill* was defeated, however, when the Taoiseach and six deputies voted against their own Bill. The reasons for this

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<sup>649</sup> This was reflected in the rapid decline in number of births at this time. Cormac Ó Gráda and Brendan Walsh, ‘Fertility and Population in Ireland, North and South,’ *Population Studies* 49 (1995), 259-279, 277.

<sup>650</sup> E. O’Reilly, *Masterminds of the Right*, 14.

<sup>651</sup> N. Fennell and M. Arnold, *Irishwomen Into Focus*, 9-10.

<sup>652</sup> A later off-shoot of this group was the Contraception Action Programme. Pauline Jackson, ‘Women’s Movement and Abortion: the Criminalization of Irish Women,’ In *The New Women’s Movement: Feminism and Political Power in Europe and the USA*, Drude Dahlerup (ed.), 48-63, 50.

<sup>653</sup> Commission on the Status of Women, *Report to the Minister for Finance*, 225.

<sup>654</sup> Irish Council of Trades Unions, *Seventeenth Annual Report* (Dublin: Brindleys, 1975), 484-485; Irish Council of Trades Unions, *Nineteenth Annual Report*, 304; Irish Council of Trades Unions, *Twentieth Annual Report*, 142; Irish Council of Trades Unions, *Twenty-First Annual Report*, 178-179; Irish Council of Trades Unions, *Twenty-Second Annual Report* (Dublin: Brindley-Dollard, 1980), 79-80.

<sup>655</sup> Michael O’Sullivan, ‘A Curse Upon Our Country: Mrs. Robinson and the Contraception Crisis,’ In *Mary Robinson: The Life and Times of an Irish Liberal*, (Dublin: Blackwater Press, 1993), 51-64, 56.

<sup>656</sup> A. Smyth, ‘A Great Day for the Women of Ireland ...,’ 70.



change of heart were not disclosed.<sup>657</sup> The Primate of Ireland, Archbishop McQuaid, however, had made public his opposition to contraception as a ‘curse upon the land’.<sup>658</sup> All over Ireland proclamations from the pulpits urged parishioners to take action on the issue. In 1973 two lay-Catholic groups were formed: the Irish Family League and the Council of Social Concern, both of which were directed by the Catholic Knights of St. Columbanus. The League formed to oppose the legalisation of contraception, divorce, abortion and euthanasia and to maintain all articles of the Irish Constitution which ‘enshrine Christian values’.<sup>659</sup> In December 1973, however, an appeal to the Supreme Court in *McGee v. Attorney General* (1974) found that the ban on contraception was incompatible with the constitutional right of marital privacy.<sup>660</sup> In spite of this judicial finding, it was not until 1979 that the *Health (Family Planning) Act* provided even limited legal access to contraceptives. This was eventually widened by amendments to the Act in 1985, 1992, and 1993.<sup>661</sup> In practice an increasing number of Irishwomen use some form of contraception in the 1990s.<sup>662</sup>

Contraception was defined as a regulatory policy, as abortion would be, and was dealt with in a piece-meal fashion: there was no comprehensive policy articulated on contraception at any time during the campaign.<sup>663</sup> Both contraception and abortion were gender-specific (ie. likely to stimulate feminist involvement) and concerned with role change (a radical departure from tradition). The conservative reaction to the initiatives in contraception policy ushered in the first phase of the abortion policy subsystem, between 1979 and 1991, in which a powerful anti-feminist, anti-abortion coalition formed and significantly influenced policy outputs and outcomes. A series of crises in 1992, the second phase of the subsystem, tipped the balance of power and led, eventually, to the introduction of relatively progressive legislation in the third and most recent phase of abortion policy-making.

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<sup>657</sup> Garret Fitzgerald states that Liam Cosgrove did not even discuss his intentions with the other members of the Government. Garret Fitzgerald, *All in a Life*, (Dublin: Gill and Macmillan, 1992), 308-309.

<sup>658</sup> E. O'Reilly, *Masterminds of the Right*, 15.

<sup>659</sup> *Ibid.*, 30.

<sup>660</sup> Nuala Jackson, ‘Family Law: Fertility and Parenthood,’ In *Gender and the Law in Ireland*, Alpha Connelly (ed.), (Dublin: Oak Tree Press, 1993), 130-150, 133.

<sup>661</sup> *Ibid.*, 135-136.

<sup>662</sup> The number can be estimated by the fact that between 1980 and 1993 alone the Irish birth rate declined by 33 per cent. Department of Equality and Law Reform, *United Nations Fourth World Conference on Women: National Report of Ireland*, (Dublin: the Stationery Office, 1994), 77.

<sup>663</sup> Yvonne Galligan, ‘Women and the Policy Process in the Republic of Ireland: The Contraception Debate’. Paper presented at *Workshop 22: Negotiating the Policy Agenda: Gender and the State, ECPR Joint Sessions of Workshops*, Bern Switzerland, 27 February - 4 March 1997, 21.

## 1. CONSTITUTIONAL AND JUDICIAL CONSERVATISM 1979-1991

### The Constitutional Amendment

#### *Putting the Issue onto the Policy Agenda*

In 1979 over one million people, approximately one-third of the population of the Republic, gathered in Dublin's Phoenix Park to take Mass with Pope John Paul II. The Council of Social Concern, an anti-contraception group concerned about the increasing secularisation of Ireland, inspired by the visiting Pope, encouraged by international anti-abortion activists, and supported by Catholic societies such as the Knights of St. Columbanus and Opus Dei, began to discuss the possibility of strengthening Ireland's anti-abortion legislation through an amendment to the Constitution.<sup>664</sup>

In July 1980 the Council began informally contacting other organisations about the possibility of putting forward a 'Pro-Life Amendment' and the Pro-Life Amendment Campaign (PLAC) was formally set up in January 1981. Participants included the Irish Responsible Society, the Irish Pro-Life Movement, the National Association of the Ovulation Method and the Irish Society for the Protection of the Unborn Child (SPUC).<sup>665</sup> The institutional links between the Catholic Church and the Irish hospital system meant that anti-abortion leadership by prominent members of the medical profession, and the Irish Catholic Doctors Guild, was supported by hospital ethics committees (dominated by Catholic clergy), members of the powerful pharmaceutical lobby, and the Irish Nurses Organisation.<sup>666</sup> Links were also made with the World Federation of Doctors Who Respect Human Life.<sup>667</sup>

While the first pro-abortion lobby group, the Women's Right to Choose Group (WRCG), had formed in 1979, it also held its first press conference in September 1980.<sup>668</sup> Abortion referral was available within the Trinity College Dublin (TCD) student advisory service, the Dublin Well Woman Centre (DWC), and, from June 1980, the Irish Pregnancy Counselling Centre (IPCC).<sup>669</sup> DWC, WRCG and

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<sup>664</sup> Abortion was already illegal in Ireland. The Irish Free State had passed the British *Offences Against the Person Act* (1861) into its legislation in 1922. Sections 58 and 59 prohibit abortion, in all circumstances, making 'both the woman who attempts to abort and anyone who assists her liable to life imprisonment'. The *Censorship of Publications Act* (1929) also prohibited 'the printing, publishing, selling or distributing of any publication containing written material which might reasonably be supposed to advocate the procurement of abortion or miscarriage'.

<sup>665</sup> Cornelius O'Leary and Tom Hesketh, 'The Irish Abortion and Divorce Referendum Campaigns,' *Irish Political Studies* 3 (1988), 43-62, 48.

<sup>666</sup> P. Jackson, 'Women's Movement and Abortion: the Criminalization of Irish Women,' 55.

<sup>667</sup> Vicky Randall, 'The Politics of Abortion in Ireland,' In *The New Politics of Abortion*, Joni Lovenduski and Joyce Outshoorn (eds.) (London: Sage, 1986), 67-85, 70.

<sup>668</sup> Ibid.

<sup>669</sup> This was later to be replaced by the Open Door Counselling Service. Ruth Riddick, 'Engaging the Mainstream: Service Provision as Radical Intervention,' *Paper presented to the WERRC Annual Conference*, Dublin, May 1996, 4.

IPCC were the only specifically feminist public voices in the subsequent newspaper debates.<sup>670</sup> The CSW, as a national feminist umbrella group, found its structure as a consensus organisation inhibited a decisive response on the abortion issue.<sup>671</sup> In fact it was not until 9 June 1982, fourteen months after the first PLAC press conference, that the Anti-Amendment Campaign (AAC) was launched.

The AAC was initially comprised 16 organisations,<sup>672</sup> and the first press conference featured eminent and respectable religious, medical, and political persons. The organizers of the press conference stressed that they were not a front for the WRCG and that many members of the campaign actually opposed abortion.<sup>673</sup> AAC always defined the campaign as one of opposition to the proposed amendment: that the proposed amendment did not solve the problem of unwanted pregnancies in Ireland; that it allowed for no exceptions even when the pregnancy severely threatened the woman's health or was the result of rape or incest; that it was sectarian (excluded non-Catholics); that such an amendment would impede public discussion and possible legislation on abortion; and that it was a waste of public funds.<sup>674</sup>

The original group, the WRCG, became divided as the majority of members wanted to maintain its 'woman-only' autonomy within a structure containing a broad-based alliance of respected figures and organizations to argue against an amendment. In this context medical and legal arguments in support of abortion under *particular* circumstances would be presented.<sup>675</sup> A more radical minority wanted to form a 'mixed sex' feminist/left grassroots organisation to fight the referendum and argue for abortion as a *women's right to choose*.<sup>676</sup> The minority left and formed the Women's Right to Choose Campaign (WRCC).<sup>677</sup> This was not only strategic, but also a recognition that while Ireland's feminists had

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<sup>670</sup> The London-based Irish Women's Abortion Support Group sent press releases and publicity material which was not published. Irish Women's Abortion Support Group, 'Across the Water,' *Feminist Review* 29 (1988), 64-71, 70.

<sup>671</sup> A questionnaire on the issues of divorce and abortion, sent to the affiliated organisations in December 1981 and March 1982, showed a lack of support for both issues by the majority of affiliates. On this basis CSW remained silent on abortion. Council for the Status of Women, *Letter to Affiliated Organisations*, 7 December 1981, Council for the Status of Women Archives, Dublin; Council for the Status of Women, *Letter to Affiliated Organisations*, March 12 1982, Council for the Status of Women Archives, Dublin.

<sup>672</sup> The majority were either feminist (the Dublin Well Woman Centre, the WRCG, IPCC), Left parties or groupings (the Democratic Socialist, Workers and Irish Communist Parties, plus the People's Democracy, Revolutionary Struggle and Socialist Worker's Movement groups) or Liberals (the Irish Council for Civil Liberties, Student Union groups and the Trade Union Women's Forum).

<sup>673</sup> V. Randall, 'The Politics of Abortion in Ireland,' 74.

<sup>674</sup> *Ibid.*, 75.

<sup>675</sup> Tom Hesketh, *The Second Partitioning of Ireland: The Abortion Referendum of 1983*, (Great Britain: Brandsma Books, 1990), 84.

<sup>676</sup> V. Randall, 'The Politics of Abortion in Ireland,' 74.

<sup>677</sup> Lyn Davis, 'When Irish Eyes Are Smiling ... They Probably Aren't Women's,' *Refractory Girl* (May 1985), 36-38, 36.

supplied the main impetus and coordinating skills for AAC, not all Irish feminists were in favour of abortion on demand.<sup>678</sup>

AAC had a loose structure and no visible leader.<sup>679</sup> Up until February 1983 the group operated without any full-time treasurer, secretary, or chairperson. Fund-raising, a collective responsibility, was not particularly successful. By the end of the campaign AAC had raised only £31,000 and had spent nearly £44,000.<sup>680</sup> In comparison, PLAC's Referendum Campaign Committee raised £143,000 between May-September 1983 alone and wound up the campaign with a surplus.<sup>681</sup>

Just before the June 1981 general election was announced, a small PLAC deputation met party leaders Dr. Garret FitzGerald (Fine Gael), Charles Haughey (Fianna Fáil) and Frank Cluskey (Labour). Although both Fianna Fáil and Fine Gael included a commitment to an abortion referendum in their election party platforms it was not mentioned in the resulting Fine Gael/Labour Party *Joint Programme For Government*. This reflected growing reservations among the more liberal members of a new government which aimed towards a more pluralist, secular, state.<sup>682</sup> It was decided that, instead, the amendment would be included in the upcoming Constitutional review.<sup>683</sup>

The issue had progressed no further when a general election was again called, in February 1982, after the Dáil was dissolved following a budget defeat. The PLAC executive wrote to both major party leaders who pledged to introduce a pro-life amendment separately from any other issue. The Labour party was not approached.<sup>684</sup> The Knights of Columbanus were also mobilised as lobbyists against 'un-Christian practices' such as contraception, divorce, abortion and euthanasia. They were to 'target the undesirable candidates for the good of society'.<sup>685</sup> Otherwise, as in the previous June, the amendment was a 'non-issue' in the election.

The February election resulted in a minority Fianna Fáil government which relied on the support of three TDs from the Worker's Party.<sup>686</sup> On 23 March the new Taoiseach, Charles Haughey, announced that his government would introduce the

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<sup>678</sup> Vicky Randall, 'The Politics of Abortion: Ireland in Comparative Perspective,' *Canadian Journal of Irish Studies* 18(1) (July 1992), 121-128, 126.

<sup>679</sup> Only towards the end of the campaign did Senator Mary Robinson and Adrian Hardiman emerge as the chief spokespersons. C. O'Leary and T. Hesketh, 'The Irish Abortion and Divorce Referendum Campaigns,' 50.

<sup>680</sup> T. Hesketh, *The Second Partitioning of Ireland*, 85.

<sup>681</sup> C. O'Leary and T. Hesketh, 'The Irish Abortion and Divorce Referendum Campaigns,' 54.

<sup>682</sup> V. Randall, 'The Politics of Abortion in Ireland,' 73.

<sup>683</sup> G. Fitzgerald, *All in a Life*, 416.

<sup>684</sup> C. O'Leary and T. Hesketh, 'The Irish Abortion and Divorce Referendum Campaigns,' 50.

<sup>685</sup> E. O'Reilly, *Masterminds of the Right*, 24-25.

<sup>686</sup> V. Randall, 'The Politics of Abortion in Ireland,' 73.

necessary legislation for a ‘pro-life amendment’ later that year.<sup>687</sup> By the end of the year, all of the churches, trade unions and the medical and legal professions had commented ‘widely and profusely’ on the matter.<sup>688</sup> The minority government was defeated on a censure motion, in November 1982, just two days after Haughey announced the proposed text of the Pro-Life Amendment:

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

Although this modified the original PLAC version by recognising the equal right to life of the mother, PLAC announced their acceptance of the text, as did Fine Gael. As it turned out, the proposed Amendment had also been approved by the Church of Ireland Archbishop of Dublin, as well as members of the Catholic Hierarchy before being presented to the Dáil.<sup>689</sup>

The commitment to a referendum was a minor issue in the election campaign and a Fine Gael-Labour coalition formed a majority government in November 1982.<sup>690</sup> The Coalition’s *Joint Programme of Government* stated that the legislation to change the Constitution would be adopted, by 31 March 1983, although the Parliamentary Labour Party ‘reserved the right to a free vote on the issue’.<sup>691</sup> By late January 1983, however, the Fine Gael Taoiseach, Garret FitzGerald, was facing increasing anti-amendment pressure from both his Labour coalition partners and his own party.<sup>692</sup> Both the Director of Public Prosecutions and the Attorney General, Peter Sutherland, were now objecting that the proposed wording was ambiguous and would invite legal action in order to test its implications.<sup>693</sup> On 9 February the government declared its intention to seek an alternative wording.<sup>694</sup> Before the Government produced its revised wording, based on Sutherland’s advice, Fitzgerald consulted with the Catholic Bishops as well as with Protestant and Jewish leaders.<sup>695</sup>

In April, however, the revised wording failed in the Second Reading in the Dáil and the original Fianna Fáil wording was passed as an amendment. The Bill itself

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<sup>687</sup> C. O’Leary and T. Hesketh, ‘The Irish Abortion and Divorce Referendum Campaigns,’ 50.

<sup>688</sup> T. Hesketh, *The Second Partitioning of Ireland*, 58.

<sup>689</sup> G. Fitzgerald, *All in a Life*, 417.

<sup>690</sup> Joseph O’Malley, ‘The Election,’ In *Nealon’s Guide: 24th Dáil and Seanad, 2nd Election ‘82*, Ted Nealon and Séamus Brennan (eds.), (Dublin: Platform Press, 1983) 150-153, 151.

<sup>691</sup> C. O’Leary and T. Hesketh, ‘The Irish Abortion and Divorce Referendum Campaigns,’ 51.

<sup>692</sup> V. Randall, ‘The Politics of Abortion in Ireland,’ 76.

<sup>693</sup> G. Fitzgerald, *All in a Life*, 440.

<sup>694</sup> *Ibid.*, 441.

<sup>695</sup> *Ibid.*, 442-443.

was then passed with the bulk of Fine Gael members abstaining.<sup>696</sup> In the Seanad efforts were made by the two independent senators, both patrons to AAC (Senator Mary Robinson and Senator Shane Ross), to delay the Bill.<sup>697</sup> In spite of this the *Pro-Life Amendment Bill* passed all stages by April and, following Presidential assent, became law on 4 June 1983.<sup>698</sup>

### *The Referendum Campaign*

In mid-August, the date of the referendum on Article 40.3.3 of the Constitution was announced: 7 September 1983.

The media played a central part in the campaigns. Treatment by the national press was ‘remarkably fair’ though the rural-based papers showed a ‘much clearer bias’ in favour of the proposed Amendment.<sup>699</sup> RTE (the national radio and television service) provided free broadcast time to opposing lobbies and to the main political parties.<sup>700</sup> PLAC and Fianna Fáil spoke supporting the Amendment; AAC, the Worker’s Party, and the Labour Party argued against it; while Fine Gael emphasised flaws within the Amendment text.<sup>701</sup> Although officially ‘non-political’ the issue of abortion was widely commented upon by politicians from all parties.

AAC formally launched its referendum campaign, on August 15, a day before PLAC. The launch panel included politicians and figures from medical, religious, and trade union organisations. An ‘atmosphere of violence’ prevailed during the campaign: hate mail and obscene phone calls, property damage and physical assault were suffered by pro-abortion campaigners.<sup>702</sup> The PLAC headquarters was also damaged in a fire.<sup>703</sup> Doctor’s and lawyer’s associations were bitterly and publicly divided. Even the Irish Farmers Association was split into two

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<sup>696</sup> V. Randall, ‘The Politics of Abortion in Ireland,’ 76.

<sup>697</sup> Ibid.

<sup>698</sup> Although the Coalition parties had a clear majority in the Seanad, FitzGerald indicated that he would allow the Bill to go through, stating that it was not worthwhile ‘tearing the party asunder again’. C. O’Leary and T. Hesketh, ‘The Irish Abortion and Divorce Referendum Campaigns,’ 53.

<sup>699</sup> V. Randall, ‘The Politics of Abortion in Ireland,’ 77.

<sup>700</sup> Two minutes on television and radio for each of the lobbies and the minor parties; three minutes for the Labour Party and four minutes on television plus three minutes on radio for each of the major parties. PLAC and AAC spoke on September 1; Worker’s Party on September 2; the Labour Party on September 3; Fianna Fáil on September 4; and Fine Gael on September 5. T. Hesketh, *The Second Partitioning of Ireland*, 302.

<sup>701</sup> Ibid., 304.

<sup>702</sup> V. Randall, ‘The Politics of Abortion in Ireland,’ 77; P. Jackson, ‘Women’s Movement and Abortion: the Criminalization of Irish Women,’ 56; U. Barry, ‘Abortion in the Republic of Ireland,’ 58.

<sup>703</sup> T. Hesketh, *The Second Partitioning of Ireland*, 364.

camps.<sup>704</sup> The social effects of the referendum were so divisive that it was subsequently described as ‘the second partitioning of Ireland’.<sup>705</sup>

PLAC received a great deal of support from the Catholic Church as many priests, especially in rural areas, used the pulpit to promote the proposed Amendment or invited representatives of SPUC to address the congregation.<sup>706</sup> During the last week before polling the Conference of Irish Bishops and the Archbishop of Dublin made public statements supporting the proposed Amendment.<sup>707</sup> Taoiseach Fitzgerald described the incident as ‘a remarkable excursion by the Bishops into the field of Constitutional law’, an action which contradicted their previous position, on the separation of Church and State.<sup>708</sup> Both Taoiseach and Tanaiste called on the electorate to vote ‘No’. The Methodist church also asked for a ‘no’ vote but the Church of Ireland (another Protestant faith) deemed it a matter for the individual conscience.<sup>709</sup> On polling day, groups of nuns emerged from enclosed orders, leaving their convents ‘for the first time in sixty years’ to cast their votes.<sup>710</sup>

### *The Results*

The Eighth Amendment to the Constitution was passed by 66.9 per cent to 33.1 per cent. Out of 41 constituencies 36 had supported the amendment.<sup>711</sup> There was a sharp difference between urban and rural voting patterns. All five constituencies which voted against the amendment were in Dublin and the highest ‘yes’ vote was registered in the rural West.<sup>712</sup> Where anti-amendment committees were formed outside Dublin, however, in Galway, Cork, and Waterford the ‘no’ vote was also higher.<sup>713</sup> There was also a very high abstention rate: the turnout was only 54.6 per cent of the electorate. When the vote is taken as a percentage of the total electorate, the ‘yes’ vote accounted for 35.79 per cent, whilst the ‘no’ vote was 17.6 per cent.<sup>714</sup>

Article 40.3.3 of the Constitution now read:

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<sup>704</sup> T. Inglis, *Moral Monopoly: The Catholic Church in Modern Irish Society*, 84.

<sup>705</sup> T. Hesketh, *The Second Partitioning of Ireland*.

<sup>706</sup> V. Randall, ‘The Politics of Abortion in Ireland,’ 82.

<sup>707</sup> *Ibid.*, 77.

<sup>708</sup> G. Fitzgerald, *All in a Life*, 445.

<sup>709</sup> *Ibid.*

<sup>710</sup> L. Davis, ‘When Irish Eyes Are Smiling,’ 36.

<sup>711</sup> *Ibid.*

<sup>712</sup> T. Hesketh, *The Second Partitioning of Ireland*, 368.

<sup>713</sup> P. Jackson, ‘Women’s Movement and Abortion: the Criminalization of Irish Women,’ 56.

<sup>714</sup> T. Hesketh, *The Second Partitioning of Ireland*, 365.

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.<sup>715</sup>

### *The Impact of the Referendum*

On September 7 1983 the Republic of Ireland became the first country to enshrine the 'right to life' of the foetus in law. A 'traditionalist lobby', the backbone of the anti-abortion coalition, had now developed 'a philosophy for coherence, extensive international support and a local organisation for its political expression'.<sup>716</sup> The Catholic Church had been able to assert religious authority over the 'moral' matters of the body and to cut across other allegiances within the context of modern Ireland.<sup>717</sup> Some feminist commentators suggested that openly asserting a (contested) authority illustrated that conservative forces could no longer rely on a 'diffuse, hidden process of exercising power'.<sup>718</sup> Only slightly more than half of all those eligible had voted in the referendum. The high rate of abstention indicated that both pro-abortion and anti-abortion coalitions had been unable to fully mobilise support for their cause.<sup>719</sup>

### **Judicial Decisions**

After the 1983 referendum, confirming the illegality of abortion in Ireland, Dublin anti-abortion campaigners hosted an international conference, 'Birth Right '84', in which a series of follow-up strategies were developed.<sup>720</sup> After complaints to the Censorship Board, Dublin public libraries were required to remove books on women's health which contained abortion information or advice, in accordance with the *Censorship of Publications Act* (1946).<sup>721</sup> A complaint to the Censorship Board regarding the British magazine *Cosmopolitan* also resulted in the publication of an Irish edition which did not carry advertisements for abortion clinics.<sup>722</sup> The Irish distributors of *The Guardian* newspaper also held back an issue carrying an advertisement by the Marie Stopes

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<sup>715</sup> Government of Ireland, *Bunreacht na hÉireann: The Constitution of Ireland*, 128.

<sup>716</sup> T. Hesketh, *The Second Partitioning of Ireland*, 377.

<sup>717</sup> T. Inglis, *Moral Monopoly*, 82.

<sup>718</sup> U. Barry, 'Abortion in the Republic of Ireland,' 63.

<sup>719</sup> **Appendix 6** lists the individual groups which make up the opposing coalitions.

<sup>720</sup> Deaglán de Bréadún, 'SPUC Wants Abortion Advice Ban,' *Irish Times*, 10 July, 1984; Mary Maher, 'Youth Meeting Against Abortion,' *Irish Times*, 20 July, 1984; Willy Clingan, 'Picket Planned Over Abortion Referrals,' *Irish Times*, 17 September, 1984; *Irish Press*, 'Abortion Claim,' 24 September, 1984.

<sup>721</sup> Mary Kelly, 'Censorship and the Media,' In *Gender and the Law in Ireland*, Alpha Connelly (ed.), (Dublin: Oak Tree Press, 1993), 185-211, 204.

<sup>722</sup> Deaglán de Bréadún, 'SPUC Wants Abortion Advice Ban,' *Irish Times*, 10 July, 1984.



abortion clinic.<sup>723</sup> *Attic Press*, the only feminist publishing house in Ireland, was also the subject of anonymous complaints to advertisers, distributors and booksellers, concerning the ‘moral unacceptability’ of its publications. This led to some titles being withdrawn from circulation.<sup>724</sup> While many newspaper reports were limited to describing the problems of unmarried or underage mothers,<sup>725</sup> and even seemingly ‘neutral’ articles regarding the numbers of Irish women seeking abortion became ammunition for ideological battles.<sup>726</sup> The Irish abortion figures were, however, one of the few ‘acceptable’ ways of discussing the issue.<sup>727</sup>

### *Legal Action Begins: Censoring Counselling Services*

On 28 June 1985 SPUC took the censorship campaign a step further and initiated legal proceedings against DWC and Open Door Counselling (ODC), aimed at closing the counselling services.<sup>728</sup> In response, on 11 September 1985, ODC alleged that SPUC had no legal standing (*locus standi*) to mount a case.<sup>729</sup> On 24 September the High Court ordered that the proceedings continue, in the name of the Attorney General, at the relation of SPUC.<sup>730</sup> On 19 December 1986 High Court Justice Hamilton granted SPUC an injunction prohibiting ODC and DWC ‘from counselling or assisting’ to ‘obtain further advice on abortion or to obtain an abortion’.<sup>731</sup>

The Hamilton ruling, the first judicial ruling since the Eighth Amendment to the Constitution was passed by referendum, contained several other significant

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<sup>723</sup> Council for the Status of Women, *1992 Annual Report*, (Dublin: Council for the Status of Women, 1992), 3.

<sup>724</sup> Ailbhe Smyth, ‘The Politics of Abortion in a Police State,’ In *The Abortion Papers: Ireland*, Ailbhe Smyth (ed.), (Dublin: Attic Press, 1992), 138-148, 140-141.

<sup>725</sup> For examples of unmarried mother stories see *Irish Times*, ‘“Grim Time” for Unmarried Mothers,’ 24 October, 1984 and *Irish Press*, ‘Intolerance Growing - Fennell,’ 24 October, 1984. A particularly tragic case of an underage mother involved Ann Lovett, who died giving birth, received wide media attention and was instrumental in polarising attitudes among young people. Sinead O’Connor, ‘Taking a Stand,’ Interview by Marian Finucane, series producer Marian Finucane (Dublin: RTE Montrose Production) no date.) The link between these tragedies and the lack of contraception and abortion services was made on occasions. For an example see Claire Grady, ‘Abortion Facts Not Full Story: True Figures Much Higher,’ *Evening Herald*, 19 December 1986, 19.

<sup>726</sup> *Irish Times*, ‘Dublin Single Women Abortion Rate Higher Than UK,’ 18 July 1984; *Irish Times*, ‘Findings on Abortion Disturbing, Says Cura’ 19 July 1984.

<sup>727</sup> *Irish Independent*, ‘Increase in Abortion Figures,’ 30 August 1985; Gene McKenna, ‘Abortion Trail to UK is a ‘Major Problem,’ *Irish Independent*, 12 September 1985; *Irish Press*, ‘Huge Increase in Second Abortions,’ 25 September, 1985; *Irish Independent*, ‘Irish Abortions Rising,’ 19 August 1986, 3; Mary Punch, ‘4,000 on Abortion Trail to UK,’ *Irish Independent*, 10 June 1987; Karen Homquist, ‘Irish Abortion Increase Despite Information Ban,’ *Irish Times*, 21 September 1990.

<sup>728</sup> *Attorney General (at the relation of SPUC (Irl) Ltd) v Open Door Counselling Ltd and Dublin Well Woman Centre Ltd* (1987) ILRM 477, 484.

<sup>729</sup> *Ibid.*, 484.

<sup>730</sup> *Ibid.*, 485.

<sup>731</sup> *Ibid.*, 500.

points. First, that the Attorney General was able to take up such cases, as the protector of the public interest. Second, that the power of the courts to enforce personal rights did not depend on the enactment of legislation, to implement Article 40.3.3. Third, that as a consequence of Article 40.3.3, abortion is 'contrary to national policy and public morality and also contrary to law and the right to life'. Fourth, the provisions of the European Community law were not relevant, since this related to the activities of defendants within the State. Fifth, SPUC had *locus standi* to pursue costs, against ODC and DWC.<sup>732</sup>

On 16 March 1988 ODC and DWC lost their appeal against the High Court judgement.<sup>733</sup> The services were to be

... perpetually restrained from assisting pregnant women within the jurisdiction to travel abroad to obtain abortions by referral to a clinic, by the making for them of travel arrangements, or by informing them of the identity and location of and the method of communication with a specified clinic or clinics.<sup>734</sup>

The services closed temporarily but announced their intention to lodge a complaint with the European Commission of Human Rights and to challenge the legal standing of SPUC in relation to these issues within Irish courts.<sup>735</sup> In July 1988 DWC resumed its pregnancy counselling service 'within the ambit of the Supreme Court injunction'.<sup>736</sup> Similarly, ODC had established Open Line Telephone Helpline as an emergency measure, in January 1987 and continued to offer informal (and now illegal) access to information and counselling through Ruth Riddick's home.<sup>737</sup> The Supreme Court appeal against granting SPUC *locus standi* was rejected on 12 October 1989. Chief Justice Findlay found that SPUC 'had a *bona fide* concern and interest for the protection of the constitutionally guaranteed right to life of the unborn'.<sup>738</sup>

A feminist, pro-abortion, *ad hoc* committee formed to defend the right to non-directive pregnancy counselling, the right to provide abortion information, and the right to make abortion referrals.<sup>739</sup> A Women's Information Network was formed to provide a non-directive telephone counselling service and to lobby for

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<sup>732</sup> Ibid., 478.

<sup>733</sup> *Attorney General (at the relation of SPUC (Irl) Ltd) v Open Door Counselling Ltd & Dublin Well Woman Centre Ltd*, (1988) IR 593; (1988) ILRM 19.

<sup>734</sup> (1988) IR 593, 627.

<sup>735</sup> P. Jackson, 'Abortion Trials and Tribulations,' 119.

<sup>736</sup> Dublin Well Woman Centre, *Putting Women's Health First*, (Dublin: Dublin Well Woman Centre, 1993), 2.

<sup>737</sup> Ruth Riddick, 'Abortion and the Law in the Republic of Ireland,' *An Address to the New England School of Law*, Boston Massachusetts, 11 March 1993.

<sup>738</sup> (1988) ILRM 19; Paul Gardiner, 'Party With Bona Fide Concern and Interest Has Locus Standi in Proceedings to Enforce Constitution,' *Irish Times*, Law Report, 16 October 1989.

<sup>739</sup> *Irish Times*, 'Abortion Referral Defended,' 12 August 1985.

the right to travel and free information. Later, the Dublin Abortion Information Campaign was also formed, to provide abortion information and to lobby for unrestricted access to abortion facilities in Ireland.<sup>740</sup> The ICTU consistently supported DWC<sup>741</sup> and Sinn Féin also provided intermittent support.<sup>742</sup>

The legal action against the services also attracted considerable media interest and at least one commentator noted not only the contrasting arguments, but the contrasts between the actual women, of the two opposing sides. This description could be a metaphor for the difference between the 'old' and the 'new' Irelands.

The benches were filled with supporters of both sides, some wearing flowers in their lapels, others wearing the notorious gold-plated reproductions of foetal feet. These symbols apart, the physical difference between the two sides was cruelly obvious. The clinic women and their supporters were vibrantly youthful, clearly of child-bearing age. The SPUC women and their colleagues were markedly older, their child-bearing days long gone.<sup>743</sup>

On 7 March 1991, the counselling services appeared before the European Commission on Human Rights which found that Ireland was in violation of Article 10 of the *European Convention of Human Rights and Fundamental Freedoms*, of which Ireland is a signatory. The Commission found that preventing the services from providing non-directive pregnancy counselling did not prevent abortions. The effect of the prohibition was, therefore, 'to put the mother's health at risk rather than to save the life of the unborn'.<sup>744</sup> This ruling had no direct binding power on the Irish judiciary, however, and, on 29 October 1992, ODC and DWC also appeared in the European Court of Human Rights. The Court upheld the Commission's findings, that Ireland was in violation of Article 10 of the Convention, which deals with the right to give and receive information. The Irish Government was, therefore, directed to allow the services freedom of expression.<sup>745</sup>

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<sup>740</sup> Anne McTiernan, 'Guide to the Pressure Groups,' *Irish Times*, 19 September, 1992.

<sup>741</sup> Irish Congress of Trade Unions, *Report from the Women's Conference*, 1-3; Irish Congress of Trade Unions, *Final Agenda: Women's Conference*, 16.

<sup>742</sup> Sean Flynn, 'Delegates Defy Party Leaders on Abortion,' *Irish Times*, 4 November 1985; Sean Flynn, 'Noonan Condemns SF Abortion Stance,' *Irish Times*, 6 November 1985; *Irish Times*, 'Abortion on Demand Policy Deleted After Heated Debate,' 3 November 1986; *Irish Times*, 'Conference Rejects Abortion Motions,' 2 November 1987.

<sup>743</sup> Nell McCafferty, 'As Far as Practicable...', In *Goodnight Sisters*, (Dublin: Attic Press, 1987), 28-35, 28-29.

<sup>744</sup> James Kingston and Anthony Whelan, 'Protection of the Unborn in Three Legal Orders - Part I,' *Irish Law Times* (April 1992), 93-97, 96.

<sup>745</sup> James Kingston and Anthony Whelan, 'Protection of the Unborn in Three Legal Orders - Part IV,' *Irish Law Times* (December 1992), 279-283, 280; Marrianne Heron, 'Abortion: Still No Answers,' *Irish Independent*, 12 March 1993.

On 20 July 1993, however, the Irish Supreme Court ruled against lifting the restrictions on ODC and DWC, and referred the matter back to the High Court, on a technicality.<sup>746</sup> On 12 October 1994, the case appeared before the High Court but was delayed when SPUC objected to the rostered judge, Miss Justice Mella Carroll, the only woman on the High Court. The objection was upheld on 21 December 1994.<sup>747</sup> It was not until 23 June 1995 that DWC finally won the right to make abortion information available. High Court Justice Geoghegan found against both the Attorney General and SPUC. DWC was awarded court costs plus £25,000 damages, as compensation for loss of income, to be paid by the Attorney General's Department. SPUC was to pay its own costs.<sup>748</sup> **Table 5.1**, below, lists the court rulings as chronicled in Irish legal literature.

### *Censoring the Student Unions*

In July 1988 it was announced that the UCD students' union would publish the names, addresses, and telephone numbers of abortion clinics in their *Welfare Guide 1988/89*.<sup>749</sup> On 16 August 1988 SPUC began a protracted legal battle against the students.<sup>750</sup> This resulted, on 3 October 1989, in an interim order preventing six elected officers of the Union of Students of Ireland, four elected officers of the UCD Student's Union and four elected officers of the Trinity College Dublin (TCD) Student's Union from 'publishing information about the identity, location and how to contact abortion clinics outside this jurisdiction'.<sup>751</sup> Later, on 20 March 1990, the Supreme Court was to award the related costs of appeal to SPUC, which billed the students £22,913 and gave them seven days to pay, on threat of imprisonment.<sup>752</sup>

In early October 1989, however, fourteen student leaders of the Trinity College Students' Union defied the interim injunction and the guidebook was openly distributed at stalls set up in the college for 'Freshers Week'. A large red banner with the Dublin Women's Right to Information telephone number was also prominently displayed, as well as T-shirts with the same number, and a specially

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<sup>746</sup> *The Attorney General at the Relation of the Society for the Protection of Unborn Children (Ireland) Ltd. V. Open Door Counselling Ltd. and Dublin Well Woman Centre Ltd.* (1994) 1 ILRM 256; Uinsionn Mac Dubhghaill, 'AG Says Abortion Rights in Operation Despite Ruling: Court Order 'Inconsistent' With Amended Constitution,' *Irish Times*, 6 August 1993.

<sup>747</sup> *Dublin Wellwoman Centre Ltd., Rita Burtenshaw and Caroline McCamley v. Ireland, the Attorney General and the Society for the Protection of the Unborn Child (Ireland) Ltd.* (1995) ILRM 408.

<sup>748</sup> John Maddock, 'Wellwoman Wins Advice Battle,' *Irish Independent*, 24 June, 1995, 5; J. Kingston and A. Whelan, 'Protection of the Unborn in Three Legal Orders - Part IV,' 281.

<sup>749</sup> Michael Foley, 'Information on Abortion Planned,' *Irish Times*, 6 July 1989.

<sup>750</sup> *The Society for the Protection of Unborn Children (Ireland) Ltd v Diarmuid Coogan and Others* (1989) IR 734.

<sup>751</sup> *The Society for the Protection of Unborn Children (Ireland) Ltd v Stephen Grogan and Others* (1989) IR 753.

<sup>752</sup> *Irish Independent*, 'SPUC in 'Sheriff Threat' to Students,' 7 March 1990; *Irish Times*, 'Student Leaders to Meet Cost of SPUC's Appeal,' 21 March 1990.

printed leaflet with more telephone numbers.<sup>753</sup> This ‘freedom of information’ campaign attracted support from a wide variety of groups and added to the strength of the already existing pro-abortion coalition.<sup>754</sup>

**TABLE 5.1. Irish Law Reports: Counselling Services Cases**

Reference	Date	Site	Outcome	Judge
<b>Attorney General (at the relation of the Society for the Protection of the Unborn Child (Ireland) Ltd v Open Door Counselling and Dublin Well Woman Centre</b>				
(1988) IR 593 (1987) ILRM 477	19 December 1986	High Court	In favour of SPUC: SPUC granted injunction to restrain ODC, DWC from counselling	Hamilton
(1987) ILRM 477	27 April 1987	High Court	In favour of SPUC: SPUC granted <i>locus standi</i>	Hamilton
(1988) IR 593 (1988) ILRM 19	16 March 1988	Supreme Court	In favour of SPUC: ODC, DWC permanently restrained	Finlay, Hederman Griffin, Walsh, Henchy
(1989)ILRM 19	12 October 1989	Supreme Court	In favour of SPUC: SPUC retains <i>locus standi</i>	Finlay
<b>Open Door Counselling Ltd. and Others v Ireland</b>				
(1992) 4 ILT 96	7 March 1991	European Commission of Human Rights	In favour of ODC, DWC: Irish law in violation of Article 10 of the European Convention of Human Rights and Fundamental Freedoms	This does not contain force of law: Irish authorities are not forced to comply
(1992) 12 ILT 279	29 October 1992	European Court of Human Rights	In favour of ODC, DWC: Irish law in violation of Article 10 of the above Convention	The Irish Government was directed to allow the services freedom of expression
<b>Attorney General (at the relation of the Society for the Protection of the Unborn Child (Ireland) Ltd v Open Door Counselling and Dublin Well Woman Centre</b>				
(1994) 1 ILRM 256	20 July 1993	Supreme Court	In favour of SPUC: ODC, DWC still restrained, case directed to High Court	Finlay, Hederman, Egan, Blayney, (Denham dissenting)
<b>Dublin Well Woman Centre Ltd., Rita Burtenshaw and Caroline McCamley v Ireland, the Attorney General and the Society for the Protection of Unborn Children (Ireland) Ltd</b>				
(1995) 1 ILRM 408	21 December 1994	Supreme Court	In favour of SPUC: objection to Justice Carroll upheld	Denham, Hamilton, Egan, Blayney, Costello
<b>Attorney General (at the relation of the Society for the Protection of the Unborn Child (Ireland) Ltd v Open Door Counselling and Dublin Well Woman Centre</b>				
	23 June 1995	High Court	In favour of ODC, DWC: permitted to provide counselling	Geoghegan

References: IR: The Irish Reports; ILRM: Irish Law Report Monthly; ILT: Irish Law Times

<sup>753</sup> Jill Nesbit, ‘Students and SPUC Set for a Show-Down,’ *Irish Times*, 6 October 1989.

<sup>754</sup> Including the Federated Workers Union of Ireland No. 15 branch, the Campaign to Separate Church and State and the Young Fine Gael group. See B. Stamp, ‘Abortion Information,’ *Irish Times*, Letters to the Editor, 3 October, 1989 and Triona Dooney, ‘Information on Abortion,’ *Irish Times*, Letters to the Editor, 4 October 1989.

On 11 October 1989 SPUC applied for an interlocutory injunction against the students on the basis that they had breached the interim restraining order. Justice Carroll found that the only evidence against the students were newspaper reports and that this was not sufficient to convict them of contempt of court and committal to prison.<sup>755</sup> Justice Carroll refused a further High Court injunction against the students stating that having SPUC act as ‘self-appointed policemen’ was ‘viewed with some distaste in several quarters’.<sup>756</sup> Mary Robinson, defending the four Trinity College Student’s Union leaders, stated that, as the students concerned included not only nationals of Ireland but also people from other countries, it was a matter for European Community law.<sup>757</sup> Justice Carroll decided to refer certain questions to the European Court of Justice before ruling on the injunction.<sup>758</sup>

SPUC announced its intention to appeal this delay in the Supreme Court. On 19 December 1989, the Supreme Court granted SPUC’s injunction, to apply until the final determination by the High Court, the Supreme Court or the Court of Justice of the European Communities.<sup>759</sup>

On January 29 1990, Justice Carroll of the High Court heard arguments for referring the case to the Court of Justice, responsible for regulating matters of EU law. As both parties needed to come to an agreement as to the questions which would be put to the European Court, an adjournment until February 19th was granted.<sup>760</sup> In March, Justice Carroll approved three questions, including one which requested clarification on whether abortion was defined as a ‘service’ under the Treaty of Rome (and therefore unable to be restricted between Member States).

An order dated 5 March 1990 was considered by the Court of Justice and the judgement was delivered on 4 October 1991.<sup>761</sup> Abortion, performed in accordance with the law of the state in which it is carried out, did constitute a service. The provision of information about this service, not by the service itself, but by ‘student’s associations’ who have *no economic linkage* with this service, was not protected by European law. As such the Court of Justice had no jurisdiction over the matter. In effect, this upheld Ireland’s ban on abortion information, by stating the case could be decided on Irish law alone.<sup>762</sup>

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<sup>755</sup> (1989) IR 753, 754.

<sup>756</sup> Jill Nesbit, ‘Students and SPUC Set for a Show-Down,’ *Irish Times*, 6 October 1989.

<sup>757</sup> *Irish Times*, ‘SPUC Case ‘Should go to EC Court’,’ 10 October 1989.

<sup>758</sup> (1989) IR 753, 758.

<sup>759</sup> Ibid., 766; Paul Gardiner, ‘Party With Bona Fide Concern and Interest Has Locus Standi in Proceedings to Enforce Constitution,’ *Irish Times*, Law Report, 16 October 1989.

<sup>760</sup> *Irish Times*, ‘SPUC Reaches Some Agreement on Questions,’ 30 January 1990; and John Maddock, ‘SPUC, Students in Euro Case Talks,’ *Irish Independent*, 30 January 1990.

<sup>761</sup> *The Society for the Protection of Unborn Children (Ireland) Ltd v Stephen Grogan and Others* (1992) ILRM 461, 462.

<sup>762</sup> J. Kingston and A. Whelan, ‘Protection of the Unborn in Three Legal Orders - Part IV,’ 279.

On 7 August 1992 the High Court Justice Morris granted permanent injunctions to prevent the publication and dissemination of information concerning abortion services by student unions.<sup>763</sup> He also directed that the papers from the case be sent to the Director of Public Prosecutions (DPP). The DPP would decide whether to prosecute the students for contempt of court.<sup>764</sup> In 1993, however, the unions continued to give information in defiance of the ban.<sup>765</sup> By redefining the issue from one of abortion information to freedom of information, in general, the student's were able to draw on considerable support.<sup>766</sup> **Table 5.2**, below, lists the court proceedings against the students.

**TABLE 5.2. Irish Law Reports: Student Unions Cases**

Reference	Date	Site	Outcome	Judge
<b>The Society for the Protection of Unborn Children (Ireland) Ltd v Diarmuid Coogan and Others</b>				
(1989) IR 734 (1989) ILRM 526	7 September 1988	High Court	In favour of DC&O: SPUC not granted <i>locus standi</i>	Carroll
(1989) IR 734 (1990) ILRM 70	28 July 1989	Supreme Court	In favour of SPUC: SPUC granted <i>locus standi</i> , case directed to High Court	Finlay, Hederman Griffin, Walsh, (McCarthy dissenting)
(1990) IR 273	20 March 1990	Supreme Court	In favour of SPUC: UCD to pay costs of hearings	Finlay, Hederman Griffin, Walsh, (McCarthy dissenting)
<b>The Society for the Protection of Unborn Children (Ireland) Ltd. v Stephen Grogan and Others</b>				
(1989) IR 753	11 October 1989	High Court	In favour of SG&O: questions referred to the Court of Justice of the European Communities	Carroll
(1989) IR 753 (1990) ILRM 350	19 December 1989	Supreme Court	In favour of SPUC: interim restraining order granted	Finlay, Hederman Griffin, Walsh, McCarthy
(1992) ILRM 461	4 October 1991	The Court of Justice of the European Communities	In favour of SPUC: outside of European Law	
(1992) 2 IR 471	22 July 1992	High Court	Admissibility of oral evidence on domestic law.	Morris
(1992) 12 ILT 279	7 August 1992	High Court	In favour of SPUC: permanent restraining order granted	Morris

References: IR: The Irish Reports; ILRM: Irish Law Report Monthly; ILT: Irish Law Times

### *The Impact of Censorship*

<sup>763</sup> Council for the Status of Women, *1992 Annual Report*, 6.

<sup>764</sup> J. Kingston and A. Whelan, 'Protection of the Unborn in Three Legal Orders - Part IV,' 280.

<sup>765</sup> Marianne Heron, 'Abortion: Still No Answers,' *Irish Independent*, 12 March 1993.

<sup>766</sup> This increased their support to the point where the 'Student Defence Fund' appeal listed almost 60 individuals and groups as sponsors. Martina Murray and Eamon O Mordha, 'The Student Defence Fund,' *Letter*, Undated. Archives of the Council for the Status of Women, Dublin.

Censorship of the counselling services spilled over to affect the electronic media after the first Supreme Court ruling was announced in March 1988. RTE circulated guide-lines prohibiting live-to-air broadcasting of programs dealing with abortion and stating that no one may put forward the view that women should travel to obtain abortion.<sup>767</sup> As late as 1994, RTE decided to defer transmission of *50,000 Secret Journeys*, which contained interviews with Irishwomen who have had an abortion. Concern about 'balance' was the official reason given.<sup>768</sup>

This blanket ban on information meant that Irishwomen became significantly disadvantaged. Although the numbers of women presenting for abortion in Britain did not decrease those women were presenting with more advanced pregnancies.<sup>769</sup> Women were continuing to obtain abortion but did not have access to professional counselling before or after the event and, although some counselling was available in Britain, it was 'too little too late'.<sup>770</sup> There were also no provisions for post-abortion health care in Ireland.<sup>771</sup>

After the wide-spread public debate over abortion which characterised the 1983 referendum the rest of the decade saw decision-making power concentrated into the hands of the elites: the judiciary, in particular, the Supreme Court. The *Irish Law Times* indicated that not all members of the judiciary would agree with the Supreme Court decisions regarding abortion and was explicitly critical of the 'incurable natural law axioms' and the 'remorselessly linear fashion' to which the Supreme Court reached 'a particular conclusion'.<sup>772</sup> Individual judges also expressed frustration with the 'almost complete silence on the part of the State' which left the courts to act as 'policemen' in this matter.<sup>773</sup>

Both media and judicial commentators could, quite rightly, criticise the political system for inaction on the abortion issue from a position of relative safety. Yet the political strength of the socially conservative forces was quite plain. The 1986 referendum, aimed at removing a constitutional ban on divorce, had been dominated the same anti-feminist coalition which campaigned for an abortion amendment. Even though opinion polls showed a clear majority in favour of divorce before the announcement of the referendum, the referendum was heavily defeated, after a massive conservative campaign.<sup>774</sup>

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<sup>767</sup> U. Barry, 'Abortion in the Republic of Ireland,' 62.

<sup>768</sup> Patsy McGarry, 'RTE Defers 'Landmark' Programme on Abortion,' *Irish Times*, 30 March 1994.

<sup>769</sup> *Irish Times*, 'Increase in Number of Women Seeking UK Abortions,' 3 December 1993.

<sup>770</sup> Áilín Quinlan, 'Over 40,000 Travelled for Abortion Since 1983,' *Cork Examiner* 21 October 1993.

<sup>771</sup> J. Kingston and A. Whelan, 'Protection of the Unborn in Three Legal Orders - Part I,' 96.

<sup>772</sup> Editorial, 'Keeping the Nation's Conscience,' *Irish Law Times* 6(10) (October 1988), 1.

<sup>773</sup> Editorial, 'The Supreme Court Upholds the Rule of Law in the SPUC Case,' *Irish Law Times* 8(1) (January 1990), 1.

<sup>774</sup> Brian Girvin, 'The Divorce Referendum in the Republic: June 1986,' *Irish Political Studies* 2 (1987), 93-99.



In such a repressive social climate the position of women politicians, particularly feminist politicians, was definitely under threat. McCafferty describes a WPA press conference promoting women candidates in the 1987 elections:

The might as well have been in purdah. They gathered obediently for a mass photograph, revealing their faces, but not their politics. The journalists who had come, by invitation, did not shame them further by asking questions.<sup>775</sup>

Yet the general election of February 1987 saw the beginnings of a progressive recovery. The Progressive Democrats won 14 seats in their first election while stating that their agenda was to free Irish politics ‘from the twin issues of National Partition and Religious Division’.<sup>776</sup> In the June 1989 election, the Progressive Democrats entered into an unlikely coalition government with Fianna Fáil, and the Green party won its first seat in the Dáil.<sup>777</sup> Perhaps most significant, on 9 November 1990, Mary Robinson was elected first woman President of Ireland.

### **The Influence of Feminism? 1979-1991 Assessed**

Ireland was experiencing economic recession and political instability as modernising and secularising forces were disrupting the certainties of the ‘old Ireland’. The issue of abortion became a mobilising force for those opposed to the introduction of a secularising agenda and, in the political system, even those proponents of the new Ireland were intimidated by the continuing power of ‘religious nationalism’. The ‘feminist involvement’ model of policy *type* suggests that the groups available, as primary allies, to feminists within subsystems like those which form around abortion policy are the less powerful ‘secondary interests’ in society. This proved to be the case as Irish feminists mobilised a great deal of support but support which remained within an urbanised, modernised, minority. As feminist groups formed the backbone of the pro-abortion coalition there can be no doubt as to their presence within the policy subsystem. The strength of feminist coalitions was, however, very slight in terms of the indicators laid out previously.

The anti-abortion coalition gained firm hold of the dominant policy discourse as they were able to draw on a wealth of material and symbolic resources to re-define the social and political landscape. Repeated judicial defeats on the issue of abortion, the defeat in the divorce referendum, and the increased media censorship were all measures of their success in gaining policy which would fulfil

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<sup>775</sup> Nell McCafferty, ‘Purdah,’ In *Goodnight Sisters*, (Dublin: Attic Press, 1987), 64-66, 64.

<sup>776</sup> Dick Walsh, ‘The Election,’ In *Nealon’s Guide: 25th Dáil and Seanad, Election ‘87*, Ted Nealon (ed.), (Dublin: Platform Press, 1987), 152-154, 152.

<sup>777</sup> Stephen Collins, ‘The Election,’ In *Nealon’s Guide: 26th Dáil and Seanad Election ‘89*, Ted Nealon (ed.), (Dublin: Platform Press, 1989), 156-158, 156.

anti-feminist, anti-abortion goals.<sup>778</sup> The political arenas of conflict chosen by the anti-abortion coalition were those least permeable to feminist influence: the constitution and the judiciary. In contrast, the EC provided some gains for progressive forces but even these were not unmitigated victories.

What were the impacts of these policies? The statistics on the increasing number of Irishwomen having abortions led feminists to suggest that the policies did not prevent women making a choice regarding pregnancy, but did prevent them making an informed choice. The quantitative arguments paled into insignificance, however, after the events of 1992 brought a qualitative approach to bear in the form of the 'X' case.

## 2. 1992: A CULMINATION OF CRISES

In 1992, the tension between the 'old' and the 'new' Irelands exploded in a series of crises over abortion. As well as the continuing series of court cases involving the counselling services and the students, there were three new issues: the so-called 'X' case; the Maastricht Treaty Protocols and a second national referendum on abortion.

### Judicial Decision-Making in the 'X' Case

In February 1992 a 14 year old girl, pregnant as a result of rape, went to London for an abortion accompanied by her family. Having already reported the rape to the Gardaí, the parents enquired as to the admissibility of DNA testing (of aborted foetal tissue), as evidence in the upcoming trial. The query was referred to the Director of Public Prosecutions and then to the Attorney General's office. Acting as 'the guardian of the Constitution', the Attorney General, Mr. Harry Whelan, applied for an interim restraining order on the child and her family, to prevent the abortion, on 6 February. On being served the interim injunction the girl and her parents returned to Ireland. The High Court then granted an interlocutory restraining order on 10-11 February. On 17 February the girl and her parents were prohibited from leaving Ireland 'for a period of nine months from the date hereof' effectively forcing her to have the child. In his ruling High Court Justice Costello stated that while 'the Oireachtas had failed to legislate on how it was to have regard to the equal right of the mother', as stated in the 1983 referendum, the Court had jurisdiction over the case and could make its own decisions.<sup>779</sup>

While it would have been open to the government to instruct the Attorney General to drop the case the Fianna Fáil Taoiseach, Albert Reynolds, refused to discuss it.<sup>780</sup> When the case became public it provoked a huge outcry. In Ireland,

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<sup>778</sup> The most striking example of this was the publication of an article, at a time when the censorship over factual abortion information was almost complete, entitled: 'Abortion Leads to Nuclear War - Pope,' *Irish Times*, 20 September 1984.

<sup>779</sup> *The Attorney General v X and Others* (1992) 1 IR 1, 11.

<sup>780</sup> Emily O'Reilly, 'Abortion Ban on 14-Year-Old Girl 'is Sub Judice',' *Irish Press*, 13 February 1992.

‘radio phone-in programmes were inundated with calls, newspapers were deluged with letters... for several weeks the Irish national media focused on the case to the near-total exclusion of other news items’ and 7,000 people marched in protest to the Dáil.<sup>781</sup> The ‘X’ case also caused an international scandal, particularly amongst other EC countries, and on February 24 the European Women’s Lobby lodged an official complaint on behalf of the women of Europe.<sup>782</sup>

In response, the Government applied ‘intense pressure’ on the girl’s family to appeal to the Supreme Court, undertaking to pay all costs.<sup>783</sup> The family eventually agreed and, on 24- 26 February 1992, the Supreme Court lifted the injunction.<sup>784</sup> On 5 March the full Supreme Court judgement was made public. While not unanimous the decision to lift the injunction related to the balance between the right to life of the girl and the right to life of the foetus.<sup>785</sup> The threat of suicide was deemed to have tipped the balance and the girl was entitled to a termination for that reason.<sup>786</sup> In other words, in *The Attorney General v X and Others*, the Supreme Court interpreted the amended Article 40.3.3 to mean that abortion was legal if there was a grave risk to the mother’s life.<sup>787</sup>

The depth of public feeling over the plight of the 14 year old was aptly summed up some years later.

The bringing of the X case marked an all-time low in the treatment of women with crisis pregnancies. It was perhaps the most shameful and disgraceful period in Irish public life since the foundation of the State. It tore us apart as a nation and, in doing so, exposed us to all of our hypocrisies. It highlighted the dangers of Catholic fundamentalism as it applies to this issue.<sup>788</sup>

At the time, however, Justice McCarthy merely stated that ‘(t)he failure by the legislature to enact the appropriate legislation is no longer just unfortunate - it is inexcusable’.<sup>789</sup> The Constitutional amendment was seen as providing a basic policy statement which relied on legislation to guide practical implementation of

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<sup>781</sup> Ailbhe Smyth, ‘A Sadistic Farce: Women and Abortion in the Republic of Ireland, 1992,’ In *The Abortion Papers: Ireland*, Ailbhe Smyth (ed.), (Dublin: Attic Press, 1992), 7-24, 12.

<sup>782</sup> Anne Vale, President European Women’s Lobby, *Letter to Taoiseach* 24 February 1992, Council for the Status of Women Archives, Dublin.

<sup>783</sup> A. Smyth, ‘A Sadistic Farce,’ 12.

<sup>784</sup> (1992) 1 IR 1, 41.

<sup>785</sup> *The Attorney General v X and Others* (1992) ILRM 401, 403.

<sup>786</sup> Council for the Status of Women, *1992 Annual Report*, 3.

<sup>787</sup> G. Hussey, *Ireland Today*, 55.

<sup>788</sup> *Dáil Debates*, 2 March 1995, cc. 44.

<sup>789</sup> A. Smyth, ‘A Sadistic Farce,’ 13-14.

that policy. In absence of legislation the judiciary were, in fact, filling a 'policy vacuum'.<sup>790</sup>

All abortion activists were galvanised into action by the 'X' case.<sup>791</sup> The Repeal the Eighth Amendment Campaign (REAC), formed in February 1992, began to press for the statutory right to information and travel, and the deletion of the Eighth Amendment, to allow abortion within Ireland in 'specific' circumstances.<sup>792</sup> Their activities escalated dramatically when, between the High Court and Supreme Court 'X Case' hearings, it had emerged that the Government had inserted a protocol, which was intended to 'protect Ireland's abortion law from the jurisdiction of the European Court', into the EC Maastricht Treaty.<sup>793</sup>

### **The Referendum on the Maastricht Treaty**

The Maastricht Treaty dealt with the steps which Member States would take toward economic and monetary union and was widely viewed as being a positive move towards the resolution of some of Ireland's macro-economic problems. It had already been reported, by the *Irish Times* in November 1991, that the constitutional prohibitions in relation to abortion and family life would be protected under the terms of the EC treaty to be negotiated at Maastricht in December of that year.<sup>794</sup> Protocol 17 went unremarked, at the time, because it changed nothing. Politically, it was a safeguard against any assertion by the anti-abortion movement that the EC would force abortion on Ireland.<sup>795</sup> The 'X' case, however, had shed new light on the Maastricht Treaty Protocol. In this case it would remove any right of a higher appeal to the European Court on any issue within the realm of Article 40.3.3 of the Irish Constitution.<sup>796</sup> In view of the importance of appeals to the European Courts in the other abortion-related cases this was highly significant.

Despite the agitation within Ireland other Member States were reluctant to amend the Treaty. Instead they agreed to sign a 'Solemn Declaration' stating that

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<sup>790</sup> David Gwynn Morgan, 'Must Attorney-General Explain?' *Irish Times*, 17 February 1992.

<sup>791</sup> Which returned to the forefront in 1995, when the man convicted of 'unlawful carnal knowledge' of the 14-year-old girl had his 14-year sentence reduced to four years by the Court of Criminal Appeal, leading to renewed protests by feminist groups. *Irish Echo*, 'More Anger Over 'X' Case as Rapist Gets Sentence Cut,' 6-19 April 1995; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No.425, March 27 1995; Women's Education, Research and Resource Centre, *WERRC Newsletter* (May 1995), 5.

<sup>792</sup> Affiliate organisations: The Union of Students of Ireland, individual student unions, Women's Aid, the Women's Education, Research and Resource Centre at UCD, and the Irish Council for Civil Liberties. Spokeswoman: Ursula Barry. Anne McTiernan, 'Guide to the Pressure Groups,' *Irish Times*, 19 September 1992.

<sup>793</sup> Council for the Status of Women, *1992 Annual Report*, 3.

<sup>794</sup> Declan Coughlan, 'Haughey Says Abortion Clause Will be Protected,' *Irish Times*, 28 November 1991.

<sup>795</sup> G. Hussey, *Ireland Today*, 216.

<sup>796</sup> A. Vale, President European Women's Lobby, *Letter to Taoiseach*.

Protocol 17 was not intended to restrict the freedom to travel or obtain information.<sup>797</sup>

When announcing that the referendum to endorse the Maastricht Treaty would be held on 18 June the government also announced the establishment of a special sub-committee to develop a strategy on the abortion issue. This Committee was to specifically consider whether a legislative response alone was sufficient to respond to the Supreme Court decision in the 'X' case or whether another referendum would be required.<sup>798</sup> The government's refusal to reveal whether it would hold a referendum to *overturn* the Supreme Court decision, or introduce legislation to *implement* it, led all abortion coalitions to oppose the Maastricht referendum.<sup>799</sup>

Anti-abortion groups were supported by two prominent Fianna Fáil senators - Des Hanafin, a founding member of PLAC, and Eamon Ó Cuív - and Justice Rory O'Hanlon, a High Court judge who had just been appointed President of the Law Reform Commission.<sup>800</sup> After a series of public statements, this prominent member of Opus Dei and father of 12 children was finally dismissed from his position as President of the Law Reform Commission, but not dismissed from the High Court.<sup>801</sup> On 26 May, the Irish Catholic Bishops Conference released a statement reiterating their opposition to abortion and providing abortion information.<sup>802</sup> SPUC also campaigned, emphasising the threat to Ireland's sovereignty and independence, particularly Irish neutrality in the face of a potential EC military force.<sup>803</sup>

While the pro-abortion REAC campaign was ostensibly national, it was mainly centred in Dublin, Galway and Cork, where organisations were established. On 8 March a separate group, the Women's Coalition, also formed arguing that a women-only campaign was also needed.<sup>804</sup> Also in March the SCSW (headed by Justice Carroll) issued a statement arguing for the right to travel and

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<sup>797</sup> Ibid.

<sup>798</sup> The sub-committee was chaired by the Minister for Justice, Mr. Flynn and included the Minister for Health, Industry and Commerce and Transport and Communications Dr. O'Connell, Mr. O'Malley and Mrs. Geoghegan-Quinn and the Attorney General Mr. Whelan. Renegh Holohan, 'Three Routes are Open to Reynolds,' *Irish Times*, 19 September 1992.

<sup>799</sup> Brendan Kennelly and Eilís Ward, 'The Abortion Referendums,' In *How Ireland Voted 1992*, Michael Gallagher and Michael Laver (eds.), (Dublin: PSAI Press, 1993), 115-134, 117-118.

<sup>800</sup> G. Hussey, *Ireland Today*, 119.

<sup>801</sup> Editorial, 'Separation of Powers - Uncertainty Where to Draw the Line,' *Irish Law Times* 10(5) (May 1992), 101.

<sup>802</sup> Catholic Press and Information Office, 'The Maastricht Referendum and Some of its Implications' *News Release*, 26 May 1992, Archives of the Council for the Status of Women.

<sup>803</sup> Anne Speed, 'The Struggle for Reproductive Rights: A Brief History in its Political Context,' In *The Abortion Papers: Ireland*, ed. Ailbhe Smyth (Dublin: Attic Press, 1992), 85-98, 97.

<sup>804</sup> B. Kennelly and E. Ward, 'The Abortion Referendums,' 116.

information.<sup>805</sup> In May, Frontline, an umbrella group of organisations providing services to women with crisis pregnancies, formed to support another referendum on information, travel and limited access to abortion.<sup>806</sup>

The CSW was more vocal during this campaign, urging women to ‘break the silence’ that surrounded abortion and every aspect of women’s experience of reproduction, and pledging ‘to work toward policies and strategies that would begin to tackle the reality of abortion and crisis pregnancy in Ireland’.<sup>807</sup> While the CSW demanded that the Government ensure the terms of the Maastricht Treaty protected the ‘full citizenship rights’ of Irishwomen it ultimately supported a ‘yes’ vote.<sup>808</sup> The Executive Committee’s decision was based on the assessment that ‘the long term interest of women and progress on women’s rights in Ireland require the direct and uninterrupted influence of Europe.’<sup>809</sup>

The referendum results provided a ‘yes’ vote - carried by 69 per cent to 31 per cent. The fact that anti-abortion groups had conducted an intensive nationwide campaign against Maastricht (in many parts of the country they were the only groups canvassing) meant that the heavy defeat was interpreted as being more significant for them.<sup>810</sup> In actual fact, both sides had campaigned against Maastricht and the Government, and lost.

### **The 1992 Abortion Referendum**

In the wake of the Maastricht referendum, there was increasing speculation in the media as to the action to be taken by the Government on abortion, upon the resumption of the Dáil on October 7. With the exception of Fianna Fáil all political parties made their positions on the abortion issue public: The Progressive Democrats favoured legislation on the ‘substantive issue’ (of the legality of abortion itself); Fine Gael favouring legalising travel and information, but awaiting Government proposals as to the substantive issue; Labour advocated a referendum on travel and information and legislation permitting abortion in some circumstances; the Democratic Left recommended travel and information ensured by referendum and the Eighth Amendment repealed. The two bodies seen as representing women’s interests, the CSW and the SCSW both lobbied for full travel and information rights. The CSW had no public statement to make on the substantive issue, however, until a series of workshops with members of the 90 groups affiliated to the Council around the country had been completed. The

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<sup>805</sup> Second Commission on the Status of Women, *A Guide to the Report*, 5.

<sup>806</sup> Members include: Irish Family Planning Association, Cherish, Doctors for Freedom of Information, Dublin Well Woman Centre and USI. Affiliate members include: Repeal the Eighth Amendment Campaign and Women’s Coalition. Spokeswoman: Dr. Mary Henry. Anne McTiernan, ‘Guide to the Pressure Groups,’ *Irish Times*, 19 September 1992.

<sup>807</sup> Council for the Status of Women, *1992 Annual Report*, 5.

<sup>808</sup> *Ibid.*, 4.

<sup>809</sup> *Ibid.*, 6; Mary Banotti, ‘Banotti welcomes Council for the Status of Women’s decision to say ‘yes’ to Maastricht,’ *Press Statement from Mary Banotti, MEP*, 9 June 1992, Archives of the Council for the Status of Women.

<sup>810</sup> B. Kennelly and E. Ward, ‘The Abortion Referendums,’ 118.

SCSW sent a private letter to the Taoiseach suggesting two options: a repeal of the Eighth Amendment to return to the position before 1983, or, a referendum on allowing travel and information which would include wording to the effect that there should be no interference with the rights of a pregnant woman where there is a threat to her life.<sup>811</sup>

In early October, the Government proposed three amendments to the Constitution, the first two dealing with the right to travel and information. The third provided for abortion where there was a real and 'substantive' risk to the life, as distinct from the health, of the mother. The Government indicated that, if the information proposal was adopted, legislation would finally be introduced.<sup>812</sup>

*The Twelfth Amendment:*

It shall be unlawful to terminate the life of an unborn unless such termination is necessary to save the life, as distinct from the health, of the mother, whether there is an illness or disorder of the mother giving rise to a real or substantive risk to her life, not being a risk of self-destruction.

*The Thirteenth Amendment:*

Subsection 3 of this section shall not limit freedom to travel between the State and another state.

*The Fourteenth Amendment:*

Subsection 3 of this section shall not limit freedom or obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.

On 20 October the debate on the referendums opened in the Dáil. While no deputy adopted the position of the anti-abortion groups many strongly objected to the distinction between a woman's life and health. The first woman speaker in the debate, Nuala Fennell, asked that women's anger over the 'man-handling' of the issue be put on the record. The following day Monica Barnes expressed regret that groups such as the CSW and the SCSW were not formally consulted while the referendum proposals were being drawn up. On 22 October the Bills were passed without amendments.<sup>813</sup>

The same week in which the Bills passed the Seanad, however, the Government collapsed and a General Election was called for 25 November.<sup>814</sup> The same date

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<sup>811</sup> Benagh Holohan, 'Three Routes are Open to Reynolds,' *Irish Times*, 19 September 1992.

<sup>812</sup> Council for the Status of Women, *1992 Annual Report*, 6.

<sup>813</sup> B. Kennelly and E. Ward, 'The Abortion Referendums,' 121.

<sup>814</sup> A breakdown in trust between the two party leaders, Albert Reynolds and Dick Spring, over the publication of the Beef Tribunal Report on July 29 and the forcing through Cabinet on 11 November of the appointment of Harry Whelan as President of the High Court, was responsible for the collapse. John Gary, 'The Demise of the Fianna Fáil/Labour

was set for the referendums. With the exception of the Christian Centrist Party,<sup>815</sup> and a number of independent candidates,<sup>816</sup> abortion was not an election issue.<sup>817</sup> There was no campaigning by Fianna Fáil or the Progressive Democrats on the issue, but Fine Gael's position was eventually indicated, by a statement by John Bruton that the party's approach was for a 'no' vote on the abortion issue. In contrast the two parties which advocated a more liberal position on abortion took a clear stance from the start of the campaign.<sup>818</sup> The Labour Party, influenced by its National Women's Council, devoted special time in its campaigning, broadcasting, and literature to the issue. Similarly the Democratic Left issued all its electioneers with a leaflet devoted to abortion.<sup>819</sup> The sidelining of the abortion issue by the parties was also reflected by the national media.<sup>820</sup>

### *The Referendum Campaign*

While the short period also left the opposing lobbies little time to organise an effective campaign the anti-abortion groups had enough resources to launch a truly nationwide canvassing campaign on the referendums. PLC called for a 'no' vote on the abortion and information questions, and without explicitly campaigning on the travel issue, indicated that it favoured a 'no' campaign on that question as well. A second umbrella group, the National Right-to-Life Campaign, called for a 'no' vote on all three issues.<sup>821</sup> A new group, Youth Defence, was incorporated within this new umbrella organisation. They maintained close links with American activists such as Operation Rescue and Human Life International.<sup>822</sup> Initially, the Bishop's Conference indicated that a 'neutral' position would be adopted, as bishops were divided in their individual opinions, on 13 November however, Archbishop Connell of Dublin issued a pastoral letter stating that he would be voting 'no' on all three issues. A number

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'Partnership' Government and the Rise of the 'Rainbow' Coalition,' *Irish Political Studies* 10 (1995), 192-199, 192-193.

<sup>815</sup> The Christian Centrist Party concentrated on the issues of contraception, divorce and abortion. Founded in 1991, it claimed to be a response to the secularising trends in Irish society and in particular to the new-found liberalism of Fianna Fáil. Brian Girvin, 'The Road to the General Election,' In *How Ireland Voted 1992*, Michael Gallagher and Michael Laver (eds.), (Dublin: PSAI Press, 1993), 1-20, 15.

<sup>816</sup> 25 independent candidates ran on a 'pro-life' anti-abortion platform in various constituencies. They fared poorly; on average each won fewer than 1,000 first preferences, and only one saved her deposit. Michael Gallagher, 'The Election of the 27th Dáil,' In *How Ireland Voted 1992*, Michael Gallagher and Michael Laver (eds.), (Dublin: PSAI Press, 1993), 57-78, 57.

<sup>817</sup> Abortion ranked low as an issue among both men (3%) and women (5%) voters. Frances Gardiner, 'Women in the Election,' In *How Ireland Voted 1992*, Michael Gallagher and Michael Laver (eds.), (Dublin: PSAI Press, 1993), 79-92, 83-84.

<sup>818</sup> B. Kennelly and E. Ward, 'The Abortion Referendums,' 123.

<sup>819</sup> *Ibid.*, 124.

<sup>820</sup> *Ibid.*

<sup>821</sup> *Ibid.*, 122.

<sup>822</sup> Anne McTiernan, 'Guide to the Pressure Groups,' *Irish Times*, 19 September 1992; Justine McCarthy, 'Shock Troopers,' *Irish Independent*, 17 June 1995, Independent Weekender Supplement, 1.



of other bishops subsequently announced that they, too, would be voting 'no' on all three issues.<sup>823</sup>

A common campaign platform, the Alliance for Choice, was launched by the most significant pro-abortion groups.<sup>824</sup> On 10 November after consultation with its 93 constituent member organisations, the CSW concluded that the amendment on the substantive issue of abortion was inappropriate and ambiguous, but that the amendments on travel and information should be overwhelmingly endorsed.<sup>825</sup> The Church of Ireland, Presbyterian church and Methodist church all favoured legislation in preference to constitutional amendment and favoured abortion in limited, carefully monitored circumstances.<sup>826</sup> In September 'Doctors for Freedom of Information' also issued press releases calling for abortion to be available in Ireland for women with life-threatening illnesses and no restrictions on access to information about abortion.<sup>827</sup>

### *The Results*

More people voted in the 1992 referendum than had participated in the 1983 referendum: 68 per cent of registered voters came out. While the 'no' vote on the issues of travel and information was again higher in rural areas, both the measures were passed, 62.4 per cent to 37.6 per cent (travel) and 59.9 per cent to 40.1 percent (information). The Twelfth Amendment was defeated, 34.6 per cent by 65.4 per cent.<sup>828</sup> While there are no clear-cut regional differences on this issue, to do with abortion itself, it may be that the wording of the Amendment was rejected by both sides.<sup>829</sup>

The results of the general election led to a Fianna Fáil/Labour Coalition.<sup>830</sup> Under the section 'Social Justice and a Compassionate Society', the *Fianna Fáil and Labour Programme For A Partnership Government 1993-1997*, committed itself to introducing legislation to regulate the position of abortion in Ireland.<sup>831</sup>

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<sup>823</sup> Ibid.

<sup>824</sup> This included REAC, the Women's Coalition, Frontline, and the youth wings of Fine Gael, the Democratic Left and the Labour Party, the Union of Students of Ireland and the Campaign to Separate Church and State. B. Kennelly and E. Ward, 'The Abortion Referendums,' 122.

<sup>825</sup> Council for the Status of Women, *1992 Annual Report*, 7.

<sup>826</sup> B. Kennelly and E. Ward, 'The Abortion Referendums,' 122.

<sup>827</sup> Dr. Mary Henry and Dr. Fiona Bradley spokeswomen. Uinsionn Mac Dubhghaill, 'Doctors Back Abortion Choice,' *Irish Times*, 19 September 1992.

<sup>828</sup> Ann Hill, 'Irish MPs Vote to Ease Abortion Restrictions,' *Australian*, March 10 1995, 12.

<sup>829</sup> B. Kennelly and E. Ward, 'The Abortion Referendums,' 129.

<sup>830</sup> Michael Gallagher and Michael Laver, 'Preface,' In *How Ireland Voted 1992*, Michael Gallagher and Michael Laver (eds.), (Dublin: PSAI Press, 1993), vii-xi, x.

<sup>831</sup> *Fianna Fáil and Labour Programme For A Partnership Government 1993-1997*, 'Appendix A,' In *How Ireland Voted 1992*, Michael Gallagher and Michael Laver (eds.), (Dublin: PSAI Press, 1993), 174-193, 184.

### **The Influence of Feminism? 1992 Assessed**

For the first time it could be said that the strength of the pro-abortion coalitions had increased, according to the indicators set out, at the beginning of this thesis. The perseverance of the feminist coalitions had resulted, finally, in some of the tenets of feminism becoming accepted into the policy discourse. The 'X' case was a true 'crisis' in the sense described in Chapter 2: personalised, emotional, and capable of mobilising 'disorganised' social action. 'X' epitomised and *humanised* all the arguments feminists had made over the years.

In terms of the passage of policy which would fulfil feminist goals, the 'X' case marked the first time there had been a decision allowing for abortion by the Irish judiciary, illustrating a change of heart by elite decision-makers. In actuality, this set only a limited precedent: the 'X' case judgement could still be considered a conservative one as 'X's' plight bore a close resemblance to that of the 14 year old rape victim in the 1938 *R v Bourne* case, a case which served as a foundation for abortion law in the United Kingdom, Ireland, and Australia.<sup>832</sup> It was, however, an important step away from the anti-abortion precedents set in the previous five years.

The implications of the subsequent Maastricht and abortion referendums may be debated. Either the economic significance of the preparations for a single European market out-weighed the issue of abortion in the eyes of the majority,<sup>833</sup> or the mass of public opinion had shifted toward a more liberal position on abortion after the 'X' case.<sup>834</sup> The 'alacrity and complete unconcern' of EC leaders regarding the insertion of Protocol 17 raised questions, however, as to the power of the EC to modernise Irish society.<sup>835</sup> In terms of progress toward achieving feminist goals, the cumulative effect of the decisions of 1992 formed a major turning point in the abortion policy subsystem, if only for the commitment given by the Government to finally introduce legislation on abortion.

### **3. LEGISLATION INTRODUCED: 1993-1996**

In January 1993 the *Irish Independent* newspaper reported that 'major difficulties' were looming for the political parties over the proposed abortion legislation. Senior political sources issued statements to the effect that 'while the issue was a priority for the new government it was unlikely that it would be processed sufficiently to enable a Bill to be drafted and presented during 1993'.<sup>836</sup> And indeed, over twelve months later, there was still no legislative action on the issue.

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<sup>832</sup> J. Kingston and A. Whelan, 'Protection of the Unborn in Three Legal Orders - Part IV,' 282.

<sup>833</sup> Michael Holmes, 'The Maastricht Treaty Referendum of June 1992,' *Irish Political Studies* 8, (1993), 105-110.

<sup>834</sup> *Ibid.*, 131.

<sup>835</sup> A. Speed, 'The Struggle for Reproductive Rights,' 98.

<sup>836</sup> *Irish Independent*, 'Headache for Three Parties: Abortion,' 8 January, 1993.

Lobbying continued. On the pro-abortion side, the SCSW recommended that legislation reflecting the outcomes of the 1992 abortion referendum be enacted 'without delay'.<sup>837</sup> The CSW described the situation as one of 'political paralysis' and called for 'some political will and leadership' to end the current 'climate of fear and hopelessness'.<sup>838</sup> December 1993 British Office of Population Censuses and Surveys abortion figures showed yet another increase in the number of Irish women seeking abortion.<sup>839</sup> These figures were regularly disputed, by both sides, as an underestimation.<sup>840</sup> In 1994 the Irish Family Planning Association (IFPA) published its *Agenda for Choice* in which it set out its goals for the year 2000. The over-arching goal was 'achieving reproductive rights in Ireland'.<sup>841</sup> This was an attempt to lead the public debate further along the progressive path, as 'reproductive rights' was not a concept which had gained much hold in the policy debate, at that point in spite of the increasing numbers of Irishwomen obtaining abortions (see **Figure 5.1** below).<sup>842</sup>

Anti-abortion women's groups met with President Robinson to express their opposition to abortion.<sup>843</sup> The PLC continued lobbying of all sitting TDs, and MEP candidates,<sup>844</sup> and carried out various legal and illegal protests.<sup>845</sup> During the European Parliament elections, Catholic traditionalist, Nora Bennis, contested a seat and announced the formation of a new conservative Catholic movement, Solidarity.<sup>846</sup>

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<sup>837</sup> Second Commission on the Status of Women, *Report to the Government*, 33.

<sup>838</sup> Anne Taylor, Chairwoman, Council for the Status of Women, *Letter to the Taoiseach*, Mr. Albert Reynolds and the Tanaiste, Mr. Dick Spring, 5 July 1994, Archives of the Council for the Status of Women.

<sup>839</sup> *Irish Times*, 'Increase in Number of Irish Women Seeking UK Abortions,' 3 December 1993.

<sup>840</sup> Eilish O'Regan, 'Record Termination Figure May Be On 'Low Side',' *Irish Independent*, 2 March 1995.

<sup>841</sup> Irish Family Planning Association, *The Agenda for Choice*, (Dublin: Irish Family Planning Association, 1994).

<sup>842</sup> Ruth Riddick, *Interview by Author*, 5 July 1996.

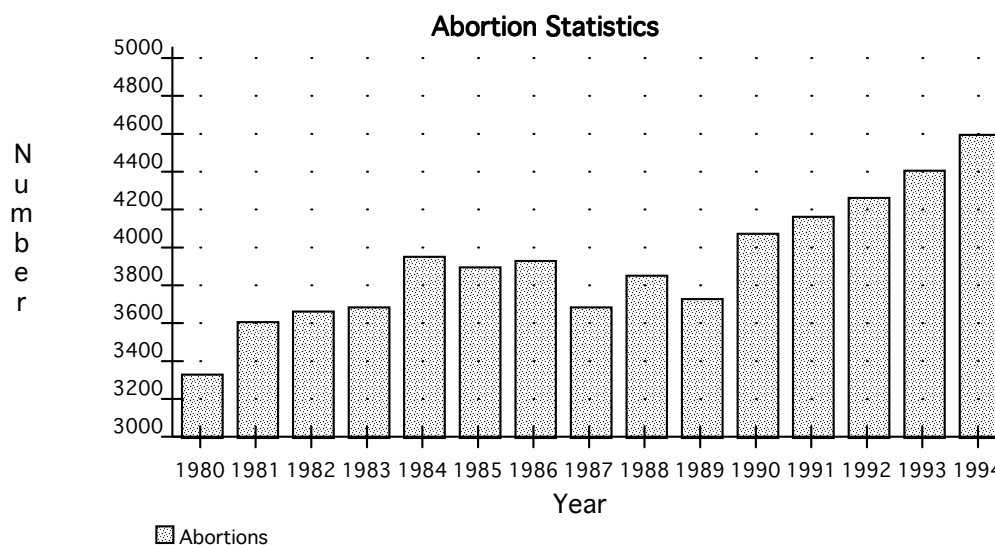
<sup>843</sup> Orla Bourke, 'Women for Aras Meeting,' *Irish Press*, 19 February 1993.

<sup>844</sup> Audrey Magee, 'Pro-life Campaign Claims Provision of Information Amounts to Abortion Referral,' *Irish Times*, 13 May 1994.

<sup>845</sup> *Evening Press*, 'Anti-Abortion US Group to Target Ireland,' 13 August 1993; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No.408, November 28 1994; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No.399, September 26 1994.

<sup>846</sup> Michael Marsh, 'The 1994 European Parliament Election in the Republic of Ireland,' *Irish Political Studies* 10 (1995), 209-215, 213.

**FIGURE 5.1. Irishwomen Obtaining Abortions (Approximate Numbers)<sup>847</sup>**



Source: Irish Family Planning Association, *Abortion Statistics*, November 1995.

The publication of Pope John Paul II's encyclical *Evangelium Vitae* (The Gospel of Life) was publicly welcomed by the anti-abortion groups,<sup>848</sup> and an Irish 'Pro-Life/Pro-Family' conference was sponsored by Human Life International, signalling the enduring links between Irish activists and extremist American groups.<sup>849</sup>

Medical practitioners were also pressuring the government for clear guide-lines. In January 1993 the Irish Hospital Consultants Association sought a meeting with the Irish Medical Council on the potential conflict which existed between their guidelines and the situation arising from the 1992 judicial and constitutional reforms.<sup>850</sup>

May 1994 saw further news reports on dissent in Cabinet ranks. Social Welfare Minister, Dr. Michael Woods, and Environment Minister, Michael Smith, stated that they believed the 'X' case was a 'once-off phenomenon' and that there was

<sup>847</sup> Other statistics indicate that, in 1997, approximately 4,884 Irishwomen obtained abortions in Britain. Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 540, June 9 1997.

<sup>848</sup> Stating that the 'Catholic Church may have lost the battle on contraception, but ... it is clear that the ground is to be held on abortion and euthanasia,' the *Cork Examiner* suggested that 'the opposition to abortion is going to intensify in this country.' T. P. O'Mahony, 'Pope Draws Battle Lines,' *Cork Examiner*, 31 March 1995.

<sup>849</sup> Justine McCarthy, 'Shock Troopers,' *Irish Independent*, 17 June 1995, Independent Weekender Supplement, 1.

<sup>850</sup> These guidelines could still leave doctors open to charges of misconduct. Michael Marsh and Rick Wilford, 'Irish Political Data,' *Irish Political Studies* 9 (1994), 189-246, 220.

no need for legislation.<sup>851</sup> Perhaps inspired by the increasing complexity of Ireland's international position,<sup>852</sup> however, by late October 1994 there was considerable talk about a forthcoming Abortion Information Bill.<sup>853</sup> By the first week of November its details had been leaked to the *Irish Times*.<sup>854</sup> The proposed Bill was again put on the back burner, however, in the drama of the mid-November fall of the Fianna Fáil/Labour Party coalition Government.

### *The Social Crisis of Catholicism*

From mid-November the Government faced increasing disarray over the appointment of the Attorney General, Harry Whelan, to the position of President of the High Court and subsequent revelations about Whelan's unjustified reluctance to extradite the convicted paedophile priest Fr. Brendan Smyth. The Taoiseach, Albert Reynolds, was found to have misled the Dáil on the matter and resigned before a 'no confidence' motion could be introduced. This led to the resignations of the Tanaiste, Labour and Fianna Fáil Government Ministers, and the President of the High Court.<sup>855</sup>

The Fr. Brendan Smyth case cannot be over-estimated in loosening the control of the Church on the popular imagination. Television coverage of the November 1994 Dáil debates on the issue attracted *over three times the number of viewers than tuned in for the IRA cease-fire announcement*.<sup>856</sup> This was also to be the beginnings of an avalanche of child sex abuse cases which received exhaustive media coverage in Ireland over the next few years.<sup>857</sup> The 'moral high ground' of the male-dominated Church had irrevocably eroded.

In the midst of this Albert Reynolds told the Labour leader, Dick Spring, and the Health Minister, Brendan Howlin, that abortion legislation could not be formulated during the lifetime of the Coalition government. There was considerable media speculation that the issue would create an obstacle to the formation of a new Fianna Fáil/Labour coalition.<sup>858</sup> The 'Rainbow Coalition' which did, in fact, eventually emerge to take Government did not include Fianna Fáil. It consisted of Fine Gael, Labour and the Democratic Left and was headed by John Bruton (Fine Gael), as Taoiseach, and Dick Spring (Labour) as

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<sup>851</sup> Don Lavery and Kevin Moore, 'Abortion and Divorce Hit by Further Delay,' *Sunday Independent*, 1 May 1994.

<sup>852</sup> Ireland's unclear position on abortion began to have ramifications as the EU negotiated a common position in relation to the draft UN declaration for the Conference on Population and Development. *Sunday Tribune*, 'Abortion Stance Not Acceptable to EU Partners,' 8 May 1995; Diarmuid Doyle, 'Whelan: Back in the Fray,' *Sunday Tribune*, 8 May, 1995.

<sup>853</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 404, October 31 1994.

<sup>854</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 405, November 7 1994.

<sup>855</sup> *Ireland*, Electronic News Service, November 17 1994.

<sup>856</sup> A. Smyth, 'States of Change,' 28.

<sup>857</sup> Duncan Woolford, 'Irish Crisis Focuses Attention on Paedophiles in the Priesthood,' *Weekend Australian*, 19-20 November 1994.

<sup>858</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 408, 28 November 1994.

Tanaiste.<sup>859</sup> While the *Programme for Government* again promised legislation on abortion ‘as soon as possible’ it was not until 23 February 1995, that the Government finally published the Bill which would put the two successful referenda into a legislative framework.<sup>860</sup>

The *Regulation of Information (Services Outside State for Termination of Pregnancies) Bill 1995* was put forward by the Minister for Health, Michael Noonan. The Department of Health stated that the objectives of the Bill were: to ensure that those who are advising pregnant woman provide ‘non-offensive’ information on the full range of options without promoting abortion; to prevent abortion referrals (!); and to ensure that published information about abortion is accurate.<sup>861</sup> Fianna Fáil decided to allow a ‘conscience vote’ on the issue<sup>862</sup> as Fine Gael accused it of trying to score political points on this ‘highly sensitive issue’.<sup>863</sup>

### The Lobbying Campaign

The proposed Bill met with a critical response. The IFPA, the CSW, the Irish Council for Civil Liberties, the USI and the Women's Coalition, complained that preventing doctors from making direct contact with an abortion clinic on behalf of a patient was an interference with the doctor/patient relationship. A number of doctors claimed that they had been making appointments for patients in British abortion clinics, and maintained that they would continue to do so, even if it was made illegal by the new legislation.<sup>864</sup> Chief Executive of the CSW, Ms Anne Marie Gill, commented that the Bill reflected ‘very confused thinking’ and may be ‘simply be another layer of an unsatisfactory legal situation.’<sup>865</sup> Academic feminists at the Women’s Education, Research and Resource Centre expressed reservations about the Bill in a statement to the press and in letters to all TDs and Senators.<sup>866</sup>

Anti-abortion groups such as Family Solidarity, the Pro-Life Campaign, Youth Defence, and the Knights of Columbanus were also critical of the Bill, on the basis that providing information was tantamount to promoting abortion.<sup>867</sup> High Court judge Rory O’Hanlon issued a public statement arguing that the legislation

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<sup>859</sup> Ann Connolly, ‘Irish Leader Emerges From Political Wilderness,’ *Weekend Australian*, 17-18 December 1994.

<sup>860</sup> Liam Ferrie, *IE News Flash*, Electronic News Service 15 December 1994.

<sup>861</sup> *Irish Echo*, ‘Abortion Bill runs into trouble,’ 9-22 March 1995, 2.

<sup>862</sup> Gene McKenna, ‘Judge's Remarks on Abortion Bill ‘Unwise’: Spring,’ *Irish Independent*, 2 March 1995.

<sup>863</sup> Ann Hill, ‘Irish MPs Vote to Ease Abortion Restrictions,’ *Australian*, 10 March 1995.

<sup>864</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 422, 6 March 1995.

<sup>865</sup> Anne Marie Gill, Executive Officer, Council for the Status of Women, *News Release*, 23 February 1995, Council for the Status of Women Archives.

<sup>866</sup> Women’s Education, Research and Resource Centre, *WERRC Newsletter* (May 1995), 5.

<sup>867</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 421, 27 February 1995.

is unconstitutional, as it was against the law of God, and ‘the Irish Constitution states that God's law is supreme’.<sup>868</sup> The Bishop of Cloyne, Dr John Magee, was the first member of the Irish Catholic Hierarchy to formally criticise the proposed legislation, followed by the Archbishop of Dublin, Dr Desmond Connell.<sup>869</sup> The Irish Bishops' Conference issued a 22-point statement which suggested that ‘(n)o motive of compassion for the mother, no reluctance or regret, however genuine, can justify or excuse the participation in the destruction of a human life’.<sup>870</sup>

The pressure on legislators intensified, as TDs who said that they would support the Bill received abusive telephone calls and pickets at their homes, with accusations of complicity in murder and anti-abortion groups likening their actions to that of the Nazis during the Holocaust.<sup>871</sup>

While both sides marched and picketed in support of their beliefs, International Women's Day, which fell in the middle of the Dáil debate, was marked by an especially large number of seminars and receptions, and a protest march from Parnell Square to the Dáil.<sup>872</sup>

### **The Dáil and Seanad Debates**

The Bill was introduced for the Second Stage reading in the Dáil by Fine Gael Health Minister Noonan on 2 March 1995.<sup>873</sup> The *Regulation of Information (Services Outside the State for Termination of Pregnancy)* Bill was to provide for access to abortion information in Ireland and the freedom to travel out of the country to purchase abortion services. Noonan stated that the ‘truth’ of the anti-abortion campaign was that ‘(i)t does not accept, and has never accepted, the democratic decision of the Irish people in 1992...’.<sup>874</sup> Official support for the Bill was expressed by spokespeople for the other ‘Rainbow Coalition’ parties as well as the Progressive Democrats. The Fianna Fáil Opposition Spokesperson on Health, Máire Geoghegan-Quinn, toed the unofficial ‘party line’ when she described the timing of the Bill as ‘unwise’ and suggested that the judiciary were the proper arbiters in this case.<sup>875</sup> Although the official stand by each of the parties was moderate and supportive of the legislation, the rest of the Second Stage debate (2 March and 7-8 March) provided an opportunity for the many TDs

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<sup>868</sup> Gene McKenna, ‘Judge's Remarks on Abortion Bill ‘Unwise’: Spring,’ *Irish Independent*, 2 March 1995.

<sup>869</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 422, 6 March 1995.

<sup>870</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 423, 13 March 1995.

<sup>871</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 422, 6 March 1995.

<sup>872</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 423, 13 March 1995.

<sup>873</sup> *Dáil Debates*, 2 March 1995, cc. 6-28.

<sup>874</sup> *Ibid.*, cc. 21.

<sup>875</sup> *Ibid.*, 35.

who disagreed with the legislation to state their cases, and for the legislation to be defended by its supporters.<sup>876</sup>

Minister Noonan urged TDs not to be intimidated by forces outside the House but to stand for the primacy of the Dáil and ensure that it was the Dáil which made laws by which people lived. In a speech which specifically rejected the authority of the anti-abortion groups, the judiciary and the Church, he asserted the ‘primacy of Dáil Éireann’.<sup>877</sup>

I call on all deputies to reject the intimidation of TDs attempted by Youth Defence and others. I call on them to reject the pressure put on them by the various interlocking organisations, both overt and covert, which constitute the Pro-Life Movement. I call on all deputies to reject the intrusion in our proceedings by a High Court judge who, in a piece of ludicrous hyperbole sought to involve us in the guilt of a new holocaust. I call on all deputies to reject those who would reach back into the mist of history and try to pressure us with the ghostly weapons of bell, book and candle. That wasn’t done since the War of Independence when Deputy Deasy’s father was excommunicated by the Bishop of Cork.<sup>878</sup>

While the vote at the Second Stage was seen as a serious test of Bruton’s three party left-right coalition, the Government had a comfortable majority when the Bill was supported by Fine Gael (with one abstainer),<sup>879</sup> Labour, the Democratic Left, five Progressive Democrats, an Independent and a Green Party member.<sup>880</sup> Although at least eleven Fianna Fáil TDs agreed with what the Bill attempted to do, all voted against, in accordance with the wishes of a substantial majority in the party. The following day the Committee stage began with the Progressive Democrat’s Liz O’Donnell putting on record a statement issued by the Irish Bishops:

There are no circumstances in which the life of an innocent human being may be intentionally destroyed. That principle remains true whatever the law of the State or international law may say.<sup>881</sup>

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<sup>876</sup> *Dáil Debates*, 2 March 1995, cc. 3-99 and 167-184; 7 March 1995, cc. 332-360 and 392-419; 8 March 1995, cc. 441-500, 622-676, and 715-745.

<sup>877</sup> Dermot Kelly and Michael O’Regan, ‘Bill Passes Second Stage Comfortably by 85 to 67,’ *Irish Times*, 9 March 1995.

<sup>878</sup> *Dáil Debates*, 8 March 1995, cc. 741-742.

<sup>879</sup> Donegal TD Paddy Harte was expelled from the Fine Gael Parliamentary Party, for six months, as punishment for abstaining in the vote. Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 427, 10 April 1995.

<sup>880</sup> Ann Hill, ‘Irish MPs Vote to Ease Abortion Restrictions,’ *Australian*, 10 March 1995.

<sup>881</sup> *Dáil Debates*, 9 March 1995, cc. 795.



O'Donnell described it as a 'snub to this House, to the decision of the Supreme Court and to all compassionate Irish people'.<sup>882</sup> O'Donnell also acted in the Report and Final Stages of the Dáil debate to ensure that the Bill did not reduce the already limited circumstances in which women could have abortions in Ireland itself.<sup>883</sup>

The Seanad debate was seen to be both cooler and more rational than in the 'more populist Dáil'.<sup>884</sup> The proposed legislation was passed by 29 votes to 17. One third of Fianna Fáil Senators failed to attend and the rest voted against the Bill.<sup>885</sup> On the 14 March the Bill completed the Seanad Committee and all remaining stages.<sup>886</sup> The final debate, lasting five hours, included an amendment proposed by the Progressive Democrats to allow directive counselling and to explicitly allow referral arrangements to be made in certain circumstances.<sup>887</sup>

Described as a 'triumph for democracy'<sup>888</sup> the *Regulation of Information (Services Outside the State for Termination of Pregnancy) Bill 1995* was finally sent to President Mary Robinson.<sup>889</sup> On 16 March the President called a meeting of the Council of State to advise on whether she should sign the Bill into law or refer it to the Supreme Court to test its constitutionality.<sup>890</sup> She chose the latter giving the Court sixty days to decide. If unconstitutional, the Bill would lapse but if it were judged constitutional, it could never again be challenged.<sup>891</sup>

### **The Judiciary: the Final Say**

The Supreme Court appointed counsel to argue against the constitutionality of the Bill from two diametrically opposed viewpoints.<sup>892</sup> The case commenced on 4 April. The argument that the Bill does not protect the right of the unborn was put forward by Mr. Peter Kelly SC. The argument that the Bill restricts the rights of the mother was presented by Mr. Frank Clarke SC. The Attorney General, Mr.

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<sup>882</sup> Ibid.

<sup>883</sup> Dáil *Debates*, 10 March 1995, cc. 1078-1080.

<sup>884</sup> Joe Carroll, 'House Lives up to Reputation as Rational, Cooler Forum,' *Irish Times*, 14 March 1995.

<sup>885</sup> Mary Cummins and John Maher, 'All Options Needed, says Noonan,' *Irish Times*, 14 March 1995.

<sup>886</sup> *Seanad Debates*, 14 March 1995, cc. 996-1079.

<sup>887</sup> Dermot Kelly and Mary Cummins, 'Information Bill on Abortion Passes all Stages,' *Irish Times*, 15 March 1995.

<sup>888</sup> Joe Carroll, 'History is Made as Bill is Passed,' *Irish Times*, 15 March 1995.

<sup>889</sup> Maol Muire Tynan, 'President to Decide Today on Future of Abortion Bill,' *Irish Times*, 15 March 1995.

<sup>890</sup> Tim Ryan, 'Supreme Court Referral for Bill,' *Irish Press*, 16 March 1995.

<sup>891</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 424, 20 March 1995.

<sup>892</sup> *In the Matter of Article 26 of the Constitution and in the Matter of the Reference to the Court of the Regulation of Information (Services Outside the State for Termination of Pregnancies) Bill 1995* (1995) 2 ILRM 81, 86.

Dermot Gleeson SC, made the case on behalf of the Government that the Bill was constitutional.<sup>893</sup> Chief Justice Hamilton delivered the Court's decision, on 12 May, ruling that the Bill was entirely constitutional.<sup>894</sup> The court went on to tell doctors that, while they are not free to arrange abortions for patients, they can liaise with doctors in foreign abortion clinics once an appointment has been made.<sup>895</sup> Following the judgement President Robinson signed the Bill into law.<sup>896</sup> It was duly announced in the Dáil on 22 March 1995.<sup>897</sup>

### **The Impact of Legislation**

While the ruling was generally welcomed by the Government, Labour expressed some caution, suggesting that, while the Supreme Court decision resolved the 1992 referendum, there was still the 'substantive issue' of abortion to be addressed arising as a result of the judgement in the 'X' case. In the absence of further legislation it was seen as inevitable that some future case would raise the issue again.<sup>898</sup> In the short term, however, many issues were able to be resolved. Within a week of the Supreme Court decision the Irish College of General Practitioners produced a training programme and information pack for general practitioners who were willing to provide abortion information.<sup>899</sup> The Department of Health also circulated a detailed questionnaire to all Health Boards and General Practitioners to determine the type of pregnancy counselling that was being made available.<sup>900</sup>

Pro-abortion groups were not entirely pleased with the limited nature of the legislation. The IFPA stated that it would defy the new legislation to make appointments for clients at abortion clinics in Britain.<sup>901</sup> Not surprisingly, the various anti-abortion groups expressed 'bitter disappointment' at the decision, vowing to campaign for another constitutional referendum and were severely critical of the 'culture of death' which had 'overtaken the country'.<sup>902</sup> The Irish

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<sup>893</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 425, 27 March 1995.

<sup>894</sup> (1995) 2 ILRM 81, 83.

<sup>895</sup> Ibid., 83-85.

<sup>896</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 432, 15 May 1995.

<sup>897</sup> *Dáil Debates*, 22 March 1995, cc. 1695.

<sup>898</sup> Alan Shatter, 'Despite the Ruling, Troubled Waters Still Lie Ahead,' *Irish Times*, 15 May 1995.

<sup>899</sup> *Irish Echo*, 'Bill Allows Doctors to Give Information on Abortion,' *Irish Echo* 8(10) (June 1995), 8.

<sup>900</sup> *Irish Independent*, 'GPs Face Quiz on Abortion Advice,' 14 June 1995.

<sup>901</sup> Pdraig O'Morain, 'IFPA Says it Will Continue to Make Abortion Appointments,' *Irish Times*, 22 May 1995.

<sup>902</sup> Andy Pollak, 'Abortion Bill Providing a Price List for Death, Says Archbishop,' *Irish Times*, 5 June 1995; Joseph Power, 'Procurement of Abortion Made Legal, Say Bishops,' *Irish Independent*, 1 July 1995; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 436, 12 June 1995; Michael O'Regan, 'Leading Judge Condemns Abortion

Bishops Conference also issued a statement strongly criticising the Supreme Court judges who took it upon themselves to ‘re-interpret the Constitution’.<sup>903</sup> The legal and religious debate continued in the press unabated.<sup>904</sup>

Youth Defence members escalated their activities of protest, intimidation and violence against pro-abortion supporters.<sup>905</sup> TD Dr. Jim McDaid had his surgery picketed, his car stoned and his house attacked, by anti-abortionists.<sup>906</sup> When hoax letter bombs were received at the offices of the Irish College of General Practitioners and the Dublin Well Woman Centre<sup>907</sup> Youth Defence was again linked to the incident.<sup>908</sup>

In July 1995 the Minister for Health, Michael Noonan, announced grants totalling £300,000 for agencies involved in pregnancy counselling - the first direct government funding for pregnancy counselling services. Yet organisations which would not provide abortion information received almost two-thirds of the monies.<sup>909</sup> The government package also included a research project aimed at discovering what factors lead to crisis pregnancies and to the decision to abort.<sup>910</sup> Liz O’Donnell, of the Progressive Democrats, had little praise for this in the Dáil:

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Information Act,’ *Irish Times*, 10 July 1995; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 441, 17 July 1995.

<sup>903</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 439, 3 July 1995.

<sup>904</sup> Fr. N. Barber, ‘No Surprise Abortion Bill Found to be Constitutional,’ *Irish Times*, 13 June 1995; *Irish Times*, ‘Bishops Discuss Abortion Bill,’ 14 June 1995; Joseph Power, ‘Bishops to State their Case on Abortion Rules,’ *Irish Independent*, 15 June 1995; Andy Pollak, ‘Hierarchy Criticises Supreme Court,’ *Irish Times*, 1 July 1995; Fr. Tom Ingoldsby, ‘Referral Guidelines and Mary Gallagher,’ *Choice*, *Irish Independent*, 14 June 1995; Ethna Cotter, ‘Abortion Information and Truth,’ Jim Cantwell (Director, Catholic Press and Information Office), ‘Morally Innocent,’ and Tomás Ó Gormáin, ‘Anti-Papal Inheritance,’ *Irish Times*, 17 June 1995; Mary Lucy (President, Society for the Protection of Unborn Children), ‘Abortion Information,’ *Irish Times*, 20 June 1995; Huw O’Sullivan, ‘Abortion,’ *Irish Times*, 13 July 1995.

<sup>905</sup> Michael Quinn, ‘Howlin Clinic Protesters are Fined by Court,’ *Irish Independent*, 30 May 1995; *Sunday Independent*, ‘Youth Defence Four Arrested,’ 9 July 1995; Justine McCarthy, ‘Shock Troopers,’ *Irish Independent*, 17 June 1995, Independent Weekender Supplement, 1; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 437, 19 June 1995; Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 441, 17 July 1995.

<sup>906</sup> Ann Connolly, ‘Irish Right-To-Life Campaigners Decry Right to Inform,’ *Australian*, 10 May 1995.

<sup>907</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 436, 12 June 1995.

<sup>908</sup> Justine McCarthy, ‘Shock Troopers,’ *Irish Independent*, 17 June 1995, Independent Weekender Supplement, 1.

<sup>909</sup> Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 440, 10 July 1995.

<sup>910</sup> Eilish O’Regan, ‘Fight on Abortion Law Over, Noonan Predicts,’ *Irish Independent*, 4 July 1995.

He will not have to spend much money in trying to find out the reasons women with crisis pregnancies seek terminations abroad; it is because they cannot have their pregnancies terminated here.<sup>911</sup>

A 1995 Department of Health discussion paper, *Developing a Policy for Women's Health*, defined contraception and pregnancy counselling as an integral part of women's health policy.<sup>912</sup> At the same time, however, pregnancy counselling services are justified as 'minimising the circumstances in which such high numbers of women seek to have abortions'.<sup>913</sup> When this policy was introduced to the Dáil the message that 'access to good family planning has probably been the single biggest contributor to women's health' was reinforced.<sup>914</sup> It was also recommended that centres 'along the lines of the Well Woman Centre should be set up in every region'.<sup>915</sup>

At the first national conference on women's health, held in 1995, CSW chairwoman, Noreen Byrne, suggested that the 'oppressive and controlling approach to women's reproductive care' was being replaced by policies which acknowledge the 'right of access to contraception and provision of a choice of services',<sup>916</sup> thus closing a 'period of negativity and punitive attitudes to women and crisis pregnancy'.<sup>917</sup>

### **The Influence of Feminism? 1993-1996 Assessed**

The presence and strength of feminist coalitions within the policy subsystem was boosted in this most recent phase of abortion policy-making by the incorporation of abortion-related services as part of a comprehensive women's health policy.<sup>918</sup> As long-time activist, Ruth Riddick, points out:

... feminism moved from the margins to the mainstream through the provision of client-centred services for women which have profoundly

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<sup>911</sup> *Dáil Debates*, 9 November 1995, cc. 39.

<sup>912</sup> Eilish O'Regan, 'Women Set for Boosted Health Plan,' *Irish Independent*, 23 June 1995.

<sup>913</sup> Department of Health, *Developing a Policy for Women's Health*, (Dublin: The Stationery Office, 1995), 40.

<sup>914</sup> *Dáil Debates*, 9 November 1995, cc. 122.

<sup>915</sup> *Ibid.*, cc. 118.

<sup>916</sup> Tom Hegarty, 'Move on Women's Health Policy Welcomed,' *Irish Times*, 1 July 1995.

<sup>917</sup> *Modern Woman*, 'CSW Welcome Supreme Court Decision,' *Modern Woman* 2(6), (June 1995), 28.

<sup>918</sup> Both pre-abortion counselling and post-abortion medical care have been included in the discussion document published by the Department of Health, *Developing a Policy for Women's Health*.

affected legal and political life, both in Ireland and within the European Union.<sup>919</sup>

This re-definition of abortion-related services as a women's health issue marks a major feminist victory in the discursive debate. This could only be accomplished, however, on the back of a greater legitimacy for feminist demands. One of the great sources of ideological opposition to contraception and abortion in Ireland, the Catholic Church, was increasingly discredited at this time; leading to an erosion in its social and political strength. The Brendan Smyth case, in particular, was a 'critical moment in the realignment by civil society of the place of the Church within the power structure'.<sup>920</sup>

The *Regulation of Information (Services Outside the State for Termination of Pregnancy) Act 1995* is legislation which only partially fulfils feminist goals but moving the debate into the political arena of elections and party politics did allow for a greater feminist influence on the policy outcome. International political factors were also significant in bringing the Oireachtas to the point of passing legislation. The physical proximity to a country in which abortion was legal gave the government the easy option of 'exporting' the policy problem. The passage of national legislation showed progress toward feminist goals had been achieved, however, and formed an unambiguous sign of the influence of feminism on public policy in Ireland.

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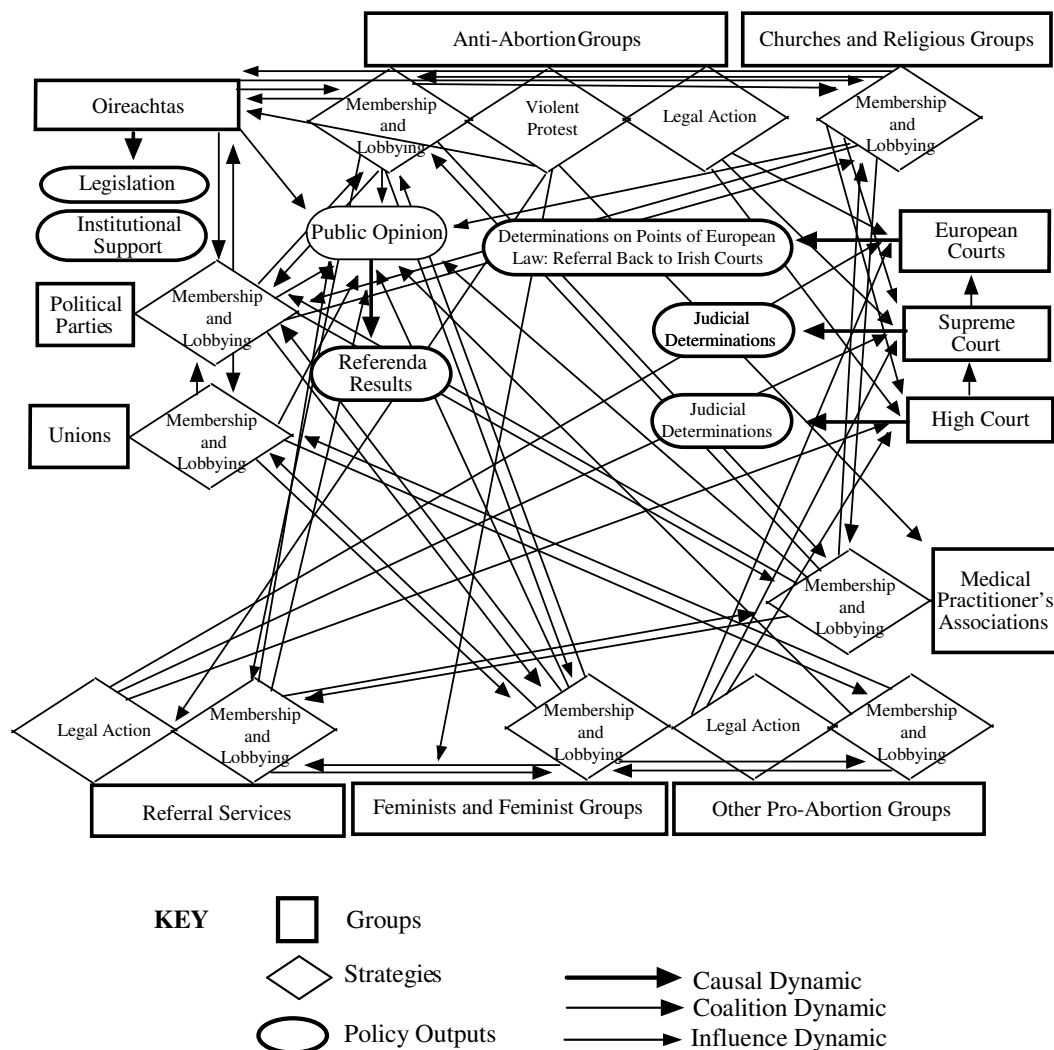
<sup>919</sup> R. Riddick, 'Engaging the Mainstream,' 1.

<sup>920</sup> A. Smyth, 'States of Change: Reflections on Ireland in Several Uncertain Parts,' 36.

#### 4. FEMINISM AND ABORTION POLICY IN IRELAND

A diagrammatic ‘snapshot’ of the abortion policy subsystem is illustrated in **Figure 5.1** below.

**FIGURE 5.2. Irish Abortion Policy Subsystem Dynamics**



It may be seen that the abortion policy subsystem has some similarity to the equal pay policy subsystem. Both are extremely decentralised and feature the European courts as one of a number of policy brokers. Feminists again work in coalitions with other groups and, while it cannot be said that feminist coalitions were stronger than their opponents, their persistent presence was a incessant reminder that the gender-based strictures under which Irishwomen existed were not based on the ‘lived experience’ of women, but on the presumptions of women’s prescribed social role. In this, the influence of feminism on public policy in Ireland is similar to that exercised in Australia, and is examined in the next chapter of this thesis.

# **PART 3**

## **AUSTRALIA**

## CHAPTER 6

### CHANGING HORIZONS: THE 'NARROW' AND THE 'BROAD' AUSTRALIAS

... the relative lack of a tradition of citizenship in the Australian state-civil society system ... has not been challenged ... While government discourse has incorporated the multicultural and feminist politics of the new social movements it has done so in a way that reproduced their marginality to the traditional tripartite structures of capital, labour and the state.<sup>921</sup>

The political entity of Australia was gradually formed between 1770, when the first claim of British sovereignty was established on the continent, and 1900 when the Act of Federation was signed.<sup>922</sup> The Federal Constitution of Australia was a pragmatic agreement as to the on-going economic relations between the six already-existing colonies. The societal definition of Australia was initially one of negation: it was not Asian, in spite of being located in the middle of the Asia-Pacific region, and it was not Aboriginal in spite of 'settling' their land.<sup>923</sup> Australia could be the 'lucky country' as a relative egalitarianism and probity prevailed amongst those who fell within the narrow definition of 'Australian citizen'.<sup>924</sup> Yet, historically, the majority of women, Aboriginal and Torres Strait Islander (ATSI) peoples, and migrants from a non-English speaking background (NESB) had limited access to the rights of residency and citizenship.<sup>925</sup>

The economic prosperity of post-war Australia saw a process of social and political reform which was to challenge, and broaden, the definition of what it was to be Australian. The broader definition of Australianness which has emerged in the post-war years is not just a critique of the 'masculinist, racist and Anglo-supremacist' status quo.<sup>926</sup> It is defined positively as allowing for an expanded range of acceptable beliefs, behaviours, and sexualities; for a 'reconciliation' with the Aboriginal peoples; and for a social 'multiculturalism'. Politically, there is a move toward coalition building, nationally and internationally. It also involves a greater integration in the international economy.

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<sup>921</sup> Anna Yeatman, *Bureaucrats, Technocrats, Femocrats*, (Sydney: Allen and Unwin, 1990), xi.

<sup>922</sup> Henry Reynolds, *Aboriginal Sovereignty*, (Sydney: Allen and Unwin, 1996), 86.

<sup>923</sup> For more on the negative definition of 'Australian' see Tom Clarke and Brian Galligan, 'Protecting the Citizen Body: The Commonwealth's Role in Shaping and Defending an 'Australian' Population,' *Australian Journal of Political Science* 30(3), (November, 1995), 452-468.

<sup>924</sup> Carol Hughes, 'Political Culture,' In *Australian Politics: A Third Reader*, Henry Mayer (ed.), (Melbourne: Longman Cheshire, 1972), 133-146, 136.

<sup>925</sup> Gisela Kaplan, *The Meagre Harvest*, (Sydney: Allen and Unwin, 1996), 13.

<sup>926</sup> Jan Pettman, *Living in the Margins*, (Sydney: Allen and Unwin, 1992), 5.



Both the 'narrow' and 'broad' definitions of Australia and Australians exist today.<sup>927</sup> In comparison to Ireland, however, the intensity of public reaction to critical points of conflict or change has been relatively mild. Change has generally been accommodated under an ethos of 'ameliorative liberalism'.<sup>928</sup> This partly due to the dispersed nature of the Australian federal political system. It is also due to a generally incrementalist approach to social change by government and other interests. Finally it is due to a relatively prosperous national economy. As a result the dichotomy between the narrowly homogeneous and the broadly diverse has existed as an underlying, and largely hidden, dynamic. The tensions between these 'two Australias' manifest as the incorporation of political interests, the introduction of a cultural pluralism, and as a retreat from affluence.

## 1. THE INCORPORATION OF POLITICAL INTERESTS

The Australian Constitution displays a narrow view of Australian citizenship in its emphasis on the economic relationships between the States. While the major political parties also share this economic identification, with either the interests of labour or capital, the electoral process has opened the door to the incorporation of other interests. The political system has not shown a great deal of ability to accommodate the interests of Australian women, however, if the numbers of women in politics are any indication.

### The Narrow Political Structure of Federalism

The Australian Constitution of July 1900, as contained within the *Commonwealth of Australia Constitution Act*, reflects the historical process by which the six existing colonial governments chose to cede some of their powers to a national body:

... the people of New South Wales, Victoria, South Australia, Queensland; and Tasmania, humbly relying on the blessings of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established.<sup>929</sup>

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<sup>927</sup> They would not, however, always be expressed in the positive terms I have described above. Within Dryzek's four discourses of democracy, both the negatively defined 'resigned acceptance' and the positively defined 'right-minded democracy' would belong to the 'narrow' Australia. Similarly, the 'anxious egalitarianism' and the 'inclusive republicanism' would be found within the 'broader' Australia. John Dryzek, 'Australian Discourses of Democracy,' *Australian Journal of Political Science* 29(2), (1994), 221-239.

<sup>928</sup> James Jupp, 'Managing Ethnic Diversity: How Does Australia Compare?' In *Australia Compared*, Francis Castles (ed.), (Sydney: Allen and Unwin, 1991), 38-54, 52-53.

<sup>929</sup> Constitutional Commission, *The Australian Constitution as Altered to 1 January 1988*, (Canberra: Australian Government Publishing Service, 1988), 1.

This Federation also included Western Australia from September 1900. As the regulation of trade between the States, and between Australia and other countries, was the primary motivation behind Federation the current Constitution may be argued to be an inadequate basis for the representation of the broader interests of Australian citizens. The Australian Constitution is no philosophical treatise in the liberal democratic tradition, as its definition of citizenship illustrates:

41. No adult person who has or acquires a right to vote at elections for the more numerous House of Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.<sup>930</sup>

In 1900 that limited right of citizenship was extended to white men, in South Australia and Western Australia, white women. After a great deal of campaigning by early feminists, the *Commonwealth Electoral Act*, 1902 was adopted, extending the franchise to white women in the rest of Australia.<sup>931</sup> Most Australian Aboriginals were disenfranchised for another 60 years - until the *Commonwealth Electoral Act*, 1962 came into force. The Australian Constitution (s25) did not even count Aboriginal or resident Pacific Islander people as part of the population. It states ... 'if by the law of any State all persons of any race are disqualified from voting at elections ... persons of that race resident in that State shall not be counted'.<sup>932</sup> Aboriginal people have only been included in census data since 1967.<sup>933</sup>

For those who were eligible to vote Federation established two new representative forums. In the Parliament of the Federal Commonwealth, Members of the Lower House, the House of Representatives, are elected to represent a given number of electors. There are currently 148 members of the House of Representatives based on electorates which attempt to balance the wide variation in population density within and between States. As this still benefits the larger and more populous States, each State is represented by an equal number of Senators within the Upper House, the Senate. The Australian Senate, originally based on the American model, currently contains 76 Senators: 12 from each of the six States and 2 from each of the Territories.

Each of the six States have their own Parliaments. These have 'residual powers' - authority in any area *not specifically designated* as a Commonwealth responsibility.<sup>934</sup> The significance of this division of powers between the Commonwealth, the six States and the two (later) Territories cannot be over-

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<sup>930</sup> Ibid., 11.

<sup>931</sup> Deborah Cass and Kim Rubenstein, 'From Federation Forward: The Representation of Women in the Australian Constitutional System,' In *A Woman's Constitution?* Helen Irving (ed.), (Sydney: Hale and Iremonger, 1996), 108-126, 118.

<sup>932</sup> Constitutional Commission, *The Australian Constitution*, 8.

<sup>933</sup> J. Pettman, *Living in the Margins*, 7.

<sup>934</sup> The two Territories have, over time, also been accorded equivalent sub-national governments.

emphasised. Federalism not only provided a stable set of structures and rules but also a set of politically-driven dynamics whereby the two levels of government are committed to on-going negotiations regarding fiscal and administrative processes.

Any substantial change in the division of powers requires the political co-operation of the participating governments of the day. Formal amendments to the Constitution can only occur through the passage of legislation by both Commonwealth Houses of Parliament (by an absolute majority), then passing a referendum, in which the amendment gains the majority of votes in the majority of states.<sup>935</sup> Under a system in which there is almost no chance of intergovernmental party-political unanimity resistance is almost guaranteed and Australia has a very poor record of Constitutional change. The Australian federal system of government has been criticised for fragmenting political responsibility;<sup>936</sup> creating essentially conservative responses to policy problems;<sup>937</sup> and dealing inadequately with contemporary social problems.<sup>938</sup>

Section 51 of the Constitution lists a number of Commonwealth powers relating to social issues; some of which have been considerably expanded over time.<sup>939</sup> Section 116 makes clear the separation of Church and State: neither establishing nor prohibiting any religion.<sup>940</sup> Yet these references are relatively few in comparison to the numerous points within the Australian Constitution which provide the Commonwealth with powers by which to regulate trade, tariffs, resources, exchange rates and to act with respect to industrial relations matters.<sup>941</sup>

### **The Dynamics of Party Politics: Incorporating Multiple Interests**

Two parties have dominated Australian politics and they have traditionally been divided along class lines. The Australian Labor Party (ALP), the oldest party in Australian politics, emerged as the political arm of the trade union movement in the 1890s and is 'one of the few social democratic parties in the world to have

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<sup>935</sup> Richard Lucy, *The Australian Form of Government*, (South Melbourne: Macmillan, 1985), 316-319.

<sup>936</sup> Graham Maddox, 'Federalism: Or Government Frustrated,' *Australian Quarterly* 45 (September 1973), 92-100.

<sup>937</sup> Hugh Emy and Owen Hughes, *Australian Politics: Realities in Conflict*, (Melbourne: Macmillan, 1988), 267-268.

<sup>938</sup> G. Greenwood, *The Future of Australian Federalism* (Second Edition), (St. Lucia: University of Queensland Press, 1976), 337.

<sup>939</sup> Commonwealth 'health benefits' powers, for example has grown to include the provision of medical benefits, authorisation of capital works projects, health research and promotion, the regulation of health practitioners, the provision of health insurance, accident and injury compensation, occupational health and safety, product regulation, advertising, quarantine and agriculture, and patient rights are all Commonwealth responsibilities. J. McMillan, *Commonwealth Constitutional Power Over Health*, (Canberra: Consumers Health Forum of Australia, 1993).

<sup>940</sup> Constitutional Commission, *The Australian Constitution*, 29.

<sup>941</sup> *Ibid.*, 13, 15.

maintained its trade union affiliations'.<sup>942</sup> The ALP is not homogeneous within itself but has accommodated a relatively broad range of political views through its organised 'faction' system. The 'Left' has been more traditionally socialist but even the 'Right' of the ALP has promoted the concept of 'social justice' within an economic framework.<sup>943</sup> Due to its tolerance of internal diversity the ALP has been well placed to mobilise support from an increasingly dispersed polity and, in recent years, has become identified with the broader definition of Australian citizenship.<sup>944</sup> The ALP has had a reasonable success in incorporating multiple social interests through developing 'agencies and agendas' reflecting diverse needs.<sup>945</sup> This has resulted in continued political support from some ethnic groups<sup>946</sup> and feminist voters.<sup>947</sup>

The Liberal party takes the view that it is non-sectional in support and believes that its policies express the 'middle ground' of Australian politics. The party has traditionally had close ties with business and employers, however, and its policies have generally endorsed morally conservative values.<sup>948</sup> The Liberal party has dominated government since its inception in 1944, ruling continuously from 1949 until 1972, often in coalition with the Country Party. This third, smaller, party has generally represented rural interests. In recent years it has attempted to broaden its appeal, reflected in name changes from the Country Party, to the National-Country Party, to the National Party. It has never won enough seats to form a government on its own but, together with the Liberal Party, has formed a 'non-Labor' coalition.

A number of minor parties have emerged at State or Federal level.<sup>949</sup> The Democratic Labour Party (DLP), the Call to Australia Party, the Australian Democrats and the Tasmanian Greens have all made significant impacts, at

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<sup>942</sup> Dennis Woodward, 'The Australian Labor Party,' In *Government, Politics and Power in Australia*, (Fourth edition), John Summers, Dennis Woodward and Andrew Parkin (eds.), (Melbourne: Longman Cheshire, 1990), 144-155, 144.

<sup>943</sup> This 'dual tradition' within the ALP is spelt out in more detail in Bob Carr, 'New Directions for Labor,' In *Whitlam, Wran and the Labor Tradition*, (New South Wales: Pluto Press, 1988), 93-98.

<sup>944</sup> Michael Gordon, *Paul Keating*, (St. Lucia: University of Queensland Press, 1993), 196-197.

<sup>945</sup> James Jupp and Marian Sawyer, 'Building Coalitions: The Australian Labor Party and the 1993 Election,' *Australian Journal of Political Science* 29, (1994), 10-27, 12.

<sup>946</sup> At the 1996 Federal election the ALP share of the Asian-born Australian vote was 25 percentage points higher than Labor's share of the Australian-born vote. Lindsay Tanner, 'Building an Inclusive Society.' Paper presented to the *Fabian Society Conference*, Melbourne, 28 July 1996, 5.

<sup>947</sup> Marian Simms, 'The End of Pragmatism? The Coalition Parties in the Early 1990s,' *Australian Journal of Political Science* 29, (1994), 28-41, 38.

<sup>948</sup> Dean Jaensch, 'The Liberal Party,' In *Government, Politics and Power in Australia*, Fourth Edition, John Summers, Dennis Woodward and Andrew Parkin (eds.), (Melbourne: Longman Cheshire, 1990), 131-143, 132.

<sup>949</sup> In 1996 Federal elections, these included the Confederate Action Party, the Citizens Electoral Council, the Call to Australia, the Australian Democrats, the Independent EFF Party, the Greens, the Natural Law Party, and the No Aircraft Noise Party. Anthony Green, *Guide to the 1996 Elections*, (Sydney: Australian Broadcasting Commission, 1996), 1.

various times, by holding the balance of power. None of the minor parties have formed government at Commonwealth level. This is a reflection of the ability of the two major groupings (Labor and non-Labor) to incorporate a diverse range of political interests. This has led to distinct periods of political domination by one or the other of the major groupings, as illustrated by **Table 6.1**, below.<sup>950</sup>

### **Policy Implications: An Adequate Representation of Women's Interests?**

The ability of the political system to adequately represent women's interests has also varied: between State and Federal Parliaments; between the Upper and Lower Houses of those Parliaments; depending upon the electoral system in place;<sup>951</sup> the political culture of the time;<sup>952</sup> and the intensity of the voter 'swing' which put the governing parties in power.<sup>953</sup>

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<sup>950</sup> Individual election results, at Commonwealth, State and Territory level, are listed in **Appendix 7**.


<sup>951</sup> Marian Sawyer, 'Working the System,' In *Women, Power and Politics Conference Proceedings*, (Adelaide: Women's Suffrage Centenary Steering Committee, 1995), 39-42.


<sup>952</sup> Susan Ryan, 'Women in Government and Cabinet "Two Steps Forward, One Step Back",' In *Women, Power and Politics Conference Proceedings*, (Adelaide: Women's Suffrage Centenary Steering Committee, 1995), 31-38.

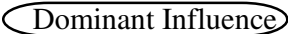
<sup>953</sup> The 1996 Federal elections, for example, saw a massive electoral swing against the ALP Government. In that election Liberal women won 17 seats in the House of Representatives. Only five of these women had been sitting members of the previous Parliament and, given the unlikely nature of the Liberals maintaining their vote at the next Federal election, are likely to lose their seats in 1999. Women Into Politics, 'Reflections on the 1996 Federal Election,' *WIP About* 3(2), (October, 1996), 5.

**TABLE 6.1. Party in Government (Australia): 1968-1996**

PLACE	Cwth.	ACT	NT	NSW	QLD	SA	TAS.	VIC.	WA
YEAR									
1968									
1969									
1970									
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1996									

 Non-Labor Parties

 Australian Labor Party (ALP)

 Dominant Influence

**Table 6.2** below, illustrates the dramatic differences in the political representation of women, across Australia. Nowhere in Australia is the representation of women proportional to their numbers in the general population. Feminist groups such as Women into Politics, the Women's Electoral Lobby and the Australian Local Government Women's Association, have also actively supported women candidates.<sup>954</sup>

<sup>954</sup> Kate Tully (for the Office of the Status of Women), *Every Woman's Guide to Getting into Politics*, (Canberra: Australian Government Printing Service, 1995), 60.

**TABLE 6.2. Percentage of Australian Parliamentarians who are Women, July 1996<sup>955</sup>**

<b>Electorate</b>	<b>Lower House</b>	<b>Upper House</b>
Federal Commonwealth	15.5	30.3
Australian Capital Territory	35.3	-
Northern Territory	16.0	-
New South Wales	16.2	33.3
Queensland	14.6	-
South Australia	19.1	27.3
Tasmania	28.6	0.0
Victoria	17.0	20.5
Western Australia	21.1	14.7

Based on data tabled in Marian Sawer, 'The Impact of Electoral Systems on Women,' Paper presented at the *National Symposium on Political Equality for Women: How and How Soon?*, Parliament House Canberra, 19 September 1996, 7.

While both the major parties have women's organisations and mentoring schemes, the ALP has also set itself the target of improving the representation of women in Parliaments by the year 2002, by preselecting women candidates for one third of all winnable seats.<sup>956</sup> In practice, however, considerable barriers to women's participation remain in terms of 'parliamentary sitting hours, procedures and style'.<sup>957</sup>

Australia is less constrained than Ireland by its supra-national obligations in this regard. In its membership of the United Nations (UN) and the International Labour Organisation (ILO) it is signatory to a number of equity conventions. As these are not strictly and legally binding, in the sense of EU agreements, it is an obligation of good 'global citizenship' which acts to compel enforcement. The capacity of feminists to effect change through the political system has, then, depended upon the incorporation of feminism into the two major political groupings, particularly the ALP, which formed what was described as a 'special partnership' with Australian feminists.<sup>958</sup>

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<sup>955</sup> Not all States and Territories have two Houses and, where applicable, this will be indicated with a cipher (-).

<sup>956</sup> Coopers and Lybrand (for the Commonwealth-State Ministers Conference on the Status of Women), *Women and Parliaments in Australia and New Zealand*, (Canberra: Australian Government Printing Service, 1994), 23.

<sup>957</sup> Joint Standing Committee on Electoral Matters, *Women, Elections and Parliament*, (Canberra: Australian Government Publishing Service, 1994), 25.

<sup>958</sup> Prime Minister Paul Keating, Transcript of Opening Speech, Official Opening, *Women, Power and Politics Conference*, Adelaide, October 8 1994.

## 2. THE INTRODUCTION OF A CULTURAL PLURALISM

The dominant ideology of society, the powerful 'myth' of national culture, remains important in that it normatively frames policy within 'a core of attributes, values and attitudes ... that marked things and people as authentically Australian'.<sup>959</sup> This national identity provided the assumptions upon which the political system was built. It assumed, for example, the dominance of men over women and of the white races over all others. The mobilisation of the contemporary feminist movement was particularly important in challenging this orthodoxy and, along with the aboriginal, migrant and gay rights movements, introduced a broader image of women and their capacities.<sup>960</sup>

### A Narrow Vision

The fundamental values and social structure of a national culture describe the 'parameters within which a party or an individual must operate if they are to remain relevant'.<sup>961</sup> These parameters have, until recently, been very narrow indeed.

The Australian legal system, for example, is built upon the premise that Australian colonies became British by settlement and not by conquest.<sup>962</sup> Yet in the worst days of the colonisation of Australia, Aboriginal people were treated as though they were another type of feral animal, to be shot or poisoned if they interfered with the appropriation and cultivation of land. The advance of 'settlement' was thus described, in 1880, as being marked by a 'line of blood'.<sup>963</sup> The subsequent impounding of Aboriginals on missions and the forcible removal of their children acted to remove their cultural identity from that of 'mainstream' Australia.<sup>964</sup>

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<sup>959</sup> Geoff Stokes, 'From Nationalism to Citizenship: The Politics of Identity in Australia,' Paper presented to the *Australian Identities Conference*, July 3-6, 1996, Dublin, Ireland, 7.

<sup>960</sup> Marian Sawer, 'Locked Out or Locked In? Women and Politics in Australia,' In *Women and Politics Worldwide*, Barbara Nelson and Najma Chowdhury (eds.), (New Haven: Yale University Press, 1994), 73-91, 78-81.

<sup>961</sup> B. Girvin, 'Social Change and Political Culture in the Republic of Ireland,' 388.

<sup>962</sup> *Coe v the Commonwealth*, 53, ALJR (Australian Law Journal and Reports), 1979, 408. Cited in H. Reynolds, *Aboriginal Sovereignty*, 95.

<sup>963</sup> L. Fison and A. W. Howitt, *Kamilaroi and Kurnai*, (London, 1880), 182. Cited in H. Reynolds, *Aboriginal Sovereignty*, 97.

<sup>964</sup> Aboriginal people began to successfully protest their lack of rights, gaining citizenship in the 1960s, some ability to claim for tribal lands in the 1970s, some measures addressing the appalling health, housing and employment problems faced by the ATSI community in the 1980s. In the 1990s, the beginnings of a historic reconciliation were begun with the judicial decision of *Mabo v Queensland no. 2* (1992) and the following *Native Title Act*, 1993. In 1996 a number of these gains were threatened in a series of political moves by the Liberal/National Party government and by more extreme conservative groups taking advantage of a social 'backlash' against the 'broad Australia'.



In the year of federation, Asian and black immigration was officially prohibited by the Commonwealth *Immigration Restriction Act*, 1901. This 'White Australia Policy' was only relaxed in 1966. At the same time, however, it has been estimated that approximately 62, 475 Pacific Islanders came to Queensland as 'indentured servants' between 1863 and 1907.<sup>965</sup> These individuals had no right of settlement or citizenship, as private bondsmen and women their legal status was as ambivalent as that of the aboriginals. Their actual status was barely above that of slaves. The conditions on the cane fields gave rise to 'atrocities' which were 'met with concealment, and by analogy, silent approbation on the part of the white community' according to one commentator, writing in 1884.<sup>966</sup> Eventually many, but not all, the Pacific Islanders were deported.

Over three million people migrated to Australia, largely from 'non-English speaking' European countries, between 1947 and 1972.<sup>967</sup> The early assimilationist approach to immigration assumed that immigrants would 'readily embrace Australia's dominant - but poorly defined - Anglo-Celtic values'.<sup>968</sup> This approach was not successful in assimilating NESB migrants into the 'mainstream' but was successful in keeping these minority cultures hidden.<sup>969</sup>

Social divisiveness on the basis of race or ethnicity is not unusual, yet there are few other normative influences, such as religion, which could act as a basis for Australian social solidarity. Historically the large Irish population in early Australia contributed to a 'strong Catholic counter-culture' amongst the working classes.<sup>970</sup> The middle classes were predominantly Protestant (Church of England, Methodist and Presbyterian) and religion was, primarily, a marker of social status in the early colonies. The influential 'Free Thinkers' actively campaigned throughout the nineteenth century to diminish the influence of religion on many areas of Australian life. Freethought was described as 'the main ideology of the colonial intellectuals' and had considerable success in wresting education away from the religious organisations.<sup>971</sup> From a relatively low base, church attendance has since declined across all faiths, although many Australians

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<sup>965</sup> Kay Saunders, 'Pacific Islander Women in Queensland: 1863-1907,' In *Worth Her Salt*, Margaret Bevege, Margaret James and Carmel Shute (eds.), (Sydney: Hale and Iremonger, 1982), 16-32, 17.

<sup>966</sup> Report filed by J. A. Gibson, Justice of the Peace, Yalata, Queensland, 1884. Cited in K. Saunders, 'Pacific Islander Women in Queensland: 1863-1907,' 25.

<sup>967</sup> National Women's Advisory Council, *Migrant Women Speak*, (Canberra: Australian Government Publishing Service, 1979), 3.

<sup>968</sup> Office of Multicultural Affairs, *Submission to the Committee to Advise on Australia's Immigration Policies*, (Canberra: Department of the Prime Minister and Cabinet, 1988), 8.

<sup>969</sup> Later, during the Whitlam ALP government, the first Commissioner for Community Relations, Al Grassby, outlined the multicultural approach of 'social cohesion with cultural diversity'. In 1988 multiculturalism meant that 'conformity to a particular cultural stereotype should not be the price expected in return for equality, equity or participation'. In 1996 an anti-immigration protest against 'swamping' Australia with migrants, particularly Asian migrants, was an attempt to 'turn back the clock'.

<sup>970</sup> Rowan Ireland, *The Challenge of Secularisation*, (Melbourne: Collins Dove, 1988), 32-33.

<sup>971</sup> Peter Coleman, *Obscenity, Blasphemy and Seditious: 100 Years of Censorship in Australia*, Second edition, (Sydney: Angus and Robertson, 1974), 50.

call themselves religious.<sup>972</sup> Since the demise of the Democratic Labor Party, in the mid 1980s, Australian politics has lacked 'a forceful Christian presence'.<sup>973</sup> Politically, religious influence has been limited, to the norms and values relating to the 'private sphere' of life.<sup>974</sup> Given the diversity of religious organisations in Australia, however, it has been difficult for any particular group to claim to represent 'the Christian view'.<sup>975</sup>

The fundamental values and social structure which dominate Australia are those of the 'secular State'. Religion was overshadowed in the popular perception of an Australia which was pragmatic, egalitarian and tolerant.<sup>976</sup> This perception not only masked a discrimination against those of different race or ethnicity but also a fundamental sexism.

### **The Dynamics of Change: Contemporary Australian Feminism**

The emergence of contemporary feminism was the most significant of the liberatory NSMs affecting the Australian social system in that it challenged the narrow definition of citizenship as it related to the *majority* of the population rather than a minority group. It both paved the way and augmented other movements promoting cultural pluralism.

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<sup>972</sup> Gary Bouma, 'Assessing Trends in the Position, Strength and Role of Religion in Australian Society,' In *Australian and New Zealand Religious History 1788-1988*, Robert Withycombe (ed.), (Phillip, ACT: Australian and New Zealand Association of Theological Schools and Society for Theological Studies, 1988), 44-55, 49.

<sup>973</sup> David Millikan, 'Christianity and Australian Identity,' In *The Shape of Belief: Christianity in Australia Today*, Dorothy Harris, Douglas Hynd and David Millikan (eds.), (Homebush, NSW: Lancer, 1982), 29-46, 43.

<sup>974</sup> Michael Hogan, *The Sectarian Strand*, (Melbourne: Penguin, 1987), 256-285.

<sup>975</sup> Stuart Fowler, 'Christian Concern in the Parliamentary Lobbies,' In *The Shape of Belief: Christianity in Australia Today*, Dorothy Harris, Douglas Hynd and David Millikan (eds.), (Homebush, NSW: Lancer, 1982), 147-158, 158.

<sup>976</sup> John Eddy, 'What are the Origins of Australia's National Identity?' In *Australia Compared: People Policies and Politics*, Francis Castles (ed.), (Sydney: Allen & Unwin, 1991), 17-37, 18; Dean Jaensch, *An Introduction to Australian Politics*, (Melbourne: Longman Cheshire, 1984).

'First wave' feminism had emerged in Australia in the nineteenth century.<sup>977</sup> The 'traditional feminist' groups active in the twentieth century included the National Council of Women (NCW) and the Business and Professional Women's Club (later the Australian Federation of Business and Professional Women - AFBPW). These differed from the 'second wave' feminists of the late 1960s in that education, increased economic affluence, and easier access to contraception allowed contemporary women to achieve a much greater level of independence than the majority of Australian women had ever experienced.<sup>978</sup> The emergence of the contemporary feminist movement was also partly facilitated by the large anti-conscription movement and New Left politics of the time.<sup>979</sup>

The theory of feminism, as it developed in Australia, was strongly influenced by developments in the United States and, in particular, Britain.<sup>980</sup> While this may have led to an 'excessive and derivative' use of the labels 'liberal feminist', 'socialist feminist' and 'radical feminist' to categorise Australian feminisms,<sup>981</sup> it has been suggested that Australian feminists have synthesised the various streams of international feminism into new theoretical positions.<sup>982</sup>

### *Australian Radical Feminists*

The Australian women's liberation movement (WLM) began in Sydney, November 1969, when a small number of women who 'were mainly from left-

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<sup>977</sup> Since the emergence of the contemporary feminist movement there has been a large number of works published documenting early Australian feminism. In the 1970s, these included Beatrice Faust, 'Feminism Then and Now!' *Australian Quarterly* 46 (1), (March 1974), 15-28; Marilyn Lake, "'To Be Denied a Sense of Past Generations': Review Article," *Hecate* II (2), (July 1976), 68-73; Jebby Phillips, 'Women Voters: How the Vote Was Won,' *Women and Politics Conference Proceedings, Volume 1*, (Canberra: Australian Government Printing Service, 1977), 81-85; Ada Norris, *Champions of the Impossible*, (Melbourne: Hawthorne Press, 1978). The 1980s saw a series of papers given on the subject by Eva Bacon, Barbara Cameron, Kelly Farley, Kate White and Pam Young, *Second Women and Labour Conference Papers 1980, Volume 1*, (Victoria: Australia Radical Publications, 1980); and more books including Jocelyn Clarke and Kate White, *Women in Australian Politics*, (Sydney: Fontana Books, 1983); Marian Sawer and Marian Simms, *A Woman's Place*, (Sydney: Allen and Unwin, 1984); National Women's Consultative Council, *Women into Action Kit*, 1988. The 1990s have continued to contribute to the literature on the subject, with Miriam Dixon, 'Gender, Class and the Women's Movement in Australia, 1890, 1980,' In *Australian Women: New Feminist Perspectives*, Norma Grieve and Ailsa Burns (eds.), (Melbourne: Oxford University Press, 1990), 14-26; Darryn Kruse and Charles Sowerwine, 'Feminism and Pacificism: 'Women's Sphere' in Peace and War,' In *Australian Women: New Feminist Perspectives*, Norma Grieve and Ailsa Burns (eds.), (Melbourne: Oxford University Press, 1990), 42-58.

<sup>978</sup> J. Pakulski, *Social Movements*, 199.

<sup>979</sup> Katy Reade, "'Struggling to be Heard': Tensions Between Different Voices in the Australian Women's Liberation Movement in the 1970s and 1980s,' In *Contemporary Australian Feminism*, Kate Pritchard Hughes (ed.), (Melbourne: Longman Cheshire, 1994), 198-221, 201.

<sup>980</sup> C. Burton, *Subordination*, xi.

<sup>981</sup> M. Sawer, 'Reclaiming Social Liberalism: The Women's Movement and the State,' 6.

<sup>982</sup> Barbara Sullivan, 'Contemporary Australian Feminism: A Critical Review,' In *Australian Political Ideas*, Geoff Stokes (ed.), (Kensington, NSW: University of New South Wales Press, 1994), 152-167.

wing organisations' gathered to discuss the position of women in these groups and in society.<sup>983</sup> The first WLM leaflet, *Only the Chains Have Changed*, was distributed at an anti-Vietnam march in 1969.<sup>984</sup> After more groups formed in Sydney and Melbourne the first national Women's Liberation Conference was held, in Melbourne, in May 1970.<sup>985</sup> While recognising that a wide range of issues impacted on women, many Australian radical feminists began to focus on abortion law reform, as symbolising a women's basic control over her own life. The slogan: 'not the church, not the state, women must decide their fate' was abortion-related but stood for a much broader range of issues to do with liberation and sexual politics.<sup>986</sup> This was also given form in radical feminist action establishing women's shelters and rape crisis centres from 1974 onwards.<sup>987</sup> Feminist-run services successfully competed with established, Church-funded organisations, for government grants.<sup>988</sup> Establishing 'non-government organisations' (with government funding) in a range of women's services was the limit of WLM involvement with the state. Australian radical feminism has also provided a ground for the development of a plethora of other significant feminist groups including lesbian-feminists, spiritual feminists, eco-feminists and peace feminists. The 'revolutionary' demands of the WLM 'set the pace' by allowing 'reformist' liberal feminist groups to appear moderate in comparison.<sup>989</sup>

#### *Australian Socialist Feminists*

Australia has a long tradition of socialist feminist activism. The Militant Women's Group, which emerged out of the Community Party of Australia in 1927, was the first semi-independent socialist feminist group in Australia.<sup>990</sup> This set a precedent for socialist feminist co-operation across political parties. In the 1930s a number of Working Women's Conferences were convened, a working women's magazine was produced and the first conference on equal pay was held.<sup>991</sup> The Union of Australian Women (UAW) was another important early group. Contemporary socialist feminists followed in this tradition when, in March 1970, a small group of women from communist and trade union backgrounds

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<sup>983</sup> Katy Reade, 'Struggling to be Heard,' 202.

<sup>984</sup> Ibid.

<sup>985</sup> Ibid., 205.

<sup>986</sup> Karen Coleman, 'The Politics of Abortion in Australia: Freedom, Church and State,' *Feminist Review* 38 (1988), 75-97, 76.

<sup>987</sup> Heather McGregor and Andrew Hopkins, *Working for Change: The Movement Against Domestic Violence*, (Sydney: Allen and Unwin, 1991), 9.

<sup>988</sup> Colleen Chesterman, *Homes Away From Home*, (Canberra: Australian Government Printing Service, 1988), 9.

<sup>989</sup> S. Encel, N. MacKenzie and M. Tebbutt, *Women and Society*, (Melbourne: Cheshire, 1974), 82.

<sup>990</sup> This group was responsible for organising the first International Women's Day activities in Australia in 1928. Joyce Stevens, *Taking the Revolution Home*, (Melbourne: Sybylla Press, 1987), 95.

<sup>991</sup> Ibid., 67.

formed the Women's Action Committee to take militant action for equal pay.<sup>992</sup> Eventually joining forces with WLM and the Melbourne University Women's Liberation Group, the groups hosted a National Women's Liberation Conference on 'Women at Work and Women and the Trade Unions', in 1971.<sup>993</sup> Concerned with both capitalist and patriarchal oppression, many feminist activists within the trade union movement in Australia work within a socialist feminist framework, without specific party allegiance.

### *Australian Liberal Feminists*

Early Australian liberal feminist groups, such as the Australian Federation of Women Voters (AFWV) and the United Associations of Women, formed in the 1920s and were not associated with any particular political party. It was in this tradition that the Women's Electoral Lobby (WEL) was formed, in Melbourne, February 1972.<sup>994</sup> The emergence of the Australian liberal feminist movement not only coincided with the election of a reforming social-democratic government, but was part of the process by which this occurred.<sup>995</sup> WEL's first action was a candidate survey for the 1972 elections: the 'Think WEL before you vote' campaign.<sup>996</sup> Through their extremely skilful use of the media,<sup>997</sup> WEL was successful in placing the six basic demands of the contemporary feminist movement on the political agenda: equal pay; equal employment opportunity; equal access to education; free contraception; free safe abortion on demand; and 24-hour child care.<sup>998</sup>

Through the activities of WEL there developed a 'distinctive relationship between feminism and the state' in Australia,<sup>999</sup> leading to an extremely influential, state feminism, also described as 'official feminism'.<sup>1000</sup> Political and administrative action by the state, accomplished by feminist bureaucrats ('femocrats') acting as

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<sup>992</sup> Zelda D'Aprano, *Zelda: The Becoming of a Woman*, (Melbourne: Self-published, 1977), 115.

<sup>993</sup> Megan McMurchy, Margot Oliver and Jenni Thornley, *Love Or Money*, (Victoria: Penguin, 1983), 132.

<sup>994</sup> Katy Reade, 'Struggling to be Heard,' 206.

<sup>995</sup> Marian Sawyer, 'Why has the Women's Movement had More Influence on Government in Australia than Elsewhere?' In *Australia Compared*, Francis Castles (ed.), (Sydney: Allen and Unwin, 1991), 258-278, 270.

<sup>996</sup> Helen Glezer, Jan Mercer and Pat Strong, 'WEL Strategy, 1972: The Methods of a Protest Lobby,' *Politics* 8(1), (1973), 177-180.

<sup>997</sup> For examples of this, see Helen Glezer and Jan Mercer, 'Blueprint for a Lobby: The Birth of WEL as a Social Movement,' *Politics* 8(1), (1973), 169-176 and Jan Aitkin, Julie Boyce, Caroline Graham, Wendy McCarthy and June Surtees, 'The World of WEL (NSW),' *Politics* 8(1), (1973), 184-191, 187-189.

<sup>998</sup> While Heitlinger gives equal emphasis to all of these, local analysis of the early WEL campaign specifies three areas of most importance: equal pay, abortion law reform and adequate child care facilities. J. Aitkin, J. Boyce, C. Graham, W. McCarthy and J. Surtees, 'The World of WEL (NSW),' 191; Alena Heitlinger, *Women's Equality, Demography and Public Policies: A Comparative Perspective*, (Great Britain: St. Martin's Press, 1993), 94.

<sup>999</sup> M. Sawyer, 'Reclaiming Social Liberalism: The Women's Movement and the State,' 10.

<sup>1000</sup> Hester Eisenstein, *Gender Shock*, (Sydney: Allen and Unwin, 1991), 14.

the 'paid advocates' of the interests of women, attempted to remove and redress gender inequalities.<sup>1001</sup> In retrospect, the femocrat strategy has been 'uniquely successful',<sup>1002</sup> and is one of the distinguishing characteristics of the contemporary Australian feminist movement.<sup>1003</sup> Femocrats have assisted in the introduction of a cultural pluralism even as they themselves have been part of the incorporation of political interests.

While the interventionist strategies of liberal feminism have always been the subject of criticism from radical and socialist feminists; there has been a lively and on-going debate amongst liberal feminists in the 1990s as to which are the most effective strategies in this relationship between feminism and the state.<sup>1004</sup> The other strand of criticism, also emerging in the 1990s, was in regard to the number of women who espoused a 'career feminism' of an essentially self-interested kind.<sup>1005</sup> Not only has the incentive for collective feminist action reduced as the barriers to career participation weaken but also, paradoxically, the increased opportunities won by liberal feminist groups such as WEL have also acted to weaken the organisational strength of those groups as more and more feminists are caught up in the demands of their professional lives.

### *Academic Feminism*

The dynamics evident in the femocracy are replicated in Australian academic feminism. Women's Studies, Aboriginal Studies and Multicultural Studies units and programs have been introduced into some Australian tertiary education institutions. Many of these undertake an 'academic activism'. Some units, such as the Australian Women's Research Centre, which operates out of Deakin University, evidence a 'community' focus.<sup>1006</sup> The National Centre for Women, based at the Swinburne University of Technology, is trades oriented, and attempts to encourage equity in the education, employment and training of women in non-traditional areas.<sup>1007</sup> The Australian Institute for Women's Research and Policy, located at Griffith University, emphasises its links with the public sector.<sup>1008</sup>

Other Women's Studies programs are more concerned with discursive, postmodern feminism, and deliberately eschew a 'materialist' perspective which would lead to an engagement with non-academic matters. At the same time, the continuing inequalities affecting women within the Australian academy lead both

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<sup>1001</sup> A. Yeatman, *Bureaucrats, Technocrats, Femocrats*, 61.

<sup>1002</sup> Pamela O'Neil, 'Reflections,' *WEL National Bulletin* (March/April 1988), 5-7, 5.

<sup>1003</sup> H. Eisenstein, *Gender Shock*, 14.

<sup>1004</sup> Marian Sawer, *Sisters in Suits*, (Sydney: Allen and Unwin, 1990); Sophie Watson (ed.) *Playing the State: Australian Feminist Interventions*, (Sydney: Allen and Unwin, 1990); A. Yeatman, *Bureaucrats, Technocrats, Femocrats*; Clare Burton, *The Promise and The Price*, (Sydney: Allen and Unwin, 1991); H. Eisenstein, *Gender Shock*.

<sup>1005</sup> G. Kaplan, *The Meagre Harvest*, 38-39.

<sup>1006</sup> Australian Women's Research Centre, *Annual Report 1994*, (School of Social Inquiry, Faculty of Arts, Deakin University: 1994).

<sup>1007</sup> National Centre for Women, *Gender Matters* (Summer, 1997).

<sup>1008</sup> Australian Institute for Women's Research and Policy, *AIWRAP-UP 9*, (August 1996).

activist and postmodern academic feminists to involvement with university women's professional organisations such as the Australian Federation of University Women and the Women's University Network: Women in Leadership program.

### *Anti-Feminist Groups*

While, as in Ireland, the membership of anti-feminist groups in Australia overlaps with that of anti-abortion groups and church organisations; independent anti-feminist groups, such as the Australian Women's Guild of Empire, formed as early as 1929.<sup>1009</sup> Contemporary Australian anti-feminist groups have also been associated with a number of 'New Right' organisations.<sup>1010</sup>

Two groups which formed in the mid-1970s, the Women's Action Alliance (WAA) and Women Who Want to be Women (WWWW), were able to take advantage of a 'conservative turn' in the social system and a politically receptive Liberal/National coalition government at Commonwealth level.<sup>1011</sup> WAA was formed in Melbourne in April 1975 and was the more moderate of the two. Its links with the conservative groups such as the National Civic Council, the Concerned Parents Association, the Festival of Light, the Right to Life (RTL), Tax-payers Association, Caroline Chisholm Society and various 'New Right' groups sat uneasily with its 'in principle' support of equal pay for women.<sup>1012</sup> WWW was established in Melbourne on the 22nd March 1979 by WAA women who wished to take a stronger anti-abortion policy.<sup>1013</sup> Both groups acted to discredit and trivialise feminism as the 'harbinger of the unisex society', while creating controversy over any government funding for feminist services, challenging government concerns for women as 'sexism'.<sup>1014</sup>

### **Policy Implications: A Realistic Reflection of Women's Experience?**

The dominant Australian social identity was, historically, defined as a exceedingly narrow one, excluding the interests of Aboriginal people, NESB migrants and women. Feminism was one of a number of liberatory movements which arose during the late 1960s and early 1970s and promoted a broader cultural pluralism. In doing so it gave an increased legitimacy to a whole range of new activity by women. As Scutt points out, however, while these movements should be celebrated it should also be recognised that

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<sup>1009</sup> J. Stevens, *Taking the Revolution Home*, 30.

<sup>1010</sup> This is evidenced by articles in *The New Right Report* (April 30, 1986); resolutions from conferences such as the *Total Child Care Conference* (Macquarie University, 28 September-1 October, 1979); and the *Women for the Family and Society Conference* (Macquarie University, 8-9 March, 1980). Archives of the Human Life Protection Society, Hobart, Tasmania.

<sup>1011</sup> Penny O'Donnell, *Anti-Feminism in Australia*, (Honours Thesis, Department of Political Science, University of Melbourne, January 1981), 13.

<sup>1012</sup> *Ibid.*, 38-39.

<sup>1013</sup> *Ibid.*, 30.

<sup>1014</sup> *Ibid.*, 34.

... in all eras of Australian history since white settlement such groups had agitated for those same rights to freedom, equality, autonomy, self-definition. ... The 'firsts' we learned about via the newspapers were not 'firsts' at all. ... Not only does the dominant group impose a version of the world through exercising their power to portray events. The dominated group is thrust into a disbelief of their own reality and an acceptance of the false vision.<sup>1015</sup>

An example of this 'false consciousness' is the disparity between the attitudes towards, and practice of, abortion in Australia. Unlike Ireland, Australia was unable to 'export' the problem, to a convenient 'other place'. Illegal abortion was available in all States and Territories.<sup>1016</sup> This is not necessarily a symptom of the greater secularisation of Australian society. While secular forces have generally dominated the Australian social system religion has remained significant in shaping public attitudes to contraception and abortion.<sup>1017</sup> Historically, the major faiths shared a repressive discourse relating to the body, sexuality and women.<sup>1018</sup> Yet Australian Catholic women presenting for abortion accurately reflected their proportion of the general population.<sup>1019</sup>

Abortion was both illegal and dangerous. There are few available statistics but, in the 1930s, it was estimated that abortion was responsible for one third of deaths

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<sup>1015</sup> Jocelyne Scutt, *The Sexual Gerrymander*, (Melbourne: Spinifex, 1994), 80-81.

<sup>1016</sup> An excellent literature review of studies of illegal abortion in Australia is contained in Part One of Barbara Baird, *I've Had One Too: An Oral History of Abortion in South Australia Before 1970*, (Women's Studies Unit, Flinders University of South Australia: Family Planning Association of South Australia, 1990). Other publications on the topic, since 1990, include: S. Murray, 'Breaking the Rules: Abortion in Western Australia, 1920-1950,' In *Sexuality and Gender in History*, P. Hetherington and P. Maddern (eds), (Centre for Western Australian History, University of Western Australia: Optima Press, 1993), 223-241 and T. Nolan, 'The Flourishing Abortion Industry of the 50's and 60's,' *Queensland Police Union Journal* (May 1995), 27-29. Even in states where there has been no scholarly research undertaken, such as Tasmania, there still remains an oral history of the 'Prohibition Times'. *Sunday Examiner*, 'Backyard Operators Out of Business?' 24 March 1985, 6.

<sup>1017</sup> Jonathan Kelley and M. D. R. Evans, 'Should Abortion be Legal?' In *Australian Attitudes: Social and Political Analyses from the National Social Science Survey*, Jonathan Kelley and Clive Bean (eds.), (Sydney: Allen and Unwin, 1988), 3-25; Jonathan Kelley, M. D. R. Evans and Bruce Headey, 'Moral Reasoning and Political Conflict: the Abortion Controversy,' *British Journal of Sociology* 44(4), (December 1993), 589-611.

<sup>1018</sup> Jan Mercer, 'Religion, Socialisation and Women,' In *The Other Half: Women in Australian Society*, Jan Mercer (ed.), (Ringwood, Victoria: Penguin Books Australia, 1975), 253-274, 263; Katharine Massam, 'Transcending the Body: Gender, Sexuality and Holiness in Australian Catholicism,' In *Sexuality and Gender in History*, P. Hetherington and P. Maddern (eds.), (Perth: Optima Press, 1993), 202-222; and D. Millikan, 'Christianity and Australian Identity,' 35.

<sup>1019</sup> Royal Commission on Human Relationships, *Final Report, Volume 3*, (Canberra: Australian Government Publishing Service, 1977), 200; J. A. Johnston and D. B. Roberts, *Catholic Women and Abortion: A Profile, Sample and Case Study*, (Sydney: Catholic Family Life Programme, 1978), 35.



related to pregnancy and birth.<sup>1020</sup> In the post-war years, it was estimated that approximately fifty women died each year, from illegal abortions.<sup>1021</sup> Arrests and convictions were rare. Abortion was simply outside the accepted discourse and the danger and secrecy involved met with only cautious protest even amongst the 'progressive organisations' of the 1930s.<sup>1022</sup>

Australian feminism has not only been divided along normative lines but also along the lines of social stratification evident in the rest of Australian life, particularly, race and ethnicity. Some ATSI and NESB feminists have been critical of 'Anglo' radical feminist accounts of heterosexuality, the family, and the primacy of patriarchy as the cause of oppression.<sup>1023</sup> Other criticisms have been levelled at Australian liberal feminism for its exclusivity and mirroring of 'the male egalitarian model of friendship'.<sup>1024</sup> Although Australian feminism has largely been an Anglo-Celtic women's movement it has differed from the narrower vision of mateship in aiming to improve the conditions and opportunities of *all* women: the doors which 'Anglo' feminists opened have enabled some ATSI and NESB women to also enter the corridors of power.<sup>1025</sup> Feminists within small socialist parties such as the Democratic Socialist Party have actively sought alliances with ATSI and NESB women.<sup>1026</sup>

### 3. A RETREAT FROM AFFLUENCE?

Australia has traditionally relied on primary production (rural, mining) for economic stability through export earnings. Neither of the two major parties have been able to significantly change the basic composition or direction of Australia's trading relationships. Both have acted to increase Australia's integration in the world economy and have progressively dismantled the Australian centralised wage-fixing system. This bi-partisan 'economic orthodoxy' has led inexorably to a national retreat from affluence.<sup>1027</sup> Even under a national Labor Government, which pursued a corporatist method of decision making, there was very little

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<sup>1020</sup> Stefania Siedlecky, 'Current Usage of and Attitudes Towards Contraception in Australia,' *Healthright* 6(1), (November 1986), 7-16, 13.

<sup>1021</sup> Paul Wilson, *The Sexual Dilemma: Abortion, Homosexuality, Prostitution and the Criminal Threshold*, (St. Lucia, QLD: University of Queensland Press, 1971), 20.

<sup>1022</sup> J. Stevens, *Taking the Revolution Home*, 44-51.

<sup>1023</sup> J. Pettman, *Living in the Margins*, 68-69.

<sup>1024</sup> G. Kaplan, *The Meagre Harvest*, 6.

<sup>1025</sup> J. Pettman, *Living in the Margins*, Chapter Five.

<sup>1026</sup> The ATSI peoples currently make up approximately 1.5 per cent of the population and, although there are now over 100 distinct ethnic groups within Australia, the largest single migrant grouping remains those originating from the UK and Ireland. Australian Bureau of Statistics, *Multicultural Australia*, (Canberra: Australian Government Printing Service, Cat. No. 2505.0).

<sup>1027</sup> Martin Painter, 'Economic Policy, Market Liberalism and the 'End of Australian Politics', *Australian Journal of Political Science* 31 (3), (1996), 287-299.

progress made in including 'women's interests', as well as 'worker's interests', within these structures.

### **The Structure of the Australian Economy**

Australia has a current population of around 16.5 million, in an area spanning the whole of the continent, 7,686,843 sq kms. Australia's early strength was in gold mining and the wool, wheat and livestock industries. When manufacturing did develop, in the 1920s, it was protected by high tariffs in order to develop import-replacing rather than externally competitive industries. By 1933 Australia had one of the highest tariff rates in the world.<sup>1028</sup> During the post-War years Australia experienced a shift into large scale manufacturing and a relative decline in the rural sector. The 'long boom' saw near full employment, high levels of migration, and a large domestic market for mass-produced 'consumer durables'.<sup>1029</sup> As an oil-producing nation Australia was somewhat cushioned from the 'oil crises' of 1973 and 1979. The increased uncertainty in international markets, however, did not encourage economic growth and Australia experienced a recession in 1974-75, followed by stagflation between 1977-79, only ending in 1980 with a brief resources boom.<sup>1030</sup> Since the 1970s, however, Australian manufacturing has become increasingly unprofitable and non-competitive, by world standards, especially as against the newly-industrialised countries of the Asia-Pacific region.<sup>1031</sup> The import of manufactured goods was growing twice as fast as Australian manufactured exports, leading to a current account deficit amounting to 9.5 per cent of GDP, or \$14 billion in 1986-1987 alone.<sup>1032</sup>

In the 1980s, the continuing reliance on unprocessed primary commodities (wheat, wool, coal and iron ore making up 75 per cent of export income) in a depressed global market, reduced export earnings dramatically.<sup>1033</sup> The 1980s could be seen as an economic rollercoaster for Australia: 'micro-cycles', such as the deep recession of 1981-82, the recovery of 1983-85, the temporary down-turn of 1985-86, the sustained recovery of 1986-1989 and the severe and sustained recession of 1989-91 provided no stable base for national economic management.<sup>1034</sup> In the 1990s, over 50 per cent of Australian exports continued to originate from the rural and resources sectors, as compared to 13 per cent of manufactured goods. The slow rate of expansion in the services sector (9 per cent per annum in Australia as compared to 15.7 per cent world average) ties Australia

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<sup>1028</sup> N. G. Butlin, A. Barnard and J. J. Pincus, *Government and Capitalism*, (Sydney: Allen and Unwin, 1982), 91.

<sup>1029</sup> *Ibid.*, 112.

<sup>1030</sup> J. O. N. Perkins, *Australian Macroeconomic Policy 1974-1985*, (Melbourne: Melbourne University Press, 1987).

<sup>1031</sup> *Ibid.*, 113.

<sup>1032</sup> Carol O'Donnell and Philippa Hall, *Getting Equal*, (Sydney: Allen and Unwin, 1988), 135-136.

<sup>1033</sup> John Ravenhill, 'Australia and the Global Economy,' In *State, Economy and Public Policy in Australia*, Stephen Bell (ed.), (Melbourne: Oxford University Press, 1994), 75-97, 76.

<sup>1034</sup> *Ibid.*

to the primary commodities market.<sup>1035</sup> Globally, the prices paid for primary products have fallen, and the continued decline in Australia's terms of trade, and increase in the current account deficit, has created pressure for a restructuring of the domestic economy.<sup>1036</sup> Australia has also attempted to gain more favourable treatment in the global economy through such coalition building as the Cairns Group of 'fair' agricultural traders and the Asia-Pacific Economic Cooperation (APEC) grouping.<sup>1037</sup>

In addition to existing difficulties arising from tradeable commodities, however, Australia has become increasingly implicated in the global financial markets. From the 1970s onwards these markets became increasingly disconnected from the pattern of national trade and resources. By the early 1990s exchange in the currency markets alone had reached a value forty to fifty times greater than the level of international trade.<sup>1038</sup> Australia's weak economic position has left domestic policies 'highly vulnerable to financial market sentiments'.<sup>1039</sup> An increasing level of foreign capital investment, highly concentrated in particular sectors of the economy, has also reduced policy autonomy in this area.

Unemployment is relatively low by world standards but have risen dramatically over time. Nationally, in 1968, the unemployment rate stood at 1.8 per cent. In 1983, national unemployment peaked at 9.9 per cent, slowly dropping to 8.7 per cent in 1996. Regional levels of unemployment varied considerably. Tasmania, for example, had an unemployment rate of 12 per cent in 1996.<sup>1040</sup> It is interesting to note that, of all the OECD countries, only Australia and Ireland were unsuccessful in either 'mitigating the direct employment effects of economic crisis or compensate(ing) for them by massive welfare intervention'.<sup>1041</sup>

### **The Dynamics of Australian Industrial Relations**

The Australian pattern of wage fixing has moved from a highly centralised system to a relatively decentralised one. Economic decision-making has been taken, by governments, in consultation with the constituent interests and, at times, within structured, semi-corporatist, national agreements.

#### *Trade Unions*

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<sup>1035</sup> C. O'Donnell and P. Hall, *Getting Equal*, 135-136.

<sup>1036</sup> Stephen Bell and Brian Head, 'Australia's Political Economy: Critical Themes and Issues,' In *State, Economy and Public Policy in Australia*, Stephen Bell and Brian Head (eds.), (Melbourne: Oxford University Press, 1994), 1-24, 12.

<sup>1037</sup> *Ibid.*, 87.

<sup>1038</sup> Stephen Bell, *The Transformation of the Australian State in Comparative Perspective*, Paper Presented at the Public Policy Network Conference, Hobart, Tasmania. February 1-2, 1996, 17.

<sup>1039</sup> *Ibid.*, 24.

<sup>1040</sup> Australian Bureau of Statistics, *Labour Force*, December 1996. Print Number 6202.0, 13.

<sup>1041</sup> Francis Castles, 'Social Protection by Other Means: Australia's Strategy of Coping With External Vulnerability,' In *The Comparative History of Public Policy*, Francis Castles (ed.), (Cambridge: Polity Press, 1989), 16-55, 28.

Australia has a historical tradition of a strong trade union movement. The structures and processes that make up the Australian centralised wage-fixing system were formed after the massive, bitterly fought, strikes of the early 1890s led to the polarisation of labour and capital.<sup>1042</sup> By the late 1920s a number of unions had formed a peak body, the Australian Council of Trade Unions (ACTU). In 1985 the ACTU had affiliates representing 90 per cent of all unions.<sup>1043</sup> This level of affiliation has remained relatively consistent. Other labour organisations include the Australian Council of Salaried and Professional Associations, which merged with the ACTU in 1979, as did the Council of Commonwealth Public Service Organisations.

#### *Employers' Associations*

The first national manufacturing organisations, the Chambers of Commerce, the Employers' Federations (later the Australian Council of Employers' Federations: ACEF) and the Chambers of Manufacturers, (later the Associated Chambers of Manufactures of Australia: ACMA) formed between 1901-1908 and have grown in membership and influence over time.<sup>1044</sup> The Australian Industries Development Association (AIDA), also a manufacturing peak association, became influential after 1967. The late 1970s saw a merger of ACMA and ACEF to create the Confederation of Australian Industry (CAI). This, in turn, absorbed the Australian Chamber of Commerce and is now the Australian Chamber of Commerce and Industry. In the early 1980s, the Australian Business Roundtable was formed, later merging into the Business Council of Australia (BCA), with AIDA.<sup>1045</sup> A more extreme grouping, the Australian Federation of Employers was formed in 1986, and backed by members of the neo-liberal 'New Right'.<sup>1046</sup>

#### *The State*

Initially the industrial arbitration system was established at State level.<sup>1047</sup> In 1904, however, a Commonwealth Court of Conciliation and Arbitration ('the

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<sup>1042</sup> S. F. Macintyre, 'Labour, Capital and Arbitration 1890-1920,' In *State and Economy in Australia*, Brian Head (ed.), (Melbourne: Oxford University Press, 1988), 98-114, 100.

<sup>1043</sup> Julian Teicher, *Unions, the ACTU and Australian Wages Policy*, (Victoria: Monash University Press, Management Papers), 30.

<sup>1044</sup> T. V. Matthews, 'Business Associations and the State, 1850-1979,' In *State and Economy in Australia*, Brian Head (ed.), (Melbourne: Oxford University Press, 1988), 115-149, 117.

<sup>1045</sup> Stephen Bell and John Warhurst, 'Business Political Activism and Government Relations in Large Companies in Australia,' *Australian Journal of Political Science* 28 (1993), 201-220, 205-206.

<sup>1046</sup> David Plowman, 'Economic Forces and the New Right: Employer Matters in 1986,' *Journal of Industrial Relations* 29(1) (March 1987), 84-91, 85.

<sup>1047</sup> The Victorian *Factories and Shops Act* was passed in 1896, broadened in 1900 to cover all factories under a system of Wages Boards, then incorporated into the 1901 *Conciliation Act*. The South Australian *Conciliation Act* 1894, created voluntary Conciliation Boards only, with no binding powers. New South Wales legislated for compulsory arbitration with the *Industrial Conciliation and Arbitration Acts* of 1901 and 1905; Western Australia followed in 1902; Tasmania in 1903. N. G. Butlin, A. Barnard and J. J. Pincus, *Government and Capitalism*, 71.

Commission') was established through the *Conciliation and Arbitration Act*.<sup>1048</sup> This semi-judicial body could determine an 'award' rate of pay which had the force of statute. Within several decades it had largely replaced State tribunals, in determining awards and registering agreements, thus initiating a lasting pattern of centralised wage-fixing.<sup>1049</sup> The Commission had limited power and its decisions were difficult to enforce: undermined by industries associated with very low wages, outwork, piecework, usually employing large numbers of women or Chinese employees.<sup>1050</sup> In addition, until 1920, the High Court held that Commonwealth awards were not binding on the States.<sup>1051</sup> Since that time, however, the Commonwealth wage-fixing system has established national award benchmarks through Test Cases and has generally built on State decisions. This has followed the gradual increase in the powers of the Commonwealth under federalism.<sup>1052</sup>

Unions, employers' groups, and the government of the day are represented within the processes of centralised wage-fixing. The ALP has traditionally supported union positions before the Commission, while the Liberal party has generally represented the interests of business and employers, as each party reflects its class-based support. The recommendations of that government significantly influences the determination of the Commission as it undertakes its role of 'facilitator' of Australian industrial relations.<sup>1053</sup> Other political parties in Australia have not been specifically represented within the centralised wage-fixing process and, while women's groups have often appeared in support of equal pay claims, women are still under-represented within the institutions of industrial relations.

### **Policy Implications: A Fair Reward for Women's Work?**

Australian women have experienced relatively high levels of labour force participation and occupational segregation, and relatively low gender earnings differentials. Although the institutional structures and processes of the Australian centralised wage fixing system supported comparative wage justice, in

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<sup>1048</sup> Since its inception, this body has been variously known as the Commonwealth Court of Conciliation and Arbitration, the Commonwealth Conciliation and Arbitration Commission, the Australian Conciliation and Arbitration Commission, and the Australian Industrial Relations Commission.

<sup>1049</sup> State Tribunals still exist, but this dissertation will concentrate on Commonwealth awards as they have been more important in providing for equal pay for women, in the period under discussion. J. Teicher, *Unions, The ACTU and Australian Wages Policy*, 3.

<sup>1050</sup> N. G. Butlin, A. Barnard and J. J. Pincus, *Government and Capitalism*, 152.

<sup>1051</sup> R. N. Spann, *Government Administration in Australia*, (Sydney: Allen and Unwin, 1979), 368.

<sup>1052</sup> H. Emy and O. Hughes, *Australian Politics: Realities in Conflict*, 289.

<sup>1053</sup> J. E. Isaac, 'The Arbitration Commission: Prime Mover or Facilitator?' *Journal of Industrial Relations* (September 1989), 405-427.

general,<sup>1054</sup> it also institutionalised dominant notions of 'women's worth'. The historical experience of Australian women has been that pay increases were not granted without considerable lobbying for action. Although women's groups could appear they were not recognised as legitimate representatives and needed to convince unions to pursue equal pay on their behalf.<sup>1055</sup> This is a serious constraint on feminist autonomy in pursuing policy goals. While feminists have organised within the ACTU to enable the union movement to better represent women, the sex-segregated nature of women's employment is reflected in their union membership, as six unions contain more than one-third of all female union membership.<sup>1056</sup> Australian women are also less likely to be members of their unions than Australian men and are less likely to participate in union activities.<sup>1057</sup>

Groups such as the Australian Federation of Business and Professional Women have represented women managers for many years preceding the contemporary feminist movement. Since then they have been joined by the Australian Businesswomen's Network, the National Association of Women in Construction, and many similar groups. These groups tend to concentrate on developing professional opportunities through networking and mentoring other women. They have formed international links through new groups such as the Women Chiefs of Enterprise.<sup>1058</sup>

At an international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN in December 1979, signed by Australia in July 1980, and ratified in July 1983. CEDAW stipulates that national governments should ensure a legal basis for the equal rights, opportunities and responsibilities of women and should set in place procedures for monitoring and redressing systemic discrimination against women. Article 11 of the Convention specifically includes the right to equal pay for work of equal value.<sup>1059</sup> ILO Convention 100 (1957) concerning *Equal Remuneration for Men and Women Workers for Work of Equal Value*, and Convention 111 (1958) concerning *Discrimination in Employment and Occupation*, are also

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<sup>1054</sup> Margaret Thornton, 'Pay Equity: An Australian Perspective,' *Paper for ILO, May 1989*. Archives of the Human Rights and Equal Opportunities Commission, Sex Discrimination Commissioner's Office, Sydney, 2; Gillian Whitehouse, 'Legislation and Labour Market Gender Inequality: An Analysis of OECD Countries,' *Work, Employment and Society* 6(1), (March 1992), 65-86, 86.

<sup>1055</sup> Thornton suggests that the Commission itself has shown itself to be open to arguments for equal pay 'only at times that comport with a male-defined perception of the national good'. M. Thornton, 'Pay Equity: An Australian Perspective,' 25.

<sup>1056</sup> These are the Shop, Distributive and Allied Workers, Miscellaneous Workers, Federated Clerks, Liquor Trades, Bank Employees and NSW Teachers' Federation. Sol Encel and Dorothy Campbell, *Out of the Doll's House*, (Melbourne: Longman Cheshire, 1991), 84.

<sup>1057</sup> Miriam Henry and Suzanne Franzway, Gender, 'Unions and the New Workplace: Realising the Promise?' In *Pink Collar Blues*, Belinda Probert and Bruce Wilson (eds.), (Melbourne: Melbourne University Press, 1993), 126-153, 145.

<sup>1058</sup> John O'Neill, 'Women Who've Won,' *The Independent Monthly*, February 1995, 25-31.

<sup>1059</sup> Vicky Marquis, 'A Feminist Republic? A Feminist Constitution?' *Australian Quarterly* (Spring 1993), 31.

related to equal pay and conditions.<sup>1060</sup> Within Australia, States were at least partially motivated by these international standards when they enacted legislation for equal pay for women.<sup>1061</sup> In contrast, the Commission rejected the Convention 100 as a 'significant factor in the formulation of its determinations' in the Test Cases related to equal pay in 1969, 1972 and 1974.<sup>1062</sup> The actual ability of coalitions arguing for equal pay to enforce these international standards has been very weak. In Australia the declarations of 'global governance' have been enforced when they have coincided with the ideologies of the political party or parties forming Commonwealth government. Organisations of international citizenship, such as the International Confederation of Free Trade Unions, also have bases in Australia. The context of workers' rights in the South East Asian region is quite different from that of Europe and the Americas. In 1993, for example, New Zealand fell into the same category as Pakistan, India, Bangladesh, Sri Lanka, Thailand, Malaysia, Brunei, Korea, Taiwan, Japan, Hong Kong, the Philippines and Turkey by having a 'partial denial of trade union rights as understood in the context of international conventions and instruments'.<sup>1063</sup>

#### 4. AN OVERVIEW OF SYSTEMIC/SUBSYSTEM INTERACTION

**Table 6.3** below plots the interaction of national political, social and economic systemic factors and the two policy subsystems. The emergence of a 'broader Australia' was signaled in 1967 when, after a national referendum, the Commonwealth was given concurrent power over Aboriginal affairs. This had the effect of bestowing the right of adult suffrage upon Aboriginal people and was a powerful symbol of equality. The removal of the 'White Australia' policy, in 1966, opening the doors to a greater cultural diversity by allowing 'highly skilled Asians' to be admitted to Australia.

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<sup>1060</sup> A. Heitlinger, *Women's Equality, Demography and Public Policies*, 53.

<sup>1061</sup> Christine Short, 'Equal Pay - What Happened?' *Journal of Industrial Relations* (September 1986), 318.

<sup>1062</sup> Mary Gaudron and Michael Bosworth, 'Equal Pay?' *In Pursuit of Justice*, Judy Mackinolty and Heather Radi (eds.), (Sydney: Hale and Iremonger, 1979) 161-169, 163.

<sup>1063</sup> Tamby Dorai Pathma, 'Women in Industrial Relations: Changes in Industrial Relations and the Impact on Women Globally,' *In Women, Power and Politics, Conference Proceedings*, (Adelaide: Women's Suffrage Centenary Steering Committee, 1995), 204-216.

**TABLE 6.3. Overview of Australian Systemic Factors and Policy Subsystems**

	Social	Abortion	Political	Equal Pay	Economic			
YEAR								
1968	A Broader Definition of Citizenship Develops	Public Activism Emerges		Increase in Pay Equity	Continued Growth			
1969								
1970				Labor Intervenes for Equal Pay				
1971								
1972			Labor Gains Power					
1973		McKenzie-Lamb Bill		Rapid Increase in Pay Equity				
1974	Laying the Blame	More Gains	Government Dismissed		Recession			
1975								
1976			Non-Labor Dominance		Plateau	Economic Instability		
1977								
1978								
1979								
1980	Chamberlain Case	Stalemate						
1981								
1982								
1983	Developing Consensus in a Multicultural Society					Labor Dominance	Locked out of Accord	Australian Dollar Floated
1984								
1985		Plateau	Destabilisation					
1986								
1987								
1988	Gains and Changes				Sustained Recovery			
1989								
1990								
1991								
1992						Towards an Australian Republic		
1993								
1994								
1995			Non-Labor Dominance	Increasing De-centralisation	Mild Recovery			
1996	Rejection of the Progressive Agenda	Multiple Attacks on the Status Quo	Liberal National Coalition Government	Dismantling the IR system				

Migrants could now apply for citizenship after 5 years, instead of the previous 15 year waiting period, and the restrictions on family settlement were eased.<sup>1064</sup> Aboriginal activism and student anti-war activism was on the rise during the 1960s and was joined by feminist activism by the end of the decade.

<sup>1064</sup> Gordon Cheers, *Australia Through Time*, (Australia: Random House, 1993), 406.



The links between the social system and the abortion policy subsystem are evident in the emergence of activism on this issue as well. The dramatic early gains within the abortion policy subsystem were achieved in the progressive period of the 1960s and 1970s. The first 'crisis' for the abortion policy subsystem emerged in 1973 with the emergence of a large and cohesive anti-abortion coalition protesting the McKenzie-Lamb Bill (discussed in Chapter 7).

The conservative reaction to this emancipatory strand intensified during the 1975-1979 years of recession and economic stagflation when record levels of unemployment were blamed on the 'dole bludgers' and the 'work shy' who led 'alternative lifestyles'.<sup>1065</sup> The 1980s saw anti-feminist, anti-abortion, coalitions mobilise in each State and Territory. Their consistent, although unsuccessful, strategies to prevent abortion stalled significant progress in the provision of services until the 1990s. This repressive attitude towards women, and scapegoating of the different, was bizarrely expressed during the 'Chamberlain Case'. In August 1980 a 10 week old baby girl, Azaria Chamberlain, was taken by a dingo at Ayers Rock. Michael Chamberlain, a Seventh-Day Adventist Minister, and his New Zealand born wife, Lindy Chamberlain, came under unprecedented Australia-wide scrutiny and suspicion after press reports linked the baby's death with sacrificial ritual and witchcraft. After lengthy legal proceedings the mother, Lindy, was found guilty of murder and sentenced to life imprisonment with hard labour. Her husband was found guilty of being an accessory after the fact and was released with a suspended 18 month sentence. This disparity in sentencing illustrated the misogyny underlying the case.<sup>1066</sup>

One of the key planks of the prosecution's case was that the Chamberlains displayed strange and inappropriate behaviour. Later analysts suggested

... much public hostility existed because the Chamberlains were different  
... an Australian intolerance of 'differentness' helped to create a climate  
which enabled an unfair conviction to be achieved.<sup>1067</sup>

This particularisation of an underlying conflict formed a 'crisis point' in that it brought the latent, and less attractive, aspects of Australian social attitudes to the surface. This intense personification of social change has remained an unusual occurrence in Australia. It has, as illustrated in the previous chapter, occurred more often in Ireland.

More typical was Bob Hawke's 1983 campaign to lead, by consensus, in a multicultural Australia.<sup>1068</sup> The Whitlam government had originally launched the

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<sup>1065</sup> Ann Harding, 'Unemployment Policy: A Case Study in Agenda Management,' *Australian Journal of Public Administration* XLIV(3), 224-246, 238.

<sup>1066</sup> Lindy Chamberlain was eventually proven innocent in 1986. The particularly Australian form of misogyny has been described as the 'Damned Whores and God's Police' syndrome, after the book by Anne Summers, *Damned Whores and God's Police*, (Kingwood: Penguin, 1975).

<sup>1067</sup> Robert Lewis, *The Chamberlain Case: Was Justice Done?*, (Collingwood: History Teachers Association of Victoria, 1990), 17.

concept of 'multiculturalism' with the claim that 'we are all ethnics'.<sup>1069</sup> This was expanded in 1989 by a comprehensive *National Agenda for a Multicultural Australia*.<sup>1070</sup> In 1992 the ALP Prime Minister, Paul Keating, began to introduce the possibility of an Australian Republic. This would involve cutting all formal links to Britain and the monarchy and, in a potent symbolic act, repudiate much of the 'narrow Australia'. By 1996, however, it could be said that both the ALP and its multicultural, internationalist vision of Australia, had been rejected by the majority of the electorate. Over 600,000 'Labor voters' switched to the non-Labor parties at this time.<sup>1071</sup> This was a 'social crisis' in that candidates which ran racist or exclusivist campaigns experienced a significant swell of support.<sup>1072</sup> 1996 also saw a series of influential anti-abortion initiatives associated with the new government's conservative agenda.

The equal pay subsystem saw some early gains, from the first national decision for equal pay for equal work, in 1969. This was given real and substantial support in 1972, when the newly-elected Whitlam ALP Government intervened for equal pay for work of equal value. Rapid gains were made in pay equity between 1969-1976. The recession of 1974-1975 put an end to the long post-war 'boom' cycle and led to a period of economic instability which resulted in the decision, in December 1983, to set up a foreign exchange market which would determine the value of the Australian dollar. The 'floating' of the Australian dollar created so much uncertainty within the markets, it was a real crisis with significant after-effects, including a major reduction in the powers of the Central Reserve Bank. After this turning point, a milder cycle of recovery and recession has been in operation, lacking any long-term solutions for the economy.

Similarly there have been no long-term solutions for pay equity as female/male relativities have stabilised in the twenty years since 1976. It has been a contradictory process. On one hand, the strengthening of Australia's international ties with the United Nations and the International Labor Organisation have increased constitutional authority in relation to gender equity. This has proved to be quite important when protecting early gains. On the other hand, in 1983, feminist ability to effect change in the domestic industrial relations system was dramatically reduced when Australian women were locked out of the Prices and Incomes Accord process. Under the Accord some neo-liberal economic principles were taken up by the Labor government, leading to an increasing decentralisation of the wage-fixing system: a process which accelerated in 1996 when the incoming Liberal/National Party coalition government undertook the dismantling of the industrial relations system in earnest. This constituted a crisis, in the sense

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<sup>1068</sup> *Social Alternatives*, 'Multiculturalism in Australia,' Special Issue 3(3), (July 1983).

<sup>1069</sup> J. Pettman, *Living in the Margins*, 13.

<sup>1070</sup> Catherine Armitage, 'Immigration: The Collapse of Consensus,' *Weekend Australian*, October 5-6, 1996, 21.

<sup>1071</sup> Roy Green, 'How Labor Can Win Again,' *Labor Herald* (8), (September 1996), 13.

<sup>1072</sup> It could be argued that the meteoric political career of Pauline Hanson is another example of the personalisation of an underlying crisis: this time of an 'Anglo constituency' which has 'lost its exclusive claim to this society and its resources'. *Editorial*, 'Ending the Politics of Racism,' *Weekend Australian*, 12-13 October 1996.

of removing many of the institutional supports for gender wage equity, leading almost inevitably to greater disadvantage for women.

The political system itself only experienced 'crisis' once, following the 'dismissal' of the Whitlam ALP government. Upon gaining power in 1972 the Whitlam government was the first ALP government in 23 years. It undertook an extensive and dramatic program of reforms and its first term of government was ambitious and controversial. The Government also experienced considerable difficulties in implementing central parts of its agenda due to the control of the Senate by the Opposition. In 1974, a 'double dissolution', whereby both Houses of Parliament went to the polls simultaneously, only increased the Opposition control of the Upper House. In October 1974, the Opposition decided to indefinitely defer Supply (the main government money Bill) in the Senate, in order to force another early election. This was contrary to the principles of the Constitution, but as Australia had such a minimalist document, these were the *unwritten* rules.<sup>1073</sup> The Government refused to comply and in November the Governor-General stepped in to break the deadlock by dismissing the elected government.

The effect of this decision, by the representative of the British Queen in Australia, was to inflame the existing tense and explosive atmosphere. On the 11 November, when the sacking was announced, numerous spontaneous demonstrations erupted around Australia.<sup>1074</sup> The non-Labor parties ran a subsequent electoral campaign which emphasised the economic recession and the unreliability of the ALP. They were elected by an overwhelming majority in December 1975 and went on to govern for another eight years. When the Hawke Labor government came to power, it was on a platform of 'responsible' economic management, with social justice as a second-order priority. It was the 'economy first' for both Labor and non-Labor alike. This was to have considerable implications for pay equity in Australia.

### **Assessing Australian National *Receptivity***

The *receptivity* of the national site, the permeability and capacity of its particular sets of political, social and economic systemic factors, create similarities across policy subsystems. This was evident in the previous chapters dealing with Ireland and is also discernible in the Australian case. This chapter has outlined the particular Australian structures and dynamics which affect the relative adequacy of the political representation of women's interests, the realism of the social reflection of women's experience and the fairness of the economic reward for women's work.

Some of the interactions between these systemic factors and the two policy subsystems under consideration have been set out in a preliminary overview and the critical points of change, or *crises*, have been indicated. The purpose of this contextual analysis is to illustrate that the site of policy, and of national feminism, both enables and constrains the policy process within subsystems. In Australia, as

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<sup>1073</sup> Paul Kelly, *The Unmaking of Gough*, (Sydney: Angus and Robertson, 1976), 270.

<sup>1074</sup> *Ibid.*, 299.

in Ireland, it would appear that feminists have the least access to decision-making in the economic system. The growing dominance of the economic system over the political system, through the acceptance of neo-liberal economic 'solutions' in Australia, suggests that aspect of national *receptivity* is diminishing over time. This has serious implications for pay equity. In a similar fashion, the recent 'narrowing' of outlook within the social system indicates possible changes in established abortion policy and practice. The following chapter examines the development of the Australian abortion policy subsystem, and illustrates how the systemic factors discussed in this chapter have shaped the policy process, and the influence of feminism on that process.

## CHAPTER 7

### THE AUSTRALIAN ABORTION POLICY SUBSYSTEM

As each 'Australian' colony gained self-government and developed its Constitution, abortion was made illegal through the enactment of the British *Offences Against the Person Act* (1861), later incorporated into various Criminal Codes and Crimes Acts.<sup>1075</sup> The Australian federal system of government thus created nine *separate* abortion policy subsystems within the one nation. As in Ireland, abortion only became a public policy issue after previous subsystem activity relating to contraception; unlike Ireland, prohibitions relating to contraception were motivated by a racist rather than religious discourse. Contraception, while not actually illegal, was actively discouraged for 'white women' during the colonial period. The British *Indecent Advertisements Act*, 1889 was incorporated into all States' legislature and worked to suppress birth control information.<sup>1076</sup> After Federation the Commonwealth government also introduced customs regulations to prohibit the importation of contraceptives.<sup>1077</sup> These statutes reflected the dominant ideology of 'populate or perish', that is, risk being overwhelmed by the 'yellow horde' to the North.

This racist discourse was also evident when, between 1870 and 1940, groups such as the Free Thinkers, Humanist Society, Racial Hygiene Association, Eugenics Society, Women's Reform League, Feminist Club and National Council of Women challenged the laws, giving public lectures on sexuality, distributing booklets on contraception, as well as opening the first birth control clinics: the 'Racial Hygiene Centres'.<sup>1078</sup> Contraception was seen by some of these groups as a way of improving the 'purity of the race' and achieving 'numerical control over the 'lower' classes'.<sup>1079</sup> In spite of these efforts, however, censorship, and trade

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<sup>1075</sup> In Queensland, the British Act was incorporated into the *Criminal Code* 1899 (Qld), ss224-6 and 282. In New South Wales, it was enacted by the *Crimes Act* 1900 (NSW), ss82-84. This was also the relevant ruling for the (later) Australian Capital Territory (ACT) which was sited within the NSW state boundaries. In Western Australia, abortion came within the *Criminal Code Act Compilation Act* 1913 (WA), ss199-200 and 259 and within Tasmania, it was contained within the *Criminal Code Act* 1924 (Tas), ss134-5. In South Australia, it was enacted by the *Criminal Law Consolidation Act* 1935, ss81(6), 82(9) and the *Criminal Code Act* 1935 (SA) 82a. In Victoria, the *Crimes Act* 1958 s65 eventually covered abortion. In the Northern Territory (NT), abortion was covered by the Commonwealth *Criminal Law Amendment Ordinance* (as amended) 1939-1973 s78, until 1978.

<sup>1076</sup> H. Finlay, 'The Impact of Law Family Planning in Australia,' *Journal of Family Law* 13(4), (1973-74), 753-780, 759.

<sup>1077</sup> Stefania Siedlecky and Diana Wyndham, *Populate and Perish*, (Sydney: Allen and Unwin, 1990), 21.

<sup>1078</sup> The most important cases include: the Walker case, 1885, the Collins case 1888, the Smith case 1902, the Chidley case 1914 and the Storer case 1933. P. Coleman, *Obscenity, Blasphemy and Sedition*, 50.

<sup>1079</sup> J. Stevens, *Taking the Revolution Home*, 47.

and legal restrictions to contraceptive distribution, remained largely in place.<sup>1080</sup> Statutes limiting the distribution of contraception were being enacted right into the 1960s. The 1966 Victorian *Summary Offences Act*, for example, states it is illegal to exhibit, sell door-to-door, sell in a street or public place, or home-deliver any form of contraceptives.<sup>1081</sup>

Religious opposition to contraception was also expressed although the religious establishment was split along sectarian lines. Catholic clergy condemned contraception and preached against it while Anglican clergy followed their British brethren in allowing birth control from 1930 onwards.<sup>1082</sup> Some of the medical profession also emphasised the physical and moral dangers of contraception in the strongest and most condemnatory tones.<sup>1083</sup> These attitudes were modified during the 1940s campaign against venereal disease, itself a symptom of the 'recreational leave' of Australian and American servicemen, during World War II.<sup>1084</sup> In 1960 the Racial Hygiene Association changed its name to the Family Planning Association of Australia (FPA). A gradual liberalisation of attitudes and laws led to the introduction of the oral contraceptive pill (the Pill) to Australia in 1961. The Pill radically redefined the terms of debate, offering the prospect of total fertility control, and leading to greater acceptance of the new inter-uterine device (IUD), sterilisation, and abortion.<sup>1085</sup>

As in Ireland, in Australia both contraception and abortion were treated as regulatory policies. While contraception was still gender-specific (ie. likely to stimulate feminist involvement) its 'role changing' aspects were somewhat less contentious due to the specific coupling of contraception with 'racial purity'. The social liberalisation of the 1960s and the 1970s saw this connection dissolve and, as contraception reached a broad acceptance, the early moves toward abortion law reform did not bring in the issue of race. This first phase of the abortion policy subsystem, between 1968 and 1978, saw substantial gains in decriminalisation and services. In contrast the 1980s were typified by a largely unsuccessful 'backlash' of legislative measures. In the 1990s the expansion of abortion services and further liberalisation of some policies broke up the 'siege mentality'

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<sup>1080</sup> H. A. Finlay and Stephen Glasbeek, *Family Planning and the Law in Australia: Part A Primary Family Planning Legislation*, (Sydney: Family Planning Association, 1973), xii; Vimy Wilhelm, 'The Informal Education System: Family Planning in Australia,' In *Family Planning, Population Education Issues in Australia: Proceedings and Discussion of the First Summer School on Family Planning*, R. Cochrane (ed.), (Sydney: Australia and New Zealand Book Company, 1974), 179-190, 183; H. Finlay, 'The Impact of Law: Family Planning in Australia,' 760; H. A. Finlay and J. Sihombing, 'Distribution and Marketing of Contraceptives,' In *Family Planning and the Law* (2nd edition), (Sydney: Butterworths, 1978), 13-58; Anthony Blackshield, 'Censorship and the Law,' In *Australia's Censorship Crisis*, G. Dutton and M. Harris (eds.), (Melbourne: Sun Books, 1970), 9-26, 10.

<sup>1081</sup> H. Finlay and S. Glasbeek, *Family Planning and the Law in Australia: Part A*, ix-xi.

<sup>1082</sup> S. Siedlecky and D. Wyndham, *Populate and Perish*, 16.

<sup>1083</sup> *Ibid.*, 15.

<sup>1084</sup> *Ibid.*, 118-120.

<sup>1085</sup> In the first ten years of Pill use, the proportion of married women using contraception rose dramatically, from 67 to 87 per cent. J. C. Caldwell and H. Ware, 'The Evolution of Family Planning in Australia,' *Population Studies* 27 (1973), 7-31, 7; S. Siedlecky and D. Wyndham, *Populate and Perish*, 43.

of the past decade. In 1996, however, the uncertain status of abortion was again emphasised as a change of government found the new Liberal/National Party coalition government without control of the Senate and the balance of power was held by two Independents, one of whom was a fervent anti-abortion campaigner.

## 1. EARLY GAINS: 1968-1978

In the decade between 1968 and 1978, five States and the two Territories provided for some form of open abortion provision. Four different abortion policy regimes emerged at this time: (1) some States and Territories passed legislation allowing for legal abortion under certain circumstances; (2) other States saw benchmark judicial determinations allow a limited defence for doctors openly providing abortions; (3) in other States abortion services opened under 'common law', that is, on the advice that their legal position was likely to be similar to that set out in interstate judicial decisions and; (4) some States and Territories had no open abortion services at all. Nationally, abortion became a recognised medical procedure, covered by health insurance.

### Judicial Determinations

#### *Victoria*

In the late 1960s the Victorian illegal abortion trade was estimated to be worth approximately \$12 million annually.<sup>1086</sup> Abortion clinic staff regularly paid police up to \$600 a month in 'protection money' in order to avoid arrest.<sup>1087</sup> This arrangement came to an end in February 1968 when the Victorian homicide squad began a series of raids on illegal clinics. The two instigators of this 'crack-down' were Superintendent Frank Holland, a Catholic with strong anti-abortion sentiments, and Dr. Bertram Wainer, a concerned medical practitioner.<sup>1088</sup> The State government of the day attempted to avoid dealing with the issue of law reform by attempting to discredit Wainer and instigating a few police raids on illegal abortionists.<sup>1089</sup>

By June 1968 eleven doctors had been charged.<sup>1090</sup> This resulted in an increase in public support for abortion law reform, by the Australian Medical Association

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<sup>1086</sup> Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, (Melbourne: Oxford University Press, 1990), 204.

<sup>1087</sup> Peggy Berman with Kevin Childs, *Why Isn't She Dead! The Police Abortion Graft Public Inquiry*, (Melbourne: Gold Star Publications, 1972), 98.

<sup>1088</sup> The Melbourne illegal abortion 'scene' is described in graphic detail in Brian Latch with Bill Hitchings, *Mr. X: Police Informer*, (Melbourne: Dingo Books, 1975).

<sup>1089</sup> K. Coleman, 'The Politics of Abortion in Australia,' 78.

<sup>1090</sup> Beatrice Faust, 'Abortion Legislation and Policy,' *In Forum on Abortion*, (Kingston, ACT: Australian Frontier, 1969), 5-10, 7.

(AMA),<sup>1091</sup> several sections of the Liberal Party of Victoria (including the Young Liberals), the Synod of the Church of England and the General Assembly of the Presbyterian Church of Victoria.<sup>1092</sup> The formation of the Abortion Law Reform Association of Victoria (ALRA/VIC) was especially significant as this was one of a series of loosely-aligned, state-based groups which were forming around the country at this time. While all the emerging groups shared the same name (ALRA), this was not a national organisation, as such, but a ‘grass-roots’ response to developments in Australia and overseas. When the first case against the doctors was brought to trial Judge Menhennit ruled that the act of abortion may be performed under the defence of ‘necessity’.<sup>1093</sup> That is:

... the accused must have honestly believed on reasonable grounds that the act done by him was (a) necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail; and (b) in the circumstances not out of proportion to the danger to be averted.<sup>1094</sup>

While this gave some legal standing to doctors performing abortions the State government continued to avoid enacting legislation on the issue. Instead an open Inquiry into police involvement in criminal abortion services re-focussed public attention from the question of abortion law reform to the problem of police corruption.<sup>1095</sup> The findings of the Inquiry were not released until late August 1971, prompting a Melbourne *Age* editorial which criticised a government which, ‘faced by influential opposition to abortion reform, mainly by people of strong religious persuasion ... lacked the political courage and conviction to bring the law into line with social reality’.<sup>1096</sup>

This opposition to abortion law reform was less public than the support being expressed. There were no special interest groups working against reform. While the inaugural meeting of the national, anti-abortion, Right to Life (RTL) Association was held in Melbourne in May 1972, Victoria did not have a state

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<sup>1091</sup> Both the Royal Australian College of General Practitioners and the Royal College of Obstetricians and Gynaecologists adopted the AMA policy. Susan Harries, ‘The Policies of Major Community Organisations,’ In *Abortion: The Unenforceable Law: The Reality of Unwanted Pregnancy in Australia*, Tony McMichael (ed.), (Carlton, Victoria: Abortion Law Reform Association of Victoria, 1972), 40-43, 40.

<sup>1092</sup> H. A. Findlay and Stephen Glasbeek, *Family Planning and the Law in Australia, Part B: Secondary Family Planning Legislation*, (Sydney: Family Planning Association, 1974), 109-131.

<sup>1093</sup> Judicial determinations were previously assumed to follow the precedent set by the British *R v Bourne* (1939) until a case arose within Australia. H. Finlay and S. Glasbeek, *Family Planning and the Law in Australia: Part A*, 53.

<sup>1094</sup> *R v Davidson* (1969) VR 667 at 672.

<sup>1095</sup> Richard Haldane, *The People's Force: A History of the Victoria Police*, (Melbourne: Melbourne University Press, 1986), 271.

<sup>1096</sup> Editorial, ‘Unfinished Business,’ *Age*, 2 September, 1971, 9.



RTL organisation until 1973.<sup>1097</sup> By this time not only were doctors more willing to carry out abortions in public hospitals, but Dr. Wainer and his wife, Jo, joined with Dr. Peter Bayliss to establish the independent, 'free-standing', Fertility Control Clinic, the first legal non-hospital abortion clinic in Australia.<sup>1098</sup>

A national feminist lobby group, the Women's Abortion Action Campaign (WAAC) was also formed in August 1972 to seek the *repeal* (not reform) of all abortion laws. WAAC, which had close ties to ALRA/VIC and the Victorian branch of the Women's Electoral Lobby was to provide a focus for feminist activism on abortion, and a national news sheet *Right to Choose*, for the next 20 years. WAAC formed alliances with a number of university feminist groups,<sup>1099</sup> organised popular protests, rallies and marches,<sup>1100</sup> and convened the first National Conference on Abortion and Contraception.<sup>1101</sup>

### *New South Wales*

In the late 1960s the New South Wales branch of ALRA (ALRA/NSW) had consistently pressed the State government for abortion law reform. Instead, in response to 'minority ecclesiastical pressure' a series of arrests were made, in 1969.<sup>1102</sup> Three police officers were charged, and over 180 prosecutions for illegal abortion were launched against medical practitioners, over the next two years.<sup>1103</sup> In response, a large and diverse campaign was undertaken by ALRA/NSW, the Humanist Society, the Council for Civil Liberties), and groups on both sides of politics.<sup>1104</sup> In April 1971 George Petersen, Member of the NSW Legislative Assembly, attempted to table a petition urging abortion law reform containing over 9,000 signatures. Petersen's petition was refused acceptance.<sup>1105</sup> The majority of the ALP Opposition voted with the Liberals against Petersen some expressing their anger at the feminist demonstrators who were loudly protesting outside Parliament and in the visitor's gallery.<sup>1106</sup>

During the first of the abortion trials Sydney Women's Liberation, the Humanist Society, ALRA/NSW, WEL, the Council for Civil Liberties, members of the ALP and Australia Party, as well as a number of medical practitioners demonstrated

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<sup>1097</sup> *Queensland Right to Life News* 23(3), (September 1995), 2.

<sup>1098</sup> S. Siedlecky and D. Wyndham, *Populate and Perish*, 81.

<sup>1099</sup> Right to Choose, 'Campaigning Around the Country,' *Right to Choose* 3 (1974), 2.

<sup>1100</sup> Gayle Burmeister, 'May 11th Marches,' *Right to Choose* 4 (1974), 3.

<sup>1101</sup> Right to Choose, 'National Conference on Abortion and Contraception,' *Right to Choose* 6 (February-March 1975), 5.

<sup>1102</sup> J. Allen, *Sex and Secrets*, 209.

<sup>1103</sup> *Ibid.*, 205.

<sup>1104</sup> S. Siedlecky and D. Wyndham, *Populate and Perish*, 85; H. Finlay and S. Glasbeek, *Family Planning and the Law in Australia: Part B*, 109.

<sup>1105</sup> Only the third time in the State's history that this had occurred. J. Allen, *Sex and Secrets*, 208.

<sup>1106</sup> *Ibid.*

outside the courts.<sup>1107</sup> When the jury acquitted the defendants Mr Justice Levine ruled that :

... abortion properly carried out by a competent person is not necessarily unlawful, that to be lawful it does not require a second opinion, that it need not be performed in a hospital; and that when assessing the danger to the patients mental health, considerations may be taken of her social and economic circumstances.<sup>1108</sup>

This ruling was regarded as a liberalisation of the Menhennit ruling in the *Davidson* case. As in Victoria, a number of 'free-standing' abortion clinics opened; unlike Victoria, these became the main providers of abortion services. In 1972 feminists established an abortion referral service, 'Control', in Sydney. When the incoming Whitlam government instigated a Community Health Programme in 1973 a free-standing feminist health clinic, the Leichhardt Women's Community Health Centre, was also established.<sup>1109</sup> The Centre planned to provide abortions as a routine part of health services for women but, as this was the focus of sustained opposition by both the AMA and anti-abortion groups (such as the New South Wales branch of the RTL and Festival of Light) the abortion service was withdrawn.<sup>1110</sup> The actions of the powerful medical lobby were seen as decisive in opposing the feminist 'holistic' type of service.<sup>1111</sup> Eventually, a number of feminist abortion services were established, along the lines of other 'free-standing' clinics.

## Legislative Reforms

### *South Australia*

Abortion law reform became an issue in South Australia (SA) after the passage of the 1967 British *Abortion Act*. Both the SA Young Liberals and the Annual Conference of the Liberal Country League carried resolutions in favour of abortion liberalisation and the Abortion Law Reform Association of South Australia (ALRA/SA) was formed in 1968. As the State government wished to avoid the abortion-related police corruption scandals of Victoria and New South Wales, the State Attorney General introduced the *Criminal Law Consolidation Act Amendment Bill*, on 3 December 1968.<sup>1112</sup>

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<sup>1107</sup> For example, *Sydney Morning Herald*, 'Demonstrators at Court Call for Legalised Abortion,' 3 April, 1971.

<sup>1108</sup> *R v Wald and Others* (1971) 3 DCR (NSW) 25.

<sup>1109</sup> Dorothy Broom, *Damned if We Do: Contradictions in Women's Health Care*, (Sydney: Allen and Unwin, 1991), 1.

<sup>1110</sup> *Ibid.*, 5.

<sup>1111</sup> S. Siedlecky and D. Wyndham, *Populate and Perish*, 87-88.

<sup>1112</sup> Jill Blewett, 'The Abortion Law Reform Association of South Australia 1968-73,' In *The Other Half: Women in Australian Society*, Jan Mercer (ed.), (Victoria: Penguin Books, 1975), 377-394, 379.

The Bill passed its first reading on 10 December, with the support of members from both the Government and Opposition, and was referred to a Select Committee of Enquiry. It was at this time that ALRA/SA commenced a 'highly coherent, well thought-out campaign' consisting of political lobbying, public education, and support mobilisation.<sup>1113</sup> The Select Committee of Enquiry's Report, received by the House on 18 February 1969, recommended the Bill be passed with the insertion of a 'conscience clause' for medical practitioners, so as not to force them to carry out abortions if morally opposed to the procedure. The Bill was, however, deferred until the next session of Parliament and was not discussed again until October 1969.<sup>1114</sup>

It was this delay, from February to October 1969, that allowed opposition to the Bill to form: Catholic and Lutheran church-based groups, the Committee of One Hundred to Defend the Unborn Child, the Society for the Protection of the Unborn Child (SPUC), the Christian Life Association, the Human Life Research Foundation and the Moral Rearmament League all mobilised.<sup>1115</sup> The anti-abortion coalition was able to redefine the debate to such an extent that ALRA/SA moderated its initial stand, from support for abortion on request, to support for the proposed Bill.<sup>1116</sup>

On the 21 October 1969, amidst intense public and media interest, a three week debate began on the Bill. It was finally passed, on 4 December (the last day of Parliamentary session that year), with eight amendments. On 8 January 1970, the Bill was proclaimed law. Whilst the *Criminal Law Consolidation Act 1935* was not repealed, the passage of the Bill, and the *Abortion Regulations* of 1970 meant that SA was the first state in Australia to legalise abortion, if:

- (a) it is performed in a hospital and in the opinion of two doctors
  - (i) the continuance of the pregnancy would involve greater risk to the life of the pregnant woman or greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated.
  - (ii) the child if born would suffer from such physical or mental abnormalities as to be seriously handicapped; or
- (b) the termination of the pregnancy is immediately necessary to save the woman's life or to prevent grave injury to the physical or mental health of the pregnant woman.<sup>1117</sup>

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<sup>1113</sup> John Warhurst and Vance Merrill, 'The Abortion Issue in Australia: Pressure Politics and Policy,' *Australian Quarterly* 54 (Winter 1982), 119-135, 130.

<sup>1114</sup> Thérèse Nicholas, *Abortion Law in South Australia*, Unpublished Thesis (BA Hons.), (School of Social Science, Flinders University, 1970), 30.

<sup>1115</sup> *Ibid.*, 64-71.

<sup>1116</sup> For example, a pro-abortion letter writing campaign yielded only 1,920 replies in January and 1,660 in August, as compared with a total of 15,420 anti-abortion signatures. J. Blewett, 'The Abortion Law Reform Association of South Australia 1968-73,' 386.

<sup>1117</sup> The *Criminal Law Consolidation Act 1935-1969*, cited in H. Finlay and S. Glasbeek, *Family Planning and the Law in Australia: Part A*, 57.

In practice, however, the situation was still far from satisfactory.<sup>1118</sup> By the mid-1970s, a pro-abortion coalition which included the Women's Action Group, the Women's Health Collective, the Women's Abortion Campaign, and state branches of WAAC and WEL was active in lobbying for the repeal of all abortion laws.<sup>1119</sup>

### *The Territories*

Soon after the election of the Whitlam ALP government, two ALP backbenchers, David McKenzie and Tony Lamb, proposed a *Medical Practice Clarification Bill* aimed at legalising abortion in the Territories under similar circumstances to that allowed in SA.<sup>1120</sup> When the McKenzie-Lamb Bill was tabled in early March 1973, however, one of the key RTL organisers, Greg O'Dwyer, seized this chance to instigate a national campaign. O'Dwyer was on the first state council of Right to Life Queensland (RTL/QLD), the first RTL group in Australia. He helped organise RTL groups in various states and to form a National Association in 1972.<sup>1121</sup> This structural work paid off as, 'with an almost immediate response from the grassroots level', RTL groups around Australia consolidated all opposition to abortion under their own organisation and mobilised new members into a mass letter writing campaign, described within Parliament as a 'deluge of mail' against the Bill.<sup>1122</sup> The RTL were able to utilise the structures and resources of a number of churches, but particularly the Catholic Church, as local priests undertook lobbying and Catholic newspapers devoted whole issues to the campaign.<sup>1123</sup> Catholic High Schools had special lessons devoted to the issue<sup>1124</sup> and Catholic priests used the pulpit to attack the ALP on the issue.<sup>1125</sup>

Ironically, in the face of the mass rallies and protests around the country, Canberra itself did not witness much local anti-abortion activity, the local RTL having only formed in late 1972.<sup>1126</sup> The ACT itself had a relatively high support for more liberal abortion laws.<sup>1127</sup> The Abortion Law Reform Association of the

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<sup>1118</sup> The Body Politic, 'Getting an Abortion in South Australia,' *Right to Choose* 3 (1974), 3.

<sup>1119</sup> Gail Burmeister, 'Women Demonstrate on December 6th: Adelaide,' *Right to Choose* 10 (March 1976), 3.

<sup>1120</sup> The Medical Practice Clarification Bill originally included the Northern Territory and Papua New Guinea (at that time an Australian protectorate), but these were deleted by amendment. Margaret Jones, 'Confrontation in Canberra,' *Sydney Morning Herald*, 9 May 1973, 3.

<sup>1121</sup> *Queensland Right to Life News* 23(3), (September 1995), 2.

<sup>1122</sup> Commonwealth of Australia, House of Representatives, *Hansard*, 1 May 1973, 1482.

<sup>1123</sup> *Ibid.*, 51.

<sup>1124</sup> The protest against this was headed 'Abortion: Indoctrination of School Children' in the records. Commonwealth of Australia, Senate, *Hansard*, 2 May 1973, 1216.

<sup>1125</sup> M. Gordon, *Paul Keating*, 57.

<sup>1126</sup> *Queensland Right to Life News* 23(3), (September 1995), 2.

<sup>1127</sup> Anne Field, *The Politics of Abortion in the ACT 1972-73*, Unpublished Thesis, (MA Qual.), (Department of Political Science, Australian National University, July 1976), 59.

Australian Capital Territory (ALRA/ACT) had formed in July 1969.<sup>1128</sup> The Canberra women's liberation movement (WLM/ACT) had formed in mid-1970 and ACT branch of WEL had formed in May 1972.<sup>1129</sup> These groups formed the Women's Abortion Coalition, with support from the Humanist Society, the Council for Civil Liberties, the Union of Australian Women and the Australia Party.<sup>1130</sup>

The campaign to support the Bill was 'defensive and late'.<sup>1131</sup> The pro-abortion coalition had not expected the Bill to be tabled as quickly as it was; they did not run a national campaign, as the Bill only effected the ACT; they underestimated the size of the opposition; and had no national organisational structure by which to co-ordinate a pro-abortion campaign, lacking a hierarchical organisation, a mass membership and substantial finances.<sup>1132</sup> While the setting up of a 'Woman's Embassy' outside Parliament House served as a focal point for rallies and information on the day of the Bill's debate and defeat, 10 May 1973, they were overwhelmed by a massive influx of interstate RTL demonstrators.<sup>1133</sup>

The Government decided to limit the time available for debate, within the House of Representatives, to three and a half hours. This 'gag' was justified on technical reasons and was widely criticised, but eventually supported, by the Opposition.<sup>1134</sup> The limited time, for the first-ever debate on abortion in the Federal Parliament, allowed many in the all-male House to remain silent. Those speakers who did engage in debate, such as the proponents of the Bill, McKenzie and Lamb, gave a very comprehensive justification for their proposal. International and interstate comparisons were made and the views of the judiciary, religious groups, medical practitioners, feminists, academics and famous thinkers such as Tolstoy and John Stuart Mill were explored.<sup>1135</sup> A proposed amendment, to establish a Royal Commission of Inquiry into the matter, was also discussed by subsequent speakers.<sup>1136</sup> In keeping with the proposed 'conscience vote' of the ALP, several Government members rose to attack the Bill. The (then) Prime Minister, Gough Whitlam, was one of only 23 Government Members who supported the Bill in the division, 98 voting against.<sup>1137</sup>

This was the first major defeat of abortion law reform in Australia, with three significant results: all political parties instituted the practice of allowing a

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<sup>1128</sup> Ibid., 23-24.

<sup>1129</sup> Ibid., 26.

<sup>1130</sup> Margaret Jones, 'Confrontation in Canberra,' *Sydney Morning Herald*, 9 May 1973.

<sup>1131</sup> A. Field, *The Politics of Abortion in the ACT 1972-73*, 59.

<sup>1132</sup> Ibid., 60.

<sup>1133</sup> Commented on in the Senate: Commonwealth of Australia, Senate, *Hansard*, 2 May 1973, 1213.

<sup>1134</sup> Commonwealth of Australia, House of Representatives, *Hansard*, 3 May 1973, 1643-1644; 9 May, 1891-1898.

<sup>1135</sup> Commonwealth of Australia, House of Representatives, *Hansard*, 10 May 1973, 1963-1972.

<sup>1136</sup> Ibid., 1972-2001.

<sup>1137</sup> Ibid. 2001.

'conscience vote' on the issue;<sup>1138</sup> it eventually led to the most extensive investigation of abortion practice in Australia (the Royal Commission on Human Relationships);<sup>1139</sup> and it put the RTL on the political map as a 'very powerful' force against reform.<sup>1140</sup> Both the RTL and WEL were specifically mentioned in the Parliamentary debate, but not as often as the Catholic Church (which opposed abortion in all cases), or recent public opinion polls (which supported abortion in most cases).<sup>1141</sup>

A further inquiry was held by the ACT Standing Committee on Education and Health in 1977 and, after considerable political pressure from RTL groups, the Festival of Light and the anti-feminist WWW, the 1978 *Termination of Pregnancy Ordinance* was passed, limiting abortion services to hospitals only.<sup>1142</sup> Senator Susan Ryan unsuccessfully introduced a motion to overturn this ordinance on the basis that it went against the wishes of the ACT Legislative Assembly.<sup>1143</sup>

During the debate of the McKenzie-Lamb *Medical Practice Clarification Bill* 'strongly-worded protests' to Federal Parliament made it clear that the Northern Territory Legislative Council wished to draft legislation of its own. At that time, Mrs. Dawn Lawrie, President of the Darwin branch of the Family Planning Association (FPA), indicated she would introduce a Bill similar to that in South Australia. The successful *Criminal Law Consolidation Ordinance* (No. 2) 1973 inserted a new s79A in the principle statute, the *Criminal Law Amendment Ordinance* 1939-73, giving the Territory similar legislation to that in SA.

#### *The Commonwealth*

In 1974, at the request of the Australian Medical Association (AMA), abortion was added to the medical benefits list as a legitimate medical service. This allowed women to either claim rebates on abortions or allow doctors to 'bulk bill', charging only the theatre fee. If the abortion was carried out in a public hospital this was waived. Item 6469 was included in the Statutory Rules which were tabled with many other items in the House of Representatives, on 9 July 1974, the first day of sitting after the double dissolution of Parliament. It was not the subject of any motion, debate, or vote. It was tabled on 8 April 1975 in the Senate and was not subject to debate there either. Abortion was thus included in the Medical Benefits Rebate Schedule by 'bureaucratic fiat'.

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<sup>1138</sup> Only the ALP had done so previously. Commonwealth of Australia, Senate, *Hansard*, 8 May 1973, 1379.

<sup>1139</sup> In a separate motion introduced a fortnight later. Commonwealth of Australia, House of Representatives, *Hansard*, 23 May 1973, 2473.

<sup>1140</sup> Right to Choose, 'Interview With David McKenzie,' *Right to Choose* 2 (1974), 3.

<sup>1141</sup> Commonwealth of Australia, House of Representatives, *Hansard*, 17 May 1973, 2282.

<sup>1142</sup> ACT Right to Life Association Newsletter, 'Private Abortion Dangers,' *ACT Right to Life Association Newsletter* (Autumn 1993), 6.

<sup>1143</sup> Right to Choose, 'News From Canberra,' *Right to Choose* 17 (Spring 1978), 5.

## Services Under ‘Common Law’

### *Western Australia*

The earliest legislative attempts at reforming Australian abortion laws were undertaken by a member of the Western Australia (WA) Humanist Society, Dr G Hislop, who introduced a series of Bills into the WA Legislative Council in 1966, 1968, 1969, and 1970.<sup>1144</sup> The Abortion Law Reform Association of Western Australia (ALRA/WA) formed in 1969 and undertook campaigns in support of Dr. Hislop.<sup>1145</sup> In 1971 the Family Planning Association of Western Australia (FPA/WA) was also established.<sup>1146</sup> In 1972 R. Claughton, Chairman of FPA/WA, introduced yet another reform Bill. This was also defeated.<sup>1147</sup>

1974 saw an increase in lobbying activities as ALRA/WA produced a comprehensive report, on the practice and extent of abortion in WA, using this to lobby all candidates in the State elections of March 30. In May, an extensive public information campaign began, with the aid of WEL/WA and WA women’s liberation movement.<sup>1148</sup> An Abortion Information Service telephone referral line, operated by ALRA/WA, also opened. It had been openly in existence for two months before police raided doctors’ surgeries and volunteer counsellors’ homes. As the pro-abortion coalition, led by ALRA/WA, engaged in a protest campaign it also became apparent that the prosecutions were unlikely to succeed against a counselling and referral service. Charges were dropped and confiscated documents returned.<sup>1149</sup> In spite of grass-roots opposition by anti-abortion groups, led by the WA branch of RTL and the Catholic-backed ‘Pregnancy Help’ organisation, after this ‘test-case’ two free-standing private abortion clinics opened, in 1976, ten years after the first of Dr. Hislop’s Bills.<sup>1150</sup>

No changes to the law were made, however, and, although allowing for abortion in order to save a mother’s life, the Western Australia *Criminal Code* 1913 still specifies fourteen years imprisonment with hard labour for a person performing an abortion and seven years imprisonment with hard labour for a woman undergoing an abortion.

### *Queensland*

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<sup>1144</sup> Along with the Freethinkers and Rationalists, Humanists had a long history of agitation for contraception and abortion reform in Australia. See P. Coleman, *Obscenity, Blasphemy and Sedition*, 49-60, for a discussion of early activities and S. Siedlecky and D. Wyndham, *Populate and Perish*, for more contemporary references to their activities.

<sup>1145</sup> Henny Newmeyer, ‘ALRA - 25 Years: A Personal History of ALRA,’ *ALRA News* 23(1), (April 1995), 9-10, 9.

<sup>1146</sup> *Ibid.*, 10.

<sup>1147</sup> Jane Beckmann, ‘Abortion Laws in Western Australia,’ *Right to Choose* 4 (1974), 6.

<sup>1148</sup> *Melbourne Herald*, ‘My! My! Says Mrs Martyr,’ 6 May, 1974.

<sup>1149</sup> Stephanie Grayston, ‘Changing Attitudes and Services: Abortion in Western Australia 1970-1990,’ In *Sexuality and Gender in History*, P. Hetherington and P. Maddern (eds.), (Centre for Western Australian History, University of Western Australia: Optima Press, 1993), 242-254, 245.

<sup>1150</sup> *Ibid.*, 248.

The Queensland (QLD) branch of ALRA was formed in 1970 and was incorporated into the new pro-abortion referral organisation, Children by Choice (CBC), in 1971. In 1973 a QLD branch of WAAC was also established.<sup>1151</sup> By 1975 the Queensland Family Planning Association (FPA/QLD) had began to work with CBC on an expansive public education campaign.<sup>1152</sup> Throughout the next few years, both CBC and WAAC/QLD consolidated their support and expanded their influence.<sup>1153</sup> In June 1978, Dr. Bayliss established the first Queensland free-standing abortion clinic, the Fertility Control Clinic, in Greenslopes, Brisbane, when he joined Dr. Bruce Errey's practice.<sup>1154</sup> In 1979 Dr. Grundmann opened a clinic in Townsville. When that clinic was featured on ABC television abortion became a public issue in Queensland.

QLD was considered to be one of the most conservative States and had been dominated by a Liberal/National Party Coalition Government since 1957.<sup>1155</sup> The State Government held extremely conservative attitudes on abortion.<sup>1156</sup> The first RTL group in Australia originally met in Brisbane in 1969.<sup>1157</sup> In the first decade of its operations, the QLD branch of RTL (RTL/QLD) established many Queensland country branches, opened a 'Pregnancy Help' anti-abortion counselling service, and conducted many lobbying activities on state and federal issues.<sup>1158</sup> In August 1979, the parliamentary leader of the Opposition, ALP member Ed Casey, was himself a patron of RTL/QLD. After the ABC report, Casey presented a RTL petition to Parliament, demanding that QLD abortion clinics be closed, thus halting the 'massacre of innocents'. In response the Government announced that it would introduce anti-abortion legislation that year.<sup>1159</sup>

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<sup>1151</sup> Right to Choose, 'National Women's Abortion Campaign,' *Right to Choose* 1 (1973), 2; Jane Beckmann, 'Abortion Seminar held in Brisbane,' *Right to Choose* 5 (1974), 6.

<sup>1152</sup> Right to Choose, 'Brisbane Report,' *Right to Choose* 9 (December 1975), 10-11.

<sup>1153</sup> S. Siedlecky and D. Wyndham, *Populate and Perish*, 91. See also *Right to Choose* Issues: 10 (March 1976), 3, 9; 11 (May 1976), 2; 12 (Spring 1976), 1; 14 (Autumn 1977), 7; 15 (Summer 1978), 7; 16 (Winter 1978), 3; 17 (Spring 1978), 4,5.

<sup>1154</sup> Dr. Bruce Errey specialised in vasectomies, which were also believed to be illegal in Queensland, at this time. Leisa Scott, 'Born to Dissent,' *Australian Magazine*, May 20-21 1995, 10-14, 14.

<sup>1155</sup> R. Scott, P. Coaldrake, B. Head and P. Reynolds, 'Queensland,' In *Australian State Politics*, Brian Galligan (ed.), (Melbourne: Longman Cheshire, 1986), 51-73, 52.

<sup>1156</sup> A 1979 poll showed National Party supporters having the lowest support for abortion (under any circumstances), followed by the Liberal Party, the ALP and the Democrats, who had the highest support for abortion (on demand). Don Aitkin, 'Abortion is Still an Emotive Issue,' *Bulletin*, 7 August 1984, 39-40, 39.

<sup>1157</sup> *Queensland Right to Life News* 23(3), (September 1995), 2.

<sup>1158</sup> *Ibid.*, 4.

<sup>1159</sup> K. Coleman, 'The Politics of Abortion in Australia,' 93.



The numerous lobby groups formed a pro-abortion coalition, the Women's Campaign for Abortion (WCA), to oppose this move.<sup>1160</sup> In April 1980, Liberal Party Member, Rosemary Kyburz, technically broke the law by disclosing the contents of the proposed anti-abortion *Pregnancy Termination Control Bill*.<sup>1161</sup> Opposition to the Bill was expressed by a wide range of groups, including members of the National Party, Liberal Party (including four Ministers), the AMA and many unions. WCA was successful in organising significant union opposition, particularly from the Brisbane Trades and Labour Council, and series of mass marches and rallies were held.<sup>1162</sup> The anti-abortion campaign carried out by RTL/QLD was extremely well-financed, involving advertising on one hundred city buses and numerous radio advertisements.<sup>1163</sup>

On the day it was to have been debated, the Premier withdrew the Bill and replaced it with a slightly modified private members Bill.<sup>1164</sup> Though this new Bill passed its first reading, Members of all three parties protested against the terms of the Bill and demanded its withdrawal. In spite of the ALP leader of the Opposition, Ed Casey, crossing the floor to support the National and Liberal Party Coalition leaders, the proposed Bill was defeated by 40 to 35 votes.<sup>1165</sup>

### **The Influence of Feminism? The 1968-1978 Assessed**

Looking first at the presence and strength of feminist coalitions in the abortion policy subsystem, it may be seen that this phase was typified by the emergence of new State/Territory ALRA groups which were supported by more established groups, such as the Humanist Society and the Council for Civil Liberties. ALRA had informal links to the liberal feminist WEL through overlapping memberships and through some of the early, key organisers, such as Beatrice Faust and Jo Wainer. The later WAAC State/Territory groups were linked in a similar manner to the radical feminist WLM. Socialist feminist groups, such as the Communist Party of Australia (CPA) women's collectives in Melbourne and Sydney, also took up the issue of abortion amongst their other campaigns. Each of these three strands of feminism worked in tandem while all having their own lines of communication (WEL newsletters, *Right to Choose* and *Tribune*).

Anti-abortion coalitions mobilised from the late 1960s. Although initially isolated the development of a national network of RTL groups attempted to provide a co-ordinated response to pro-abortion developments around Australia. This development was aided by the established communication networks and resources

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<sup>1160</sup> This coalition included WAAC/QLD, CBC, ALP Women, Pregnancy Control, the Working Women's Charter Group, Australian Union of Students (AUS) Women's Department. Right to Choose, 'Win For Abortion Activists in QLD,' *Right to Choose* 21 (Summer 1980-1981), 29-31, 29.

<sup>1161</sup> Ibid.

<sup>1162</sup> S. Siedlecky and D. Wyndham, *Populate and Perish*, 91.

<sup>1163</sup> *Queensland Right to Life News* 23(3), (September 1995), 4.

<sup>1164</sup> Rejection of a Government Bill on the floor of the House usually leads to a loss of confidence motion against the Government and may oblige the Government to resign.

<sup>1165</sup> J. Allen, *Sex and Secrets*, 211.

of a number of churches - particularly the Catholic Church. By the end of the decade, however, the anti-abortion coalition had divided into liberal-conservative and radical-conservative camps.

While legally regarded as a regulatory policy issue the abortion policy subsystem witnessed continued attempts to re-define abortion within the policy discourse by all coalitions.<sup>1166</sup> The emergence of a highly visible contemporary feminism in the 1970s increased the legitimacy of the demand for abortion law reform and services. ALRA/NSW, for example, had argued for 'some revision of the Act to permit termination of pregnancy on therapeutic or eugenic grounds'.<sup>1167</sup> In contrast WAAC was formed to 'fight for the repeal of all abortion laws' on the grounds that abortion was a 'woman's right to choose'.<sup>1168</sup> The anti-abortion RTL was dedicated to enshrining the principle that, 'from the moment of conception, the right to life of the individual must be protected'.<sup>1169</sup>

The passage of policy which would fulfil feminist goals was evident in the legislation, judicial decisions, and the establishment of abortion services around Australia. The decentralising impact of federalism meant that reform had to be pursued within individual States and Territories, creating individual but interrelated, policy subsystems. Authority over the policy was asserted, sometimes reluctantly, by governments, the judiciary, law enforcement agencies, and the medical profession. Commonwealth intervention, while rare, was extremely important in setting a precedent for abortion to be considered a matter within health policy. Through these interventions, this phase of the policy subsystem saw substantial progress toward achieving feminist goals, especially in comparison with the subsequent phase of 'stalemate'

## 2. STALEMATE: 1978-1989

Anti-abortion groups mobilised successfully, during the 1980s, to stem the tide of reform. The first strategy used involved direct action protests or vandalism by some groups, or the use of police powers by sympathetic governments, to close individual clinics. The second strategy saw many legislative initiatives aimed at restricting legal access to abortion, and a few judicial interventions along these lines. Pro-abortion coalitions continued to lobby, unsuccessfully, for change and to oppose anti-abortion interventions. The conflicts discussed below are a few of the more significant from a decade of on-going lobbying, yet relative stability, within the policy subsystem.

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<sup>1166</sup> **Appendix 8** lists the individual groups which make up the opposing coalitions.

<sup>1167</sup> Paul Wilson, 'Abortion: The Law and Public Opinion,' *In Forum on Abortion*, (Kingston, ACT: Australian Frontier, 1969), 11-14, 13.

<sup>1168</sup> WAACs other aim was to fight 'for freely available, safe contraceptives'. Women's Abortion Action Campaign, 'Editorial,' *Right to Choose* 1, 1973, 2.

<sup>1169</sup> Right to Life Victoria, 'The Life Principles,' *Pamphlet*, no date.

## Anti-Abortion Initiatives

### Victoria

From the mid-1970s an anti-abortion coalition, including such groups as Feminists for Life, the Pro-Life Group, Citizens for the Protection of the Unborn Child, the Save the Family group, and RTL/VIC, utilised a multitude of tactics which included educating the general public, contesting State and Federal elections, and setting up 'Action Pregnancy Problem Centres' to dissuade women from having abortions.<sup>1170</sup>

Victoria has been distinctive, however, as the base for RTL/Australia, which split from RTL/VIC in the mid-1980s, led by Margaret Tighe.<sup>1171</sup> Utilising more violent and extremist tactics, RTL/Australia has been criticised, even by 'mainstream' media, for their lack of 'normal standards of decent, compassionate behaviour'.<sup>1172</sup> Wainer himself survived being shot at, attempts to run him down by car and two fire bombings at his clinic.<sup>1173</sup> A series of heart attacks, however, led to open heart surgery and Dr. Wainer eventually succumbed to yet another heart attack in 1987.<sup>1174</sup> The clinic protests (known as 'rescues' amongst RTL members) seek to 'change the way people think' by serving as a 'constant reminder' of the 'holocaust' occurring within our midst.<sup>1175</sup>

In addition to anti-abortion lobby group harassment, the police 'investigations' of the 1970s also continued into the 1980s, raiding Wainer's clinic twice in 1984, alone. In April 1986, police also raided the surgery of Melbourne gynaecologist Dr. Ian McGoldrick, unsuccessfully charging him with procuring unlawful abortions.<sup>1176</sup>

State pro-abortion groups, such as the Victorian Right to Choose Coalition (which formed in 1982 and campaigned for a decade before folding) and the Campaign for Women's Reproductive Rights, campaigned for the removal of abortion from the Victorian Criminal Code and opposed anti-abortion

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<sup>1170</sup> Right to Choose, 'The Opposition,' *Right to Choose* 6 (February-March 1975), 6; *Right to Choose*, 'Right to Life Rally,' *Right to Choose* 7 (1975), 10; Lou-Anne Parker, 'Hospital in Crisis: Intimidating Tactics!' *Right to Choose* 8 (September-October 1975), 3; Moira Borthwick, 'Right to Life on the Move in Victoria,' *Right to Choose* 11 (May 1976), 11; *Freedom to Choose Newsletter*, 'Victoria: Right to Life Found Guilty,' cited in *Right to Choose* 27 (Summer/Autumn 1984), 8; *Healy v Right to Life Victoria* 1986 No. 6901, Supreme Court of Victoria; Anna Cater, 'Right to Life - Political Force or Failure?' *Canberra Times*, 12 November 1980, 17; Right to Choose Coalition, 'Abortion as a Single Issue in a State Election,' *Pamphlet*, November 1982.

<sup>1171</sup> Richard Harding, 'The Price of Abortion,' *Bulletin*, 4 July 1989, 32-34, 24.

<sup>1172</sup> Editorial, 'Wrong Tactics by the Right to Life,' *Age*, 1 November 1991.

<sup>1173</sup> June Dryborough, Fertility Control Clinic Counsellor. *Interview by Author*. 10 January 1996, Melbourne, Victoria.

<sup>1174</sup> Andra Jackson, 'Abortion Pioneer Dies, 58,' *Australian*, 19 January 1987, 1-3.

<sup>1175</sup> Margaret Tighe, Right to Life (Australia) Volunteer. *Interview by Author*. 11 January 1996, Melbourne, Victoria.

<sup>1176</sup> *Age*, 'McGoldrick Cleared on all Counts,' 3 June 1987; Right to Choose Coalition, Victoria, 'Victory!' *Freedom to Choose*, 8(2) 1987, 1.

initiatives.<sup>1177</sup> Feminist groups established Women's Health Centres which offered abortion counselling and referral within the context of a comprehensive range of health services for women.<sup>1178</sup> National pro-abortion groups based in Victoria, such as the Right to Choose Coalition, the Abortion Providers Federation of Australia and the Abortion Rights Coalition (ARC) also formed in the 1980s.<sup>1179</sup>

### *Queensland*

In 1983 Queensland abortion providers received some legal standing in the judgement following *Attorney General for the State of Queensland (Ex rel Kerr) v T* where it was stated that although the lawfulness or otherwise of abortion in Queensland had not been tested in case-law, as it had in Victoria and New South Wales, there were no grounds to suppose that, if it were tested, the outcome would not be identical.<sup>1180</sup> This did not prevent the Minister for Justice and Attorney General, Neville Harper, from authorizing a police raid on both Queensland abortion clinics in 1985. On 20 May, one hundred Queensland police raided the clinics, seizing the files of 47,000 patients who had attended for abortion, vasectomy or contraception. Media in both Brisbane and Townsville were informed of the planned police action and were able to accompany the police on the raids. Television coverage and newspaper reportage was dramatic, national, and extensive.<sup>1181</sup> The police raids provoked a strong reaction from pro-abortion groups and a public groundswell of support as large, well-attended,

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<sup>1177</sup> Right to Choose, 'More Campaign News,' *Right to Choose* 33 (Spring 1992), 9; Campaign for Women's Reproductive Rights, 'Feminist Offensive for Reproductive Freedom,' Special Insert in *Campaign for Women's Reproductive Rights Newsletter* (October 1991).

<sup>1178</sup> The first Victorian Women's Health Centre was established in Collingwood, in 1974, after receiving a grant from the Commonwealth Community Health Program. It closed four years later, due to 'obstructionism' by the Victorian Hospitals and Charities Commission, which effectively blocked the funds ever being received. A decade later, in 1985, a change of government policy was evident when the Victorian Women's Health Policy Working Party began a series of consultations and actions which led to the establishment of both urban and regional Women's Health Centres, as well as policy and information units. D. Broom, *Damned if We Do*.

<sup>1179</sup> Right to Choose Coalition members include the Women's Electoral Lobby, Union of Australian Women, Young Women's Christian Association, Women's Abortion Action Committee, Australian Union of Students (Women's Dept.) Working Women's Centre, Melbourne Unitarian Church, Australian Labor Party Status of Women Committee and Women's Right to Abortion Committee. Yvonne Smith, *Taking Time: A Woman's Historical Data Kit*, (Fitzroy: Sybylla Press, 1988), 37; APFA members include Fertility Control Clinic, East Melbourne, Victoria; Zera Medical Clinic, Midland, Western Australia; Nanyara Clinic, Rivervale, Western Australia; Fertility Control Clinic, Brisbane, Queensland; and Planned Parenthood of Australia, Townsville, Queensland. Abortion Providers Federation of Australia, *Introductory Letter*, no date (mid 1980s). Archives of the Hobart Women's Health Foundation, Tasmania.

<sup>1180</sup> Anthony Fisher and John Buckingham, *Abortion in Australia: Answers and Alternatives*, (Melbourne: Dove Communications, 1985), 98.

<sup>1181</sup> Sally Loane, 'Abortion Raids: a Grisly Circus for the TV Cameras,' *National Times*, 24-30 May 1985, 11.

public events protested the Queensland government's action.<sup>1182</sup> At a specially convened press conference, Attorney General Harper said the raids were sparked by anti-abortion petitions received by the Government, and suggested that women may be prosecuted for having had illegal abortions.<sup>1183</sup> As the Queensland Government had no legal authority to carry out the raids, as no one had laid a complaint about the service of either clinic, on 25 June, the Supreme Court declared the search warrants invalid, and ordered that the charges be quashed and the files returned.<sup>1184</sup>

RTL/QLD launched a State-wide appeal for a complainant and, on 19 August 1985, Bayliss and his anaesthetist, Dr. Dawn Cullen, were charged with unlawfully using force to procure a miscarriage and grievous bodily harm.<sup>1185</sup> Judge McGuire, of the Queensland District Court, ruled that the analysis accepted in *R v Davidson* (1969) also represented the law in Queensland.<sup>1186</sup> The McGuire ruling thus provided a judicial precedent for abortion in Queensland. Following the judicial determination, another clinic was opened in North Queensland by Dr. Grundmann, in 1987.<sup>1187</sup> Dr. Grundmann has been the subject of Parliamentary and police 'investigations' on numerous occasions as Queensland remains distinctive in its extensive use of State powers against abortion services.<sup>1188</sup>

#### *New South Wales*

The anti-abortion tactics of Victoria and Queensland were replicated in NSW as police continued to 'investigate' abortion services and, on one occasion in 1980,

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<sup>1182</sup> Opposition was expressed by the president of the Queensland Council for Civil Liberties, Matthew Foley, Dr. George Repin, Secretary-general of the AMA, the Federal Minister for Health Dr. Neal Blewett, and women's organizations in both the ALP and Liberal Party. *Australian*, 'Queensland Seizure of Medical Files 'Outrageous,' 21 May 1985; and *Mercury*, 'Blewett, AMA Slam Brisbane Files Seizure,' 23 May 1985.

<sup>1183</sup> Ryan et al point out that men who had had vasectomies (also possibly illegal) were not threatened in a similar fashion. Lyndall Ryan, Margie Ripper and Barbara Buttfield, *We Decide: Women's Experience of Seeking Abortion in Queensland, South Australia and Tasmania 1985-1992: Report to the Commonwealth Department of Human Services and Health*, (Bedford Park, South Australia: Women's Studies Unit, Faculty of Social Sciences, Flinders University, 1994), 49.

<sup>1184</sup> K. Coleman, 'The Politics of Abortion in Australia,' 96; L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 55.

<sup>1185</sup> RTL/QLD protesters had themselves been charged with trespass after being arrested at the Fertility Control Clinic, which was under the temporary care of Dr. Bertram Wainer. *Mercury*, 'Five Protesters Arrested at Clinic,' 23 May 1985.

<sup>1186</sup> *R v Bayliss and Cullen* (1986) cited in Anna McCormack, 'Abortion in Queensland,' *Refractory Girl*, 43, (Winter, 1992), 40-41, 40.

<sup>1187</sup> The Rockhampton clinic was the focus of a fiercely fought anti-abortion campaign, conducted between 21 February and 12 April 1987. L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 63.

<sup>1188</sup> Children by Choice, 'Premier's Statements in Parliament on Abortion,' *Children by Choice Newsletter*, (August 1995), 3; *Australian*, 'Abortions at Seven Months Okay: Doctor,' October 30 1994.

convicted a doctor with procuring an unlawful abortion.<sup>1189</sup> RTL/NSW also picketed clinics, clinic staff's homes, and sent libellous material in the mail.<sup>1190</sup> While this form of harassment was undoubtedly serious and distressing to abortion service providers and their clients, NSW has been distinctive in the number of legislative and judicial interventions threatening the fragile status quo.

The first anti-abortion Bill was Kevin Harrold's private member's Bill, the *Infant Life Preservation Bill* 1975, which lapsed when the 1976 state election was called.<sup>1191</sup> When, in 1981, the Reverend Fred Nile was elected to the NSW Legislative Council, the conservative, anti-abortion, Festival of Light group and his own 'Call to Australia' party gained a political platform to complement his existing radio and print media exposure. In November 1982 Nile attempted to introduce a motion which affirmed the 'right to life' of each human being from the moment of fertilisation'. This was (indefinitely) delayed by 'government business' and was less successful as a piece of legislation than as the focus of a one-man campaign as Nile did the rounds of current affairs programs and newspapers.<sup>1192</sup>

Marie Bignold, also of the Call to Australia party, proposed a motion condemning abortion and its public funding in October 1986. This fell foul of 'procedural tactics' which delayed debate until June 1988 when the Legislative Council passed the motion. The motion was defeated, however, in the Legislative Assembly. Other unsuccessful Bills include Nile's *Unborn Child Protection Bill*, 1988,<sup>1193</sup> Guy Yeoman's *Procurement of Miscarriage Limitation Bill*, 1989,<sup>1194</sup> Nile's *Procurement of Miscarriage Limitation Bill*, 1991,<sup>1195</sup> and Nile's *Public Hospitals (Conscientious Objection) Bill*, 1994.<sup>1196</sup>

An active pro-abortion coalition lobbied politicians through letter writing campaigns, petitions, telephone lobbying, delegations to Parliament and public meetings.<sup>1197</sup> Women Members of the Legislative Council have protested the

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<sup>1189</sup> Right to Choose, 'Liverpool Campaign Growing,' *Right to Choose* 11 (May 1976), 8-9.; K. Coleman, 'The Politics of Abortion in Australia,' 92.

<sup>1190</sup> Right to Choose, 'Attacks on Abortion Clinic Clients and Staff,' *Right to Choose* 24 (Summer 1981-1982), 12; Abortion Rights Coalition (NSW), 'Activities of Anti-Choice Groups in NSW,' *Fact Sheet*, January 1988.

<sup>1191</sup> Harrold planned to reintroduce the Bill, but lost his seat in the 1976 election.

<sup>1192</sup> Karin Vesk, 'Nile Confounded,' *Right to Choose* 26 (Autumn 1983), 1, 14.

<sup>1193</sup> Margaret Kirkby, 'Backyard Abortion Blues,' *Right to Choose* 30 (Winter 1989), 12-13, 12.

<sup>1194</sup> Right to Choose, 'Campaign News,' *Right to Choose* 31 (Summer 1989-1990), 4-5.

<sup>1195</sup> Sonya Voumard, 'Nile Reopens the Politics of Abortion,' *Age*, 11 September 1991; *Australian*, 'Nile Faces Defeat on Limiting Abortions,' 12 September, 1991.

<sup>1196</sup> Sigrid Kirk, 'Nile Abortion Bill Switch Condemned,' *Sydney Morning Herald*, 5 January 1994.

<sup>1197</sup> Groups included WEL, FPA/NSW, the Doctor's Reform Society, the Abortion Rights Coalition and WAAC. Margaret Kirkby, 'Safe Abortion Under Attack in NSW,' *Healthright* 7(4) (August 1988), 10-12, 12.

Nile agenda in Parliament by staging walk-outs during the debates.<sup>1198</sup> Within the NSW State ALP, Labor Women have attempted to put up a 'right to choose' platform, abolishing the conscience vote on abortion, at every State Conference since 1973. The Catholic dominated, right-wing faction within the party, in turn, attempted to disband Labor Women in NSW, finally succeeding in 1986.

Judicial decisions have also remained important in determining abortion access within NSW. In the 1982 case, *K v Minister for YACS*, a 15 year old State ward was refused 'permission' to have an abortion as she was legally in the 'care' of the Minister for Youth and Community Services, Kevin Stewart, a member of RTL/NSW.<sup>1199</sup> The girl and her mother took the matter to the Supreme Court, which ruled in her favour. Following the decision, RTL/VIC sought leave of the High Court to appeal, but was refused.<sup>1200</sup>

Pro-abortion groups continued campaigning, not only in response to anti-abortion campaigns, but including pro-active initiatives such as the unsuccessful 1977 WAAC/NSW campaign to introduce a Bill to repeal all abortion laws in NSW.<sup>1201</sup> From the 1970s on, NSW also saw a well-established women's health movement develop, with a relatively large number of centres opening.<sup>1202</sup> A NSW branch of ARC was established in the mid-1980s.<sup>1203</sup> When a new national group, the Abortion Rights Network of Australia (ARNA), was formed to take over from WAAC it was based in Sydney.<sup>1204</sup> Within the pro-abortion coalition,

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<sup>1198</sup> The Family Planning Choices Charter recommended research into the causes of women seeking abortion and into improving contraception availability and effectiveness. It also recommended sexuality education for adolescents and medical practitioners. New South Wales Women's Advisory Council, 'Refocusing the Abortion Debate,' *Hersay* 15 (November 1991), 1-2.

<sup>1199</sup> Rather than being a particular case decision, Stewart sought to impose this policy on all 4300 wards in his 'care'. Right to Choose, 'NSW State Wards Face Abortion Hurdle,' *Right to Choose* 24 (Summer 1981-1982), 10.

<sup>1200</sup> Right to Choose, 'Abortion ... Or Political Scheming?' *Right to Choose* 25 (Spring 1982), 3, 26.

<sup>1201</sup> Right to Choose, 'WAAC's Ill-Fated Repeal Bill,' *Right to Chose* 15 (Summer 1978), 7.

<sup>1202</sup> The development of this can be traced through the WAAC news sheet Right to Choose, which although attempting to give a national coverage, was based in Sydney, and tended to focus more on activity in NSW. Throughout the 1970s, almost every issue had an article about the centres, while in the 1980s every issue had more than one article by the centres, a change of emphasis also noted in the title of the journal. In the 1970s, the full title was 'Abortion is a Woman's Right to Choose' while in the 1980s, this became 'Right to Choose: A Women's Health Action Magazine'.

<sup>1203</sup> ARC(NSW) differed from WAAC in that it had an organisational membership as well as an individual membership and was not a 'woman-only' group. It was formed by WAAC, Preterm, Bessie Smyth, the Darling Street Woman's Health Centre (later known as Everywoman) and several other abortion providers. Margaret Kirkby, *Herstory/History of National Abortion Rights Campaigning Organisations in Australia*, Women's Abortion Action Campaign Report, 4 December 1992.

<sup>1204</sup> Members: Association for the Legal Right to Abortion, Western Australia; Children by Choice, Brisbane, Queensland; Women's Abortion Action Campaign, Sydney, New South Wales; Women's Abortion Action Campaign, Brisbane, Queensland and the Women's Health Foundation Clinic, Hobart Tasmania. Abortion Rights Network of Australia (ARNA), pamphlet, no date, Archives of the Hobart Women's Health Foundation,

however, there was an increasing sense of frustration as the limited access to abortion had to be won over and over again.<sup>1205</sup> The lack of institutional resources, beyond what could be provided by WLM, also remained an acute constraint.<sup>1206</sup>

### *The Commonwealth*

The payment of medical benefits for abortions remained a contentious issue and, in 1978, numerous petitions were received in both Houses of Parliament as both coalitions lobbied for, or against, change.<sup>1207</sup> The (then) Minister for Health, Ralph Hunt referred the question to the Medical Benefits Schedule Revision Committee, which reported in November, advising that no changes be undertaken. Hunt then suggested to Cabinet that voluntary funds (such as the Hibernian Australasian Catholic Benefit Society) would be allowed to exempt themselves from providing cover for abortions.<sup>1208</sup> Subsequently, Stephen Lusher, a RTL member, announced his intention to introduce a private member's Bill to remove abortion from *all* standard medical benefits tables.<sup>1209</sup>

Lusher's action sparked a heated campaign by both coalitions. On the anti-abortion side religious groups supported RTL and their associates.<sup>1210</sup> On the pro-abortion side, WAAC's campaign was supported by the National Women's Advisory Council (NWAC) and prominent politicians.<sup>1211</sup> The Bill was

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Tasmania. Other groups which attended the founding conference were the Women's Health Centre, Brisbane, Queensland; the Bessie Smyth Foundation and Everywoman's Health Centre, Sydney, New South Wales; and the Women's Electoral Lobby, Western Australia. Abortion Rights Network of Australia (ARNA), *Newsletter*, 1(1), (1993), 1.

<sup>1205</sup> Rebecca Albury, 'Abortion: But I Thought That Was Settled Years Ago,' *Right to Choose* 30 (Winter 1989), 14-16, 36-37.

<sup>1206</sup> As in Melbourne, the Sydney WLM had rented a large central premises, for the use of feminist groups at minimal cost.

<sup>1207</sup> Commonwealth of Australia, Senate, *Hansard*, 4 April 1978, 743; 12 April 1978, 1158; 11 May 1978, 1637; 24 May 1978, 1719-1920; 25 May 1978, 1819; 29 May 1978, 1983; 30 May 1978, 2041; 2 June 1978, 2321; 9 June 1978, 2649-2650.

<sup>1208</sup> Sarah Dowse, 'Hunt Inquiry' *Nation Review* 16 February 1978, cited in *Right to Choose* 15 (Summer 1978), 9, 11.

<sup>1209</sup> Right to Choose, 'Medical Benefits?' *Right to Choose* 17 (Spring 1978), 2.

<sup>1210</sup> For example, the Roman Catholic Archbishop of Sydney, Cardinal Sir James Freeman, urged NSW members to support the Lusher motion. Michelle Grattan and Gerry Carmen, 'Cardinal Urges MPs to 'Protect Unborn,' *Age*, 20 March 1979. The defeating modification of the Bill had the indirect effect of mobilising the anti-feminist WWWW group against abortion services and the FPA. Penny O'Donnell, 'Recommendations of WWWW,' *Right to Choose* 25 (Spring 1982), 15-16, 15.

<sup>1211</sup> WAAC lobbied strongly against the proposed Bill, also holding demonstrations outside Parliament House. *Advertiser*, 'The Abortion Buck Passes to the States,' 19 April 1979. The Victorian Premier, Mr. Hamer, requested all Victorian Federal MPs to vote against the motion. *Sun Herald*, 'Hamer Shock in Abortion fight,' 24 March 1979. Beryl Beaurepaire of the NWAC strongly opposed the motion on the grounds that it discriminated against women, especially those 'who were less well off', the NWAC circulating letters to all parliamentarians urging them to oppose the Bill. *Age*, 'Circular Sent to MPs on Lusher Move,' 20 March 1979; Anita Byrnes, 'Lusher Motion,' *Right to Choose* 18 (February-March 1979), 3.



eventually amended by Barry Simon, to read that abortions should not be paid for unless carried out in accordance with the laws of State or Territory, thus preserving the status quo.

The 1980 *Human Rights Commission Bill* also became a ‘political football’ as the Martyr clause (recognising the foetus as a rights-bearing human in law), was eventually amended by Barry Simon and Senator Durack, by including the UN Declaration on the Rights of the Child.<sup>1212</sup>

In May 1989 plans were leaked of the proposed introduction of another proposed Bill to ban Medicare payments for abortion by the Parliamentary Pro-Life Group, formed in February 1988 and chaired by Tasmanian Independent Senator Brian Harradine.<sup>1213</sup> In early June Harradine issued a press release on his intended *Abortion Funding Abolition Bill*, aimed at limiting Medicare payments for abortion to only those done to save the ‘pregnant person’s’ (sic) life.<sup>1214</sup> It was Alistair Webster who eventually introduced it as a private members Bill in the House of Representatives. While the Bill was debated a number of times in 1989 it was eventually shelved as Parliament went into recess.<sup>1215</sup>

### *South Australia*

The South Australian *Abortion Regulations* of 1970 have come under periodic, but unsuccessful, legislative attack in 1972 (the McRae Bill),<sup>1216</sup> and in 1988 (the Ritson Bill).<sup>1217</sup> Anti-abortion groups have been more successful in their campaign to erode service delivery, persuading hospital staff to withdraw their services, by invoking the ‘conscience clause’ against abortion. A new generation of young medical staff, with no experience with the physical and social effects of illegal abortion, contributed towards a ‘drift towards anti-abortion sentiment’<sup>1218</sup> By 1985, only two of the five major hospitals in Adelaide and a small number of

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<sup>1212</sup> Anne Summers, ‘Human Rights and the Non-Abortion Formula,’ *National Times* 15-21 March 1981, 26.

<sup>1213</sup> Pilita Clark, ‘Secret Plan to Fight Abortion,’ *Sydney Morning Herald*, 5 May 1989; Pilita Clark, ‘Abortion Bill Puts Onus on Doctors,’ *Sydney Morning Herald*, 9 May, 1989.

<sup>1214</sup> Right to Choose, ‘The Harradine Bill: New Attacks in Australia,’ *Right to Choose* 30 (Winter 1989), 3, 9.

<sup>1215</sup> Webster attempted to reintroduce this Bill again in 1990, 1991, and 1992. The March 1993 elections saw Webster lose his seat, finally consigning his Bill to oblivion. Pilita Clark, ‘Lib Tries Again on Medicare Abortions,’ *Sydney Morning Herald*, 7 December 1990; ACT Right to Life Association Newsletter, ‘No Energy, Compassion for Unborn, Says Webster,’ *ACT Right to Life Association Newsletter* (Spring 1991), 3; ACT Right to Life Association Newsletter, ‘Webster Reintroduces Bill,’ *ACT Right to Life Association Newsletter* (Winter 1992), 7; ACT Right to Life Association Newsletter, ‘In Brief,’ *ACT Right to Life Association Newsletter* (Winter 1993), 3.

<sup>1216</sup> Joy Sanderson, Catherine May, Joy Chia, Ilektra Zabaias, *Abortion: An Information Booklet*, (Adelaide: Women’s Information Switchboard), 4.

<sup>1217</sup> Lyndall Ryan, ‘Abortion in South Australia 1970-1991,’ *Refractory Girl* 41 (Summer, 1991), 2-4, 3.

<sup>1218</sup> Penelope DeBelle, ‘Ethics in Embryo,’ *Sydney Morning Herald Good Weekend Magazine*, 6 April 1991, 18-24, 24.

country hospitals offered abortion during the first-trimester of pregnancy.<sup>1219</sup> By June 1988, the unwillingness of SA doctors and nurses to carry out second-trimester abortions meant that patients were being transported interstate by the SA Health Commission, for later abortions.<sup>1220</sup> Existing anti-abortion groups, such as the Festival of Light, RTL/SA and the Call to Australia Party were being joined by groups such as Nurses for Life, formed in 1989.<sup>1221</sup>

In an attempt to regain the initiative, a number of 'proactive strategies' were employed by pro-abortion groups, such as the Pro-Choice Lobby and the Coalition for Women's Right to Choose. These included research projects to 'redefine' the abortion debate *from the point of view of the woman* seeking abortion (as opposed to the established moral/medical views).<sup>1222</sup>

## Pro-Abortion Initiatives

### *The National Women's Health Policy: Re-defining Abortion*

Launched in April 1989 the National Women's Health Policy was developed as a result of widespread consultation and was endorsed by all State and Territory Health Ministers. It included abortion within the priority area of reproductive health. Although not recommending decriminalisation, the Policy stated that women seeking abortion were not 'atypical' of society but were a 'growing minority whose practices and views have to be considered'. During consultation it was found that a 'slight majority' of Australians favoured abortion in cases where the child is unwanted and the pregnancy is less than three months, while an overwhelming majority favoured legal abortion in the case of rape and incest, birth defects and for the health of the mother.<sup>1223</sup> The widespread acceptance of this Policy was seen as an important step in placing abortion firmly on the health agenda.

### *Western Australia*

Pro-active initiatives were also undertaken by Western Australian pro-abortion coalition as they continued to lobby, unsuccessfully, for improved services, on the basis of a series of reports recommending the repeal of criminal laws and the recognition of abortion as a health service.<sup>1224</sup> Increasing numbers of GPs were

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<sup>1219</sup> L. Ryan, 'Abortion in South Australia 1970-1991,' 2.

<sup>1220</sup> Calvin Miller, 'SA Women Fly in for Abortions,' *Herald*, 23 December 1988, 3.

<sup>1221</sup> L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 44.

<sup>1222</sup> L. Ryan, 'Abortion in South Australia 1970-1991,' 4.

<sup>1223</sup> Department of Community Services and Health, *National Women's Health Policy*, (Canberra: Australian Government Printing Office, 1989), 28-29.

<sup>1224</sup> The WA Women's Advisory Council recommended repeal of existing laws in 1983-84 and 1984-85, in their report to the Premier. The WA Health Department's Women's Health Working Party Report, *Women's Health and Wellbeing* (1986) and the Western Australian Review of Obstetric, Neonatal and Gynaecological Services, 1990 both recommended the repeal of criminal laws and the re-definition of abortion as a health service. Women's Electoral Lobby (Perth), *Inequality of Access to Abortion Services in Australia: A Report to the Committee on the Elimination of Discrimination Against Women (CEDAW)*, (Perth:

making abortion referrals and the major hospital in Perth, the King Edward Memorial Hospital, also referred the majority of clients onto clinics.<sup>1225</sup> Some counselling services which had run on volunteer labour, such as the Abortion Information Service, closed in early 1987, putting extra burden on ALRA/WA to 'fill the void'.<sup>1226</sup> Between 1986 and 1989 a number of Women's Health Centres were established,<sup>1227</sup> and while these were able to take up some of the counselling needs, FPA/WA, a major service provider in other States, was not funded until 1993.<sup>1228</sup>

In 1990, it was estimated that 80 per cent of all abortions were still being performed in the two free-standing, independent clinics in Perth.<sup>1229</sup> As the largest state in Australia, WA is particularly affected by the Australia's relatively poor access to abortion, by international standards. For example, travel to Perth may involve up to five hours' flying time, from some parts of WA.<sup>1230</sup> In 1989 WEL/WA complained to the UN Committee administering CEDAW that this unequal access to abortion services were a form of discrimination against women in WA.<sup>1231</sup>

The anti-abortion coalition has continued to lobby against existing services, gaining some support in the early 1980s from the ALP Premier Brian Burke, a Catholic father of six.<sup>1232</sup> RTL/WA have held 'rescues' outside abortion clinics, leading to a number of arrests, in the 1980s and 1990s.<sup>1233</sup> The WA anti-abortion coalition is highly fragmented: a vast network of splinter groups have formed, most with religious affiliations and considerable financial backing.<sup>1234</sup>

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Women's Electoral Lobby, 1988), 29; Megan Sassi, President, Abortion Law Repeal Association of Western Australia, *Annual Report*, (May 1986-April 1987), 3.

<sup>1225</sup> S. Grayston, 'Changing Attitudes and Services,' 248.

<sup>1226</sup> M. Sassi, President, Abortion Law Repeal Association of Western Australia, *Annual Report*, 3.

<sup>1227</sup> These included Women's Health Care House in Perth, the Multicultural Women's Health Centre in Fremantle, and centres in Kalgoorlie and Whitfords. D. Broom, *Damned if We Do*, 79.

<sup>1228</sup> Abortion Rights Network of Australia (ARNA), *Newsletter*, 1(1), (1993), 8.

<sup>1229</sup> Women's Electoral Lobby (Perth), *Inequality of Access to Abortion Services in Australia*, 28.

<sup>1230</sup> Right to Choose, 'Abortion Access in Oz: Not Good, Says International Survey,' *Right to Choose* 30 (Winter 1989), 10.

<sup>1231</sup> Right to Choose, 'Unequal Access to Abortion Services in WA,' *Right to Choose* 31 (Summer 1989-1990), 16.

<sup>1232</sup> Abortion Rights Coalition, 'State Round-Up,' *Abortion Rights Coalition Quarterly*, (Autumn 1984), 5.

<sup>1233</sup> Right to Choose, 'Perth: Anti-Choice Rally,' *Right to Choose* 30 (Winter 1989), 35; Abortion Rights Network of Australia (ARNA), *Newsletter*, 1(1), (1993), 8.

<sup>1234</sup> For example, a newly formed group, Women Hurt by Abortion, has affiliations with: Australian Family Association; Catholics United for the Faith; Catholic Youth Council; Endeavour Forum; Festival of Light; Genesis Christian Life Centre; Knights of the Southern Cross; Life Ministries Inc.; Living Alternatives Inc; the National Civic Council; Parents and Friends Federation; Pregnancy Problem House; RTL(AUS); and the Sound the Alarm of the

## Tasmania

The late 1970s had seen some demand for abortion law reform in Tasmania expressed by feminist activists. At that time the Tasmanian Attorney General stated that, in his opinion,

... abortions were legal in Tasmania if two doctors, including a gynaecologist, agreed that the procedure should be performed in the best interest of the mother's physical or mental health and that the procedure was carried out in a hospital or in an approved clinic under local or general anaesthetic.<sup>1235</sup>

The majority of Tasmanian general practitioners (GPs) were also willing to refer patients for abortions indicating a generalised acceptance of abortion in some circumstances.<sup>1236</sup> Both State public hospitals were reluctant to provide abortion services, however, and most Tasmanian women had to travel to mainland Australia, usually Victoria, if they wished to obtain an abortion.<sup>1237</sup>

By the mid-1980s this situation had eased somewhat but the Royal Hobart Hospital still fulfilled only five per cent of total requests.<sup>1238</sup> The Women's Emergency Fund (WEF), a pro-abortion group which arose out of the Hobart Women's Liberation Movement to assist women with the financial costs of travelling interstate for abortions, began to lobby for greater public hospital-based abortion services.<sup>1239</sup> Neither of the two Tasmanian hospitals were willing to change their policies until there was a change in the law.<sup>1240</sup>

After a series of articles in the general press,<sup>1241</sup> the Society of Labor Lawyers and a Member of the House of Assembly, Judy Jackson, unsuccessfully lobbied

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Lord Ministries. All of these groups are associated with the Coalition for the Defence of Human Life, which is, in turn, supported and endorsed by Catholic, Charismatic, Evangelical and Pentecostal Churches. Association for the Legal Right to Abortion, 'After Effects of Abortion,' *ALRA News*, 23(1), April 1995, 4-5, 4.

<sup>1235</sup> Maureen Davey, 'Information Centre Opened,' *Right to Choose* 14 (Autumn 1977), 7.

<sup>1236</sup> Maureen Davey, *The Role of Tasmanian General Practitioners in the Provision of Contraception, Abortion and Sexual Counselling Services*, Unpublished Thesis (B. Med. Sc. Hons), (University of Tasmania, 1976).

<sup>1237</sup> Jenny Kentish, 'State Women Going Away for Abortions,' *Mercury*, 8 March 1985, 2.

<sup>1238</sup> Ibid.

<sup>1239</sup> Women's Emergency Fund, *Letter to Women's Groups and Supporters*, 6 March 1985, Archives of the Hobart Women's Health Foundation, Tasmania.

<sup>1240</sup> Martin Gilmour, 'Abortion Capital! Operations Easier in Launceston,' *Sunday Examiner*, 17 March 1985, 1.

<sup>1241</sup> *Sunday Examiner*, 'Backyard Operators Out of Business?' 24 March 1985, 6; *Sunday Examiner*, 'The Legal Facts,' 24 March 1985, 6; *Sunday Examiner*, 'Abortion: Tasmania's Rate the Highest,' 24 March 1985, 6 and Lindsay Tuffin, 'The Foetus Can Speak for Itself,' *Sunday Examiner*, 24 March 1985, 63; *Mercury*, 'Abortion Policy at RHH Criticised,' 10 May 1985, 3.

for change in hospital policy.<sup>1242</sup> The Women's Abortion Campaign (WAC) had also formed by mid-1985 and began lobbying activities.<sup>1243</sup> These activities were supported by WEF, WEL/TAS, and the Women's Information Service.<sup>1244</sup> It was only after the public release of a report which showed that most Tasmanian GPs believed the public hospital system was too 'rigid' in its interpretation of the law that the Hobart *Mercury* newspaper ran an editorial which supported legislative change.<sup>1245</sup> The lobbying campaign was, otherwise, unsuccessful and, during the 1980s, the main impact of pro-abortion groups was to keep the issue on the feminist agenda, representing those interests in the annual International Women's Day rallies and marches.<sup>1246</sup> Other issues regarding women's health were being taken up by the Hobart Women's Health Centre which opened in 1987.<sup>1247</sup>

Anti-abortion groups also retained a low profile,<sup>1248</sup> with the Tasmanian branch of RTL (RTL/TAS) largely taken up with establishing a local membership and running a 'Pregnancy Help' service.<sup>1249</sup> The organisation changed its name, in November 1988, to become the Human Life Protection Society (HLPS).<sup>1250</sup> This was part of the national trend of RTL groups dissociating themselves from the more extremist tactics associated with Margaret Tighe's RTL(Australia).<sup>1251</sup> Several Tasmanian Federal politicians were identified with anti-abortion activities: Senators Brian Harradine, Shirley Walters, Michael Tate and Members

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<sup>1242</sup> Jenny Kentish, 'RHH Policy on Abortion Slated Again,' *Mercury*, 25 May 1985, 13.

<sup>1243</sup> Women's Abortion Campaign, *Press Release*, 7 June, 1985, Archives of the Hobart Women's Health Foundation, Tasmania; *Mercury*, 'RHH Board's Line on Abortion Attacked,' 15 June 1985, 9.

<sup>1244</sup> Beverley Miller, 'A Decade of Progress?' *Mercury*, 15 June 1985, 2.

<sup>1245</sup> Dr. R. G. Fullerton and Professor J. C. Correy, *Questionnaire and Opinions of Southern Tasmanian General Practitioners on Abortion*, (Hobart: Department of Obstetrics and Gynaecology, University of Tasmania, 1985), 26; Margaretta Pos, 'Abortion Demand,' *Sunday Tasmanian*, 4 August 1985, 1-3; Editorial, 'Abortion Laws Need Examination,' *Mercury*, 9 August 1985, 8.

<sup>1246</sup> Pro-abortion banners and placards are visible in a home video recording, *International Women's Day 1988: The Rally and Television Coverage of the March (Part 1 and 2)*, 1988. Archives of the Office of the Status of Women, Tasmania.

<sup>1247</sup> At the same time, the increasing number of women approaching the Centre for abortion information led them to compile an 'information kit' in 1995, as well as providing counselling and referrals. Hobart Women's Health Centre, *A Woman's Right to Choose: An Information Kit*, (Hobart: May 1995).

<sup>1248</sup> This was largely the result of limited or non-existent resources. In 1987, RTL/TAS started the year with a 'zero bank balance'. Right to Life News, 'From the President,' *Right to Life News* 8(1) (January 1987), 2.

<sup>1249</sup> RTL/TAS produced a newsletter from 1980 onwards, advertising their educational activities. For examples, see Right to Life News, 'Educate Tasmanians Letter Box Drop,' *Right to Life News* 6(4) (November 1985), 8; Right to Life News, 'Challenge '87 Appeal,' *Right to Life News* 8(1), (1987), 5; and Right to Life News, 'The Saga of the Sign,' *Right to Life News* 8(3), (1987), 2.

<sup>1250</sup> Rosina Beaumont, 'Pro-Lifers Highlight Absurdity of Abortion,' *Mercury* 27 January 1989.

<sup>1251</sup> Joyce Cumming, Human Life Protection Society. *Interview by Author*. 19 October 1995, Hobart, Tasmania.

of the House of Representatives Michael Hodgman and Bruce Goodluck. A small group called Women Exploited by Abortion also formed in 1988.<sup>1252</sup>

### **The Influence of Feminism? 1978-1989 Assessed**

In comparison with the dynamism of the 1970s, the 1980s could be seen as a decade of consolidating the status quo as numerous unsuccessful attempts were made to wind back abortion legislation, judicial determinations and services. Dynamics within the subsystem now favoured those coalitions which had the organisational structures and resources to persist over time. Within the pro-abortion coalitions membership generally fell after the first clinics were established. The defense of existing services and continued pressure for law *repeal* was largely carried out by feminist groups, in primary alliance with abortion service providers, women's health and medical professional groups. These were supported by some political and trade union groups and individuals as secondary allies. The base from which activists operated narrowed to be more specifically health-focused although the number of these women's health groups increased. Perhaps because of this pressure on membership maintenance, or perhaps due to the increasing sophistication of both coalitions, the 1980s saw a broadening of concerns. The emergence of academic feminism meant the amount of knowledge-based resources for change had increased and this contributed to the development of a 'pro-choice' normative philosophy.

WLM-based pro-abortion groups were weaker in their ability to organise on a national scale than the church-based anti-abortion groups. The inability of pro-abortion groups to make progress over this decade gave rise to a considerable amount of analysis within WLM itself as to the weaknesses of radical feminist practice.<sup>1253</sup> A number of the more idealistic ventures had failed,<sup>1254</sup> and the pressure of continual attack were pointing to a need to go beyond the 'small group/collective' model. This sense of needing to re-organise or re-orientate radical feminist theory and practice was not followed up on any discernible scale as the 1990s saw a further dispersion of the capacity of active, WLM-based, pro-abortion groups.<sup>1255</sup>

Looking at the continuing development of the policy discourse, it is also possible that the WLM re-definition of abortion as a woman's right to choose had lost some of its strategic power. Those groups which had taken more of a liberal feminist strategy had more successfully re-defined abortion, yet again, as a women's reproductive health issue. This was more successful as 'state feminism' put abortion on the health agenda: the provision of information and services became an issue of access and equity.

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<sup>1252</sup> Right to Life News, 'Where to Find Help,' *Right to Life News* 9(1) (1988), 9.

<sup>1253</sup> R. Albury, 'Abortion: But I Thought That Was Settled Years Ago,' 36-37.

<sup>1254</sup> Right to Choose, 'Abortion Trust Fund,' *Right to Choose* 6 (February-March 1975), 7.

<sup>1255</sup> Using WAAC as an example, the 1980s saw a larger organised and financial membership than the 1990s, a change which has stimulated a move towards a number of self-funding projects, under the aegis of WAAC (rather than being supported directly by WAAC). Margaret Kirkby, WAAC, *Interview by Author*. 23 January 1996, Sydney New South Wales.

Anti-abortion groups gained a great deal of publicity, during the 1980s, through their direct action protests. This publicity was not always positive and, by the end of the decade, there was a deliberate move away from such confrontational tactics. Within these groups it was felt that they were losing members and public sympathy.<sup>1256</sup> At the same time, the ability of anti-abortion coalitions to mobilise a co-ordinated and disciplined campaign was facilitated by continuing religious institutional support. In the 1980s the anti-abortion coalition also began to use highly emotive images in their campaigns: particularly such negative imagery as explicit photographs of dismembered fetuses. The importance of iconography in generating public support has been commented on by a number of movement theorists and has been a very effective strategy of the anti-abortion coalition.<sup>1257</sup>

By the end of the decade, however, neither services nor legislative/judicial reforms had been wound back. In fact services had increased in several States consolidating the enormous change which had been achieved in the previous phase of the abortion policy subsystem. While this phase may be seen as one of stalemate there was, in fact, slow progress toward achieving feminist goals.

### **3. GAINS AND CHANGES: THE 1989-1996**

In the first half of the 1990s the number of abortion services again increased; even though State and Territory governments refused to reform or repeal restrictive laws. At the same time, however, the new technologies used in reproductive medicine were acting to re-define the meaning and practice of abortion once again. Both coalitions have opposed this process. Some anti-abortion groups have suggested that both sides were 'joining hands' in shared concern.<sup>1258</sup> This was not an opinion shared by feminist commentators although it has had some currency in the 'mainstream' media. Both groups share a resistance to medical dominance of reproduction but maintain their traditional enmity to each other. A destabilisation of the terms of the debate has been evident, however, as technological advances contain the potential to completely transform the 'traditional' notion of what abortion is. In 1996 the election of a conservative Federal government signalled a 'backlash' in the social and political systems. Anti-abortion coalitions within the abortion policy subsystem utilised these opportunities to mount a series of attacks of the status quo. While only some of these were successful the combined effects of a number of initiatives was to create a sense of 'crisis' within the subsystem.

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<sup>1256</sup> Margaret Tighe, Right to Life (Australia) Ex-RTL President. *Interview by Author*.

<sup>1257</sup> J. Pakulski, *Social Movements*, 78-79.

<sup>1258</sup> Denis Strangman, 'Life Quotes,' 1124, *ACT Right to Life Association Newsletter* (Spring 1991), supplement.

## More Services Open, No Progress in Legislation

### *Queensland*

In 1989 Queensland saw the election of the first ALP State government for 32 years. Led by Premier Wayne Goss, the incoming government promised a review of the QLD Criminal Code, leading pro-abortion groups to undertake an intense and sustained campaign for abortion law reform. Both CBC, WAC, and some ALP women agitated for the government to sponsor a Bill to change the laws.<sup>1259</sup> They were joined by the newly formed Women's Abortion Rights Coalition (WARC),<sup>1260</sup> and received significant support from the *Sun* newspaper.<sup>1261</sup> Pro-abortion groups lobbied the National Labor Women's Conference in Brisbane (which passed a resolution supporting decriminalisation of abortion), the State Labor Conference (which also passed a resolution for the repeal of the laws), the relevant ministers, the Attorney General, the Queensland Criminal Code Review Committee, the Electoral and Administrative Review Committee (examining a proposed Bill of Rights for Queensland) and organised the largest rally to be held on abortion rights in the last decade, in August 1991, as well as a stream of smaller pickets and public meetings.<sup>1262</sup>

In the lead-up to 1992 State elections pro-abortion activity increased.<sup>1263</sup> Dr. Grundmann opened another clinic in Brisbane,<sup>1264</sup> Dr. Bayliss pursued legal action over the charges of false imprisonment, malicious process and trespass to goods,<sup>1265</sup> and CBC finally won funding from the State Government, the first time this had ever occurred in Queensland.<sup>1266</sup> At the same time, however, CBC

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<sup>1259</sup> *Australian*, 'Pressure on Goss Over Abortion Law,' 1 September 1992; Abortion Rights Network of Australia (ARNA), *Newsletter*, 1(1), (1993), 3.

<sup>1260</sup> WARC was representative of support from the Young Liberals, the Union of Australian Women, the Professional Officers Association, and the Australian Welfare Union. L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 64.

<sup>1261</sup> Particularly significant was the 24 October issue of the Sunday Sun, which carried a four page feature on the attitudes toward abortion of one hundred Brisbane women. 'This was the only instance in the public media where we encountered such a wide ranging search for women's attitudes to and experience of abortion.' L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 69.

<sup>1262</sup> Anna McCormack, 'The Women's Abortion Campaign in Brisbane: Keeping Abortion Rights on the Political Agenda,' *Paper for the Women's Abortion Campaign*, June 1992.

<sup>1263</sup> Anna McCormack, 'Campaign News: The Women's Abortion Campaign in Brisbane,' *Right to Choose* 33 (Spring 1992), 7-8; *Courier Mail*, 'Lobby Group Seeks Access to Courts,' 7 November 1992; Greg Abbott, 'Goss Angers Abortion Reform Lobby,' *Sun Herald*, 23 August 1992.

<sup>1264</sup> The Rockhampton clinic was the focus of a fiercely fought anti-abortion campaign, conducted between 21 February and 12 April 1987. L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 63.

<sup>1265</sup> Leisa Scott, 'Born to Dissent,' *Australian Magazine*, May 20-21 1995, 10-14, 13.

<sup>1266</sup> Nancy Leighton, Campaign News: Children by Choice,' *Right to Choose* 33 (Spring 1992), 6.



and WAC experienced both political and tactical differences,<sup>1267</sup> and anti-abortion groups engaged in letter-writing campaigns to the press and politicians, presented petitions to Parliament,<sup>1268</sup> and continued picketing the Greenslopes clinic.<sup>1269</sup>

When the Goss government was re-elected in 1992, pro-abortion lobbying continued,<sup>1270</sup> forming alliances with a number of unions.<sup>1271</sup> While the annual ALP State Conference called for abortion law reform, unheeded, State ALP Women's President, Kerry Rea, warned the Government was risking an 'electoral backlash' by continually refusing to implement ALP policy on abortion.<sup>1272</sup> It was not until October 1994, however, that Premier Goss finally made a statement on the issue: 'I believe that this is a matter for the woman and her doctor. ... Governments can never devise a law that is completely accurate and completely detailed to cover every particular case...' <sup>1273</sup> Be that as it may, the *Criminal Code Act 1995 (QLD)*, proclaimed in 1996, contains sections 184, 185 and 186, which are essentially the same as in the previous, 1899, Act.<sup>1274</sup>

The 1994 study found that '(m)any women were unsure whether the clinics they attended might be raided at some future date, and some expressed nervousness about their medical records'.<sup>1275</sup> A 1995 survey by the *Courier Mail* newspaper found that only 8 out of the 89 Members of the Legislative Assembly were prepared to 'support a change in the law to formally legalise abortion'. This result

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<sup>1267</sup> ARNA Newsletter, 'State Reports: Queensland,' *ARNA Newsletter* 1 (1) (January-February 1993), 2.

<sup>1268</sup> Between 19 May and 5 December 1991, they presented twenty two Petitions containing 7187 signatures and between 10 March and 21 May 1992, they presented fifty three Petitions containing 12253 signatures. L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 67.

<sup>1269</sup> This culminated in the prosecution of a member of the RTL(QLD), Graham Preston, being prosecuted by Dr. Bayliss, who took out an injunction to keep Preston away from the clinic. Preston contested, lost and was ordered to stay a designated distance from the clinic and pay costs of \$34,000. When the debt remained unpaid, Bayliss moved to bankrupt Preston. L. Scott, 'Born to Dissent,' 13.

<sup>1270</sup> In 1995, a new group was formed, the Coalition of Women for a Realistic Criminal Code (CWRCC), a coalition of 30 feminist and legal organisations. They engaged in an intensive series of actions in an 'eleventh hour' attempt to include abortion laws in the Criminal Code Review. The Premier continually refused to meet with the group, in spite being approached by Senator Margaret Reynolds and other group representatives. Kym Daly, 'Women's Coalition Fights Queensland Criminal Code,' *Children by Choice Newsletter*, (August 1995), 4.

<sup>1271</sup> Women's Abortion Campaign, 'Brisbane Based Unions Support Abortion Rights,' *Newsletter*, (April 1993), 1.

<sup>1272</sup> Madonna King, 'Party Calls on Goss for Drug and Abortion Law Reform,' *Weekend Australian*, 2-3 July, 1994.

<sup>1273</sup> Children by Choice, 'Sections of the New Criminal Code Equivalent to the Old,' *Children by Choice Newsletter*, (August 1995), 3.

<sup>1274</sup> Children by Choice, 'Premier's Statements in Parliament on Abortion,' *Children by Choice Newsletter*, (August 1995), 3.

<sup>1275</sup> L. Ryan, M. Ripper and B. Buttfield, *We Decide*, 22.

was vastly out of step with another survey that year, of their constituents, which found that ‘two-thirds of Queenslanders want abortion to be legalised’.<sup>1276</sup>

### *Tasmania*

While it was in the mid-1980s that Tasmanian feminists first began to consider the option of establishing their own abortion clinic,<sup>1277</sup> it was not until the early 1990s that a small group of feminists decided to test the position of the law, and mitigate the inequitable situation of Tasmanian women, by doing so.<sup>1278</sup> Both WEF and WAC were involved in the almost secretive planning stage of the new service. The Women’s Health Foundation (WHF) had been operating for two weeks before the weekend papers broke the story.<sup>1279</sup> Ryan et al suggest that ‘the fact that news of the clinics opening had been delayed suggest collusion by the press, for they gave supportive coverage of the issue’.<sup>1280</sup>

The following week, however, the campaign to close the clinic began. It was not particularly successful in attracting public support, even given the relatively small population of Tasmania, the smallest of the States. A media campaign by HLPS and weekly ecumenical services led up to protest rally, attracting 300 people, in December 1991.<sup>1281</sup> While it was reported that a ‘spokesman for the State Government’ suggested that the clinic was a ‘legal health facility’,<sup>1282</sup> HLPS continued to lobby State Parliament into 1992,<sup>1283</sup> and carried out several protests

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<sup>1276</sup> Matthew Franklin and Cheryl Thurlow, ‘Politicians Coy on Abortion Topic,’ *Courier Mail*, 29 April 1995; Amanda Smith, ‘Two in Three Favour Abortion,’ *Courier Mail*, 10 December 1995.

<sup>1277</sup> Women’s Abortion Action Campaign, *Report from the Abortion Activists Workshop*, (Women’s Health in a Changing Society Conference, Adelaide 4-7 September 1985).

<sup>1278</sup> James Schofield, ‘Tasmanian Women Forced Interstate for Abortions,’ *The Medical Observer*, May 1991.

<sup>1279</sup> *Saturday Mercury*, ‘State’s First Abortion Clinic Open for Business,’ 16 November, 1991, 1-2; Sue Jacobson, ‘Abortion Clinic: Why it Was Set Up in Tasmania,’ *Sunday Tasmanian*, 17 November 1991, 5; Sue Jacobson, ‘Dream is Realised After Five Hard Years,’ *Sunday Tasmanian*, 17 November 1991, 5.

<sup>1280</sup> L. Ryan, M. Ripper and B. Butfield, *We Decide*, 49.

<sup>1281</sup> *Mercury*, ‘Stir Over Abortion Clinic Funding,’ 22 November 1991, 3; Rae Walsh, ‘Pressure Builds to Close State’s Abortion Clinic,’ *Mercury*, 28 November, 1991, 12; *Examiner*, ‘Pressure for Clinic Closure,’ 28 November 1991, 3; Rae Walsh, ‘Centre for Abortions Tragic, Says Harradine,’ *Saturday Mercury*, 7 December 1991, 15; Human Life Protection Society News, ‘Pro-Life Rally,’ *Human Life Protection Society News* 13(1), (March 1992), 1.

<sup>1282</sup> *Saturday Mercury*, ‘Anglican Bishop Slams Clinic,’ 30 November 1991, 5.

<sup>1283</sup> Human Life Protection Society News, ‘Abortion House - The Fight Goes On,’ *Human Life Protection Society News* 13(3), (September 1992), 1.

outside the clinic.<sup>1284</sup> The HLPS has since maintained an active, if relatively moderate, presence in Tasmania.<sup>1285</sup>

While the WHF ceased making public announcements after their opening, Family Planning Tasmania has a policy of publicly promoting the availability of 'legal, safe and affordable abortion services in Tasmania' and has made occasional statements on the issue, calling for law reform.<sup>1286</sup> In 1994 it was estimated that 40 per cent of Tasmanian women seeking abortion still travelled to mainland Australia.<sup>1287</sup> The distinctiveness of the Tasmanian situation lies in the fact that the only free-standing clinic in the State is a feminist, non-profit, organisation.<sup>1288</sup>

### *South Australia*

As access to hospital-based abortion services continued to decline, the Coalition for Women's Right to Choose began to lobby the SA Minister for Health to establish the first government-funded special-purpose abortion clinic in Australia, the Pregnancy Advisory Centre (PAC).<sup>1289</sup> While Cabinet had agreed in November 1989 to fund PAC, RTL/SA conducted a successful resident's campaign to oppose the siting of the Centre in Woodville, a suburb of Adelaide, leading to an unsuccessful Supreme Court challenge, in 1990, of the *State Planning Act*. Also in 1990, a Notice of Motion opposing the establishment of free-standing abortion clinics was introduced by the Deputy Opposition Leader, Stephen Baker, in the Legislative Assembly. This was amended, to allow clinics which followed strict hospital procedures, and passed in April 1990.<sup>1290</sup> In October that same year another, unsuccessful, private member's Bill sought to

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<sup>1284</sup> Human Life Protection Society News, 'Abortion House Action Report,' *Human Life Protection Society News* 13(4), (November 1992), 4; also Lee Barker, Women's Health Foundation. *Interview with Author*. 20 October 1995, Hobart, Tasmania.

<sup>1285</sup> A continuous stream of activity can be traced through various publications: Human Life Protection Society, *Innocent Human Life Under Threat*, Pamphlet. Hobart, Tasmania, 1990; Human Life Protection Society News, 'Northern Branch: A New Beginning,' *Human Life Protection Society News* 14(2), (May 1993), 1; Human Life Protection Society Newsletter, 'Pro-Life Month,' *Human Life Protection Society Newsletter* (September, 1994), 1; Human Life Protection Society, *Prayer for Mothers and Unborn Babies*, Poster. Hobart, Tasmania, September, 1995.

<sup>1286</sup> Mary Prior, 'Clearer State Laws on Abortions Urged,' *Mercury* 18 October 1991; Mary Rose, 'State Abortions May Top 3000,' *Mercury*, 20 April 1994, 1; Family Planning Tasmania, *Strategic Plan*, 18 May 1994, 3; Family Planning Tasmania, *Policy on Abortion*, last reviewed by Council 2 December 1994; Damian Kemp, 'Diverse Role of Family Planning Body,' *Star*, 28 March 1995, 8.

<sup>1287</sup> L. Ryan, M. Ripper and B. Buttfeld, *We Decide*, 25-26.

<sup>1288</sup> Women's Health Foundation, *Women's Health Foundation Clinic*, Pamphlet, Hobart, Tasmania, 1994; Lee Barker, Women's Health Foundation, *Interview by the Author*. 20 October 1995, Hobart, Tasmania.

<sup>1289</sup> L. Ryan, M. Ripper and B. Buttfeld, *We Decide*, 44.

<sup>1290</sup> J. Sanderson, C. May, J. Chia, and I. Zabanias, *Abortion: An Information Booklet*, 6.

oppose free-standing clinics.<sup>1291</sup> PAC finally opened, in 1992, as a special unit of the Queen Elizabeth Hospital in Adelaide.<sup>1292</sup>

### *Australian Capital Territory*

The ACT expressed its historically high support for abortion law reform by passing the *Termination of Pregnancy (Repeal) Act* (1992), on the 23 June 1989, the same year the Territory was finally granted self-government. This legislation allowed for the establishment of free standing abortion clinics in the ACT.<sup>1293</sup> This Minister for Health, Wayne Berry, negotiated with a number of groups which put in tenders for what was to be a government-subsidised project. Reproductive Healthcare Services, a subsidiary of FPA/ACT, was successful in the tendering process and the ACT ALP Government provided practical support through the provision of premises, at minimal rent and a ten year lease.<sup>1294</sup> When this was first revealed, in July 1993, RTL/ACT began a campaign to oppose the use of public funds for abortion services,<sup>1295</sup> which included Gary Humphries moving an (unsuccessful) motion to that effect in the Legislative Assembly in August.<sup>1296</sup> The new clinic opened, in September 1994, in purpose-built offices in the ACT Health Building.

The next legislative step, decriminalisation, was not as successful. In April 1994, Berry, having resigned from the Ministry, used his freedom as a backbencher to introduce the *Crimes (Amendment) Bill (No. 2)* 1994, seeking to remove sections 42, 43 and 44 of the *Crimes Act* 1900, dealing with abortion. On the day Berry foreshadowed the Bill, the Canberra Times ran an editorial calling on politicians to stop ‘shirking their duty, hoping that judges will do their jobs for them’.<sup>1297</sup>

A pro-abortion coalition led by Options, an umbrella group operating since the late 1980s, prepared a comprehensive information package for members of the ACT Legislative Assembly, stating the main arguments for decriminalisation.<sup>1298</sup> RTL/ACT also began a four month campaign, as the Bill was to be introduced in the August sitting of the ACT Legislative Assembly.<sup>1299</sup> The Bill was delayed,

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<sup>1291</sup> L. Ryan, ‘Abortion in South Australia 1970-1991,’ 3.

<sup>1292</sup> L. Ryan, M. Ripper and B. Butfield, *We Decide*, 71.

<sup>1293</sup> ACT Right to Life Association Newsletter, ‘Abortion Clinic: No!’ *ACT Right to Life Association Newsletter* (Autumn 1992), 1; ACT Right to Life Association Newsletter, ‘ACT Assembly: Circuses: NO! Abortion Clinic: YES!’ *ACT Right to Life Association Newsletter* (Winter 1992), 1.

<sup>1294</sup> Sandra McKenzie, ‘Executive Director’s Report,’ *22nd Annual Report*, Family Planning Association ACT Inc., (FPA: Canberra, 1993), 8.

<sup>1295</sup> Hugh Lamberton, ‘Abortion: \$100,000 For Civic Clinic,’ *Canberra Times*.

<sup>1296</sup> ACT Right to Life Association Newsletter, ‘APL & FPA Plan Abortion Clinic,’ *ACT Right to Life Association Newsletter* (Spring 1993), 1.

<sup>1297</sup> Editorial, ‘Abortion Reform Now For Parliament,’ *Canberra Times*, 21 April, 1994, 10.

<sup>1298</sup> *Options*, ACT, Decriminalisation of Abortion in the Australian Capital Territory, 22 June 1994.

<sup>1299</sup> ACT Right to Life Association Newsletter, ‘Berry Moves to Wipe ACT Abortion Laws,’ *ACT Right to Life Association Newsletter* (Winter 1994), 3; ACT Right to Life Association

however, as it became increasingly obvious that it would be defeated if put to the vote. A series of pro-abortion actions took place, culminating in a rally on 10 September supported by a impressive array of prominent individuals and groups.<sup>1300</sup> In November 1994, the Bill was allowed to lapse, as RTL/ACT supporters massed outside the Assembly.<sup>1301</sup> In February 1995 the ALP lost Government and Berry did not seek to reintroduce the Bill in the new Parliament.

### *The Commonwealth*

In 1994, when representing Australia before the UN, the Commonwealth held that abortion is lawful in Australia if ‘performed by a medical practitioner who believes that the operation is necessary to preserve the woman from serious danger to her life or health, including mental health’.<sup>1302</sup> While this statement was both an acknowledgement of the existing situation, illustrated in **Figure 7.1** below, and an ‘in principle’ political endorsement of decriminalisation, no action was taken to enforce this definition on the States.

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Newsletter, ‘Clinic Opens, Abortion Bill Introduced,’ *ACT Right to Life Association Newsletter* (Spring 1994), 1.

<sup>1300</sup> Supporting groups included ACT Council of Social Service, ACT Women Lawyers Association, WEL/ACT, Public Health Association, FP/ACT, Women’s Health Network, the Trades and Labour Council, while supporting telegrams arrived from Mrs. Hazel Hawke, Justice Elizabeth Evatt, Ms. Wendy McCarthy, Senator Bob McMullan and Senator Margaret Reynolds. Speakers included Ms. Quentin Bryce, Ms. Sara Dowse, Mr. Wayne Berry, Ms. Natasha Cica and Ms. Maureen Sheehan. Options, ACT, ‘Historic Pro choice Rally in Canberra,’ *Media Release*, 8 September 1994.

<sup>1301</sup> They were joined by the Catholics Defending Life group. ACT Right to Life Association Newsletter, ‘Berry Abortion Bill Lapses: Now For the Election,’ *ACT Right to Life Association Newsletter* (Christmas 1994), 1.

<sup>1302</sup> Commonwealth of Australia, *Australia: National Report on Population for the UN International Conference on Population and Development, Cairo 1994*, (Canberra: Australian Government Publishing Service, March 1994), 77.

**FIGURE 7.1. Australian Women Obtaining Abortions (Approximate Numbers)<sup>1303</sup>**



Source: Children by Choice Association, *Pregnancy and Abortion Statistics*, Pamphlet. January 1996.

### **RU 486: Re-defining Abortion**

Feminist suspicion of medical exploitation of women's reproductive labour was fueled in the 1980s as many of the dubious practices of drug companies, medical practitioners, and even international agencies, such as the World Health Organisation (WHO), became widely known. The negligent minimalisation of the 'side effects' of the early contraceptive Pills, the Depo Provera injection, and the Dalkon Shield IUD cost many women their health and some women their lives.<sup>1304</sup>

It was against this background that the debate about RU 486 began in Australia in 1987. RU 486 is a synthetic hormone, Mifepristone, which is widely used in Europe as an 'abortion pill': a non-surgical method of abortion appropriate for use during the first trimester of pregnancy. The company which manufactures the pill, Roussel-Uclaf, applied to the Therapeutic Goods Administration for permission to carry out tests in Australia, as part of a 20 country trial, overseen by WHO. After death threats and hate mail targeted the Roussel representative in Sydney, however, the company decided that the political climate in Australia was not conducive for the trials and withdrew.<sup>1305</sup> At the same time Senator Brian

<sup>1303</sup> Other statistics indicate that, in 1997, approximately 80,000 women obtained abortions in Australia. *ARHA Newsletter* 1(3), (April-May, 1997), 24.

<sup>1304</sup> A steady stream of articles appeared in *Right to Choose* (Issues 21-31) in the 1980s covering all these topics.

<sup>1305</sup> Amanda Buckley, 'The Politics of Abortion,' *The Independent Monthly*, February 1991, 20-21, 20.

Harradine received an assurance that RU 486 would not be imported without the personal approval of the Health Minister.<sup>1306</sup>

In 1990 the issue re-emerged as Professor David Healy, of Monash University, began publicly campaigning for the release of the drug in Australia. While anti-abortion groups were quick to condemn the drug,<sup>1307</sup> many pro-abortion groups were undecided,<sup>1308</sup> with only the Women's Global Network for Reproductive Rights, the Abortion Providers Network of Australia and FPA in favour of limited Australian release.<sup>1309</sup> In 1991, Renate Klein, a biologist, academic in women's studies and activist against the 'new reproductive technologies', began a campaign against RU486 from a feminist point of view, citing four major concerns: the validity and impartiality of the medical research supporting the drug; the health and safety aspects of the drug; the socio-political impact of the drug and the financial profits to be made.<sup>1310</sup> A book on the issue was published at the time and received considerable media attention.<sup>1311</sup> This sparked further national and international debate in both the feminist and medical circles.<sup>1312</sup>

In August 1993 the Therapeutic Goods Section of the Health Department gave permission to three Australian trials, to be run by FPA: as a 'morning-after pill', in Victoria and NSW, and as a treatment for the termination of pregnancy, in Victoria, only. When Senator Brian Harradine found out that the banned drug had been imported he confronted Health Minister Senator Graham Richardson, who passed responsibility for resolving the issue onto the new Health Minister Dr. Carmen Lawrence.<sup>1313</sup>

Anti-abortion groups began lobbying to halt the trials. Their efforts gained momentum when it was revealed that the religious representative to the approval

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<sup>1306</sup> Margo Kingston, 'Trial and Error,' *Sydney Morning Herald*, 27 October 1994.

<sup>1307</sup> Fiona Gillies, 'Abortion Pill Hit by Lobby,' *Herald*, 8 July, 1990; *Australian Doctor*, 'Experts Want Abortion Drug Now,' 3 August, 1990; A. Buckley, 'The Politics of Abortion,' 20.

<sup>1308</sup> International Planned Parenthood Federation, 'IMAP's Comments on RU 486,' *Letter*, 1989. Archives of the Family Planning Association of Victoria Library; Right to Choose, 'RU 486: Continuing to Probe,' *Right to Choose* 31 (Summer 1989-1990), 8-9; *Spare Rib* 207 (November 1989) Pat Spallone, 'RU 486: Still Asking Questions,' Reprinted in *Right to Choose* 32 (Autumn 1990), 5-6.

<sup>1309</sup> *Healthsharing Women*, 'RU 486 - A Boon Drug?' September/October 1990, 5-8.

<sup>1310</sup> Renate Klein, 'RU 486 A New Miracle Drug! Or is it?' *Inkwel*, 1, 1991, 17-20.

<sup>1311</sup> Renate Klein, Janice Raymond and Lynette Dumble, *RU 486: Misconceptions, Myths and Morals*, (North Melbourne: Spinifex Press, 1991).

<sup>1312</sup> Jo Wainer, 'The Social Impact of RU 486,' *New Doctor*, Spring 1991, 9-10; Jo Wainer 'RU 486: The Cases For and Against,' *On the Level* 1(3), 10-12; Renate Klein and Lynette Dumble, 'The Case Against: Misconceptions About the French Abortion Pill,' *On the Level* 1(3), 13-14; Cynthia Gibson, 'Feminists Debate RU 486,' *Conscience*, Spring 1992, 11-15; Marie Bass, 'Birth-Control Business,' *Women's Review of Books*, 10-11, July 1994; Ingeborg Retzlaff, 'Anti-Progestogens: A Feminist Medical View,' *Reproductive Health Matters*, 2, September 1993, 110-112; Jane Cottingham and Paul Van Look, 'RU 486: Misconceptions, Myths and Morals: A Critique,' *Paper given in Geneva June 1992*. Archives of Healthsharing Women, Victoria.

<sup>1313</sup> Margo Kingston, 'Trial and Error,' *Sydney Morning Herald*, 27 October 1994.

committee had not attended any of the meetings (although he had been informed of them).<sup>1314</sup> The patient consent forms were criticised by Harradine as inadequate. Finally, it was alleged that Professor David Healy had recently been involved in a disastrous trial of pituitary hormone treatment for infertile women in which some women contracted the incurable Creutzfeldt-Jacobs disease.<sup>1315</sup> Dr. Lawrence suspended the trials, on 16 August 1994, pending an independent review.<sup>1316</sup> RTL/NSW began legal proceedings against Alan Bansemer, Secretary for the Department of Human Services and Health and FPA/VIC on 15 September, in an attempt to stop the trials completely.<sup>1317</sup> RTL was subsequently denied *locus standi* not being 'a person aggrieved'.<sup>1318</sup> RTL/NSW appealed but the ruling was upheld in February 1995.<sup>1319</sup> The feminist contribution to the debate was divided.<sup>1320</sup> Anti-RU 486 feminists attempted to distance themselves from their religious allies.<sup>1321</sup> Finally, in November 1994, the independent panel vindicated the handling of the trials by FPA/VIC, being satisfied that the women taking part were fully informed; the committee had been acting correctly in that they were not obliged to coerce any member of the committee to attend meetings; and the trial should continue.<sup>1322</sup> The trials were re-commenced, the termination of pregnancy trials concluding in October 1995 and the 'morning-after pill' trials concluding in January 1996.<sup>1323</sup>

But the frenzy of activism RU 486 has created in 'pro-life' movements world-wide is not hard to understand. Once abortion becomes a private and non-surgical matter between a woman and her doctor ... it will be virtually impossible for the Right to Life to monitor, and harass, women

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<sup>1314</sup> ACT Right to Life Newsletter, 'RU 486 - Testing Starts in Australia,' *ACT Right to Life Newsletter* (Winter 1994), 7.

<sup>1315</sup> M. Kingston, 'Trial and Error'.

<sup>1316</sup> Margo Kingston, 'How Drug Trials Fail the Test,' *Canberra Times*, 13 August 1994; Editorial, 'New Pill on Trial,' *Age*, 18 August 1994; Editorial, 'Abortion Trials and Informed Consent,' *Canberra Times*, 20 August 1994.

<sup>1317</sup> ACT Right to Life Newsletter, 'In Brief,' *ACT Right to Life Newsletter* (Spring 1994), 3.

<sup>1318</sup> George Zdenkowski, 'Through the Legal Maze of the Abortion Debate,' *Sydney Morning Herald*, 24 October 1994, 15.

<sup>1319</sup> *Australian Doctor*, 'RU 486 Challenge Fails,' 3 March 1995, 14.

<sup>1320</sup> M. Kingston, 'How Drug Trials Fail the Test,'; Rosemary Moore, 'Is the Abortion Pill on its Way?' *Age*, 13 May 1994.

<sup>1321</sup> Lynette Dumble, 'Abortion Pill Debate: Is There a Hidden Agenda?' *Age*, 16 August 1994; 'Transparent Abortion Foes: Women Speak for Themselves in Rejecting RU 486,' *Fax to Healthsharing Women*, 11 August 1994. Archives of Healthsharing Women.

<sup>1322</sup> Steve Dow, 'Review Backs Abortion Pill Trial,' *Age*, 4 November 1994.

<sup>1323</sup> Dr. Anna Lavelle, Director Family Planning of Australia (Victoria). *Interview by the Author*. 11 January 1996, Melbourne, Australia.



seeking abortions. This is their last hurrah. If they lose this one, they have lost the war.<sup>1324</sup>

## The Crisis of 1996

### *The Therapeutic Goods Amendment Act*

The political composition of the new Senate, after the March 1996 Liberal/National Party coalition victory meant that Senator Brian Harradine, a devout Catholic father of six, held the ‘balance of power’: the extra vote necessary to pass Government legislation. This power and influence enabled him to successfully steer his *Therapeutic Goods Amendment Bill* into law only two months after the election.<sup>1325</sup> The object of the Bill was to subject the importation of the RU 486 to severe and extraordinary restrictions, including mandatory written approval by the Minister for Health, for each individual specific exemption. This approval and the exemption, however, could only take effect after the time limit within which Parliament may disallow the written approval or regulations had elapsed. WEL lobbied strongly, but unsuccessfully, against this Bill.<sup>1326</sup> In 1996 Australia enacted the harshest laws, of this kind, in the world.

### *The National Model Criminal Code*

In a separate development, in August 1996, a section of the proposed National Model Criminal Code was released for discussion.<sup>1327</sup> Under the proposed law, abortion would remain in the Criminal Code, a stricter maximum time limit on abortion would be imposed, resulting in even greater hardship for that small percentage of women who require access to late-term abortions.<sup>1328</sup> The proposed law would also remove the exemption from criminal liability previously granted to RU 486 in South Australia and the Northern Territory.<sup>1329</sup> While an improvement in *theory* on the formal legal status of abortion in most States and Territories of Australia, the proposed law represented a step back from the judicial determinations, in *practice*. **Table 7.1** presents an overview of the different legal regimes operating in 1995.

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<sup>1324</sup> Amanda Buckley, ‘The Politics of Abortion,’ *The Independent Monthly*, February 1991, 20–21, 21.

<sup>1325</sup> The Bill was originally, unsuccessfully introduced in 1995, under the title the *Human Services and Health Legislation Amendment Bill*. Commonwealth of Australia, Senate, *Hansard*, 8 June 1995.

<sup>1326</sup> Rivera Morton-Radovsky, Women’s Electoral Lobby, *Fax to Parliamentarians*. 29 April 1996.

<sup>1327</sup> Model Criminal Code Officers Committee, *Chapter 5: Non-Fatal Offences Against the Person Discussion Paper*, (Standing Committee of Attorneys-General, August 1996).

<sup>1328</sup> Marg Kirkby, ‘Suggested points to use in a submission in response to the abortion provisions in the Discussion Paper,’ *Letter to National Management Committee*. Abortion Rights Network of Australia (ARNA), 21 September 1996

<sup>1329</sup> Jo Wainer, ‘Re: Draft Criminal Code,’ E-mail to AUSFEM-POLNET, *Electronic Discussion List*, 9 September 1996

**TABLE 7.1. Abortion Policy and Provision in Australia (1995)**

<b>State or Territory</b>	<b>Legislation or Judicial Defence</b>	<b>Public Provision</b>	<b>Private Provision</b>	<b>Limits on Availability</b>
<b>ACT</b>	<i>Termination of Pregnancy (Repeal) Act, 1992</i>	Limited availability on medical grounds in public hospitals	1 free standing clinic	Up to 12th week
<b>NT</b>	<i>Criminal Law Consolidation Ordinance (No. 2), 1973</i>	Some in public hospitals	No free standing clinics. Some in private hospitals	Up to 14th week
<b>NSW</b>	<i>Crimes Act, 1900</i> (ss 82-84). <i>R v Wald</i> (1971) 3 NSW DCR 25 (Levine, DCJ.)	Quotas and hospital board limits in public hospitals	3 feminist non-profit clinic. 6 free standing clinics	Up to 20th week
<b>QLD</b>	<i>Criminal Code, 1899</i> (ss 224-226; 282) <i>R v Bayliss &amp; Cullen</i> (1986) 9 QLD DCR 8 (McGuire, DCJ.)	Very limited availability on medical grounds in public hospitals	6 free standing clinics	Up to 23rd week
<b>SA</b>	<i>Criminal Law Consolidation Act, 1970</i> (ss 81.6, 82.9)	Public hospitals. 1 free standing public clinic	Private gynaecological services	Up to 20th week
<b>TAS</b>	<i>Criminal Code Act, 1924</i> (ss 134-135). No test case	Some in public hospitals	1 feminist non-profit clinic. 1 private hospital	Up to 12th week
<b>VIC</b>	<i>Crimes Act, 1958</i> (s 65) <i>R v Davidson</i> (1969) VR 667 (Menhennit, J.)	Some in public hospitals	3 free standing clinics. 2 private within public hospitals. Private gynaecologists	Up to 16th week
<b>WA</b>	<i>Criminal Codes Compilation Act, 1913</i> (ss 199-200; 259). No test case	Some in public hospitals	2 free standing clinics	Up to 16th week

Source: This is an extension of the table provided in Michelle Jones, 'Policy on the Provision of Abortion: Changing Society,' *Changing Society for Women's Health: Proceedings of the Third National Women's Health Conference, 17-19 November 1995*, J. Davis, S. Andrews, D. H. Broom, G. Gray and M. Renwick (eds.), (Canberra: Australian Government Publishing Service, 1996), 55-61, 57.

### *CES & ANOR v Superclinics (Australia) Pty Limited and ORS*

In September 1996, it appeared that Australia was about to witness its first national abortion test case. The 1994 NSW Supreme Court case, *CES & ANOR v Superclinics (Australia) Pty Limited and ORS* was being appealed in the Australian High Court by the defendants. In 1994, Justice Newman had rejected a young woman's claim for damages against doctors who failed to diagnose her pregnancy early enough for her to secure an abortion. Newman stated that the abortion would have been illegal as there was no evidence that the pregnancy

posed a serious danger to her physical or mental well-being.<sup>1330</sup> After considerable public comment,<sup>1331</sup> the Newman judgement was overturned on appeal.<sup>1332</sup>

The plaintiff, having taken the case to the High Court, was now joined by the Australian Catholic Health Care Association and the Australian Catholic Bishops Conference as they sought leave to intervene in the matter requesting they be granted the status of *amicus curiae* (friend of the court). The six man Court split evenly on the issue with the decision of the Chief Justice, Sir Gerard Brennan, deciding the matter in the affirmative. Brennan was a personal friend of a number of the Bishops and a devout Catholic.<sup>1333</sup> The Bishops wished to argue that

- (a) *R v Davidson* (1969) VR 667 (Menhennitt J) and *R v Wald* (1971) 3 NSWDCR 25 (Levine DCJ) are wrongly decided and should be overruled;
- (b) the test for lawful abortion set forth in each of those cases is not supported by principle and, in particular, is not supported by the so-called general defence of necessity;
- (c) to the extent that Appellate Courts have given any recognition to the defence of necessity, the rulings of necessity in abortion cases are inconsistent with these judgements; and
- (d) moreover, the judgement of Kirby A-CJ in the Court of Appeal propounds a different interpretation which seems entirely detached from that defence.<sup>1334</sup>

In addition, they urged the Court to ‘accept the legal personality of the unborn child’.<sup>1335</sup> These five points would, if accepted, overturn every judicial determination in Australia relating to abortion. The following day, Geoffrey Brodie, President of the Abortion Providers Federation of Australia, also sought leave to appear and was granted such leave. The position of this organisation was that the status quo should not be changed. The WEL(Australia) also applied to the High Court to appear as *amicus curiae*, on the basis that WEL represented the parties directly and immediately affected by the potential decision of the Court,

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<sup>1330</sup> *CES & ANOR v Superclinics (Australia) Pty Limited and ORS*, NSW Supreme Court, 1994.

<sup>1331</sup> Rosemary Neill, ‘A Woman’s Right to Life,’ *Weekend Australian*, 23-24 March 1994, 23; Christopher Dore, ‘Abortion Law Will be Enforced,’ *Australian*, 4 April 1994; Editorial, ‘Time to Rethink Abortion Laws,’ *Sydney Morning Herald*, 24 April 1994; Editorial, ‘Abortion and the Law,’ *Age*, 26 April 1994; Editorial, ‘Uncertain Status of Abortions,’ *Australian*, 21 April 1994; Christopher Dore and Richard Jinman, ‘State Rules Out Legalising Abortion,’ *Australian*, 20 April 1994.

<sup>1332</sup> Jody Scott, ‘Pro-Lifers Condemn Court’s Abortion Ruling,’ *Weekend Australian*, 23-24 September 1995, 5.

<sup>1333</sup> Bernard Lane, ‘Catholics Fight Abortion Test Case,’ *Australian*, 12 September 1996.

<sup>1334</sup> High Court of Australia, *Outline of Submission on Behalf of the Australian Catholic Health Care Association and the Australian Catholic Bishops Conference on an Application to be Heard as Amicus Curiae*, September 1996, 3-4.

<sup>1335</sup> *Ibid.*, 28.

the women of Australia.<sup>1336</sup> By the middle of October, however, two appellants decided to settle out of court, bringing the whole issue to a standstill.<sup>1337</sup> The Catholic Bishops have since called for other potential cases to come forward.<sup>1338</sup>

#### *The Medical Benefits Schedule*

In the interim, however, the AMA had issued a press release expressing their concern that the Coalition Government was about to ‘make a deal’ with Senator Brian Harradine, involving the removal of abortion from the Medical Benefits Schedule, in return for his support for the partial sale of Telstra (the Australian telecommunications service).<sup>1339</sup> Deputy Prime Minister Tim Fischer confirmed that the Government was ‘considering a request’ by Senator Harradine to remove abortions from the Medicare list in spite of opposition from within the Coalition.<sup>1340</sup> The outcome of this consideration was not announced.

#### *The Review of Services for the Termination of Pregnancy in Australia*

Finally, in October 1996, it was reported that the National Health and Medical Research Council (NH&MRC) was split by internal attempts to suppress a report on abortion services and methods.<sup>1341</sup> In the course of their investigations, the expert panel had found ‘a lack of coordination and acknowledged leadership among health care professionals in this area’ and ‘significant variations’ in the accessibility of information about abortion, and the availability of counselling and abortion services.<sup>1342</sup> This is illustrated in **Figure 7.2**: the variation of the number of women seeking abortion per State or Territory each year does not simply reflect differing populations but also ability to gain services in that State/Territory. There is considerable ‘internal migration’ as Australian women attempt to obtain abortions within the various legal regimes.

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<sup>1336</sup> Meredith Doig, ‘Maintaining the Right to Choose,’ *Background Paper for the Women’s Electoral Lobby*, October 1996.

<sup>1337</sup> Bernard Lane and Katherine Glascott, ‘Clinic Halts Appeal on Abortion Damages,’ *Weekend Australian*, October 12-13 1996, 5.

<sup>1338</sup> *Sunday*, Channel 9 Network, 13 October 1996.

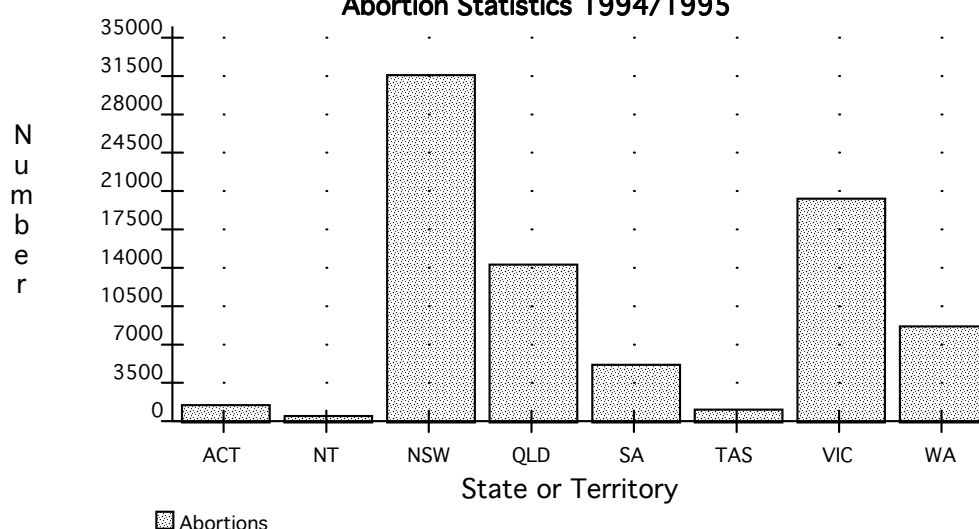
<sup>1339</sup> Australian Medical Association, ‘AMA Warns of Using Health as Trade-Off for Telstra Vote,’ *Press Release*, 21 September 1996.

<sup>1340</sup> *Examiner*, ‘Newman Firm in Stand on Abortions Aid,’ 23 September 1996.

<sup>1341</sup> Jodie Brough, ‘NH&MRC Split Over Abortion Report,’ *Sydney Morning Herald*, 21 October 1996.

<sup>1342</sup> National Health and Medical Research Council, *Services for the Termination of Pregnancy in Australia: A Review (Draft Consultation Document - September)*, (Canberra: Australian Government Publishing Office, 1995).

**FIGURE 7.2. Australian Women Obtaining Abortions (by State/Territory)**  
**Abortion Statistics 1994/1995**



Source: Children by Choice Association, *Pregnancy and Abortion Statistics*, Pamphlet. January 1996.

The Draft Report made 26 recommendations, in total, including a recommendation that RU486 and similar drugs be more readily available for further research and evaluation in Australia. It did not recommend that abortion be decriminalised even though, in order to rectify the many problems identified, that was the obvious conclusion. In September 1995, the NH&MRC released these findings in a Draft Consultation Document and a public consultation on the Draft Report was conducted. Between 400 and 1,000 letters and public submissions were received in response to the Draft Report within two months.<sup>1343</sup> These were incorporated into the final document early in 1996 as an internal battle waged within the NH&MRC. The news report suggested that ‘an attempt was made to ensure no discussion document was issued, on the grounds that it was not a health issue’.<sup>1344</sup> These groups were arguing that the concept of ‘quality and accessibility of services should be broadened to include the ethics of abortion’.<sup>1345</sup> While the concepts of ‘quality’ and ‘accessibility’ assumed service provision, the concept of ‘ethics’ did not. The report is scheduled to be released in 1997.

<sup>1343</sup> Several State and Territory WEL groups as well as National WEL put in submissions. WEL(Tasmania) put in a major submission on the issue, addressing the issue of quality in abortion services, as the clients of those services (women) may define it. Elizabeth Shannon, ‘Developing the Quality Connection: Optimal Arrangements in Abortion Policy and Provision in Australia.’ *Submission to the National Health and Medical Research Council, for the Women's Electoral Lobby, Tasmania*, 1995.

<sup>1344</sup> Jodie Brough, ‘NH&MRC Split Over Abortion Report,’ *Sydney Morning Herald*, 21 October 1996.

<sup>1345</sup> Ibid.

### **The Influence of Feminism? 1989-1996 Assessed**

Feminist coalitions continued to lobby for change, visibly and sometimes successfully, in Queensland, Tasmania, South Australia and the Australian Capital Territory. The passage of policy which would fulfil feminist goals was evident in the increased number of services becoming established, in the legislation being passed, and in the 1994 statements put forward by the Commonwealth. While not yet achieving the fulfilment of the slogan 'free abortion on demand', feminists had certainly ensured that the social and political structures relating to abortion more realistically reflected women's 'lived experience'. Abortion is not a minority issue in Australia: in 1990 it was estimated that one in four pregnancies were terminated.<sup>1346</sup>

Within the policy discourse the limitations of the largely-accepted re-definition of abortion, as a women's health issue, began to become obvious during the RU 486 debate. As feminists were divided as to the desirability of the drug, the decisions of the medical experts were given a leading role, and the political ramifications of this involved an apparent alliance between the RTL and some feminists. Of greater importance, however, was the 1996 election of the conservative Liberal/National Party Coalition at Commonwealth level. The subsequent crisis of 1996 illustrates the direct and indirect effects of changes in elected government.<sup>1347</sup> The abortion policy subsystem was again in a state of flux the outcome of which could only be uncertain.

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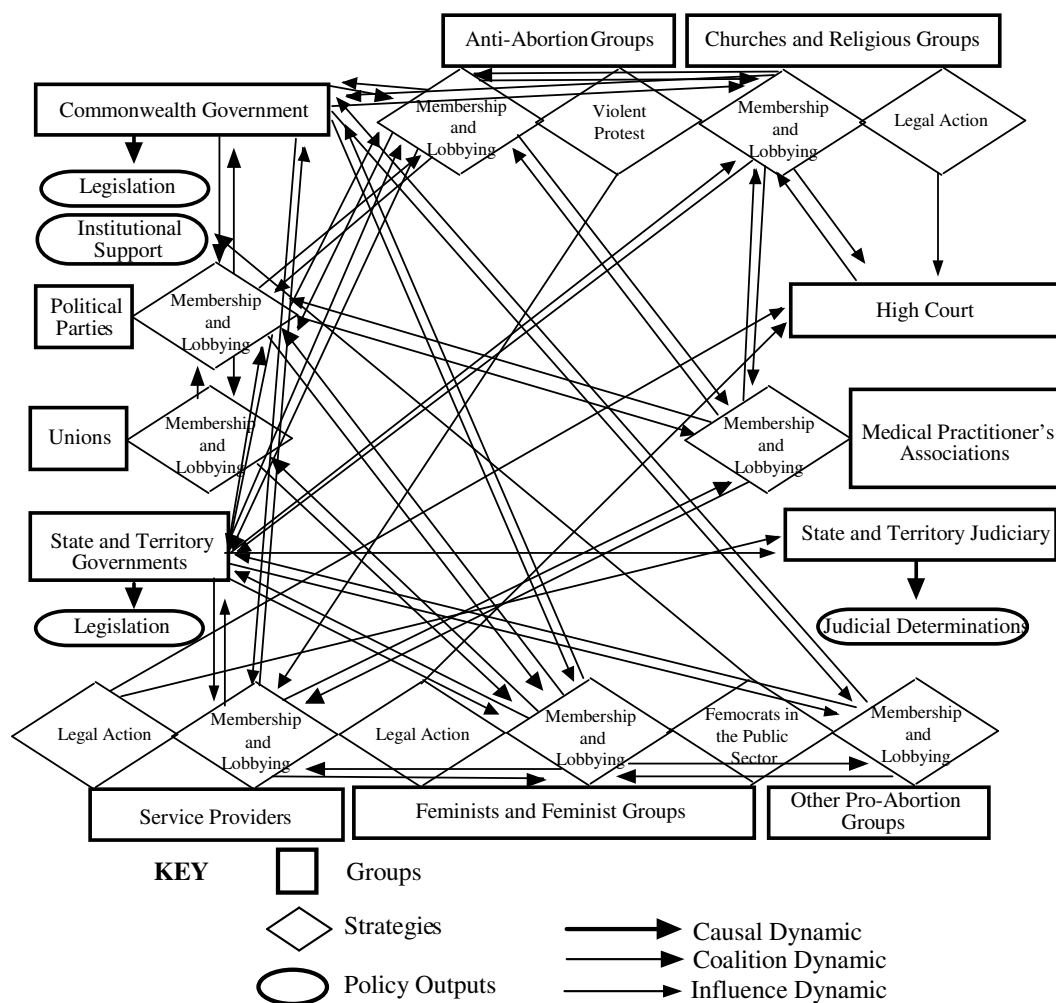
<sup>1346</sup> Pilita Clark, 'Lib Tries Again on Medicare Abortions,' *Sydney Morning Herald*, 7 December 1990.

<sup>1347</sup> In 1997 significant cutbacks in the National Women's Health Program at a national level and the defunding of services like Children By Choice (QLD) at State level indicates an increasing conservatism across social, political, and economic lines.

#### 4. FEMINISM AND ABORTION POLICY IN AUSTRALIA

The dynamics of the abortion policy subsystem are illustrated by **Figure 7.3** below.

**FIGURE 7.3. Australian Abortion Policy Subsystem Dynamics**



While numerous policy brokers characterise the abortion policy subsystem, the coalitions themselves are fairly cohesive and polarised, with only a few groups (governments, unions, medical associations) having members in both coalitions. The judiciary are officially impartial but, at least in the High Court's case, have some overlapping membership with the primary coalitions.

Feminist activity within the subsystem, both as lobbyist and as service providers, has been continuous, obvious, and direct. This provides a contrast to the equal pay policy subsystem, examined in the next chapter, where feminist influence acted indirectly through existing institutional channels.

## CHAPTER 8

### THE AUSTRALIAN EQUAL PAY POLICY SUBSYSTEM

In Australia, as in Ireland, equal pay has been treated as a gender-marked, role-equity, regulatory (rather than redistributive) policy. As discussed in Chapter 6, dynamics of Australian industrial relations have, historically, been highly centralised, based around the wage-fixing powers of the Commission. The establishment of the Commission in 1904 was a mixed blessing for women. Some women actually *lost* equal pay through the Commission's early decisions as the Basic Wage was determined as enough to support a *man* and his dependent family: it did not apply to women.<sup>1348</sup> This 'family wage' was the national (male) minimum, to which extra (over-award) payments could be added, to reflect the skill of the worker. The continuing commitment of the Commission to the principle of the Basic Wage created substantial obstacles to achieving equal pay for women for the next 70 years.<sup>1349</sup>

In the 1912 *Mildura Fruit Pickers (and Packers) Case*, for example, it was determined that lower rates for women should be enough for a *single woman without dependents*. No female minimum wage was established as:

... women are no different from the lowest class of improvers hanging onto the skirts of a trade used for the purpose of pulling down the wages of men fully trained - I can fix no rate for them, they defy definition - they defy classification.<sup>1350</sup>

In the 1917 *Theatrical Employees Case* the female minimum rate was set at 58 per cent of the male basic wage. This was reduced in the 1919 *Clothing Case*: to 54 per cent of the male rate. Again many women suffered wage reductions as a result of these decisions.<sup>1351</sup> In 1937 the Council for Action on Equal Pay (CAEP) was formed and appeared before the Commission that year to argue for an increase in the female basic wage (to 60 per cent of the male rate). This was rejected as the Commission considered it would damage 'family life'.<sup>1352</sup>

From 1942 the Women's Employment Board was empowered to set different rates for different jobs during the labour shortage of WWII. The Board had no jurisdiction over the majority of industries, however, and numerous strikes

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<sup>1348</sup> Megan McMurchy, Margot Nash, Margot Oliver and Jenni Thornley, *For Love or Money*, (Australia: Flashback Films, 1983).

<sup>1349</sup> Jim Hagan, *History of the ACTU*, (Melbourne: Longman Cheshire, 1981), 310.

<sup>1350</sup> 6 CAR 61.

<sup>1351</sup> Y. Smith, *Taking Time: A Woman's Historical Data Kit*, 18-23.

<sup>1352</sup> J. Stevens, *Taking the Revolution Home*, 68.



occurred as women workers attempted (unsuccessfully) to gain pay equity.<sup>1353</sup> During the post-war economic boom, CAEP was joined by the AFBPW, the NCW and the UAW in campaigning for equal pay. In 1950 women's wages became set at a standard 75 per cent of the male rate. Equal pay was denied on the basis that women were less productive, and less efficient, than men at work and their needs and responsibilities were fewer.<sup>1354</sup> Women who had already won greater gains had their wages reduced.

Throughout the 1950s, feminist groups worked hard to put equal pay on the trade union and political agendas.<sup>1355</sup> They had some success as the ACTU launched its annual Equal Pay Week campaign.<sup>1356</sup> During the 1952-53 *Basic Wage Case* employers sought to reduce the 75 per cent female minimum to 60 per cent. The AFBPW and NCW successfully argued against this before the Commission. Following this decision, the ACTU and some feminist organisations began to lobby, successfully, for equal pay legislation in State Parliaments: New South Wales in 1958, Queensland in 1964, Tasmania in 1966 (public service only), South Australia in 1967 and Western Australia in 1968.<sup>1357</sup>

This thesis begins from the events between 1969 and 1976, the five years in which determinations by the Commission provided substantial improvement in female/male wage ratios, as the first phase of the contemporary equal pay policy subsystem. The second phase, covering the twenty years between 1976 and 1996, saw very little variation (+ or - 2 per cent), according to some measures. As in Ireland, the institutions of industrial relations have not recognised 'women's interests' as separate from 'workers' interests', despite a long history of biased judgements on the basis of sex.

## **1. THE DRAMATIC PROGRESS OF PAY EQUITY: 1969-1976**

### **1969: The Equal Pay Test Case**

#### *Putting Equal Pay onto the National Agenda*

In addition to the on-going feminist lobbying at State level the second half of the 1960s also saw two changes within the processes of centralised wage-fixing which were significant in clearing the way for an equal pay claim. The introduction of a (male) minimum wage and the implementation of the 'total wage' principles in 1967 (118 CAR 600) was a formal move away from the concept of a sex-based 'family wage', towards a skills-based remuneration,

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<sup>1353</sup> Ibid., 83-88.

<sup>1354</sup> M. McMurchy, M. Nash, M. Oliver and J. Thornley, *For Love or Money*.

<sup>1355</sup> Yvonne Smith and Betty Olle, *Peace, Placards and Petticoats*, (Melbourne: Union of Australian Women, 1989), 2.

<sup>1356</sup> Beryl Miller, *Equal Pay and the Union of Australian Women* (no date). Archives of the Union of Australian Women, Melbourne Offices, 1995.

<sup>1357</sup> S. Encel, N. MacKenzie & M. Tebbutt, *Women and Society*, 151.

enabling a flat increase in the award wages of both male and female workers.<sup>1358</sup> When the Commission embarked on a Work Value Inquiry in the Metal Trades (121 CAR 587) it found that much of the work done was indistinguishable between men and women. This led to the Commission issuing an 'invitation' to the unions to give the abolition of sex-based anomalies in the total wage 'careful study'.<sup>1359</sup>

### *The Test Case*

In 1969, in response to the Commission's invitation, the ACTU made a submission to alter the Meat Industry Interim Award (127 CAR 1143).<sup>1360</sup> R. J. Hawke, the ACTU advocate,<sup>1361</sup> presented the case for equal pay by arguing that the number of women employed in the workforce, particularly married women, had increased significantly. This implied that the family-based arguments against equal pay were no longer valid.<sup>1362</sup> Four feminist groups were also given leave to intervene in the case: the AFBPW, the NCW, the AFWV and the UAW. They argued, on economic, social and historical grounds, for the desirability of ending all forms of discrimination against women.<sup>1363</sup>

Submissions by Counsel for the Commonwealth Government emphasised that the Commonwealth was not opposed to the principle of equal pay but objected that equal pay would, by adding to the annual wages bill: depress the economy; be particularly onerous for labour intensive industries employing female workers; *cause a major shift in financial power from men to women*; and was 'too complex' to be dealt with. Instead the Commission should adopt the more moderate principles of a relevant State legislation.<sup>1364</sup> The advocate for employer groups, the Meat and Allied Trades Federation of Australia, and other meat producer groups, emphasised the cost of the increases. The advocate intervening on behalf of meat industry retail traders, the metal trades employers, chambers of manufacturers and the trading banks also opposed the ACTU application. The overall view was that equal pay should be postponed for as long as possible.<sup>1365</sup>

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<sup>1358</sup> J. Hagan, *History of the ACTU*, 308-309.

<sup>1359</sup> Edna Ryan and Ann Conlon, *Gentle Invaders: Australian Women at Work 1988-1974*, (Melbourne: Nelson, 1975), 154.

<sup>1360</sup> The ACTU position was supported by representatives of the High Council of Commonwealth Public Service Organizations, the Australian Council of Salaried and Professional Associations, the Council of Professional Associations, the Australian Journalists Association, the Australian Bank Officials Association and the Australian Nursing Federation Employees Section.

<sup>1361</sup> Later to become president of the ACTU (1969-1979) and Prime Minister of Australia (1983-1991).

<sup>1362</sup> 127 CAR 1148.

<sup>1363</sup> *Ibid.*, 1149.

<sup>1364</sup> The Commonwealth position was supported by the Commonwealth Public Service Board and Commonwealth instrumentalities. Counsel for the Commonwealth on Equal Pay, *Submissions by the Commonwealth on Equal Pay, Australia: Commonwealth Conciliation and Arbitration Commission C.No. 894 of 1969 and C.Nos 2157-2164 of 1968*, 2-3.

<sup>1365</sup> Australian Metal Industries Association, *Equal Pay: Submission to National Employers Policy Committee*, 3 May 1968.

The decision of the Commission, handed down on 19 June 1969, closely followed the recommendations of the Commonwealth and was heavily based on legislation previously enacted in New South Wales. Although nine principles would be applied, the last limited all the rest:

... notwithstanding the above, equal pay should not be provided by application of the above principles where the work in question is essentially or usually performed by females but is work upon which male employees may also be employed.<sup>1366</sup>

### *Implementing the Decisions*

The effects of this decision were modest. Individual unions would have to apply for changes to the award rate and, where this was granted, implementation would take place, incrementally, to be completed by 1st January 1972. As Australia had one of the most sex-segregated workforces in the world only about 18 per cent of women workers were eligible to even apply for equal pay.<sup>1367</sup> At the same time the decision was totally in keeping with the workings of the Commission which rarely opposed the Government of the day and 'rarely grants ... that which has not already been won'.<sup>1368</sup>

While the Victorian Employed Women's Organisation Committee unsuccessfully pressured the ACTU to protest the decision,<sup>1369</sup> many women expressed a sense of disillusionment with the union movement, which seemed acquiescent to the outcome of the case: 'No protestations, no meetings, no strikes, no nothing'.<sup>1370</sup> Zelda D'Aprano, an employee of the Meat Industry Union, protested by chaining herself to the front doors of the Commonwealth Offices in Treasury Place, Melbourne.<sup>1371</sup> As the contemporary feminist movement mobilised around the issue of equal pay a second chain-up targeted the doors of the Arbitration Court. A further protest was held by women riding on trams, paying only seventy-five per cent of the fare.<sup>1372</sup> In addition to protesting and lobbying independently, feminists also staged a large demonstration at the 1971 ACTU Annual Congress to present their demands, chanting 'One Job, One Rate' as the union delegates tried to leave.<sup>1373</sup>

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<sup>1366</sup> 127 CAR 1159.

<sup>1367</sup> Equal Pay Unit, 'The Influence of History,' *Equal Pay: A Background Paper*, (Canberra: Department of Industrial Relations, 1992), 3.

<sup>1368</sup> Jim Hutson, *Six Wage Concepts*, (Melbourne: Amalgamated Engineering Union, 1971), 230.

<sup>1369</sup> Kaye Hargreaves, *Women at Work*, (Victoria: Penguin, 1982), 28.

<sup>1370</sup> M. McMurphy, M. Oliver & J. Thornley, *Love or Money*, 132.

<sup>1371</sup> Z. D'Aprano, *Zelda: The Becoming of a Woman*, 117.

<sup>1372</sup> Belinda Probert, 'Women's Working Lives,' *Contemporary Australian Feminism*, Kate Pritchard Hughes (ed.), 160.

<sup>1373</sup> M. McMurphy, M. Oliver & J. Thornley, *Love or Money*, 132.

This emerging new feminist influence was also being felt within the union movement. An Alternative Trade Union Women's Conference was held in May 1971 to organise tactics by which to pressure the ACTU to raise the issue of equal pay for work of equal value. This was conceived as part of a broader agenda which included child care, anti-discrimination measures, a shorter working week, flexible hours and maternity leave.<sup>1374</sup> While some male delegates supported feminist demands, including equal pay, there was no consensus within the ACTU.<sup>1375</sup> Many unionists strongly supported the concept of a 'family wage'.<sup>1376</sup> Ultimately, however, the ACTU Congress decided that the 1969 decision on equal pay was unsatisfactory and that a further application for equal pay would be lodged, in 1972, at the National Wage Case.<sup>1377</sup>

### **1972: Equal Pay for Work of Equal Value**

The combined effect of feminist pressure as both union delegates ('insiders') and protesting 'outsiders' again put equal pay onto the ACTU, and the Commission's agenda.

#### *The Test Case*

During the 1972 National Wage Case the ACTU made an application to alter the Clerks (Domestic and Overseas Airlines) Awards (147 CAR 172). This was the vehicle for the 'equal pay for work of equal value' and 'adult minimum wage' claim. The dynamics of the 1972 case were very similar to the 1969 case: the ACTU and women's organizations (the NCW and UAW now joined by WLM) again made submissions as to the desirability of equal pay while employer groups and the Commonwealth government again put in submissions against change. Hearings on the application for equal pay for work of equal value were concluded at the end of November 1972. After the election of the Whitlam ALP government a week later, however, the Industrial Registrar received a request from the Commonwealth Crown Solicitor that the case be re-opened 'for the purpose of hearing an application by counsel for the Attorney-General on behalf of the Commonwealth of Australia'.<sup>1378</sup>

The application by the Commonwealth advocate, barrister Mary Gaudron, was heard on 13 December 1972 and she was granted leave to make further submissions. That is, the case was reopened and the new Government intervened in support of an adult minimum wage and equal pay for work of equal value, arguing that the recent Metal Trades Award decision (131 CAR 663) illustrated the equal nature of the work done by women, and that this should be extended to all awards.

The Commission's decision, handed down on 15 December 1972, rejected the ACTU claim for a adult minimum wage on grounds that the 'essential

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<sup>1374</sup> K. Hargreaves, *Women at Work*, 30.

<sup>1375</sup> *Ibid.*, 31.

<sup>1376</sup> This is in spite of an official ACTU policy supporting equal pay for women since 1941.

<sup>1377</sup> S. Encel, N. MacKenzie & M. Tebbutt, *Women and Society*, 163.

<sup>1378</sup> 147 CAR, 175.

characteristic' of the male minimum wage in awards was to provide sufficient remuneration for a man and his dependent family: the Commission was not convinced that women had the same responsibilities.<sup>1379</sup> In this sense, the Commission obviously saw the minimum wage as containing a 'defacto' family wage, even though this had been officially removed in 1967. With regard to equal pay, however, the influence of the dramatic recalling of the Commission by the new government was obvious. The Commission stated that 'the present social and industrial climate' had shown that 'broad changes of significance have occurred since 1969' and have been 'reflected in the attitudes of Governments'.<sup>1380</sup> The new principle of 'equal pay for work of equal value' was to be applied to all awards, both adult and junior, through a consideration of the work performed irrespective of the sex of the worker.<sup>1381</sup> Most significantly, the judgement allowed for sex-segregated areas of work to be included, through Principle 5(b):

Work value considerations should, where possible, be made between female and male classifications within the award under consideration. But where comparisons are unavailable or inconclusive, as may be the case where the work is performed exclusively by females, it may be necessary to take into account comparisons of work value between female classifications within the award and/or comparisons of work between female classifications in different awards. In some cases comparisons with male classifications in other awards may be necessary.<sup>1382</sup>

### *Implementation*

As important as this decision was it contained a number of elements which contributed to significant failures in its implementation.<sup>1383</sup> Firstly, rather than arising from an 'adequate underlying causal theory',<sup>1384</sup> the decision was incremental and time-limited, phased in by three equal instalments, and supposedly completed by the deadline of by 30 June 1975. While the new Commonwealth government introduced equal pay immediately, in the Australian Public Service, individual unions were made responsible for mounting challenges to each award within the private sector. While this reflected general wage fixing implementation practices, only 54 equal pay cases were presented between 1973 and 1981, less than half occurring before the Commission's implementation deadline.<sup>1385</sup> Secondly it can be argued that the decision did not have the total

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<sup>1379</sup> Ibid., 176.

<sup>1380</sup> Ibid., 177.

<sup>1381</sup> Ibid., 179.

<sup>1382</sup> Ibid., 180.

<sup>1383</sup> This section again refers to the 'six conditions of successful implementation' discussed in P. Sabatier and D. Mazmanian, 'Policy Implementation,' 143-169.

<sup>1384</sup> Ibid.

<sup>1385</sup> C. Short, 'Equal Pay - What Happened?' 325.

support of ‘constituencies and critical sovereigns’.<sup>1386</sup> In spite of continuing feminist pressure on the ACTU as a whole, the ability of women unionists to convince their comrades that equal pay was not a low priority ‘sectional’ interest but one ‘which must be considered within overall trade union goals which are ‘common’ to all’, varied considerably between individual unions.<sup>1387</sup> Thirdly, even if women unionists could persuade their unions to support an equal pay claim, the decision did not ensure that the Commission would act as a ‘sympathetic agency with the ability to apply sanctions and incentives to induce compliance’.<sup>1388</sup> Private employers mounted a vigorous defence against equal pay and, of the 54 cases heard, only 35 awards were eventually changed.<sup>1389</sup>

Fourthly, although the Commission had established some Principles that could be used as a basis of changing relativities through the application of work value criteria, these were not ‘clear and consistent objectives’.<sup>1390</sup> The criteria already existing, from the 1966 Trades Award Work Value Inquiry (121 CAR 587), the 1968 Vehicle Industry Award (124 CAR 295) and the Metal Trades Award (131 CAR 663) ‘systematically embodied a discriminatory bias against the work that women perform’.<sup>1391</sup> In contrast the new criteria were ‘loose’ and ‘vague’.<sup>1392</sup> Fifthly, there was a lack of support from ‘committed and skilled officials’:<sup>1393</sup> relativities were often set by negotiation, thus preserved existing job classifications and existing inequalities.<sup>1394</sup> Comparisons between female classification in one award and male classifications in other awards never actually occurred in practice. In only two cases, 176 CAR 69 and 183 CAR 382, did Commission officers make inspections to establish relative work value.<sup>1395</sup> This sluggish response by individual unions has led to speculation that

... the unions made conscious decision to pursue immediate wage claims at the cost of long-term increases for the female members by obtaining quasi-equal pay through consent agreements. *The content and adequacy of consent agreements varied according to the level of women’s*

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<sup>1386</sup> P. Sabatier and D. Mazmanian, ‘Policy Implementation,’ 143-169.

<sup>1387</sup> Margaret Gardner, ‘The ‘Fateful Meridian’: Trade Union Strategies and Women Workers,’ In *Managing Labour? Essays in the Political Economy of Australian Industrial Relations*. Mark Bray and Vic Taylor (eds.), (Sydney: McGraw-Hill, 1986), 168-194, 192.

<sup>1388</sup> P. Sabatier and D. Mazmanian, ‘Policy Implementation,’ 143-169.

<sup>1389</sup> C. Short, ‘Equal Pay - What Happened?’ 325.

<sup>1390</sup> P. Sabatier and D. Mazmanian, ‘Policy Implementation,’ 143-169.

<sup>1391</sup> Laura Bennett, ‘Equal Pay and Comparable Worth and the Australian Conciliation and Arbitration Commission,’ *Journal of Industrial Relations* 30 (December 1988), 533-545, 537.

<sup>1392</sup> *Ibid.*, 535.

<sup>1393</sup> P. Sabatier and D. Mazmanian, ‘Policy Implementation,’ 143-169.

<sup>1394</sup> Equal Pay Unit, ‘The Influence of History,’ 3.

<sup>1395</sup> C. Short, ‘Equal Pay - What Happened?’ 325.

*representation and organisation in unions negotiating agreements* (my italics).<sup>1396</sup>

Finally several 'exogenous factors' undermined the decision:<sup>1397</sup> most female workers were covered by State-registered awards which varied considerably, and, while the minimum wage was prescribed for adult male employees only, this affected award overtime and other penalty rates and led to unequal outcomes.<sup>1398</sup>

Although representing a significant step forward toward equal pay the 1972 Case, like the 1969 Case, continued to discriminate against women. The Commission 'did not find that sex was an unjust basis for wage determination and act to remove it', and 'did not find that the value of women's work was equal to the value of men's'.<sup>1399</sup> Nor did the Commission recognise its own sex discrimination in its separation of 'women's interests' as distinct from all other 'workers' interests'. It is doubtful that the Commission would have introduced the principle of equal pay for work of equal value without the intervention of the ALP Government, given the 'conservative nature of the commission and the crucial role that non-legal forces play in its wage determination practices'.<sup>1400</sup> While the ALP federal platform had included a commitment to equal pay since 1936, the party was also experiencing an increase in feminist influence as both 'insiders' and 'outsiders'.<sup>1401</sup>

## **1974: The Adult Minimum Wage**

### *Getting the Issue Onto the Agenda*

The 1972 ACTU Annual Congress refused to support the concept of an adult minimum wage and a second Alternative Trade Union Women's Conference, held in September 1973, focused on developing strategies by which to convince the ACTU to take up the issue.<sup>1402</sup> Their efforts were unsuccessful and, at the 1973 ACTU Congress, the proposed amendment supporting an adult minimum wage was defeated.<sup>1403</sup> On the political front, WEL had been more successful in lobbying for amendments to Section 31 (1) c and d, of the *Industrial Arbitration*

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<sup>1396</sup> C. O'Donnell and P. Hall, *Getting Equal*, 55.

<sup>1397</sup> P. Sabatier and D. Mazmanian, 'Policy Implementation,' 143-169.

<sup>1398</sup> C. Short, 'Equal Pay - What Happened?' 326-327.

<sup>1399</sup> Philippa Hall, 'Intervening in Wage Cases: What's the Point,' *Pay Equity Conference Proceedings*, (Sydney: National Pay Equity Coalition, 1989), 52-62, 59.

<sup>1400</sup> L. Bennett, 'Equal Pay and Comparable Worth,' 544.

<sup>1401</sup> Marian Simms, 'Australia,' *The Politics of the Second Electorate: Women and Public Participation*, Joni Lovenduski and J. Hills (eds.), (London: Routledge and Kegan Paul, 1981), 91.

<sup>1402</sup> K. Hargreaves, *Women at Work*, 34.

<sup>1403</sup> *Ibid.*, 35.

Act, to refer to an 'adult' (not 'male') minimum wage.<sup>1404</sup> Finally, in January 1974, the Minister for Labour, Clyde Cameron, publicly announced that 'if the ACTU were to seek an extension of the male minimum wage to females, the Australian government would support any such application', more or less forcing the ACTU to act.<sup>1405</sup>

### *The Test Case*

In February 1974, the ACTU made a submission to alter the Graphic Arts Award, arguing for the extension of the adult male minimum wage to adult females under that award, on the grounds that existing arrangements discriminated against low paid female workers (157 CAR 293). This was supported by the Printing and Kindred Industries Union, and the Commonwealth Government (Department of Labour), represented by Mary Gaudron. The employer groups were joined in opposing change by the Victorian (State) Liberal Party Government.

Feminists were concerned that ACTU may not adequately represent women's interests on this issue and three groups (the NCW, UAW, and WEL) presented submissions.<sup>1406</sup> The WEL advocates had obtained unreleased figures on the number of 'fatherless families' from a survey conducted for the Henderson Inquiry Into Poverty. The statistical evidence showed that '131.7 thousand fatherless families' were headed by women, or '0.8 per cent of the Australian population'.<sup>1407</sup> This made the concept of the 'male bread winner' no justification for lower wages for women. Sawyer suggests 'The tightly argued WEL submission (which included costings) was the turning point in the case'.<sup>1408</sup> In contrast, the ACTU had not provided any proof that women should receive a minimum wage, reflecting their ambivalence and confirming the wisdom of feminist strategies.

The Commission's decision was that one adult minimum wage would apply, instead of separate male and female rates, stating that 'the family component should be discarded from the minimum wage concept'.<sup>1409</sup> Increases were to be phased in by 30 June 1975.

### *Implementation*

The outputs of that decision were impressive in the short-term. Both award rates and female earnings increased in the wake of the first ruling which did not rely on individual unions applying for the increase: the minimum wage decision had an automatic flow-on. It is in this sense that it can be said that this was the 'measure that affected most women directly'.<sup>1410</sup> State tribunals in NSW, Victoria,

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<sup>1404</sup> M. Sawyer, *Sisters in Suits*, 5.

<sup>1405</sup> M. Gaudron and M. Bosworth, 'Equal Pay?', 167.

<sup>1406</sup> K. Hargreaves, *Women at Work*, 36.

<sup>1407</sup> E. Ryan and A. Conlon, *Gentle Invaders*, 171.

<sup>1408</sup> M. Sawyer, *Sisters in Suits*, 5.

<sup>1409</sup> CAR 157 299.

<sup>1410</sup> Gillian Whitehouse, 'Enterprise Bargaining and Pay Equity: An Evaluation of Risks.' Paper Presented at the *Australian Sociological Association Annual Conference*, Deakin University, December.8.



Queensland, SA and Tasmania followed suit the following year.<sup>1411</sup> With this decision, in theory, all barriers to equal pay had been removed.<sup>1412</sup>

The overall impact was, however, modified in three main ways. Strategies of resistance by employer groups aimed to contain the numbers of women who could apply by changing the sex composition of their labour force and re-classifying female workers' awards. An agreement between employers and unions, classifying long-serving female employees as men with no more than 12 years of service, contained the scope of the 'equal' pay that was achieved. The Commission also continued to base all relativities on existing inequitable job classifications: direct work value assessments based on the skills, education and experience needed for the job would not even be discussed for another ten years.

The ACTU remained ambivalent: the decisions of the 1975 Annual Congress supported improved conditions for working women but opposed dual-income families. It also supported the concept of a Working Women's Charter while not necessarily accepting the one which had been drawn up by the ACTU Working Women's Action Group.<sup>1413</sup> The Working Women's Charter Campaign, an independent feminist group, was formed to consult with women workers and acted in parallel with the ACTU women. Responsible for holding annual Women and Labour Conferences between 1975 and 1980, it was a response to the perceived inaction of unions on feminist issues.<sup>1414</sup> Feminists within the ACTU and the ALP also actively organised with independent feminist groups. This was more than a simple case of over-lapping membership. Feminists were entering representative bodies in order to make those institutions which were already recognised as 'legitimate' within the industrial relations system more responsive to feminist goals and objectives.

### Supplementary Initiatives

Child bearing and caring was a significant factor affecting Australian women's pay equity, not in the *direct* sense (of equal award wage rates), but in the *indirect* sense of determining the pattern of women's labour force participation.<sup>1415</sup> Unsupported primary responsibility for child care was a major causal factor in the broken participation pattern which reinforced Australian women's horizontal sex-segregation *between occupations* into a 'secondary labour market': characterised by part-time work, menial tasks, lower wages, less promotion opportunities, and associated with higher turnover rates and greater absenteeism.<sup>1416</sup> These workers generally hold different jobs from full time staff, have a different pay structure

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<sup>1411</sup> K. Hargreaves, *Women at Work*, 37.

<sup>1412</sup> C. Short, 'Equal Pay - What Happened?' 320.

<sup>1413</sup> K. Hargreaves, *Women at Work*, Victoria: Penguin, 1982, 40-41.

<sup>1414</sup> *Ibid.*, 44.

<sup>1415</sup> Christabel Young, *Balancing Families and Work: A Demographic Study of Women's Labor Force Participation*, (Canberra: Australian Government Publishing Service, 1989), 2.

<sup>1416</sup> Bruce Chapman and Charles Mulvey, 'An Analysis of the Origins of Sex Differences in Australian Wages,' *Journal of Industrial Relations* 28 (December 1986), 504-520, 513.

and little chance of promotion, thus reinforcing a vertical sex-segmentation even *within occupations*.<sup>1417</sup>

In the 1970s the savings associated with government and corporate provision of child care were not yet known.<sup>1418</sup> Child care was still considered to be a 'woman's issue' and one of the basic feminist demands. It was with an eye to the newly-mobilised 'women's vote' that the *Child Care Act* 1972 was passed by the McMahon Liberal-Country Party Government, allocating the first federal funding for child care, only a few weeks before the federal election. The newly elected Whitlam Labor government further expanded child care services, in particular, those services required by working parents.<sup>1419</sup> This was followed by the 1973 *Maternity Leave (Australian Government Employees) Act*, which affected more than 250,000 public sector employees (and included paternity leave provisions) and the 1975 *Children's Commission Act* which provided for a comprehensive range of children's services.

The Whitlam government also ratified the ILO *Convention on Discrimination on Employment and Occupation* (partly through the efforts of the Australian Clerical Officers Association's Women's Caucus which documented a number of cases of discrimination), provided funding for the Melbourne Working Women's Centre,<sup>1420</sup> and the Sydney Women's Trade Union Commission.<sup>1421</sup> With the dismissal of the Whitlam ALP Government, by the Governor General in November 1975, and the election of the Fraser Liberal/Country Party Coalition Government, contemporary feminist influence over the Commonwealth political agenda came to a halt.

## Policy Impacts

The Australian Bureau of Statistics (ABS) figures, in **Figure 8.1** below, show the extremely rapid rise of pay equity at this time.

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<sup>1417</sup> Human Rights Australia, *Just Rewards*, (Canberra: Australian Government Printing Service, 1992), 45.

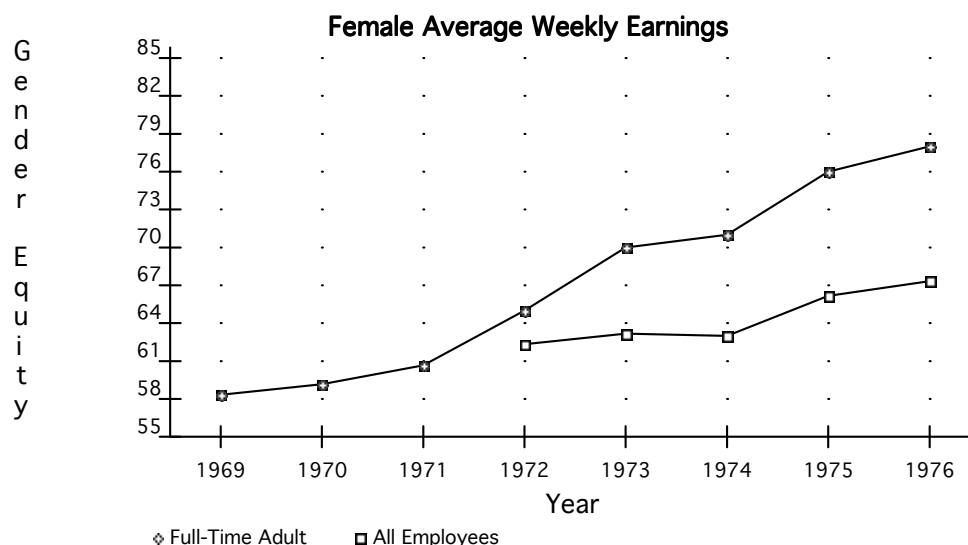
<sup>1418</sup> Spending on child care generated a net benefit of \$100 million per annum for the Commonwealth government, considering the loss of PAYE tax and the extra cost of tax and social security support to non-working mothers. Similarly, businesses were likely to save approximately \$130,000 per year as a result of providing a 60 place child care centre, recovering costs from reduced labour turnover and absenteeism. Women's Bureau, 'Demographic Trends Affecting the Work-Force,' *Women and Work*, 12(2) June 1990, 8-10. See also John Briggs and Bruce Chapman, 'Foregone Earnings from Child-rearing,' *Family Matters: AIFS Newsletter* 21 (August 1988), 35-36.

<sup>1419</sup> C. O'Donnell and P. Hall, *Getting Equal*; 66.

<sup>1420</sup> Mary Owen and Sylvie Shaw, *Working Women: Discussion Papers from the Working Women's Centre*, (Victoria: Sisters Publishing, 1979), 3.

<sup>1421</sup> K. Hargreaves, *Women at Work*, 42.

**FIGURE 8.1. Female/Male Earnings (Gender Equity): 1969-1976<sup>1422</sup>**



Sources: *Wage Rates and Earnings*, (Australian Bureau of Statistics Print No. 6312.0, various years); *Weekly Earnings and Hours of Employees* (Australian Bureau of Statistics Print No. 6304.0, various years).

It may be seen that, for full-time workers, following each of the 1972 and 1974 Wage Case decisions, a rapid increase in pay equity in that year is followed by a more gradual increase the following year. While matching the gender equity of full time adult female average weekly earnings to the impact of particular policies is somewhat speculative, the dramatic rises of 1972 and 1974 suggest that these decisions had some effect on relativities.

These decisions may also have had a different effect on part-time workers. The statistics for both private and public part-time workers were only collected from 1972, but they show a very slight improvement in gender equity for all employees following the 1972 'equal pay for work of equal value' decision, and a much larger improvement following 1974 Minimum Wage decision, suggesting this was of greater benefit to part-time and casual employees. The overall increase in equity is considerably less for all employees (as compared to full-time adult), both in the scale of gender equity and in rate of improvement over time.

### The Influence of Feminism? 1969-1976 Assessed

In this first phase of the Australian equal pay policy subsystem the progress toward achieving feminist goals was evident in the dramatic rise in pay equity between 1969 and 1976. This illustrates the power of the Australian centralised-

<sup>1422</sup> Before 1972, statistics from *Wage Rates and Earnings*, (Australian Bureau of Statistics Print No. 6312.0, various years) were only collected for private employees. From 1972 onwards, statistics from *Weekly Earnings and Hours of Employees* (Australian Bureau of Statistics Print No. 6304.0, various years) covered all employees, both public and private. As female public sector employees were generally better paid than their counterparts in the private sector these figures exaggerate the increase in pay equity before 1972.

wage fixing system to impose 'more equal' pay on a broad scale. The potential could only be realised, however, through the action of an influential feminist movement on a sympathetic trade union movement and/or government. While it was the Australian industrial relations system, rather than the legislative arena which has been most significant in providing for equal pay,<sup>1423</sup> legislation has made a significant contribution, particularly as regards these 'indirect' factors.<sup>1424</sup>

There is no doubt that these issues would not have been addressed if feminists had not put them on the political agenda. While WEL was, without doubt, the single most influential feminist group, lobbying politically and developing a 'women's policy machinery' within the public service during the ALP years 1972-1975; the activities of radical, socialist and traditional feminists provided an increased legitimacy for specific interventions. The strength of this demand was such that it out-weighed the economic uncertainty of the 'oil crisis' of 1973 and the subsequent recession. It did not achieve an increased role for women, however, in the institutions of industrial relations itself.

Contesting definitions of equal pay, as a policy problem, were evident in the interaction between the Commission, the ACTU, and the feminist groups arguing for pay equity. Only the feminists consistently argued for equal pay for women: the ACTU and the Commission repeatedly treated women as primarily defined by their position within an assumed family structure. Employers consistently argued against pay equity. Government was divided: the ALP supported pay equity while the Liberal party supported the interests of employers. The coalitions were both clear and consistent in their composition and co-ordinated actions.<sup>1425</sup>

## **2. THE EQUAL PAY PLATEAU (Part 1): 1976-1988**

### **The Effects of Wage Indexation**

During the Fraser years (1975-1983), the progress toward equal pay came to an abrupt halt as a result of three factors, the first of which was the 'wage indexation system', in which national wage increases were tied to rates of inflation, thus maintaining female/male relativities. When wage indexation began to break down in the late 1970s, pay equity increased, then decreased again. This decrease was partly due to the introduction of several new wage-fixing principles. An inquiry into the principles of wage fixation led to a recommendation that the Commission take, as the 'dominant consideration', the 'capacity of the economy to pay,

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<sup>1423</sup> M. Thornton, 'Pay Equity: An Australian Perspective,' 8; Gillian Whitehouse, *Employment Equity and Labour Organisation*, 189.

<sup>1424</sup> Although Whitehouse finds a 'lack of a relationship between earnings equity and equity legislation (even equal pay legislation)', she does not dismiss this altogether as a relevant factor, but signals the need for studies such as the present one, in which 'more qualitative examination of legislative measures and their interaction with institutional features such as centralised union/wage bargaining' are examined. G. Whitehouse, *Employment Equity and Labour Organisation*, 189.

<sup>1425</sup> See **Appendix 9** for a listing of individual groups within the coalitions.

measured by the impact of wage increases on inflation and unemployment'.<sup>1426</sup> By December 1982 all sides had agreed to a 'wage pause' in the face of a deteriorating economy facing serious structural problems.<sup>1427</sup> This also contributed to a relative worsening of women's gender equity in remuneration.

The third factor affecting progress towards pay equity was the emergence of a small, vocal, anti-feminist movement which gained some political influence within the government at this time. Both the WAA and WWW urged the new government to instigate funding cuts to women's programs set up under the Whitlam government. Although their claims were contested by the feminists within the National Women's Advisory Council (NWAC), a consultative body set up by the Fraser government, the political commitment to public sector cost-cutting meant there were real reductions in women's services. Child care funding, for example, was cut by one third. While day care centres for working parents remained a priority, subsidised child care 'was not to be seen as a normal government provision to which families had a right, but as a benefit restricted to the 'needy' as defined by strict government guidelines'.<sup>1428</sup> The subsequent establishment of an Office of Child Care within the Department of Social Security was a step back from the Whitlam plan to introduce a Children's Commission.<sup>1429</sup>

The NWAC was able to persuade the government to sign the UN CEDAW Convention, however, in July 1980. Under section 51 (xxix) of the Australian Constitution, however, any international treaties must be ratified by the Commonwealth Government before they may come into effect.<sup>1430</sup> Feminist organisations were unsuccessful in persuading the Fraser government to ratify CEDAW.

Feminists also continued to mobilise within the ACTU. The Working Women's Charter was accepted in 1977 and, when the ACTU Women's Charter Conference determined that child care, equal pay and maternity leave were priority areas for action, this led to the April 1979 Maternity Leave Case (218 CAR 120).<sup>1431</sup> Several unions, supported by the UAW, NCW, WEL, AFBPW and the ACT Women's Union Committee, applied before the Commission for similar measures for private sector employees to those which already existed within the public sector. Although the Commission failed to do this, the generally positive decision which was handed down provided some basis for future gains.<sup>1432</sup>

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<sup>1426</sup> Kosmos Tsokhas, *A Class Apart? Businessmen and Australian Politics 1960-1980*, (Melbourne: Oxford University Press, 1984), 141.

<sup>1427</sup> J. Isaac, 'The Arbitration Commission: Prime Mover or Facilitator?' 420-421.

<sup>1428</sup> C. O'Donnell and P. Hall, *Getting Equal*, 67.

<sup>1429</sup> Deborah Brennan, *The Politics of Australian Child Care*, (Melbourne: Cambridge University Press, 1994), 99.

<sup>1430</sup> C. Burton, *The Promise and the Price*, 129

<sup>1431</sup> K. Hargreaves, *Women at Work*, 50.

<sup>1432</sup> In 1985 the Adoption Leave Case extended maternity leave to adopting mothers.

## Introduction of the Accord

In March 1983 the ALP gained government and, under Prime Minister Bob Hawke, established a national semi-corporatist agreement between the ALP and the ACTU: the Prices and Incomes Accord. The ALP could guarantee industrial harmony on the basis of an agreement with the ACTU to a 'no-extra-claims' provision within an indexation package, in exchange for a number of 'social wage' benefits, plus tax cuts.<sup>1433</sup> The Accord, part of a deliberate strategy to gain power for the 'political arm of the labour movement', had featured strongly in the 1983 federal election campaign.<sup>1434</sup> In April 1983, employer groups gave 'in principle' support to the Accord, during the National Economic Summit.<sup>1435</sup>

There was only one woman official at the Summit (among 99 men), Senator Susan Ryan, Minister for Education, nor were any women's organisations invited to speak, although WEL was invited to be a spectator.<sup>1436</sup> Similarly, there was no women's representative on the Economic Planning and Advisory Council, established to facilitate on-going consultation and co-operation between Summit members.<sup>1437</sup> This was a major defeat for feminists in the sense that participation 'is both prior to, and the foundation for, any representation'.<sup>1438</sup> Rather 'the position of women in the workplace has only advanced when women participate and women's groups have intervened on their behalf'.<sup>1439</sup> The Accord had the effect of re-emphasising the 'masculinity of the power structures',<sup>1440</sup> leading to the pessimistic conclusion that

... it is difficult to see how women can ensure that industry policy promotes their interests when they have little representation in government, unions and business and when the specific representation of women as women is absent from the industry policy structures.<sup>1441</sup>

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<sup>1433</sup> Iola Matthews, 'Work and Family Responsibilities: The ACTU View,' *Making the Link 2*, (Labour Management Studies Program, Macquarie University, NSW, 1991), 52-59, 54.

<sup>1434</sup> Bill Kelty, Interview, *Labour in Power*, (Sydney: Australian Broadcasting Corporation, 1992).

<sup>1435</sup> J. Isaac, 'The Arbitration Commission: Prime Mover or Facilitator?' 422.

<sup>1436</sup> The Office of the Status of Women circulated a background discussion paper highlighting the concerns of women, but these contained disclaimers stating that the Government did not endorse their views. Jo-Anne Schofield, *Freezing History - Women Under the Accord 1983-1988*, (University of New South Wales: Industrial Relations Research Centre, 1989), 11.

<sup>1437</sup> *Ibid.*, 13.

<sup>1438</sup> Rosemary Owens, 'Law and Feminism in the New Industrial Relations,' In *The New Industrial Relations in Australia*, Ian Hunt and Chris Provis (eds.), (Sydney: Allen and Unwin, 1994), 36-67, 42.

<sup>1439</sup> *Ibid.*, 52.

<sup>1440</sup> J. Schofield, *Freezing History - Women Under the Accord 1983-1988*, 16.

<sup>1441</sup> C. O'Donnell and P. Hall, 144.

While the structure of the Accord disadvantaged women, the principles of the Accord *Mark I* did secure wage increases for women, at a time of severe economic down-turn in Australia.<sup>1442</sup> This was supplemented by separate initiatives to significantly increase child care as Commonwealth-funded places rose by almost 60 per cent within two years.<sup>1443</sup> The Accord *Mark II*, negotiated in September 1985, was less advantageous to women as it introduced wage discounting (partial wage indexation) and traded real wage cuts (initially 2 per cent) for tax cuts and improved superannuation. Australian women were less likely than men to have superannuation coverage.

While these measures were justified as necessary to off-set the dramatic depreciation of the Australian dollar, by May 1986 deteriorating economic conditions led to even further wage discounting. As Australia faced a macro-economic crisis in terms of trade, balance of payments and the current account deficit, a joint statement by the Confederation of Australian Industry (CAI), the Business Council of Australia (BCA) and the ACTU stressed the need to restructure the economy with a view to increased international competitiveness and increased productivity.<sup>1444</sup> The position of the ACTU weakened during 1986, in the face of a government agenda of deregulation and business 'encouragement', and during the late 1980s the Accord delivered an overall transfer of national income from wage earners to employers.<sup>1445</sup>

This is, in part due to the tremendous increase in unemployment in the early 1980s. **Figure 8.2** below illustrates the historically high levels of unemployment throughout the 1970s and worsening into the 1980s.

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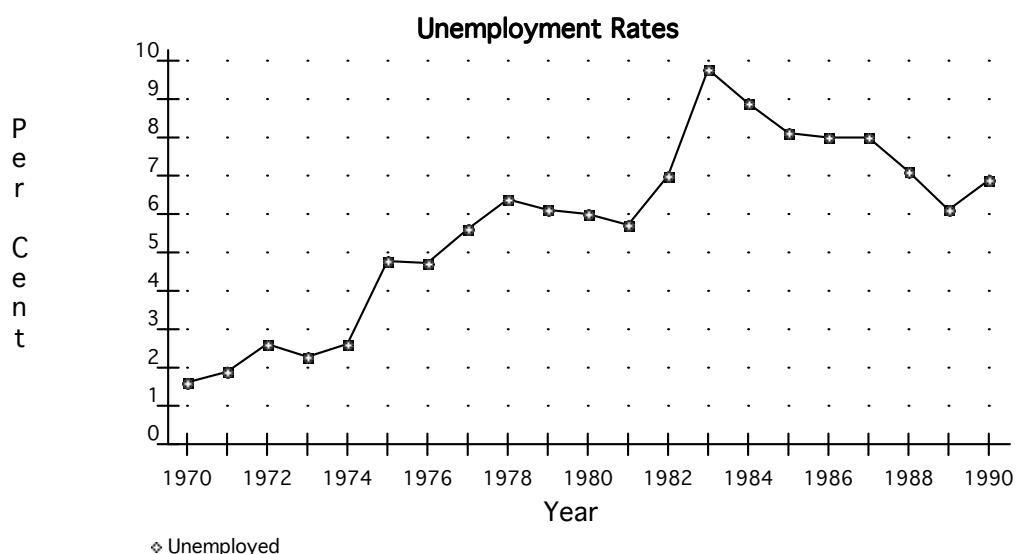
<sup>1442</sup> Human Rights Australia, *Just Rewards*, 39.

<sup>1443</sup> C. O'Donnell and P. Hall, *Getting Equal*; 67.

<sup>1444</sup> J. Isaac, 'The Arbitration Commission: Prime Mover or Facilitator?' 422.

<sup>1445</sup> Vic Taylor, 'Politics and the Institutional Apparatus of Australian Industrial Relations in the Late 1980s,' *Journal of Australian Political Economy* 26, (April 1990), 27-46, 32.

**Figure 8.2. Australian Unemployment Rates: 1970-1990**



Source: Organisation for Economic Co-operation and Development, *Labour Force Statistics 1970-1990*, (France: OECD, May 1992).

## Legislating for Equality

### *1984 Sex Discrimination Act*

Three months after the ALP won Government, CEDAW was finally ratified, in July 1983. The *Sex Discrimination Bill*, implementing certain provisions of CEDAW into Australian law, was the subject of a lengthy and abusive debate as the defeated non-Labor parties attempted to use the 'Sex Bill' as a platform from which to attack the new 'socialist' government. Senator Susan Ryan, who introduced the Bill to the Senate and Wendy Fatin, who spoke for it in the House of Representatives, were also targets for personal abuse. The *Sex Discrimination Bill* was introduced on 2 June 1983 but not passed until 7 March 1984. In spite of extended public controversy (in which most media attention was given to claims by WAA, WWW and conservative churches),<sup>1446</sup> the *Sex Discrimination Act* (SDA) was passed in August 1984.<sup>1447</sup> A Sex Discrimination Commissioner was

<sup>1446</sup> Chris Ronalds, *Affirmative Action and Sex Discrimination*, (Leichardt: Pluto Press, 1991), 15.

<sup>1447</sup> The *Sex Discrimination Act*, 1984 (SDA) provides that it is unlawful to discriminate (treat less favourably than another would be in the same or similar circumstances) against a person on the grounds of that person's sex, marital status or pregnancy. It is unlawful to discriminate on those grounds in employment, provision of goods, services or facilities, some areas of education, club membership, accommodation and land, and administration of Commonwealth laws and programs. The SDA also provides that it is unlawful to sexually harass a person in employment or in some areas of education. (Sexual harassment is defined under the Act as an unwelcome sexual advance or request for sexual favours or unwelcome conduct of a sexual nature.) Where a person who is sexually harassed in these circumstances acts to prevent further harassment, the SDA protects that person against disadvantage and/or dismissal. Initially, any Commonwealth or State law which expressly required discrimination was exempt from the Act for a period of two years.



appointed to the (then) Human Rights Commission in order to oversee the implementation of the SDA. The SDA had specific implications for equal pay in that it prohibited sex discrimination in the terms and conditions of employment (although it exempted employers from complaints of discrimination where they were acting in accordance with industrial awards). Other exemptions, given to church schools, the *Social Security Act* and the armed forces, also constrained the effectiveness of the policy.

#### *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*

When Senator Susan Ryan introduced SDA in parliament, she noted the absence of provisions covering affirmative ('positive') action, which had been included in her previous private member's Bill, and announced the forthcoming issue of a green paper setting out options for further legislation. When the green paper was released, in 1984, a further two elements of policy were announced; a 12 month pilot program, and a working party on legislating for affirmative action. These incrementalist tactics were successful and, while there was some opposition, the public debate that ensued was more reasoned and informed than that which took place over the SDA. In August 1986, the *Affirmative Action (Equal Opportunity for Women) Act* (AA) was passed by the Commonwealth Parliament. The legislation was phased in over 3 years. The process was also assisted by the fact that many states had already passed similar measures.

AA also had implications for pay equity in that it required private sector firms with 100 employees or more, and all higher education institutions, to promote equal opportunity for women.<sup>1448</sup> The Affirmative Action Agency, consisting of a Director of AA and a staff of approximately twenty to assist in administration, was formed but each workplace was expected to implement its own AA program. Although indirect measures, SDA and AA contribute to equal pay through engaging in 'broader structural strategies'.<sup>1449</sup> International provisions under CEDAW require a report to the UN Committee one year after ratification and every four years afterwards.<sup>1450</sup> They also fulfilled a public educative function which increased the legitimacy of other equity demands.

#### **Further Determinations by the Commission**

In 1983 feminist groups (NCW, UAW and WEL) intervened in the National Wage Case (291 CAR 3) to argue that, without the imposition of some objective criteria to measure work value, workers in female-dominated industries would not achieve pay equity. WEL argued for a work value inquiry into female occupations; the provision of on-going adequate and effective machinery to

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<sup>1448</sup> The *Affirmative Action (Equal Opportunity for Women) Act*, 1986 has, as its principle object, to remove discrimination against women in employment; reduce the occupational segregation of women; and to improve opportunities and conditions of employment for women at all levels.

<sup>1449</sup> Margaret Thornton, 'Equal Pay in Australia,' in *Equal Pay Protection in Industrialised Market Economies: In Search of Greater Effectiveness*, Francois Eyraud (ed), (Geneva: International Labour Organisation, 1993), 23-42, 32.

<sup>1450</sup> Jane Innes, 'Discrimination Legislation and Pay Equity,' *Pay Equity Conference Proceedings*, (Sydney: National Pay Equity Coalition, 1989), 41-45, 45.

provide for special and extraordinary circumstances based on anomalies and inequities when restructuring this work; and an increase in child care facilities.<sup>1451</sup> The Commission rejected all proposals and held that as child care was not an industrial issue it was not within the scope of the Commission's determinations. While the Commission agreed that women were not paid equally with men it held that the state of the economy was such that it could not afford large-scale wage increases.<sup>1452</sup> Drawing on the 'Anomalies and Inequities' Provision, the Commission rejected the claim on the grounds that it involved wage increases which could have a general application, rather than those of a 'special and isolate nature'.<sup>1453</sup>

During the 1983 ACTU Congress, the need for a re-valuing of women's work was accepted and the ACTU made a commitment to take action on the issue of comparable worth,<sup>1454</sup> placing it in their 1984 Action Program for Women Workers.<sup>1455</sup> In November 1985 the ACTU applied to alter the *Private Hospitals Doctors and Nurses (ACT) Award 1972* (300 CAR 185). The case sought to revalue the work done by nurses in comparison with that done by other medical professionals.<sup>1456</sup> The ACTU advocate, Jenny Acton, argued that nursing had been undervalued because it is a traditionally female occupation but, when examined objectively, comparable worth increases were justified by the skill and responsibility concerned with the work performed.<sup>1457</sup>

A coalition of feminist groups, the Council of Action for Equal Pay, also intervened before the Commission to argue that 'the rates of pay for all women in predominantly female occupations ... should be re-assessed case by case.'<sup>1458</sup> During the Case, feminists attracted publicity through re-enactments of Zelda D'Aprano's chain-up outside the Court, and the tram-ride protest.<sup>1459</sup> The feminist arguments and activities showed an enthusiasm not matched by 'formal support' of the ACTU: many union members were 'lukewarm' in their support as they feared reductions in the 'hard-won margins in male-dominated awards'.<sup>1460</sup> During the Case 'women in unions found it extremely difficult to get information from the ACTU, including what was in the ACTU submissions, whether the case would allow for a broad application etc.'. <sup>1461</sup> A lack of cooperation between the

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<sup>1451</sup> Jocelyn Scutt, *Women and the Law*, (Sydney: The Law Book Company Ltd, 1990), 96

<sup>1452</sup> Ibid., 98

<sup>1453</sup> C. Burton, *The Promise and the Price*, 134.

<sup>1454</sup> Ibid., 132.

<sup>1455</sup> Ibid., 133.

<sup>1456</sup> Human Rights Australia, *Just Rewards*, 40.

<sup>1457</sup> Regina Graycar and Jenny Morgan, *The Hidden Gender of Law*, (Leichardt, New South Wales: Federation Press, 1990), 93.

<sup>1458</sup> C. Burton, *The Promise and the Price*, 135.

<sup>1459</sup> Daniela Torsh, *Time's Up*. (Melbourne: Film Australia), 1986.

<sup>1460</sup> M. Thornton, 'Pay Equity: An Australian Perspective,' 16.

<sup>1461</sup> Helen Twohill, 'Pay Equity and the ACTU,' In *Pay Equity Conference Proceedings*, (Sydney: National Pay Equity Coalition, 1989), 5-9, 6.

Council of Action for Equal Pay and WEL meant that the latter group was not invited into the negotiations until the eleventh hour - too late to prepare and present a submission to the Commission.

In its ruling of February 1986, the Commission rejected the term 'comparable worth' and directed that any further equal pay applications were to be processed through the Anomalies Conference.<sup>1462</sup> A special conference of nursing unions decided that, although the anomalies provision was inadequate, the ACTU should proceed with the Anomalies claim.<sup>1463</sup> An Anomalies Conference decision was made, in April 1986, which ruled in favour of the ACT nurses and this was followed by positive decisions in State tribunals. When the Commonwealth decision was handed down, in September 1986, the increase was 'very much a matter of matching what had already been determined by State tribunals'.<sup>1464</sup>

Two other significant pay equity cases were also run at this time. The Professional Officers Association (POA) undertook the APS Therapists Anomalies Case (299 CAR 533) in order to win 'equal pay for work of equal value' for the predominantly female professions of occupational therapists, physiotherapists and speech pathologists in the Australian Public Service. This was successful before the full bench of the Commission in 1985 on the grounds that the 'present position of Therapists is anomalous', that 'the overall cost ... will be negligible'.<sup>1465</sup> The APS Social Workers' Anomalies and Inequities Case (unreported), also undertaken by the POA, was similarly resolved, in April 1988, before the Anomalies Conference.<sup>1466</sup>

Feminist groups unsuccessfully raised the issue of comparable worth again during the August 1988 National Wage Case (Print No. H4000), when the Commission heard submissions from the National Pay Equity Coalition (NPEC),<sup>1467</sup> which argued that there was a need for systematic re-evaluation of women's jobs in order for the 1972 principle to be applied effectively.<sup>1468</sup> Feminists were unable to alter those processes of wage fixing within the Commission which contained both endogenous, historically generated inequities, and reproduced contemporary, exogenous, gender inequalities.<sup>1469</sup> The Commission has never accepted that award rates are, in essence, discriminatory.<sup>1470</sup>

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<sup>1462</sup> Ibid.

<sup>1463</sup> J. Schofield, *Freezing History - Women Under the Accord 1983-1988*, 54.

<sup>1464</sup> C. Burton, *The Promise and the Price*, 136.

<sup>1465</sup> 299 CAR 533, 534.

<sup>1466</sup> Felicity Rafferty, 'Equal Pay - Past Experience, Future Directions: A Practitioners Perspective,' In Pay Equity Conference Proceedings, (Sydney: National Pay Equity Coalition), 26-38, 30.

<sup>1467</sup> This group arose out of the Socialist-Feminist Conference held in Sydney in 1982 and comprised the 'Socialist-Feminists', UAW, WEL and others. J. Scutt, *Women and the Law*, 99.

<sup>1468</sup> P. Hall, 'Intervening in Wage Cases: What's the Point,' 56.

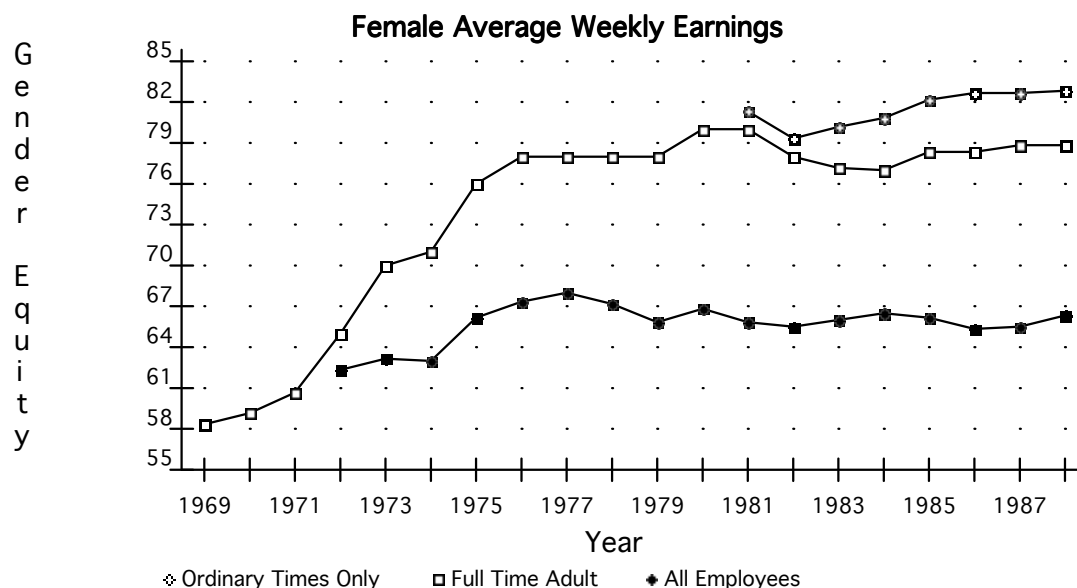
<sup>1469</sup> L. Bennett, 'Equal Pay and Comparable Worth,' 540.

<sup>1470</sup> P. Hall, 'Intervening in Wage Cases: What's the Point,' 57.

## Policy Impacts

It may be useful here to examine the progress toward pay equity between 1976 and 1988. **Figure 8.3** illustrates the nature of the equal pay plateau.

**FIGURE. 8.3. Female/Male Earnings (Gender Equity): 1969-1988**



Sources: *Wage Rates and Earnings*, (Australian Bureau of Statistics Print No. 6312.0, various years); *Weekly Earnings and Hours of Employees* (Australian Bureau of Statistics Print No. 6304.0, various years).

Amongst full-time adult workers, after the initial rapid increase in pay equity (1969-1976) the restraining influence of wage indexation may be at work between 1976 and 1979, with a 'wage breakout' leading to an increase, then a decrease, in wage relativities between 1979 and 1982. This decrease continued until 1984 when a mild improvement was seen between then and 1987. In 1987, however, pay equity had not regained the ground achieved in 1980. 1988 saw a consistent decrease in gender equity within average weekly earnings whether ordinary time (without overtime or bonuses), full-time adults, or all employees.

The pattern of pay equity was similar for statistics collected for 'all workers'. In the early 1980s, statistics on ordinary time earnings began to be collected. It may be argued that 'ordinary time earnings' are an artificial measure of women's earnings. Over-time, over-award and over-agreement payments, excluded from ordinary times measures, were a major site of wage injustice.

## The Influence of Feminism? 1976-1988 Assessed

Contesting definitions of equal pay within the policy discourse were certainly on the agenda as feminists pursued the issue of comparative worth before the Commission. Feminist tenets were not accepted in this case and the continuing marginality of pay equity, as an economic issue, was evident in the ALP/ACTU Accord agreements. The ALP was willing to enact equality legislation, as a social

justice issue, and supported child care initiatives but these were clearly subservient to macro-economic objectives.

Feminists had to find new ways of keeping equal pay 'alive' as an issue before the ACTU, the government, and the Commission in this period. It was only through this consistent pressure from feminists involved in the sphere of industrial relations (in which women still had no official representation) that the position of women was maintained. The structurally limited nature of feminist influence is evident in the 'equal pay plateau' which developed shortly after the end of indexation. This indicator of the progress toward achieving feminist goals illustrate that feminists did not have the strength to force their agenda onto the Accord partners within the pro-equal pay coalition.

The equality policies that were enacted by the Labor government did fulfil some important feminist goals and were significant advances in the status of women. Within the terms of the equal pay policy subsystem, however, these advances did not directly contribute to the desired policy impacts. Instead, women were to experience further wage stagnation and some widening of the female/male relativities in the next few years.

### **3. THE EQUAL PAY PLATEAU (Part 2): 1988-1996**

#### **Restructuring Australia**

Acting in response to macro-economic pressures the 1988 Accord *Mark III* proposed a restructured, two-tiered, wages system. Along the first tier, wages would be automatically increased by indexation; along the second tier, wage increases would be linked to productivity.<sup>1471</sup> The Accord partners contended that the two-tier system 'protected the relative overall position of the majority of women workers and delivered substantial wage increases to a large number of women'.<sup>1472</sup>

Feminist commentators disagreed, suggesting that while there were some significant gains for women, employer opposition and the limited resources of individual unions for researching over-award payment issues reduced the equity impacts of the measures.<sup>1473</sup> The 'lack of real concern' for women's issues within the ACTU Executive meant that information on the equity aspects of the Accord were, at times, more to do with public relations than with a rigorous investigation of the gendered policy impacts.<sup>1474</sup> Feminists also took their concerns about the two-tier system directly to the Commission: during the August 1988 National Wage Case (Print No. H4000), the Commission heard submissions from the NPEC showing that second-tier wage increases were not won in many female-

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<sup>1471</sup> Jenny Jones, 'Women and Contemporary Industrial Relations,' *A Woman's Place is Everywhere*, (Tasmania: Office of the Status of Women, 1993), 27-32, 32.

<sup>1472</sup> Ed Davis, 'Industrial Relations in the 1980s: Sea-change,' *Making the Link 1*, (Labour Management Studies Program, Macquarie University, NSW, 1990), 2-8, 7.

<sup>1473</sup> J. Schofield, *Freezing History - Women Under the Accord 1983-1988*, 61.

<sup>1474</sup> H. Twohill, 'Pay Equity and the ACTU,' 7.

dominated industries and significant delays reduced the value of the increases which were won.<sup>1475</sup>

The August 1988 National Wage Case approved the award restructuring process set out in the Accord *Mark IV* and the Commission adopted the Structural Efficiency Principle (SEP) to facilitate this.<sup>1476</sup> The SEP included a requirement for the removal of award provisions which discriminate against sections of the workforce,<sup>1477</sup> so that award restructuring provided an opportunity whereby 'skill' could be re-defined.<sup>1478</sup> It soon became obvious, however, that award restructuring could offer positive opportunities for women only in combination with an 'affirmative action' approach in the review process and a re-definition of what is meant by 'skilled work'.<sup>1479</sup> The SEP, which placed the emphasis on workplace efficiency and productivity measures, presented considerable difficulties for women, still overwhelmingly concentrated in the service sector, in which efficiency and productivity is difficult to measure.<sup>1480</sup> Within the ACTU there were a number of 'skirmishes' between the Women's Committee and the ACTU Executive as to the real effects of award restructuring on women.<sup>1481</sup>

The Commonwealth's response to feminist concerns involved a provision within the new *Industrial Relations (Consequential Provisions) Act* 1988, requiring the Commission to have regard to the principles of the *Racial Discrimination Act* 1975 and the *Sex Discrimination Act* 1984 when carrying out its functions.<sup>1482</sup> It also launched the *Australian Women's Employment Strategy* in November 1988.<sup>1483</sup>

The *Industrial Relations Commission Act* 1989 redefined the role of the Commission, which would no longer explicitly acknowledge cost-of-living increases, focusing instead at productivity considerations at industry level (rather than at award level), within a broad framework of national economic considerations. After approving the Accord *Mark V* that year, the Commission introduced a 'Minimum Rates Adjustment' (MRA) procedure for developing appropriate relativities between classifications throughout awards based on skill, responsibility, and the conditions under which the work is normally

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<sup>1475</sup> E. Davis, 'Industrial Relations in the 1980s: Sea-change,' 7; J. Scutt, *Women and the Law*, 102-108.

<sup>1476</sup> Gwynneth Singleton, *The Accord and the Australian Labour Movement*, (Melbourne: Melbourne University Press, 1990), 171.

<sup>1477</sup> Valerie Pratt, 'Industrial Relations Reform and Enterprise Bargaining,' *Making the Link* 2, (Labour Management Studies Program, Macquarie University, NSW, 1991), 4-9, 6.

<sup>1478</sup> Human Rights Australia, *Just Rewards*, 41.

<sup>1479</sup> Denise Bradley, 'A Foot in the Door: Women in Employment, Education and Training in Australia,' *Unicorn* 19(1), (March 1993), 15-27, 19.

<sup>1480</sup> Jennie George, 'Decentralism v. Deregulation: Implications for Women,' *Making the Link* 4, (Labour Management Studies Program, Macquarie University, NSW, 1993), 16-19, 18.

<sup>1481</sup> H. Twohill, 'Pay Equity and the ACTU,' 8.

<sup>1482</sup> Human Rights Australia, *Just Rewards*, 39.

<sup>1483</sup> Suzanne Jamieson, 'Federal Government Initiatives,' *Making the Link* 1, (Labour Management Studies Program, Macquarie University, NSW, 1990), 2-24, 9.

performed.<sup>1484</sup> While this was aimed at increasing labour market flexibility, this also opened up new opportunities for the re-valuing of women's wages, MRAs being of most benefit to workers receiving little or no over-award pay, many of whom were women. In the *Child Care Workers* case, the MRA process was used to gain significant increases in award rates.<sup>1485</sup> Between the cases examined under the anomalies process, and those under the MRA, many low-paid, predominantly female jobs were re-evaluated, with the resulting pay increases affecting large numbers of workers.<sup>1486</sup>

In July 1989, the ACTU held a conference on Women, Education and Training and Award Restructuring,<sup>1487</sup> and later that year the ACTU Congress called for the Commonwealth to 'promote the practical achievement of equal pay through the establishment of an Equal Pay Bureau'.<sup>1488</sup> In response to this, in September 1989, a Women's Desk was established in the Department of Industrial Relations (DIR) and the Women's Employment, Education and Training Advisory Group was established as an advisory body in the Department of Employment, Education and Training.<sup>1489</sup> Both the NPEC and the AFBPW held conferences on pay equity in 1989, their frustrations expressed thus:

... the task as defined by the Commission cannot be achieved - by women's organisations, or anyone else. ... the Commission won't listen if you don't take account of its role and the current economic and political environment. If you do, you can't put the submission.<sup>1490</sup>

Continuing obstacles specific to equal pay were identified as continued gender bias in work value assessment and continued sex segmentation in the labour market.<sup>1491</sup>

After the March 1990 elections, when the ALP won a fourth term of Government, the Accord *Mark VI* was approved during the 1990 National Wage Case. The AFBPW intervened before the Commission, arguing that the 1972 'equal pay for equal work' decision had never been properly enforced, in an attempt to place pay

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<sup>1484</sup> Human Rights Australia, *Just Rewards*, 41.

<sup>1485</sup> Child Care Industry (Northern Territory) Award 1986; Child Care Industry (Australian Capital Territory) Award 1985 (C148, C173). First MRA (1990) (Print J4316, J5560, J5561) Second MRA (1991) (Print J7703, J8865).

<sup>1486</sup> G. Whitehouse, 'Enterprise Bargaining and Pay Equity: An Evaluation of Risks,' 9.

<sup>1487</sup> Women's Bureau, 'Workshops, Conferences and Seminars,' *Women and Work* 11(2) (August 1989), 11.

<sup>1488</sup> Women's Bureau, 'New Women's Unit,' *Women and Work* 11(3), (1989), 3.

<sup>1489</sup> Women's Bureau, 'WEETAG - the First Six Months,' *Women and Work* 11(2) (August 1989), 4.

<sup>1490</sup> P. Hall, 'Intervening in Wage Cases: What's the Point,' 59.

<sup>1491</sup> Philippa Hall, 'The Price of Wage Justice, The Costs of Delay,' Paper presented at *Pay Equity: The Gender Gap* Seminar Conducted by the Business and Professional Women's Club of Ryde/Hunters Hill. Macquarie University, Sydney, 15 July 1989, 8.

equity back on the agenda.<sup>1492</sup> That same year, a report commissioned by the National Women's Consultative Council demonstrated that, on average, women earned less than men in all categories of earnings, all components of earnings and in all industries and occupations.<sup>1493</sup>

These efforts seemed to bear some fruit when, under the Accord *Mark VII*, the Commission rejected the principle of enterprise bargaining that had been sought by the Accord partners as it placed female dominated industries at a disadvantage.<sup>1494</sup> In October, however, the Commission established a new Enterprise Bargaining Principle (EBP): instead of the Commission granting across-the-board wage increases, they were now to be negotiated between management and workers, through a single bargaining unit in an enterprise or discrete section of an enterprise, in return for the implementation of efficiency measures to bring about productivity gains.<sup>1495</sup> The Commission played a much reduced role in the new system, conciliating with parties on disputed matters and testing agreements to ensure that there were consistent minimum award conditions. That is, workplace bargaining agreements were not to involve a reduction in ordinary time earnings, a departure from minimum standards of hours of work, paid annual leave or long service leave.<sup>1496</sup> At the same time, however, the 1991 amendments to the *Industrial Relations Act* reduced the Commission's role in considering community interests (including the interests of women) in their determinations. The narrower role of the Commission, as well as the move to enterprise bargaining, caused feminist groups to react with concern and apprehension.<sup>1497</sup>

In response to this, in March 1991, the DIR Equal Pay Unit was established by upgrading the 1989 Women's Desk. As well as providing on-going policy advice to Government, the Unit was to promote the Government's pay equity policies, conduct and commission research, prepare Commonwealth Government submissions to the Commission and other industrial tribunals, and monitor developments in enterprise bargaining.<sup>1498</sup> Women were not able to negotiate wage increases, under enterprise bargaining, to the same extent as men were.<sup>1499</sup>

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<sup>1492</sup> Carmel Egan, 'Pay Justice Eludes Women in Waiting,' *Weekend Australian*, August 11-12 1990, 6.

<sup>1493</sup> Human Rights Australia, *Just Rewards*, 24.

<sup>1494</sup> Julie-Ann Lee, 'Women and Enterprise Bargaining: the Corset of the 1990s?' *Australian Journal of Public Administration* 53(2), (June 1994), 189-200, 190.

<sup>1495</sup> Ibid.

<sup>1496</sup> Equal Pay Unit, *Equal Pay: A Background Paper*, 5.

<sup>1497</sup> Human Rights Australia, *Just Rewards*, 39.

<sup>1498</sup> Equal Pay Unit, *Equal Pay: A Background Paper*, 1992, 5.

<sup>1499</sup> Australian Bureau of Statistics, *Enterprise Bargaining in Australia: 1994 Annual Report*, (Canberra: Australian Government Publishing Service, 1995), 291.



## The 'Family-Friendly' Initiatives

A number of feminist-oriented initiatives were undertaken by the ALP government around the March 1990 elections. One of the major election commitments made by Prime Minister Hawke was to increase child care places. Further incentives for employers to extend child care, in both the public and private sectors, would be provided by providing tax exemptions for money spent on child care (through Section 47(8) of the *Fringe Benefits Tax Assessment Act*). The 1989 Industry Initiative (encouraging employer investment in child care) was also upgraded.<sup>1500</sup> The Commonwealth introduced fee relief for low and middle income families using commercial child care centres as well as for those using community-based centres.<sup>1501</sup> The overall additional funding resulted in the biggest expansion of child care in Australia's history.<sup>1502</sup> At the same time, Australia ratified ILO Convention No 156, concerning *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities* and developed a work and family implementation strategy which involved establishing a Work and Family Unit within the DIR.<sup>1503</sup>

In July 1990, the Commission heard the Parental Leave Test Case (Print J3596), aimed at extending the maternity leave and adoption leave standards to parental care. The ACTU argued that 'Australia does not provide enough support for workers with family responsibilities to comply with OECD 'best practice''.<sup>1504</sup> The ACTU claim was supported by the Commonwealth Government and all State Governments. The case was also supported by a number of intervenors, including the Commonwealth Sex Discrimination Commissioner, the Australian Institute of Family Studies, Parents Without Partners, the Australian Early Childhood Association and all major feminist organisations. The main opposition to the case came from the CAI, which argued that the claim was 'costly and disruptive to employers'.<sup>1505</sup> While the Commission granted parental leave, it limited paid paternity leave to one week, only.<sup>1506</sup>

Legislative measures continued to be used to strengthen anti-discrimination policy. The *Discrimination and Other Legislation Act* 1992 extended the *Sex Discrimination Act* 1984 to cover federal industrial awards and enterprise agreements certified under the *Industrial Relations Act* 1988.<sup>1507</sup> The *Human*

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<sup>1500</sup> I. Matthews, 'Work and Family Responsibilities: The ACTU View,' 56.

<sup>1501</sup> Ibid., 58.

<sup>1502</sup> Women's Bureau, 'Expanded National Child Care Strategy,' *Women and Work* 12(2) (June 1990), 5-6.

<sup>1503</sup> Ilene Wolcott, 'Merging the Spheres of Work and Family Life,' In *Making the Link* 2, (Labour Management Studies Program, Macquarie University, NSW, 1991), 45-51, 46.

<sup>1504</sup> Bettina Cass, 'Family Policies in the Workplace,' *Workplace* (Winter 1994), 13-15, 15.

<sup>1505</sup> I. Matthews, 'Work and Family Responsibilities: The ACTU View,' 56.

<sup>1506</sup> Shop distributive and Allied Employees' Association, 'Parental Leave,' *SDA Women's Newsletter* 9(1), (1991), 2.

<sup>1507</sup> Jane Innes, 'Inter-Connection of Discrimination and Industrial Law,' *Making the Link* 5 (Labour Management Studies Program, Macquarie University, NSW, 1994), 8-12, 9.

*Rights and Equal Opportunity Legislation Amendment Act (no. 2)* 1992 also amended the *Sex Discrimination Act* 1984 to prohibit an employee from being dismissed on the grounds of family responsibilities.<sup>1508</sup>

The emphasis on ‘women’s issues’ was revisited during the March 1993 election campaign when Dr. Anne Summers was employed as a consultant. The result was a pledge to establish Working Women’s Centres, in each State and Territory, to provide advice on pay and conditions to non-unionised women and women working in non-award areas.<sup>1509</sup> Prime Minister Keating included child care in his main policy speech stating that ‘it was time that child care was included among mainstream economic issues’.<sup>1510</sup>

It may be argued, however, that ‘women’s issues’ of all kinds were clearly separate from ‘economic issues’. In 1992 Senator Peter Cook, Minister for Industrial Relations, had described pay equity as part of the Government’s social justice strategy.<sup>1511</sup> The Accord itself served as a justification for the Commission to refuse to reconsider the value of women’s work on at least three occasions since 1983 and saw ‘equity objectives become subservient to macro-economic ones’.<sup>1512</sup> Low income earners locked into the wage fixing system, such as the majority of women workers, were the ones practising ‘wage restraint’: those who could least afford it.<sup>1513</sup> As such, ‘the Accord has not been fair, equitable, or just’.<sup>1514</sup>

### **Increasing Decentralisation in Industrial Relations**

Ten years into the Accord, 1993 marked a decade of change in industrial relations, ‘unmatched since the turn of the century’.<sup>1515</sup> Under the *Industrial Relations Reform Act* 1993, wages and conditions could now be negotiated directly between employer and employees, and merely certified by the Commission. Under the ‘no disadvantage’ test the Commission could not approve

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<sup>1508</sup> Rosemary Kramer, ‘Work and Family in Australia: It’s Only the Beginning,’ *Making the Link* 5, (Labour Management Studies Program, Macquarie University, NSW, 1994), 68-76, 69.

<sup>1509</sup> Department of Industrial Relations, ‘Working Women’s Centres,’ *Equal Pay Unit Newsletter* 6, (April 1994), 7; Department of Industrial Relations, ‘All Working Women’s Centres Now Operational,’ *Equal Pay Unit Newsletter* 7, (January 1995), 17.

<sup>1510</sup> *Bulletin*, ‘Winning Women’s Votes,’ 2 March 1993, 26.

<sup>1511</sup> Department of Industrial Relations, *Equal Pay Policy Statement*, 1992, 2.

<sup>1512</sup> J. Schofield, *Freezing History - Women Under the Accord 1983-1988*, 74-75.

<sup>1513</sup> Elise Callander, ‘Flexible Work Patterns,’ *Making the Link* 2, (Labour Management Studies Program, Macquarie University, NSW, 1991), 60-64, 60.

<sup>1514</sup> Shop, Distributive and Allied Employees Association, ‘No Tears at Demise of ‘Two Tiered’ Wage System,’ *SDA Women’s Newsletter* 6 (2), (1988), 2-3.

<sup>1515</sup> Peter Cook, ‘Efficiency and Equity: Strategy for Government,’ *Making the Link* 4, (Labour Management Studies Program, Macquarie University, NSW, 1993), 1-4, 1.

agreements resulting in reduction of entitlements or protection for employees.<sup>1516</sup> The award system was retained to provide a 'safety net' of minimum standards and conditions. The Act was described as being 'designed to entrench and rapidly spread enterprise bargaining as the predominant form of wage negotiation.'<sup>1517</sup> This was, indeed, the effect for by the end of February 1994, there were 4000 enterprise agreements covering 56 per cent of federal award employees.<sup>1518</sup>

The new Act incorporated previous amendments to prevent and eliminate discrimination and required the Commission to take account of ILO Convention No 156 in performing its functions.<sup>1519</sup> The Commission was also empowered to make orders to ensure that men and women workers received equal remuneration, for work of equal value, including over-award payments.<sup>1520</sup> In September 1993 the Industrial Relations Minister, Laurie Brereton, and the Minister assisting the Prime Minister for the Status of Women, Senator Rosemary Crowley, also met with representatives of the AFBPW, NPEC, WEL, the Women's Economic Think-Tank, the Commonwealth-State Council on Non-English Speaking Background Women's Issues, the National Women's Consultative Committee and the Women's Employment, Education and Training Advisory Group to discuss the ramifications of the Act.<sup>1521</sup>

The Accord *Mark VIII* introduced a new maternity allowance, a policy which fell short of the agreement granting paid maternity leave for all workers in the private sector, part of the agreement originally negotiated in June 1994.<sup>1522</sup> In April maternity leave was further negotiated to be means tested.<sup>1523</sup> In the final Budget it was disconnected to the workplace altogether and reduced to a 'baby bonus'. The 1995 Budget emphasised family-support in a series of measures, however, on child care, the child care assistance, child care cash rebate, subsidies, grants and programs for sole parents.<sup>1524</sup> The child care rebate was defined as a work related expense rather than a welfare measure.<sup>1525</sup>

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<sup>1516</sup> Department of Industrial Relations, 'Enterprise Bargaining - Certified Agreements and Enterprise Flexibility Agreements,' *Equal Pay Unit Newsletter* 6, (April 1994), 5.

<sup>1517</sup> J. Lee, 'Women and Enterprise Bargaining: the Corset of the 1990s?', 190.

<sup>1518</sup> Tim Pallas, 'Bosses Should Stop Whingeing and Exploit IR Opportunities,' *Australian*, 31 March 1995, 15.

<sup>1519</sup> Department of Industrial Relations, 'Industrial Relations Legislative Reforms,' *Equal Pay Unit Newsletter* 6, (April 1994), 2.

<sup>1520</sup> *Ibid.*, 4.

<sup>1521</sup> Department of Industrial Relations, 'Women's Groups Welcome Equity Proposals in New Legislation,' *Equal Pay Unit Newsletter* 6, (April 1994), 1.

<sup>1522</sup> Ewin Hannan, 'Super Deal, Maternity Cash Key to Accord,' *Australian*, 10 May 1995, 27.

<sup>1523</sup> Ewin Hannan, 'Unions Accept Means-tested Maternity Leave,' *Weekend Australian* 15-16 April 1995, 3.

<sup>1524</sup> Tom Dusevic, 'Social Policy Centres on \$816 Baby Bonus,' *Australian*, 10 May 1995, 21.

<sup>1525</sup> Dr. Carmen Lawrence, 'Questions Without Notice: Child Care Rebate,' *Hansard*, Australian House of Representatives, 7 February 1995.

## Cases Before the Commission

When, in July 1994, the ACTU applied before the Commission for a general family leave the Commonwealth government opposed the claim, warning the Commission that the additional labour costs would be inappropriate, 'at this stage of the economic recovery'. The Commonwealth position was that paid family leave should be negotiated at the individual workplace rather than inserted into all awards.<sup>1526</sup> The ACCI also opposed the claim, citing both costs and opposition to a national, rather than enterprise approach.<sup>1527</sup> When the Commission granted workers the ability to combine up to five days of sick and bereavement leave for family leave, granting no new leave, the Government and the ACCI both endorsed the ruling as 'striking a reasonable balance'.<sup>1528</sup>

The problem of the increasing disparity between the over-award payments received by men and those by women was also the subject of an ACTU campaign in 1995.<sup>1529</sup> For example, the Human Rights and Equal Opportunity Commission (HREOC) inquiry into sex discrimination in over-award payments found that, in 1993, women received 93 per cent of average male weekly award rates, but only 53 per cent of average male over-award payments.<sup>1530</sup> The Commonwealth Government also pledged support, as part of the commitments given at the United Nations Fourth World Conference on Women.<sup>1531</sup> In December 1995, the ACTU ran a test case to extend the principle of equal over-award payments for women, but was thwarted by the Metal Trades Industry which claimed that all three companies cited in the claim were reforming their pay structures to reflect this already, and deferred the case until February 1996.<sup>1532</sup>

Projects mapping the extent and causes of unequal pay proliferated in 1995. They included the New South Wales Public Sector Pay Equity Project, the National Tertiary Education Industry Union Study of Gender Pay Equity in Higher Education, The Age newspaper Pay Equity Study, the Cullen Egan Dell Research on Management Pay, the ACTU Equal Pay Investigations in preparation for the Equal Pay Test Case in relation to Over-Award Payments, and the ACTU Request for HREOC Inquiry into Pay Equity in Victoria.<sup>1533</sup>

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<sup>1526</sup> Ewin Hannan, 'Warning on Family Leave Claim,' *Weekend Australian*, 30-31 July 1994, 4.

<sup>1527</sup> Ibid.

<sup>1528</sup> Ewin Hannan, 'IRC Gives Go-Ahead to Five Days of Family Leave,' *Australian*, 29 November, 1995, 3.

<sup>1529</sup> Ewin Hannan, 'ACTU Moves to Bridge Pay Gap Between Sexes,' *Australian*, 7 April 1995, 4.

<sup>1530</sup> Fiona Carruthers, 'Women Get Call to Arms in Pay Battle,' *Weekend Australian*, June 11-12 1994, 7.

<sup>1531</sup> Connie Larmour, *UN Fourth World Conference on Women: Planning, Setbacks and Achievements*, Current Issues Brief No 5, 1995-96, (Canberra: Parliamentary Research Service, 1995), 10-11.

<sup>1532</sup> Sid Marris, 'ACTU Equal Pay Test Case Delayed,' *Australian*, 13 December 1995, 6.

<sup>1533</sup> Philippa Hall, 'Remuneration and Equal Pay for Women,' Paper presented to *Women in the Workplace Conference*, Sydney 21 November 1995, 12-13.

The restructuring of the Australian economy and the deregulation of the labour market also contributed to the growth of a vast, unregulated labour force, largely made up of NESB women paid as little as \$2 an hour.<sup>1534</sup> Overseas born females, particularly over-represented in manufacturing, already earned significantly less than Australian born female workers, having higher rates of unemployment and lower rates of unionisation.<sup>1535</sup>

### **The 'New World' of Industrial Relations**

When the Liberal/National Party coalition won government in 1996, under John Howard, the Accord system came to an end. The contrast between the industrial relations agenda of the previous government and that of the Coalition was typified by the *Workplace Relations Bill*. As the proposed Bill was the subject of a Senate Inquiry, feminist groups, including WEL, the Women Lawyers Association, NPEC, and the Association of Non-English Speaking Background Women could address the Senate Economic References Committee to raise their concerns. A new lobby group, the Women's Industrial Relations Lobby, was also formed at this time with membership from more than 30 women's groups.<sup>1536</sup> Feminist groups, such as WEL and AFBPW, also met with the Minister for Industrial Relations, Peter Reith, to criticise the proposed Bill. The (then) federal Sex Discrimination Commissioner, Sue Walpole, warned that this would lead to widespread pay discrimination.<sup>1537</sup>

Although modified somewhat when passing into law, in 1997, the *Workplace Relations Act* introduced a new form of individual contract: Australian Workplace Agreements (AWAs). A new institution, the Office of the Employment Advocate, was created to mediate disputes involving AWAs. In relation to discrimination in overaward payments, however, workers who feel that they have discriminated against must apply to HREOC.<sup>1538</sup> While the worker may appoint a 'bargaining agent', such as a union, to represent them or may request that the Employment Advocate examine a proposed AWA before signing, the Act assumes that employees and employers, and women and men, are able to negotiate equally. That this has not been the experience of either workers or women in the past is ignored.<sup>1539</sup>

While the Coalition asserts that AWAs will involve no loss of living standards, through the compulsory inclusion of ten minimum conditions, it has been suggested that if the 'keystone institution of the old labour market was the

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<sup>1534</sup> E. Wynhausen, 'Slaves to Fashion,' *Weekend Australian Review*, 13-14 May, 1995, 1-2.

<sup>1535</sup> Biljana Skoklevska, 'NESB Women and Employment,' *A Woman's Place is Everywhere*, Tasmania: Office of the Status of Women, 1993, 45-46, 45.

<sup>1536</sup> Yvonne Coburn, 'Women's Groups Prepare for Battle Over IR Legislation,' *Weekend Australian*, 27-28 July 1996, 43.

<sup>1537</sup> Sid Marris, 'Walpole Fears for Gains on Equal Pay,' *Weekend Australian*, 6-7 April 1996, 2.

<sup>1538</sup> *Australian*, 'The Reith Revolution,' 24 May, 1996, 4.

<sup>1539</sup> Women's Electoral Lobby, *Pre-Budget Briefing Background Paper*, (Confidential Fax to National Management Committee Members, 1996), 7.

Industrial Relations Commission; the keystone institution of the new one is the central bank'.<sup>1540</sup> The macro-economic implications are described as

... the price someone has to pay when your monthly foreign interest bill is \$1.7 billion or 88 per cent of your monthly current account deficit, you slip from 16th to 21st on the world competitiveness table, your real interest rates are higher than most of your trading partners, unemployment is 8.9 per cent despite the fact that the economy is growing at a high 4.8 per cent, and when you vote in a conservative government.<sup>1541</sup>

The first Budget of the new government also slashed the child care budget by \$1 million by winding back many of the ALP initiatives. The child care cash rebate was altered from a non-means tested, work-related payment, to a means-tested benefit. The child care assistance payment, a subsidy paid to the service provider, also became means tested. Cut-off salaries, for families with two or more children, were reduced. Even worse for women workers, means-testing was to be on the basis of the combined income of 'the family', not the salary of the primary care-giver.<sup>1542</sup>

The new government also made a commitment to reduce interest group involvement in government. Whereas the ALP government had provided grants of \$143 million to trade unions and over 1300 community groups in 1994-1995 alone, the Coalition slashed funding across the board.<sup>1543</sup> Not only feminists, but many other social movement/interest groups were going to find it much more difficult to have any input into public policy from this time, onwards.

### Policy Impacts

**Figure 8.4**, below, illustrates the continuing wage differential in earnings.

Statistics on ordinary times earnings show that women reached the 'high point' of equality in 1993 when women's ordinary time earnings peaked at 84.4 per cent.<sup>1544</sup>

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<sup>1540</sup> Alan Wood, 'Bernie Fraser's New Wages Squeeze,' *Weekend Australian*, 30-31 March 1996, 25.

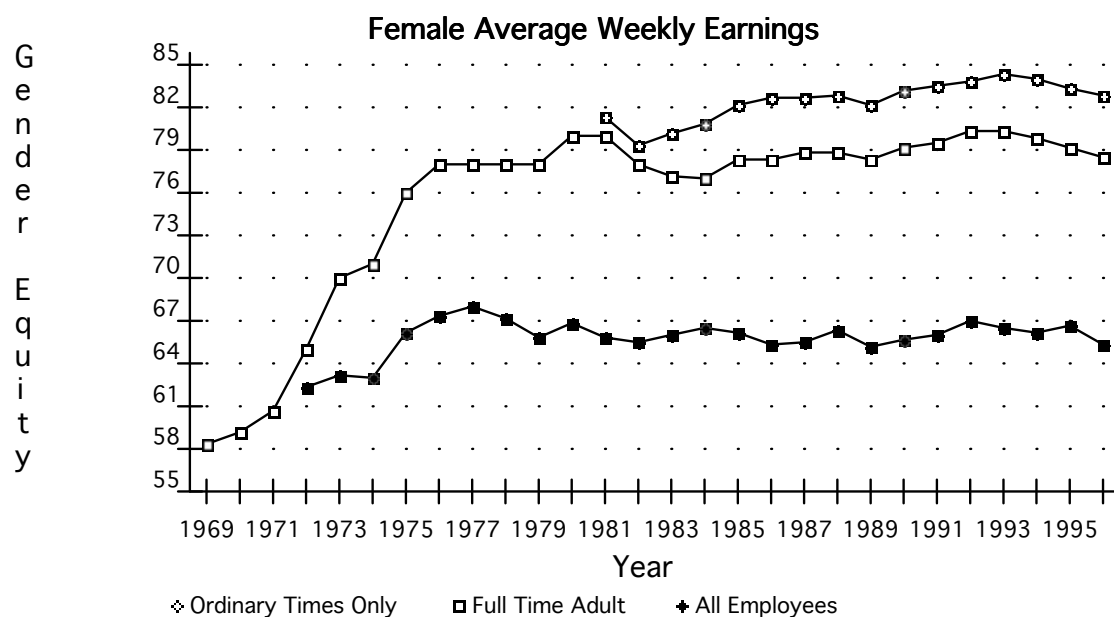
<sup>1541</sup> Peter Switzer, 'Workplace Weaklings Will be Big Losers,' *Weekend Australian*, 1-2 June 1996, 60.

<sup>1542</sup> Yvonne Coburn, 'Career Mums are Losers as Costello Chops Child Care,' *Weekend Australian*, 24-25 August 1996, 38.

<sup>1543</sup> Des Moore, *How Labor Targeted Votes and Opinion*, Discussion Paper. (South Yarra: Institute for Private Enterprise, 26 July 1996), 1.

<sup>1544</sup> The highest ever female:male ratio was actually reached, in August 1991, at 84.6 per cent.

**FIGURE. 8.4. Female/Male Earnings (Gender Equity): 1969-1996**



Sources: *Wage Rates and Earnings*, (Australian Bureau of Statistics Print No. 6312.0, various years); *Weekly Earnings and Hours of Employees* (Australian Bureau of Statistics Print No. 6304.0, various years).

For full-time adult women workers, gender equity peaked at 80.4 per cent of male earnings, in 1992.<sup>1545</sup> These same workers were earning 80 per cent of male earnings in 1980-1981. The position of female part-time workers is indicated by the steady reduction of gender equity since 1977.<sup>1546</sup>

The remaining earnings gap between male and female workers is somewhat over-determined as a number of factors contribute. A number of studies suggest that the segregation of Australian women into a narrow range of occupations and industries is a causal factor.<sup>1547</sup> The majority of female employees are concentrated in two occupational groups: clerical and sales and sales/personal service workers.<sup>1548</sup> This occupational segregation has resisted increased labour force participation rates for women, improved educational profiles and equal

<sup>1545</sup> Australian Bureau of Statistics, *Average Weekly Earnings, States and Australia* (February), various years, Print no. 6302.0.

<sup>1546</sup> Ibid.

<sup>1547</sup> Sue Powell, 'Women's Work and the Union,' *Canberra Bulletin of Public Administration* 76, (1994), 204-210, 204; C. Short, 'Equal Pay - What Happened?'; C. O'Donnell and P. Hall, *Getting Equal*; Martin Watts and Judith Rich, 'Equal Employment in Australia? The Role of Part-Time Employment in Occupational Sex Segregation,' *Australian Bulletin of Labour* 2 (June 1991).

<sup>1548</sup> Shirley Sampson, 'Increasing Women's Participation in Male-Dominated Occupations,' *Dismantling the Divide*, (Canberra: Australian Government Printing Service, 1993), 29.

opportunity legislation.<sup>1549</sup> Other studies suggest that wage differentials *within* occupations are of greater importance than wage differences *between* occupations in contributing to the overall 'gap'.<sup>1550</sup> The other significant point is the link between occupational segregation and part-time work,<sup>1551</sup> a link which works to women's disadvantage in the labour force.<sup>1552</sup>

The restructuring of the labour market has seen an increase in the number of part time workers, contract labour, outworkers and sub-contractors, the majority of which employ women working in the service sector industries.<sup>1553</sup> In 1989-1990, only 47 per cent of women had worked full-time, compared to 82 per cent of men. Between 1987-1992, 55 per cent of the increase in part-time employment was taken up by adult women, compared to 23 per cent for adult men.<sup>1554</sup> In 1993, there was a further increase in the number of women in part-time work.<sup>1555</sup> Part-time workers receive less opportunities for training and advancement, their work 'marked by poor pay and conditions' and receive neither long service leave nor maternity leave.<sup>1556</sup> Despite award changes which now permitted part-time employees to be in promotable positions and identified ambition by those employees for promotional opportunities, 'unless these changes are supported by a number of personnel and staff development and affirmative action initiatives, the reality will be a continuation of the 'second class' status of part-time employment'.<sup>1557</sup> In a broader sense this has set into motion a process 'whereby many of the costs and risks of production are shifted from industry to the worker'.<sup>1558</sup> At the same time, 'part-time work is still constructed in the

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<sup>1549</sup> S.F. Lambert and R. Petridis, *Occupational Segregation and Female Employment Over the Business Cycle*, (Canberra: Australian Government Publishing Service), iii.

<sup>1550</sup> B. Chapman and C. Mulvey, 'An Analysis of the Origins of Sex Differences in Australian Wages,'; Anne Hawke, *Male-Female Wage Differentials: How Important is Occupational Segregation?*, Discussion Paper 256, (Canberra: Centre for Economic Policy Research, Australian National University, 1991); Sheila Rimmer, 'Occupational Segregation, Earnings Differentials and Status Among Australian Workers,' *The Economic Record* 67(198), (1991); Michael Kidd, 'Sex Discrimination and Occupational Segregation in the Australian Labour Market,' *The Economic Record* 69 (204), (1993), 44-55.

<sup>1551</sup> C. O'Donnell and P. Hall, *Getting Equal*; Helen Lewis, *Part-time Work: Trends and Issues*, (Canberra: Australian Government Publishing Service, 1990); M. Watts and J. Rich, 'Equal Employment in Australia?'

<sup>1552</sup> S.F. Lambert and R. Petridis, *Occupational Segregation and Female Employment*, 11.

<sup>1553</sup> Rosemary Owens, 'Women, 'Atypical' Work Relationships and the Law,' *Melbourne University Law Review* 19 (1993), 339-430, 404-405.

<sup>1554</sup> Australian Bureau of Statistics, *Women in Australia*, (Canberra: National Capital Printing, 1993), 180.

<sup>1555</sup> Department of Employment, Education and Training, *Women's Employment and Education Experience in the Recession and Recovery*, Issue 4. (Canberra: Australian Government Publishing Service, 1993).

<sup>1556</sup> E. Davis, 'Industrial Relations in the 1980s: Sea-change,' 3.

<sup>1557</sup> Robyn Alexander and Sybille Frank, *Award Restructuring in Part-time Work in Banking*, (Canberra: Australian Government Publishing Service, 1990), 43.

<sup>1558</sup> Rosemary Owens, 'Women, 'Atypical' Work Relationships and the Law,' *Melbourne University Law Review* 19 (1993), 339-430, 404-405.



arbitration system as women's work', because of the continuing responsibility for domestic work and child care primarily undertaken by women.<sup>1559</sup> It has become increasingly obvious that 'women's participation in the paid work force through 'atypical' work may be just as oppressive as their exclusion from it'.<sup>1560</sup>

Other trends threatening pay equity were identified as the decline of public sector employment (in which women had gained a greater share of profession and managerial employment than in the private sector); and higher levels of unemployment, under-employment and discouraged workers.<sup>1561</sup> The continuing lower evaluations of women's work and skill also contributes significantly to the pay gap.<sup>1562</sup>

### **The Influence of Feminism? 1988-1996 Assessed**

The definition of equal pay continued to be an issue of contention as feminists pressured for work value assessments which would re-define what was meant by 'equal'. The disinterest of the Commission and the government's placement of pay equity into the category of 'social policy', rather than economic policy, effectively sidelined the issue. Although the restructuring of the industrial relations system and the decentralisation of wage-fixing system began to negatively affect pay equity neither of the Accord partners were prepared to alter the general direction of policy. The ACTU focused on the 'big picture' at the expense of distributive and wage issues.<sup>1563</sup> Similarly, Labor concentrated on macroeconomic restructuring, assuming a 'trickle down' effect would benefit disadvantaged groups.<sup>1564</sup>

The anti-equal pay coalition gained considerable strength at this time. The employer's associations were representing themselves at Commission Wage Cases. The Liberal and National parties were providing an Opposition in federal politics. There was a considerable amount of interaction between the two through groups such as the H. R. Nicholls Society, the Free Enterprise Foundation of Australia, and the Centre for Independent Studies.<sup>1565</sup> At the same time, however, large companies were making their own links with the ALP government, either autonomously, or through the BCA.<sup>1566</sup> The direction of the Accord was guided by a hegemonic economic neo-liberalism which cut across coalition formation along the lines of the power elites: all the power elites held a consensus on the merits of market competition and a withdrawal of the state from a regulatory role

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<sup>1559</sup> Ibid., 408.

<sup>1560</sup> Ibid., 421.

<sup>1561</sup> Philippa Hall, 'The Price of Wage Justice, The Costs of Delay,' 10.

<sup>1562</sup> P. Hall, 'Remuneration and Equal Pay for Women,' 11.

<sup>1563</sup> S. Bell and B. Head, 'Australia's Political Economy: Critical Themes and Issues,' 15.

<sup>1564</sup> Rhonda Sharp and Ray Broomhill, *Short Changed*, (Sydney, Allen and Unwin, 1988), 63.

<sup>1565</sup> D. Plowman, 'Economic Forces and the New Right: Employer Matters in 1986,' 85-86.

<sup>1566</sup> S. Bell and J. Warhurst, 'Business Political Activism and Government Relations,' 205-206.

in the economy.<sup>1567</sup> This neo-liberal economic dominance was exacerbated upon the election of a Liberal/National Party coalition government.

The strength of the influence of feminism on the equal pay policy subsystem varied a great deal. Feminist policies were presented as electorally popular administrative or legislative interventions by government. Feminist influence was quite limited within the wage-fixing process itself. Denied a major part in the industrial relations arena, women's interests were promoted by a small, well informed group of policy actors.<sup>1568</sup> Having appeared in every national wage case since 1990, feminist groups have suggested that 'perhaps the real object in wage cases is not to sway the Commission, but to encourage or embarrass the other parties, by exposing the inadequacies in their arguments or evidence'.<sup>1569</sup> At the same time, there is an increasing disillusionment that 'key aspects of the feminist critique, such as the call for increased flexibility, diversity, grass roots participation and accountability have been co-opted to legitimise a whole range of policy and practice initiatives that do not necessarily benefit women'.<sup>1570</sup>

This would certainly seem to be the case, judging by the lack of progress toward feminist goals illustrated by the statistics in **Figure 8.4**. Unlike Ireland, the statistics gathered in Australia provide a varied and relatively sensitive indicator of female/male differentials, across a range of employment situations. Yet all of these indicators give the same, sober, verdict. It would appear that the 'equal pay plateau' may be the wages equivalent of the equal opportunity's 'glass ceiling'.

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<sup>1567</sup> M. Painter, 'Economic Policy, Market Liberalism and the 'End of Australian Politics'', 297.

<sup>1568</sup> Philippa Hall, Human Rights and Equal Opportunities Commission. *Interview by Author*. 25 January 1996, Sydney.

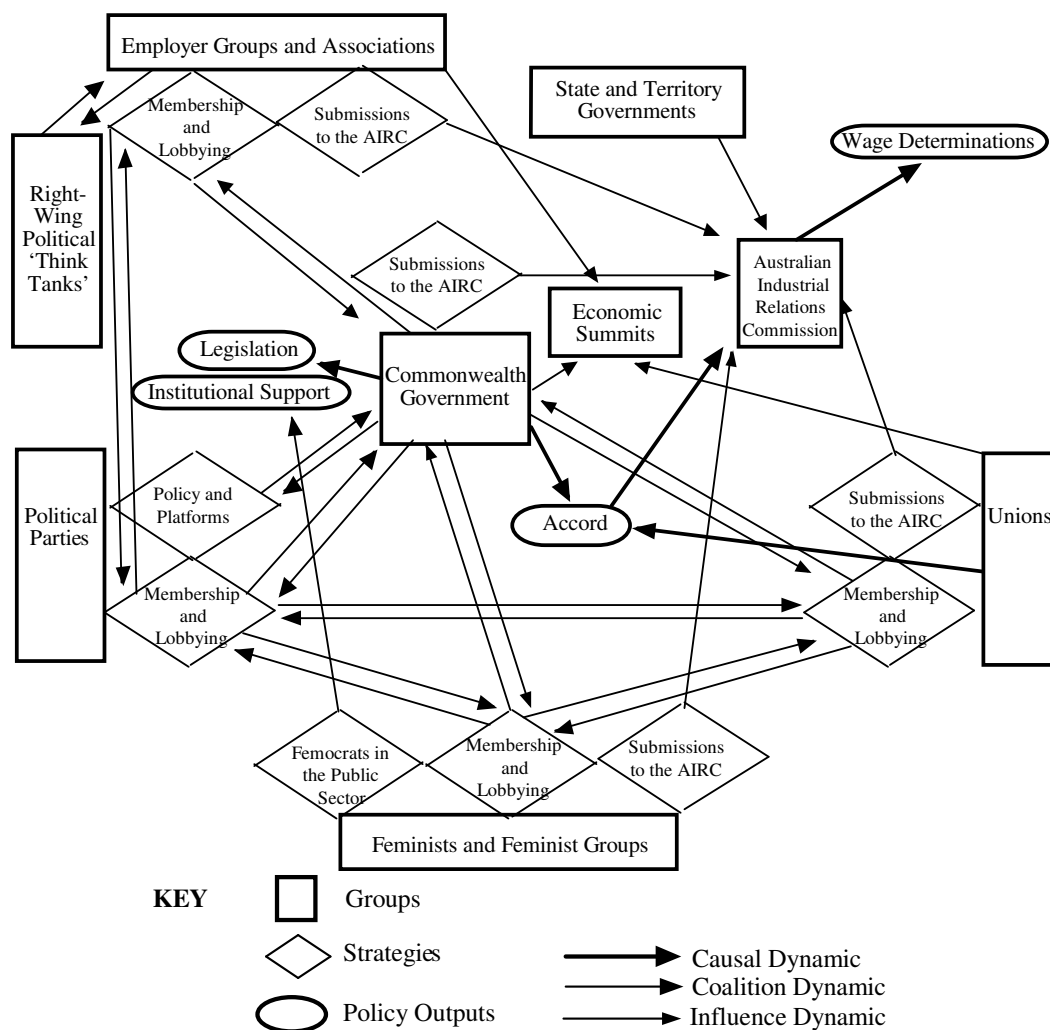
<sup>1569</sup> P. Hall, 'Intervening in Wage Cases: What's the Point,' 60.

<sup>1570</sup> Sabrina Leitmann, Panelist, *Short Changed? Women and Economic Policies*, Proceedings of Women's Electoral Lobby (Western Australia) Seminar, October 1994, Val Marsden (ed) (Perth: Women's Electoral Lobby, 1995), 9.

### 3. FEMINISM AND EQUAL PAY POLICY IN AUSTRALIA

The internal dynamics of the equal pay policy subsystem (between 1983-1996) may be pictured in **Figure 8.5** below.

**FIGURE 8.5. Australian Equal Pay Policy Subsystem Dynamics**



This is a 'snapshot' of what the equal pay policy subsystem looked like (in conceptual terms) up until the end of the Accord. It is the most centralised of all the policy subsystems examined in this thesis. The policy outputs are the result of the actions of a few, powerful groups which determine wages, legislation, policy through the Accord or institutional support. Feminists have powerful allies but weak direct influence.

As equal pay was defined primarily as an economic issue, feminists have had to work from within unions and government, as the weaker partner in the pro-equal pay coalition. Strategies included building a 'fairer form of trade unionism'

through representation and expression of women's interests.<sup>1571</sup> This indirect influence by feminists (which runs parallel to direct lobbying by autonomous women's groups) has become invisible in the past.<sup>1572</sup> The strengths and weakness of such indirect feminist influence in Australia, and in Ireland, will be discussed in the next chapter.

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<sup>1571</sup> C. O'Donnell and P. Hall, *Getting Equal*; viii.

<sup>1572</sup> Margaret Thornton, '(Un)equal Pay for Work of Equal Value,' *Journal of Industrial Relations* 23(4) (December 1981), 466-481, 468.

## **CONCLUSION**

## CHAPTER 9

### THE INFLUENCE OF FEMINISM ON PUBLIC POLICY

This thesis began with the development of an analytical model of the influence of feminism on public policy and set out some material and discursive indicators of feminist influence. In the previous six chapters, these indicators have been applied to abortion and equal pay policy in Australia and the Republic of Ireland. This chapter reiterates some of the original propositions of the three-factor model and evaluates the empirical evidence arising from the case studies. It sets out some conclusions regarding feminist influence on public policy across time, across policy subsystems, and across nations.

#### 1. THE *ACTIVITY* OF NATIONAL FEMINISM OVER TIME

The first factor in the analytical model of the influence of feminism on public policy, developed through an examination of feminist theory and policy studies, described the ‘three aspects’ of feminism. Understanding the material, normative, and analytical aspects of feminism enabled an analysis of the *activity* of national feminism *across time*.

##### Material Dynamics

The propositions associated with the material aspects of feminism were (1) that the cycle of protest (consisting of pre-mobilisation, mobilisation, proliferation, and dispersion) would determine the *strength* (visibility and scope) of feminist policy activity; and (2) this strength was greatest during the time of movement proliferation as this was the point of broadest scope and highest visibility.

These propositions were generally supported by an examination of the case studies within this thesis. The material cycle of protest was important in both Irish policy subsystems, for example, but with different effect in each. During the 1970s the pro-equal pay coalition gained considerable strength as a result of the mobilisation and proliferation of the broader contemporary feminist movement. In the 1980s the anti-abortion coalition gained strength as an anti-feminist social movement emerged. The Irish feminist movement consolidated its gains, in spite of anti-feminist opposition, and the 1990s have witnessed the further expansion of feminism into various state institutions. The greatest point of strength for Irish feminism, in terms of the most visible influence over the widest number of issues, was during the proliferation stage in the mid to late 1970s. At this time feminist influence was highly visible and proactive in both the equal pay policy subsystem and the contraception policy subsystem - policy areas central to women’s control of their productive and reproductive labour.

In Australia similar dynamics were evident as feminists mobilised within the equal pay and abortion policy subsystems in the late 1960s, and consolidated their position in the late 1970s and early 1980s, in spite of anti-feminist mobilisation. The anti-feminist movement was not as powerful in Australia as in Ireland and the Australian feminist movement maintained a long period of expansion through

a process of extensive institutionalisation and professionalisation during the 1980s and 1990s. As the full impact of feminist influence within institutions is not often entirely visible to the public eye, the Australian feminist movement showed the greatest apparent strength during the period of proliferation, in the early to mid 1970s. At this time feminists were winning substantial gains within both the equal pay and abortion policy subsystems as well as becoming a force within the political system.

Although the case studies examined in this thesis support the importance of considering the material aspect of feminism in policy studies, a consideration of the research suggests a second modification to Dahlerup's 'cycle of protest' model.<sup>1573</sup> At present the cycle of protest subsumes the process of movement consolidation into the dispersion stage. It is perhaps less pessimistic, and more realistic, to acknowledge consolidation as a stage in itself. The separation of consolidation from dispersion would also mean that the cycle of protest model could also acknowledge the demonstrated importance of feminist analysis and learning. Although proliferation may be the point of most *visible* extensive influence upon public policy, the power of internal advocacy has been evident in all four policy subsystems examined in this thesis, leading to the conclusion that feminist policy activists may exert less visible influence with *more effect* during the consolidation stage. The extended cycle of protest model offered by this thesis thus provides a more accurate description of the material dynamics of feminism - one which acknowledges its perseverance over time and draws out its implications for policy activism.

### Normative Philosophies

The propositions associated with the normative philosophies of feminism (liberal, socialist, radical and academic) were (1) that these would determine the *strategies* used to influence public policy; and (2) these were most effective when a number of strategies were used simultaneously by coalitions of feminist groups.

The development of multiple normative philosophies has been a hallmark of the proliferation stage of the feminist cycle of protest. Multiple *proactive* strategies were evident across both policy subsystems as both Irish and Australian radical feminists established women's services, particularly abortion counselling or termination of pregnancy services; as socialist feminists developed platforms of action, setting out Working Women's Charters in both countries; as liberal feminists set about institutionalising women's interests within the political system, most notably through the administrative arm of government in both countries; and as academic feminists gained space within universities and other research organisations for the production of knowledge resources. These proactive strategies created multiple resources for change: on-going developments which set up a network of accumulating feminist influence.

The diversity of feminist approaches and interventions were themselves a source of strength in the policy subsystems examined, as two examples of *reactive*

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<sup>1573</sup> The first modification, discussed in Chapter 1, was to add a pre-mobilisation stage to the original model of mobilisation, proliferation and dispersion, presented in D. Dahlerup, 'Introduction,' 22.

strategies within the Irish equal pay and Australian abortion policy subsystems show. When, for example, the Irish government attempted to amend the *Anti-Discrimination (Pay) Act 1974*, to provide exceptions for a number of employers, including the civil service, opposition spanned all types of feminism existent at that time. Traditional feminists, such as Hilda Tweedy of the Irish Housewives Association, lobbied the (then) EEC; liberal feminists such as (then) Senator Mary Robinson initiated legal action against the Government; socialist feminists within the ICTU undertook a number of actions, including lodging a complaint with the ILO; and radical feminists organised protest rallies and direct action.<sup>1574</sup>

Similarly, in Australia, when the Queensland government proposed the *Pregnancy Termination Control Bill 1980*, a broad-based campaign of opposition was mobilised. A Liberal party feminist, Rosemary Kyburz, technically broke the law by disclosing the contents of the proposed Bill - sparking the formation of the Women's Campaign for Abortion coalition. Under this umbrella, liberal feminists within State Parliament and a number of government agencies lobbied against the Bill; socialist feminists organised opposition within a number of unions, including the Brisbane Trades and Labour Council, who released public statements against the Bill; radical feminists organised 'direct action' protests outside Parliament; and academic feminists contributed well-researched articles to provide information on the need for abortion services.

These actions show the multiple strategies which arise from the different normative philosophies of feminism and the effectiveness of simultaneous interlocking strategies. The importance of multiple strategies for feminist success is emphasised by Heitlinger, who holds up Australian feminists as an example of building 'effective networks and coalitions to press women's demands both outside and inside the government'.<sup>1575</sup> Hoskyns also states that the dominance of a particular type of feminism makes a difference: when comparing Germany and Ireland she found that the strong liberal feminist strand within the Irish feminist movement made Irishwomen more skilful in their use of national legislation and European regulations, in order to gain equality in the workforce, than the more radical German feminists.<sup>1576</sup> The conclusions reached by this thesis, regarding the normative philosophies of feminism, are not new. The contribution of this thesis lies in the completeness of the typology offered in Chapter 1 and, in particular, the exposition of the policy implications of academic feminist strategies.

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<sup>1574</sup> Academic feminism was not yet established at this time but has since contributed to developing information about the inequalities and inefficiencies caused by unequal pay in Ireland. See, for example, R. Callender, 'Women and Work: The Appearance and Reality of Change'; M. Fine-Davis, *Women and Work in Ireland*; and C. Hoskyns, 'Give Us Equal Pay and We'll Open Our Own Doors'.

<sup>1575</sup> A. Heitlinger, *Women's Equality, Demography and Public Policies*, 116.

<sup>1576</sup> C. Hoskyns, 'Give Us Equal Pay and We'll Open Our Own Doors', 51.



## Analytical Perspectives

The propositions associated with the analytical perspectives of feminism (empiricism, standpoint, postmodern and pragmatic) were (1) that this would determine the way in which feminists attempt to *interpret* public policy; and (2) analytical feminism was of most importance when pragmatic use was made of accumulated knowledge.

While the elaboration of feminist analytical perspectives is associated with academic feminism, and women's studies courses in particular, feminist analysis is much broader than these institutional bases imply. This thesis has drawn upon Australian and Irish feminist analytical perspectives through both written and oral material. The personal interviews carried out in the course of this research revealed a sophisticated understanding, by feminist activists, of the multiple power dynamics of agency, structure, and discourse in the policy process.

Not only do feminists interpret policy in multiple ways but they have made pragmatic use of this accumulated knowledge. While this is evident in all the policy subsystems under examination two examples may be drawn, from the Australian equal pay and the Irish abortion policy subsystems, to illustrate the point. By 1992, for example, Irish pro-abortion activists had been using accumulated *quantitative* data in an advocacy manner for some time. During the years of SPUC-inspired censorship this was one of the few legal ways of discussing abortion in public. When the 'X' case became a 'crisis' for the Irish social system and the abortion subsystem it was partly because it so graphically shifted the focus to the detrimental *qualitative* effects of Irish law on individual women. Then, in the months leading up to the 1992 abortion referendum, the publication of *The Abortion Papers: Ireland* explicitly set out to expose and alter the policy *discourse* which surrounded abortion in Ireland.<sup>1577</sup> During the 1992 abortion referendum campaign all three feminist analytical perspectives informed the campaign run by the Alliance for Choice.

Similarly, during the 1972 Equal Pay for Work of Equal Value and the 1974 Adult Minimum Wage cases, feminist groups presented submissions to the Commission containing both *qualitative* and *quantitative* information arguing the case for pay equity. Twelve years later, when it had become patently obvious that the majority of Australian women would not actually achieve equal pay under these decisions, the CAEP argued for a re-evaluation of the 'comparable worth' of women's work using a points-based job evaluation scheme to compare the value of that work. This was an attempt to change the policy *discourse* of centralised wage fixing, which had operated through comparison only - a process containing an inherent gender bias.<sup>1578</sup> The feminist argument was rejected by the Commission.

The case studies thus illustrate the multiple interpretations of public policy by feminists and their attempts to use accumulated knowledge in a pragmatic way. The learning over time which informs feminist analysis is evident as is the limitations of that learning in relation to power. The contribution this thesis

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<sup>1577</sup> A. Smyth, 'A Sadistic Farce,' 8-9.

<sup>1578</sup> This argument is very strongly put in P. Hall, 'Intervening in Wage Cases: What's the Point'.

makes is to further our understanding of the feminist use of knowledge within the policy process by connecting feminist analytical perspectives with accounts of policy learning, as detailed in each empirical chapter, under the 'influence of feminism assessed' headings.

## 2. NATIONAL RECEPTIVITY ACROSS SUBSYSTEMS

This thesis drew on a number of models of policy analysis, the ACF in particular, to develop the second factor in the analytical model of the influence of feminism on public policy. The *receptivity* of the national site of policy describes how national political, social and economic systemic factors create *similarities across subsystems*.

The propositions associated with these political, social, and economic systems were that (1) while their dynamic factors were more open to feminist influence ('permeability'), the strength or weakness ('capacity') of these factors would affect the ability of feminism to influence public policy; (2) each set of systemic factors raised questions as to the status of women: the adequate (political) representation of women's interests, the realistic (social) reflection of women's experience, and the fair (economic) reward for women's work; and (3) although systemic factors tended to a 'patriarchal equilibrium', cumulative change was possible if feminists reached a critical level of *activity* or a *crisis* occurred which tipped the balance of power, at system or subsystem level. **Table 9.1**, below, summarises the national *receptivity* of both countries.

**TABLE 9.1. National Receptivity: Australia and Ireland**

Systemic Factor	Australia <i>From the 'narrow to the broad'</i>	Ireland <i>From the 'old' to the 'new'</i>
<b>Political</b> <i>Structures</i>	Weak, conservative constitution Weak, progressive judiciary Strong, federal system of government	Strong, conservative constitution Strong, conservative judiciary Weak, unitary system of government
<i>Dynamics</i>	Incorporation of political interests Internationally isolated	Decomposition of the traditional political culture Internationally integrated
<b>Social</b> <i>Structures</i>	Weak religious influence Strong secular influence	Strong religious influence Weak secular influence
<i>Dynamics</i>	Introduction of a cultural pluralism Internationally isolated	Introduction of a secular agenda Internationally integrated
<b>Economic</b> <i>Structures</i>	Weak economic position Primary production	Weak economic position Primary production
<i>Dynamics</i>	Strong corporatism, centralised wage fixing Retreat from affluence Internationally isolated	Weak corporatism, centralised wage fixing Recurrent fiscal crisis Internationally integrated

The concept of conflict between the 'old' and the 'new' Irelands or between the 'narrow' and 'broad' Australias does not fix the systemic factors to an unchanging national character of 'Irishness' or 'Australianess'. Although nationally specific combinations of political, social, and economic systems have arisen in each country, the interaction between different national systems, and between national systems and international factors, stimulate an on-going, dialectical process of change in both countries.

### **Australia: National *Receptivity***

Within the Australian political system, the dual levels of government inherent in the federal system dominated other structural factors. The relative power of elected government meant that the more permeable electoral cycle and dynamics of party politics also contained considerable capacity. As part of a larger trend, of the incorporation of political interests, feminists were able to make gains in improving the representation of women's interests in both the political and administrative arms of government. The resulting strength of the institutionalisation of women's interests within government has been a major factor in the 'broader Australia' becoming a 'more feminist' Australia. When speaking of Australia's 'tolerant, cohesive, and culturally diverse society' the (then) Prime Minister Keating stated '... I've absolutely no doubt that these changes in Australia are due in significant ways to ideas and energy flowing from the increasingly prominent role and status of women'.<sup>1579</sup>

The 'introduction of a cultural pluralism' within the Australian social system positively affected the abortion policy subsystem in spite of traditionalist revivals in the mid 1970s and the mid 1990s. The strength of Australian secularity, and a strong federal government which wished to avoid the issue of abortion, meant that it was the courts rather than the Church which became the arbiter of opinion. The Australian judiciary were relatively progressive although still weak in the sense that their judgements were open to future challenge and possible reversal. Feminism, as a national NSM, affected outcomes by continually asserting the need for social codes to accurately reflect the 'lived experience' of women. That this experience included the problem of unwanted pregnancy, and that there were many equally valid ways of resolving that problem, was a message critical to changing Australian socio-cultural values.

While the Australian institutions and processes of wage fixing and industry policy were relatively strong, the equal pay policy subsystem was negatively affected by the national 'retreat from affluence', partly due to Australia's relatively weak position within the international economy. Even while remaining male-dominated, the industrial relations system represented strong, dynamic national factor with considerable capacity to establish a fair reward for women's work. This was, at least initially, significant in improving the economic status of women.

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<sup>1579</sup> Prime Minister Paul Keating, Transcript of Opening Speech, Official Opening, *Women, Power and Politics Conference*, Adelaide, October 8 1994.

## **Ireland: National *Receptivity***

Irish feminists have also been relatively successful in improving the representation of women within the political system, even though the effects of this change were quite gradual, as the Oireachtas may be seen to be relatively weak in comparison to the powers of the Constitution and the judiciary. With this 'decomposition of the traditional political culture', however, the 'new Ireland' has become a 'more feminist' Ireland. As Smyth points out: 'Ireland, after all, is still one of the very few countries in the world to have elected a feminist head of state' and has 'a higher proportion of women in parliament than Britain, France or the USA'.<sup>1580</sup> While some recent reverses have been recorded, following the June 1997 elections, these have not undermined the overall progress which has been made.<sup>1581</sup>

Although social attitudes toward women also contributed difficulties in gaining equal pay, the real power of the social system was most evident within the abortion policy subsystem. The fundamental socio-cultural values and social structures of 'religious nationalism' were modified by changes in public opinion which facilitated the 'introduction of a secularising agenda'. This was one of the results of the mobilisation of an Irish feminism which undertook to challenge the unrealistic reflections of women's 'lived experience' within the social system. The ability to influence dynamic factors (public opinion) was compromised, however, by the relative weakness of those factors (in comparison to institutionalised religion) and European regulation was important in facilitating feminist influence.

The 'recurrent fiscal crisis' of the Irish economic system dominated the equal pay policy subsystem, a situation which was exacerbated for women workers due to their disadvantaged position within the labour market and their relative lack of representation in the structures and processes of the Irish industrial relations system. Feminists organised within unions but the relative weakness (capacity) of national wage fixing and decision-making structures (dynamic factors) meant that there was a much greater incentive to utilise European regulation wherever possible.

## **Patriarchal Equilibrium or Cumulative Change?**

The case studies examined in this thesis support the proposition that dynamic factors are also more permeable to feminist influence and that their capacity will affect the ability of feminism to influence public policy. The case studies also show that systemic factors do have specific implications for the status of women in each country. As such the model of national *receptivity* developed in this thesis provides an advance on other contextualising models of the policy process, in its ability to relate national factors to the status of women, and to predict where

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<sup>1580</sup> A. Smyth, *States of Change: Reflections on Ireland in Several Uncertain Parts*, 38.

<sup>1581</sup> The number of women in the Dáil dropped from 23 to 20 following the June 1997 election and the one Minister and the three junior Ministers who lost their seats were also all women. At the same time it was announced that President Mary Robinson had been nominated for, and would accept, the post of High Commissioner for Human Rights at the United Nations. Liam Ferrie, *The Irish Emigrant*, Electronic News Service, Issue No. 540, June 9 1997.

feminist influence is likely to be most effective. Yet the most critical question, in terms of the influence of feminism on public policy, remains: has there been evidence of either a patriarchal equilibrium or a cumulative change and was this the result of a critical level of feminist *activity* or of a *crisis* which tipped the balance of power at system or subsystem level?

### *Ireland*

Substantial gains were made in Ireland, during the 1970s, in both the equal pay policy subsystem (dominated by the economic system) and contraception policy subsystem (dominated by the social system). Relating this to the proliferation stage of material feminism it may be argued that a critical level of feminist *activity* had been reached at that time. This *activity* had an influence across all the systems and subsystems under examination and became most visible during the equal pay protests, when feminists successfully mobilised a broad-based opposition against the Irish government, at a national and international level. It would appear that cumulative change had been achieved.

After the visit of the Pope in 1979 a conservative turn occurred within the Irish social system which had a major repressive effect on the abortion policy subsystem and a mild spill-over upon other systems and subsystems. The *crisis* of the Papal visit tipped the balance of power by stimulating an anti-feminist mobilisation which reached a critical level of *activity* during the 1982 referendum on abortion. At the same time, economic discontent and political destabilisation led feminist activity to consolidate less visibly, and certainly not as a dominant influence throughout the 1980s. The events of the 1980s would appear to support the theory of patriarchal equilibrium.

The effects of three *crises*: the 1990 election of Mary Robinson in the political system, the 1992 'X' case (and subsequent referenda) in the abortion subsystem and the 1994 Fr. Brendan Smyth case in the social system, destabilised the conservative status quo and signalled that the 1990s had begun to move toward a process of cumulative change once again, across all systems and subsystems.

### *Australia*

In Australia substantial gains were made during the late 1960s through to the mid 1970s within the abortion and equal pay policy subsystems and the social, political and economic systems. As discussed before, this corresponded to the proliferation of Australian feminist *activity* and it became most visible when the new ALP government responded to feminist electoral support to intervene for equal pay in 1972. It may be argued that the combination of feminist *activity* and the *crisis* of the election of a pro-feminist government explained both the dramatic increase in the status of women across the social political and economic spectrum and how these pro-feminist initiatives continued even *after* two crises had occurred: the McKenzie-Lamb Bill *crisis* signaled the mobilisation of an anti-abortion, anti-feminist movement and the *crisis* of the dismissal of the Whitlam government signaled the loss of a pro-feminist political environment. Up until the end of the 1970s the evidence for a cumulative change was substantial.

There was no doubt, however, that the progress which had been achieved in terms of child care and women's policy machinery suffered a set back during the period of non-Labor dominance and the anti-feminist mobilisation was reflected in a general mood of social intolerance which emerged during the Chamberlain case.

Even after the election of the Hawke Labor government, and the passage of a series of equity initiatives in the 1980s, only minor improvement occurred in female/male wage differentials. The twin crises of the exclusion of feminist interests from the Accord and the floating of the Australian dollar put both national and international economic interests before feminist equity ones. In comparison to the earlier, brief period of dramatic improvement for women, the 1980s and early 1990s saw a long period of mild progress in the status of women across all the systems and subsystems of concern in this thesis.

The election of a Liberal/National coalition government in 1996, however, brought this progress to a sudden halt. The speed and comprehensiveness with which the new government dismantled equity measures stimulated *crises* in both policy subsystems under discussion as well as in the social and political systems. The women's policy machinery, which had been painstakingly developed since the 1970s, was now systematically 'mainstreamed' by the new government thus reducing the representation of women's interests in the political system. Both HREOC and OSW experienced radical funding cuts as equal opportunity advocacy was dismissed as part of the outdated 'politically correct' agenda, indicating a social outlook that failed to recognise the women's continuing experience of discrimination. Economically, budget cuts to education, legal aid, child care, and aged care affected women disproportionately, as did industrial relations legislation removing basic rights and protections. The abortion policy subsystem saw increased conflict over access to services and funding to the National Women's Health Program and family planning agencies were cut. It would appear that patriarchal equilibrium had finally occurred.

#### *The Outcome?*

Both countries have experienced cycles of events which have seen a forward or retrograde movement in the status of women. These have varied in the length of time covered and intensity of change experienced. Advances have not always been followed by retreats and while Australia appears to be moving away from gender equity there is little evidence that Ireland is doing so at present.

The patriarchal equilibrium model operates on a relatively short time frame, of *two to five years*, and states that as one or two systems show advances in the status of women then the other one or two will move in the opposite direction.<sup>1582</sup> This is not supported by the evidence from either country. The broader concept of advance, or cumulative change, over a longer time frame which covers a cycle of *seven to ten years* being followed by a similar period of retreat, or patriarchal equilibrium, is partially supported by the evidence coming from the Irish case studies. In the Australian case, approximately seven to ten years of substantial, sometimes dramatic improvement, followed by a *fourteen to twenty year* period of mild improvement, followed by a dramatic move away from equity, supports a variation of the cumulative change/patriarchal equilibrium model, if the time frame under consideration is lengthened yet again. When examining the whole of the period of time under discussion, a time frame of *thirty or more years*, there is no doubt that the status of women in both countries has dramatically improved by all measures and across all systems and subsystems.

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<sup>1582</sup> G. Kaplan, *Contemporary Western European Feminism*, 57-58.

The case studies within this thesis thus confirm that the *receptivity* of the national site of policy does structure policy subsystems in ways which vary between countries and create *similarities across subsystems*. The proposition put forward by this thesis, that cumulative change was possible, in spite of a tendency towards patriarchal equilibrium, finds considerable support when considering the whole period of time under consideration, but less support when considering change within shorter time frames.

### 3. THE EFFECTS OF POLICY TYPE ACROSS NATIONS

A composite model of policy *type* was developed from Lowi's 'arenas of power', Gelb and Palley's gender policy conflict, and an original concept of the determinates of feminist involvement in policy. The proposition associated with the composite model of policy *type* is that coalitions will try to redefine policy in order to reduce conflict. The overall significance of *policy type*, the third factor of the three-factor model, is to create *similarities across nations*.

#### The Power Relations Component

The particular proposition associated with the power relations component is that this describes the intensity and scope of conflict which arises over the allocation of costs and benefits.

#### *Definitions of Abortion Policy*

While Lowi's typology is more usually applied to economic issues, rather than social ones, this is not the first time it has been used to examine abortion policy.<sup>1583</sup> Abortion policy may be considered as either a distributive, or as a (social) regulatory, policy. Pro-abortion coalitions attempt to put forward policies predicated on a preferred definition of abortion as a distributive policy. That is: free from any general rule ('repeal all abortion laws'); with private benefits for the woman involved (a 'woman's right to choose'),<sup>1584</sup> and public costs, or at least publicly funded services. The scope and intensity of conflict thus becomes an individualised, low-intensity interaction, between the woman seeking abortion and centralised government agencies.

Anti-abortion coalitions attempt to define abortion as a (social) regulatory policy. This involves a direct choice of who will either gain the benefits or bear the costs. The benefits are public, in terms of increasing national human resources, but the costs, of travel (interstate or overseas) for an abortion, or the continuation of an unwanted pregnancy, are borne privately. Anti-abortion policies are not usually linked with a greater support of single parents or family units. Policies restricting women's access to abortion services are usually subject to intense conflict between coalitions and are decentralised in the sense of constantly changing forums.

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<sup>1583</sup> See the previous reference to R. Tatalovich and B. Daynes, 'The Lowi Paradigm, Moral Conflict, and Coalition Building: Pro-Choice Versus Pro-Life.'

<sup>1584</sup> There is also a strong argument that *voluntary* motherhood is a net social benefit.

The resulting policy ‘mix’ has, in both countries, shown elements of distributive and regulatory policy and has changed over time. This policy type/power relations typology is illustrated in **Table 9.2** below.

**TABLE 9.2. Comparison of Abortion Policy Type**

	<b>Distributive Health Policy</b>	<b>Regulatory Services Policy</b>
<b>Distributive Elements Dominant (Australia)</b>	Abortion services and counselling as women’s health policy	Counselling legal, some legal defence for abortion services
<b>Regulatory Elements Dominant (Ireland)</b>	Abortion counselling as women’s health policy	Legalisation of counselling, criminalisation of abortion services

In the 1990s both Australia and Ireland saw an increasing acceptance of abortion services (counselling only in Ireland) as part of a (distributive) women’s health policy. Australian feminists, however, were successful in shifting the discourse around services from an extreme regulatory policy (a criminal matter) to a mixture of regulatory and distributive policy (some legal defence exists for the provision of abortion services), with some elements of redistributive policy thrown in (costs are eligible for medical benefits rebates). Irish feminists were less successful in shifting the policy discourse in *absolute* terms although it may be argued that they were much more successful in *relative* terms. This relates to the differing national systemic factors discussed previously. Feminists in neither country have been able to achieve a completely distributive policy in regard to abortion services.

#### *Definitions of Equal Pay Policy*

In both countries feminists attempted to put pay equity forward as a redistributive policy. This was, on the surface, never disputed. The equity interests of all workers were officially represented by peak union associations in semi-corporatist agreements or in wage bargaining forums. Some significant benefits were gained as feminists mobilised within unions and government to achieve change. Pay equity was also, however, dealt with, informally, as a regulatory policy as many individual unions saw the gains made by their women members as a loss for their male members.

Both Australian and Irish equal pay policies show elements of ‘pure’ redistributive elements (where women are simply gender-neutral workers) and ‘pure’ regulatory policies (which recognise that women are primarily defined by their sex). The policies which primarily treat women as workers, but ones which have suffered from discrimination in the past, are primarily redistributive and secondarily regulatory (‘women’s work revalued’). The policies which recognise that the gendered nature of work intrinsically affects the way in which women’s work is valued are primarily regulatory and secondarily redistributive (‘revaluing women’). This typology is illustrated in **Table 9.3** and the policy outputs which fit into each of these categories are listed in **Appendix 10**.



**TABLE 9.3. Comparison of Equal Pay Policy Type**

	<b>Redistributive (Primary)</b>	<b>Regulatory (Primary)</b>
<b>Redistributive (Secondary)</b>	Women as Workers	Revaluing Women
<b>Regulatory (Secondary)</b>	Women's Work Revalued	Women as Women

The utility of Lowi's arenas of power model is clear: it describes the scope and intensity of conflict which results from the distribution of costs and benefits. An analysis of the case studies within this thesis, using Lowi's model, also supports the proposition that coalitions will try to redefine policies in order to reduce conflict. In order to pick up the gender implications of policy *type*, however, it is necessary to supplement Lowi's typology with two others.

### **The Gender Conflict Component**

The proposition associated with the gender conflict component of this model of policy *type* is that it describes the *intensity* of conflict which arises over the 'gender dimension' of a policy. In order to do this Gelb and Palley's gender 'role equity' versus 'role change' typology is considered. The differentiation between equal pay as a role equity issue and abortion as a role change one fits clearly into the Gelb and Palley typology and has been used by other analysts.<sup>1585</sup> Equal pay extends the right of fair economic reward, enjoyed by some (but not all) male workers to female workers. Pay equity has generally been implemented in an incremental way and has been defined (excessively) narrowly by policy brokers in both countries. While Gelb and Palley state that role equity measures involve little cost, controversy or opposition, this is patently not true for pay equity measures, based on the research in this thesis. In comparison to abortion policy, however, it may be said that pay equity is *less* controversial and provokes *less* opposition. It does not, however, incur less 'cost' in a financial sense as pay equity is primarily an economic measure.

Policies that involve gender role change extend the rights enjoyed by women as a group and this is certainly true for pro-abortion policies. Gender role change policies are perceived as involving a radical change that has broad implications and entails cost, controversy and overcoming considerable opposition. Abortion policy fits within that typology with the exception that it is not necessarily a financially costly measure. The addition of Lowi's arenas of power model, which concentrates on the economic costs and benefits of policy, means that the cost aspect of the Gelb and Palley model can be discarded within the composite model of policy *type*. The utility of the gender policy conflict model is clear, however, in its ability to show the *intensity* of conflict associated with the degree of gender role change.

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<sup>1585</sup> Yishai refers to Gelb and Palley's 'role equity' versus 'role change' typology in his study, discussing abortion as a 'role change' issue, with all the associated difficulties. Yael Yishai, 'Public Ideas and Public Policy: Abortion Policies in Four Democracies,' *Comparative Politics* (January, 1993), 207-228, 209.

## The Feminist Involvement Component

The proposition associated with the feminist involvement component of the model of policy *type* is that this describes the scope of conflict which arises from the gender dimension of a policy. The typology covers, gender-neutral, gender-marked and gender-specific policies. Equal pay falls within gender-marked policy in that policies that act to ensure gender pay equity affect more women than men,<sup>1586</sup> and feminists have been able to act in coalition with some of the primary organised interests within society (such as unions, political parties) as major allies to achieve these policies. In contrast, abortion is perceived to affect women only. The major allies feminists have developed, within the pro-abortion coalition, are secondary interests in society (such as medical professional groups) and the primary interests have been minor allies. These minor allies support but do not initiate pro-abortion strategies. Thus the feminist involvement model not only shows the scope of likely feminist involvement but also shows the likely make-up of coalition allies. In this it describes the gender *scope* of policy conflict.

The different sets of allies within coalitions and, more generally, the action of policy *type* in stimulating similarities of coalition formation within the policy subsystem, between countries, is illustrated in **Table 9.4** below.

**TABLE 9.4. Coalitions Across Policy Subsystems and Countries**

<b>COALITION</b>	<b>Australia Abortion Policy</b>	<b>Ireland Abortion Policy</b>
<b>Pro-Abortion</b>	Feminists and feminist groups; service providers; other pro-abortion groups; unions; political parties; medical practitioners associations; femocrats in public sector	Feminists and feminist groups; referral services; other pro-abortion groups; unions; political parties; medical practitioners associations
<b>Anti-Abortion</b>	Anti-abortion groups; churches and religious groups; political parties; medical practitioners associations	Anti-abortion groups; churches and religious groups; political parties; medical practitioners associations
<b>Policy Brokers</b>	Commonwealth Government; State and Territory Governments; High Court; State and Territory Judiciaries	Oireachtas; referenda; High Court; Supreme Court; European Courts
	<b>Australia Equal Pay Policy</b>	<b>Ireland Equal Pay Policy</b>
<b>Pro-Equal Pay</b>	Feminists and feminist groups; unions; political parties; femocrats in public sector	Feminists and feminist groups; unions; political parties; femocrats in public sector
<b>Anti-Equal Pay</b>	Employer groups and associations; political parties; politically conservative lobby groups/'think tanks'	Employer groups and associations; political parties; politically conservative lobby groups/'think tanks'
<b>Policy Brokers</b>	Commonwealth Government; State and Territory Governments; Prices and Income Accords; national economic 'summits'; Australian Industrial Relations Commission	Oireachtas; Employer Labour Conferences and social partnership agreements; Labour Relations Commission Equality Officers; Labour Court; High Court; Supreme Court; European Courts

<sup>1586</sup> The policies that have been considered under this banner, within this thesis, have included anti-discrimination and child care policies which also affect some men.

The above diagram shows the similarities between coalition formation in Australia and Ireland in each policy subsystem. The national differences that remain are tied to policy brokers who are, in turn, the point of connection to national *receptivity*.

The composite model of policy type presented in thesis provides a fuller understanding of the intensity and scope of conflict in relation to gender-based policies, and the evidence from the case studies support the proposition put forward by this thesis, that the significance of policy *type* is to create *similarities across nations*.

#### **4. POLICY SUBSYSTEM: THE *GROUND* OF ACTION**

The policy subsystem is the *ground* upon which the three-factor model of the influence of feminism on public policy is played out. The epistemological orientation of this model (feminist pragmatic) has meant that both discursive and material *indicators* have been used to identify feminist influence. Throughout this thesis, within the chapters containing the case studies, the influence of feminism has been identified by the presence and strength of feminist coalitions in the policy subsystems; the spread of acceptance of some of the principal tenets of feminism within the policy discourse; the passage of policy that would fulfil feminist goals; and the impacts of that policy toward achieving those goals. There is no doubt that, according to these indicators, there has been considerable feminist influence on public policy within the abortion and equal pay policy subsystems of Australia and the Republic of Ireland. One of the contributions of this thesis is to provide a historical overview of activism around these two central feminist demands in both countries.

#### **5. CONTRIBUTIONS, LIMITATIONS, FURTHER RESEARCH**

In examining the influence of feminism this study has developed initial propositions regarding feminist influence, examined empirical cases to find indicators of feminist influence and, on the basis of the evidence, drawn some conclusions regarding feminist influence across nations, across subsystems and across time. Here the contributions and limitations of this thesis are discussed and avenues for further research are suggested.

##### *Contributions*

The three-factor model of the influence of feminism on public policy has made a number of contribution to the literature but also raises some questions. Within the ‘*activity of national feminism*’ factor, the extended cycle of protest model provides a more accurate description of the material dynamics of feminism, its perseverance over time, and its implications for policy activism. The normative philosophies of feminism typology expands the categories of feminism and links each with particular policy strategies. The analytical perspectives of feminism typology connects the broad literature to do with feminist epistemology and methodology with theories of policy learning.

Within the '*receptivity* of the national site of policy' factor, the model connects the status of women with national structures and dynamics and, through a consideration of their varying levels of permeability and capacity, enables the policy analyst to predict where feminist influence would have the most effect. The effects of national factors were used to query the existing patriarchal equilibrium theory with a more optimistic model of cumulative change. The ability of cumulative change to be successful is still, however, open to question and this is an area for further research in the future.

Within the 'effects of policy *type*' factor, the composite model brought together the strength of Lowi's arenas of power model with Gelb and Palley's gender conflict model and an original model of feminist involvement. An appreciation of the scope and intensity of conflict which arises from both the distribution of costs and benefits *and* from gender-based policies were thus brought together. This added to an understanding of the effect of policy *type* on subsystem and coalition formation. The use of the policy subsystem as a *ground* upon which to identify the day-to-day policy process enabled both material and discursive indicators to track feminist *activity* within national sites of *receptivity* and particular policy *type*. Recording the lengthy history of activism, within the abortion and equal pay policy subsystems in Australia and Ireland, was of value in itself.

### *Limitations*

The scope of the analysis has presented some limitations. The decision to limit the comparators to two countries and two policy areas was simply to provide the breadth of analysis, to enable the maximum depth, in a study of this size. The time-frame of analysis was limited for the same reasons. Even so, when taking an internationally comparative, longitudinal approach to policy analysis, many of the finer details within the case studies have been overlooked in favour of an emphasis on points which seemed to be of greater critical importance in gaining policy outcomes.

The focus on policy has also limited discussion. Firstly, the 'three aspects of feminism' model overestimates the unity of the material feminist movement, when utilising the 'cycle of protest' model in relation to the policy process. Although it is possible and, in this case, necessary to conceptualise a cohesive movement; as feminism has spread across different sections of the population, different parts of the country, or even across different generations, there have also been multiple 'mini-cycles' of protest. Secondly, as the aim of this thesis has been to explore those 'feminisms' most concerned with the two policies under consideration, it also simplifies the differences between the normative philosophies of feminism discussed while excluding others from the discussion. Thirdly, the analytical aspects of feminism have been discussed with a materialist bias inherent in the consideration of policies which, after all, are concerned with the allocation of goods and services as well as with legitimacy.

### *Further Research*

In addition, numerous possible comparisons (with other NSMs, across other countries, or other policy areas) could build upon the research contained within this thesis, to provide additional insights into the nature of the policy process and the ability of feminism to influence policy outcomes.

This thesis has documented the perseverance and determination of thousands of women who have been prepared to bear the personal costs of activism so that all women may enjoy the freedom to control their productive and reproductive labour. The ability to understand and learn from this rich well of experience has been enhanced by the insights of the feminist and policy analysts and theorists referred to throughout. It is the author's hope that her own contributions to this body of knowledge will assist in the success of future feminist policy interventions.

## **APPENDICES AND BIBLIOGRAPHY**

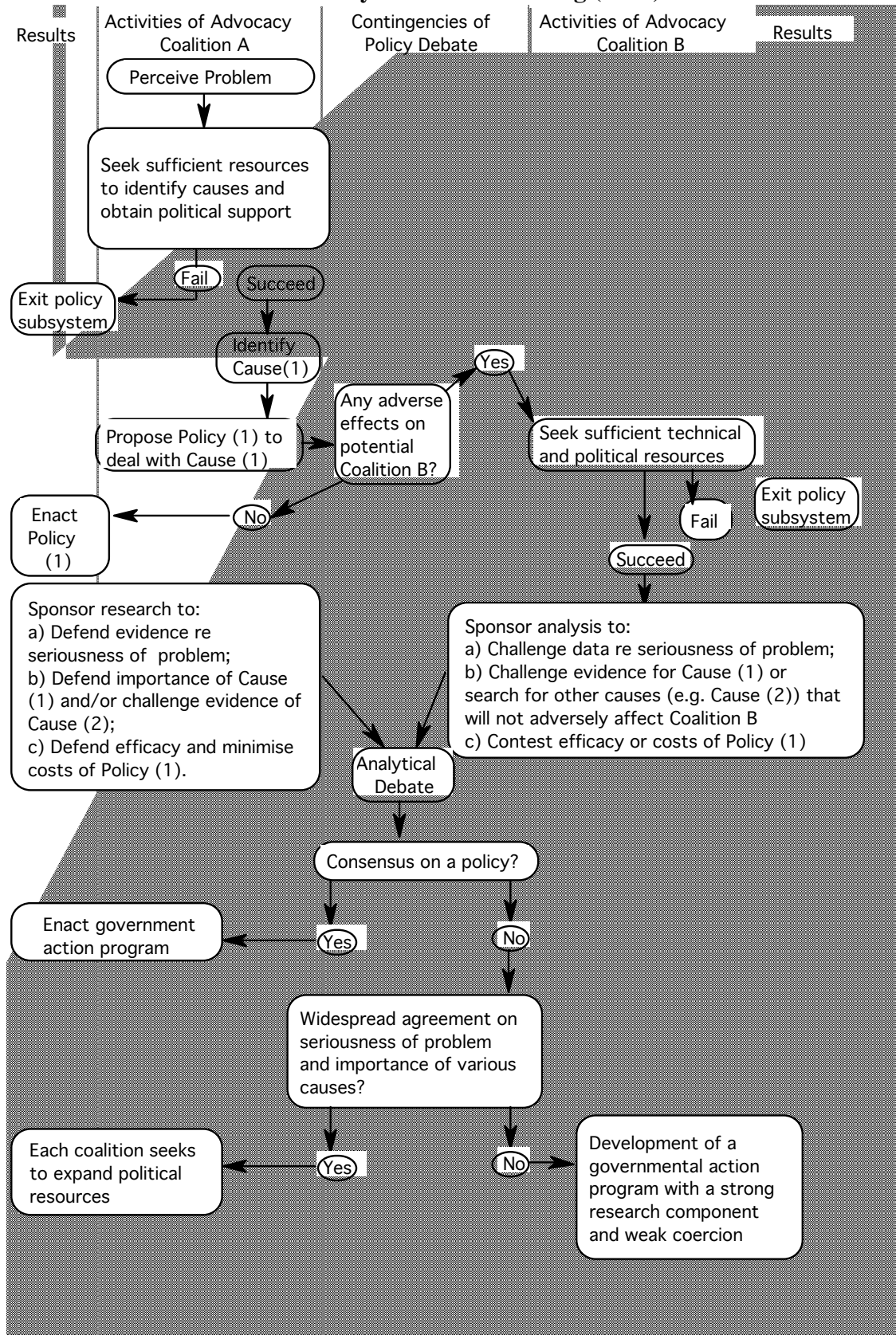
# APPENDICES

## **APPENDIX 1. Hypotheses Drawn from the Advocacy Coalition Framework by Paul Sabatier and Hank Jenkins-Smith**

1. On major controversies within a policy subsystem when core beliefs are in dispute, the line-up of allies and opponents tends to be rather stable over periods of a decade or so.
2. Actors within an advocacy coalition will show substantial consensus on issues pertaining to the policy core, although less so on secondary aspects
3. An actor (or coalition) will give up secondary aspects of his (its) belief system before acknowledging weaknesses in the policy core.
4. The policy core attributes of a governmental program are unlikely to be significantly revised as long as the subsystem advocacy coalition which instituted the program remains in power within that jurisdiction - except within the change is imposed by a hierarchically superior jurisdiction.
5. Changing the policy core attributes of a governmental action program requires both
  - (i) significant perturbations external to the subsystem (eg changes in the socio-economic conditions, system-wide governing coalitions, or policy outputs from other subsystems); and
  - (ii) skilful exploitation of those opportunities by the (previously) minority coalition within the subsystem.
6. Policy-oriented learning across belief systems is most likely when there is an intermediate level of informed conflict between the two. This requires that :
  - i) each coalition has the technical resources to engage in such a debate and that
  - ii) the conflict be between secondary aspects of one belief system and core elements of the other, or, alternatively, between important secondary aspects of the two belief systems.
7. Problems for which accepted quantitative data and theory exist are more conducive to policy-oriented learning than those in which data and theory are generally qualitative, quite subjective, or altogether lacking.
8. Problems involving natural systems are more conducive to policy-oriented learning across belief systems than those involving purely social or political systems because in the former many of the critical variables are not themselves active strategists and controlled experimentation is more feasible.
9. Policy-oriented learning across belief systems is most likely when there exists a forum which is :
  - i) prestigious enough to force professionals from different coalitions to participate; and
  - ii) dominated by professional norms
10. Elites of purposive groups are more constrained in their expression of beliefs and policy positions than elites from material groups.
11. Within a coalition, administrative agencies will usually advocate more centrist positions than their interest-group allies.
12. Even when the accumulation of technical information does not change the views of the opposing coalition, it can have important impacts on policy - at least in the short term - by altering the views of policy brokers or other important government officials.

Source: Paul Sabatier, 'Coalition Coordination and Stability in Public Policy: Testing an Expanded Version of the Advocacy Coalition Framework on San Francisco Bay/Delta Water Policy, 1960-1994,' *Proposal to the National Science Foundation*, August 15, 1994, 7.

## APPENDIX 2. Processes of Policy-Oriented Learning (ACF)



Source: Hank Jenkins-Smith and Paul Sabatier, 'The Dynamics of Policy-Oriented Learning,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview, 1993), 41-56, 46.



### APPENDIX 3. Structure of Belief Systems of Policy Elites (ACF)

	<b>Deep Core</b>	<b>Policy Core</b>	<b>Secondary Aspects</b>
<b>Defining Characteristics</b>	Fundamental normative and ontological axioms	Fundamental policy positions concerning the basic strategies for achieving core values within the subsystem	Instrumental decisions and information searches necessary to implement policy core
<b>Scope</b>	Across all policy subsystems	Specific to a subsystem	Specific to a subsystem
<b>Susceptibility to Change</b>	Very difficult; akin to a religious conversion	Difficult, but can occur if experience reveals serious anomalies	Moderately easy; this is the topic of most administrative and even legislative policy making
<b>Illustrative components</b>	<ol style="list-style-type: none"> <li>1. The nature of man (<i>sic</i>):               <ol style="list-style-type: none"> <li>i. Inherently evil vs. socially redeemable</li> <li>ii. Part of nature vs. dominion over nature</li> <li>iii. Narrow egoist vs. contractarians</li> </ol> </li> <li>2. Relative Priority of various ultimate values: freedom, security, power, knowledge, health, love, beauty etc.</li> <li>3. Basic criteria of distributive justice: Whose welfare counts? Relative weights of self, primary group, all people, future generations, non-human beings, etc.</li> </ol>	<p>Fundamental Normative Precepts:</p> <ol style="list-style-type: none"> <li>1. Orientation on basic value priorities</li> <li>2. Identification of groups or other entities whose welfare is of greatest concern</li> </ol> <p>Precepts with a Substantial Empirical Component:</p> <ol style="list-style-type: none"> <li>3. Overall seriousness of the problem</li> <li>4. Proper distribution of authority between government and market</li> <li>5. Proper distribution of authority among levels of government (e.g. regulation, insurance, education, direct payments, tax credits)</li> <li>6. Priority accorded various policy instruments</li> <li>7. Ability of society to solve the problem (e.g. zero-sum competition vs. potential for mutual accommodation; technological optimism vs. pessimism)</li> </ol>	<ol style="list-style-type: none"> <li>1. Seriousness of specific aspects of the problem in specific locales.</li> <li>2. Importance of various causal linkages in different locales over time.</li> <li>3. Most decisions concerning administrative rules; budgetary allocations, disposition of cases, statutory interpretation, and even statutory revision.</li> <li>4. Information regarding performance of specific programs or institutions.</li> </ol>

\* The Policy Core and Secondary Aspects also apply to governmental programs.

Source: Paul Sabatier and Hank Jenkins-Smith, 'The Advocacy Coalition Framework: Assessment, Revisions and Implications for Scholars and Practitioners,' In *Policy Change and Learning: An Advocacy Coalition Approach*, Paul Sabatier and Hank Jenkins-Smith (eds.), (Boulder CO: Westview, 1993), 211-235, 221.

#### APPENDIX 4. International Connections: Abortion Lobby Groups

International Co-ordinating Bodies	
Anti-Abortion	Pro-Abortion
<p>Alternatives to Abortion International</p> <p>The International Federation of Right to Life Associations</p> <p>Human Life International</p> <p>Protect Life in All Nations Inc. (PLAN)</p> <p>World Federation of National, Regional and Professional Pro-Life Organisations and Foundations (Pro-Life International)</p> <p>World Federation of Doctors Who Respect Human Life</p>	<p>World Health Organisation</p> <p>Women's Global Network for Reproductive Rights (was the International Campaign for Abortion Rights, then the International Contraception, Abortion and Sterilisation Campaign)</p> <p>Family Planning International Assistance Organisation</p> <p>Feminist International Network of Resistance to Reproductive and Genetic Engineering</p> <p>International Planned Parenthood Federation</p>
United States Anti-Abortion Groups with International Networks	
<p>National Right to Life Committee Inc.</p> <p>American Life Lobby, Inc.</p> <p>Americans United for Life</p> <p>Christian Action Council</p> <p>National Integrity Forum</p> <p>American Post Abortion Counselling Associations</p> <p>American Victims of Abortion</p> <p>Eagle Forum</p> <p>Human Life International (US)</p> <p>Operation Rescue</p> <p>Women Exploited by Abortion</p>	

Although gathered from a number of sources this table owes much of its inspiration to Nicole Underwood, *Politics of Morality: The 'Pro-Life' Movement in Australia*, Unpublished Thesis (BA Hons.), (Department of Sociology, University of Tasmania, 1993).

## APPENDIX 5: List of Members: Irish Equal Pay Policy Subsystem Coalitions and Policy Brokers

	Labour Court Review of Recommendations and Determinations (1976-1981)
Policy Brokers	Equality Officers (71 cases); Labour Court (30 cases); and Supreme Court (1 case).
Pro-Equal Pay	UNIONS: Irish Transport and General Workers' Union (10 cases); Amalgamated Transport and General Workers' Union (5 cases); Workers' Union of Ireland (3 cases); Association of Scientific, Technical and Managerial Staffs (2 cases); Rail Operative Trade Union; Inspectors and Sergeants Representative Body; Association of Higher Civil Servants; Post Office Workers' Union; Postmasters' Association; Irish Federation of University Teachers; and Individuals named (Employment Equality Agency?) (45 cases).
Anti-Equal Pay	GOVERNMENT: Department of Public Service; University College Dublin; Department of Post and Telegraphs; Bord Iascaigh Mhara; Dublin Corporation; Department of Justice and the Public Service; Department of Agriculture; National University of Ireland; and Bord Na Mona.  EMPLOYERS: Pretty Polly (Killarney) Ltd.; Dorene Separates Ltd.; Insurance Corporation of Ireland; Data Products (Dublin) Memories Ltd.; P. M. P. A. Insurance Co. Ltd.; Goulding Chemicals Ltd.; Skyways Ltd.; P. C. Moore & Co.; Plunder and Pollak; Ostlanna Iompair Éireann Teo; Clonskeagh Hospital; Galway Crystal; Linson Limited; CIE; Dungarvin Leathers Ltd.; Harringtons & Goodlass Ltd.; St. Lukes Hospital; St. Loman's Hospital; St. Mary's Hospital; Aer Rianta Teo; St. Clare's Home; National Medical Rehabilitation Centre, Dun Laoghaire; Mater Hospital; Córas Iompair Éireann; Independent Newspapers Ltd.; Haddens Ltd. Cork; W.P. Macauley; Irish Civil Service Building Society; Youghal Carpet Yarns Ltd.; Waterford Co-operative Society; Waterford Class Ltd.; AnCo; C. H. Arthur and Sales Finance Co.; H. B. Ice Cream Ltd.; Irish Containers Ltd.; the Blood Transfusion Service Board; Linson Ltd.; Addis (Ireland) Ltd.; Pauwels Trafo (Ireland) Ltd.; Haddens Ltd., Cork; Nitrigin Éireann Teoranta; Central Bank of Ireland; Brooks Thomas Ltd.; Navan Carpets Ltd.; Irish Plastic Packaging Ltd.; Inter Beauty (Ireland) Ltd.; Irish Dunlop Ltd.; Boart Hardmetals Europe Ltd.; Coombe Lying-In Hospital; Hanson Ltd.; and Calor Kosangas Ltd.

Source: Labour Court, *Thirty-Fifth Annual Report*, (Dublin: The Stationery Office, 1981).

## APPENDIX 6. List of Members: Irish Abortion Policy Subsystem Coalitions and Policy Brokers

	As mentioned in the literature, press clippings, and personal interviews.
Policy Brokers	Referendum; Oireachtas; High Court; Supreme Court; European Court
Pro-Abortion (Specific)	<p>COALITIONS: Anti-Amendment Campaign; Repeal the Eighth Amendment Campaign; Alliance for Choice; Dublin Abortion Information Campaign</p> <p>FEMINIST: Women's Right to Choose Group; Women's Right to Choose Campaign; Women's Coalition; Dublin Wellwoman Centre; Irish Pregnancy Counselling Centre; Open Door Counselling; Women's Information Network; Frontline</p> <p>MEDICAL: Dublin Fertility Guidance Clinic; Irish Family Planning Association; Doctors for Freedom of Information</p>
Pro-Abortion (General)	<p>FEMINIST: Irish Women's Liberation Movement; Irishwomen United; Women's Aid; Women's Education, Research and Resource Centre, UCD; Council for the Status of Women</p> <p>POLITICAL: Democratic Socialist; Worker's Party; Irish Communist Party; Labour Party; Sinn Féin; Democratic Left; Labour Party National Women's Council; Young Fine Gael; Young Democratic Left; Young Labour Party; Progressive Democrats; Peoples Democracy Group; Revolutionary Struggle Group; Socialist Workers Movement</p> <p>UNIONS: University College Dublin Student's Union; Trinity College Dublin Student's Union; Union of the Student's of Ireland; Trade Union Women's Forum; Irish Congress of Trade Unions; Federated Workers Union of Ireland No. 15 Branch</p> <p>LIBERAL: Irish Council for Civil Liberties; Campaign to Separate Church and State</p> <p>RELIGIOUS: Church of Ireland; Presbyterian Church and Methodist Church</p>
Anti-Abortion (Specific)	<p>COALITIONS: Pro-Life Amendment Campaign</p> <p>NATIONAL: Irish Pro-Life Movement; Society for the Protection of the Unborn Child; Right to Life Federation; Youth Defence/Friends of Youth Defence; Irish Youth and Student Pro-Life Movement</p> <p>MEDICAL: Irish Catholic Doctors Guild; Irish Nurses Organisation; National Association of the Ovulation Method</p>
Anti-Abortion (General)	<p>RELIGIOUS: Irish Family League; Council for Social Concern; Knights of St. Columbanus; Opus Dei; Conference of Irish Bishops; Solidarity; Family Solidarity</p> <p>POLITICAL: Fianna Fáil; Christian Centrist Party</p>

## APPENDIX 7. Australian Election Results: 1966-1996

Year	Commonwealth		State and Territory		
	Governing Party	Prime Minister	State, Territory	Governing Party	Premier or Chief Minister
1966	Liberal/Country	Harold Holt	Queensland	Country/Liberal	J. F. Nicklin
1967			Victoria	Liberal	Henry Bolte
1968			New South Wales Queensland South Australia Western Australia	Liberal/Country Country/Liberal Liberal Country Liberal/Country	Robert Askin Joh Bjelke-Petersen Steele Hall D. Brand
1969	Liberal/Country	John Gorton	Tasmania	Liberal/Centre	W. A. Bethune
1970			South Australia Victoria	Labor Liberal	Don Dunstan Henry Bolte
1971			New South Wales Western Australia	Liberal/Country Labor	Robert Askin J. T. Tonkin
1972	Labor	Gough Whitlam	Queensland Tasmania Victoria	Country/Liberal Labor Liberal	Joh Bjelke-Petersen Eric Reece R. J. Hamer
1973			New South Wales South Australia	Liberal/Country Labor	Robert Askin Don Dunstan
1974	Labor	Gough Whitlam	Queensland Western Australia	National/Liberal Liberal/National	Joh Bjelke-Petersen Charles Court
1975	Liberal/Country	Malcolm Fraser	South Australia	Labor	Don Dunstan
1976			New South Wales Tasmania Victoria	Labor Labor Liberal	Neville Wran Doug Lowe R. J. Hamer
1977	Liberal/National-Country	Malcolm Fraser	Queensland South Australia Western Australia	National/Liberal Labor Liberal/National	Joh Bjelke-Petersen Don Dunstan Charles Court
1978			New South Wales North Territory	Labor Country-Liberal	Neville Wran Paul Everingham
1979			South Australia Tasmania Victoria	Liberal-Country Labor Liberal	David Tonkin Doug Lowe R. J. Hamer
1980	Liberal/National-Country	Malcolm Fraser	North Territory Queensland Western Australia	Country-Liberal National/Liberal Liberal/National	P. Everingham Joh Bjelke-Petersen Charles Court
1981			New South Wales	Labor	Neville Wran
1982			South Australia Tasmania Victoria	Labor Liberal Labor	John Bannon Robin Gray John Cain
1983	Labor	Bob Hawke	North Territory Queensland Western Australia	Country-Liberal National Labor	Paul Everingham Joh Bjelke-Petersen Brian Burke
1984	Labor	Bob Hawke	New South Wales	Labor	Neville Wran
1985			South Australia Victoria	Labor Labor	John Bannon John Cain
1986			North Territory Queensland Tasmania Western Australia	Country-Liberal National/Liberal Liberal Labor	Steve Hatton Joh Bjelke-Petersen Robin Gray Brian Burke
1987	Labor	Bob Hawke			
1988			North Territory New South Wales Victoria	Country-Liberal Liberal/National Labor	Marshall Perron Nick Greiner John Caine

	Commonwealth		State and Territory		
<b>1989</b>			Queensland South Australia Tasmania Western Australia	Labor Labor Labor Labor	Wayne Goss John Bannon Michael Field Brian Burke
<b>1990</b>	Labor	Bob Hawke			
<b>1991</b>			New South Wales North Territory	Liberal/National Country-Liberal	Nick Greiner Marshall Perron
<b>1992</b>			ACT Tasmania Victoria Queensland	Labor Liberal Liberal/National Labor	Rosemary Follett Ray Groom Jeff Kennett Wayne Goss
<b>1993</b>	Labor	Paul Keating	South Australia Western Australia	Liberal/National Liberal/National	Dean Brown Richard Court
<b>1994</b>			New South Wales North Territory	Labor Country-Liberal	Bob Carr Marshall Perron
<b>1995</b>			ACT Queensland	Liberal Liberal/National	Kate Camell Bob Borbidge
<b>1996</b>	Liberal/National	John Howard	Tasmania Victoria	Liberal Liberal/National	Ray Groom Jeff Kennett

While this table has been compiled from a number of sources the majority of the information has come from: Brian Galligan, 'Appendix: Tables of Comparative Statistics,' In *Australian State Politics* Brian Galligan (ed.), (Melbourne: Longman Cheshire, 1986), 266-272, 269-270; and Scott Prasser and Mark Neylan, 'Liberal Leadership, Policymaking and Party Organisation,' In *For Better or For Worse: The Federal Coalition*, Brian Costar (ed), (Melbourne: Melbourne University Press, 1994), 115-129, 118.

## APPENDIX 8. List of Members: Australian Abortion Policy Subsystem Coalitions and Policy Brokers

	As mentioned in the literature, press clippings, and personal interviews.
Policy Brokers	State High and Supreme Courts; Australian High Court; State and Federal Parliaments
Pro-Abortion (Specific)	<p>NATIONAL COALITIONS: <i>Feminist</i>: Women's Abortion Action Campaign; Abortion Rights Network of Australia; Abortion Rights Coalition; <i>Medical</i>: Abortion Providers Federation of Australia</p> <p>STATE COALITIONS: Abortion Law Reform Association (VIC, NSW, SA, ACT, WA), QLD; Abortion Law Repeal Association of Western Australia; Association for the Legal Right to Abortion (WA)</p> <p>FEMINIST: <i>Coalitions</i>: Women's Abortion Coalition (ACT); Coalition for Women's Right to Choose (SA); Victorian Right to Choose Coalition; Women's Abortion Rights Coalition (QLD); Right to Choose Coalition (WA); Newcastle Right to Choose Abortion Coalition (NSW); Abortion Rights Coalition (NSW); Coalition of Women for a Realistic Criminal Code (QLD); <i>Services</i>: Control (QLD); Children by Choice (QLD); Abortion Information Service (WA); Women's Health Foundation Clinic (TAS); Bessie Smyth Foundation (NSW); <i>Groups</i>: Women's Abortion Action Campaign (SA, VIC, NSW, QLD, ACT); Women's Action Group (SA); Women's Abortion Campaign (SA, QLD); Pro-Choice Lobby (SA); Women's Abortion Action Campaign (QLD); Women's Campaign for Abortion (QLD); Campaign for Women's Reproductive Rights (VIC); Abortion Rights Coalition (NSW); Women's Emergency Fund (TAS); Melbourne University Children by Choice Group; Australian Union of Students Women's Department</p> <p>MEDICAL: ; Pregnancy Advisory Centre (SA); Reproductive Healthcare Services (ACT); Fertility Control Clinic (VIC); Zera Medical Clinic (WA); Nanyara Clinic (WA); Fertility Control Clinic (QLD); Planned Parenthood of Australia (QLD); Preterm Clinic (NSW); Doctor's Reform Society (NSW)</p>
Pro-Abortion (General)	<p>FEMINIST: <i>Groups</i>: Women's Electoral Lobby (all States and Territories and Nationally); Women's Liberation Movement (all States and Territories); Union of Australian Women (all States and Territories and Nationally); Radical Women Socialist Feminist Movement (VIC); Women Lawyers Association (ACT); Working Women's Charter Group (QLD); <i>Departments</i>: National Women's Advisory Council; New South Wales Women's Advisory Council; Western Australia Women's Advisory Council; Women's Information Service (TAS); National Women's Advisory Council; Women's Health Advisers (all States and Territories); Women's Health Working Party (WA)</p> <p>POLITICAL: Young Liberals (VIC, SA, QLD), Australia Party (NSW, ACT); Australian Labor Party, Labor Women (NSW); National Labor Women's Conference; ALP State Conference (QLD); Society of Labor Lawyers (TAS); Australian Labor Party Status of Women Committee</p> <p>UNIONS: Australian Council of Trade Unions; Professional Officers Association (QLD); Australian Welfare Union (QLD); Council of Social Services (ACT); Public Health Association (ACT); Trades and Labour Council (ACT); Working Women's Centre (VIC); Administrative and Clerical Officers Association (NSW)</p> <p>LIBERAL: Council for Civil Liberties (VIC, NSW, ACT, QLD); Humanist Society (VIC, NSW, ACT, SA, WA); Australian Frontier (ACT); Young Women's Christian Association (VIC)</p> <p>RELIGIOUS: Synod of the Church of England (VIC); General Assembly of the Presbyterian Church (VIC); United Church (VIC); Melbourne Unitarian Church</p> <p>MEDICAL: <i>Feminist</i>: Leichardt Women's Health Centre (NSW); Women's Health Collective (SA); Women's Health Care House (WA); Women's Health Centre (WA); Women's Health Centre (QLD); Darling Street Women's Health Centre (NSW); Everywoman's Health Centre (NSW); Hobart Women's Health Centre (TAS); Women's Health Network (ACT); Victorian Women's Health Centre; <i>Others</i>: Family Planning Australia (all States and Territories and</p>

	Nationally); Australian Medical Association; Royal Australian College of General Practitioners; Royal College of Obstetricians and Gynaecologists
Anti-Abortion (Specific)	<p>NATIONAL COALITIONS: Australian Federation of Right to Life Associations; Right to Life Australia; Federation of Pro-Life Pregnancy Support Services in Australia</p> <p>MEDICAL: Doctors Who Respect Human Life; Nurses for Life</p> <p>RELIGIOUS: Lutherans for Life, Lutheran Abortion Alternatives Network; Australian Catholic Pro-Life Association; Coalition for the Defense of Human Life</p> <p>POLITICAL: Parliamentary Pro-Life Group</p> <p>STATE BASED: Human Life Protection Society (TAS); Pro-Life Victoria; Right to Life branches: NSW, SA, ACT, QLD, WA, NT; Women Exploited by Abortion (VIC); Women Hurt by Abortion (WA); Adelaide, ANU, Monash, and Latrobe Universities Pro-Life Groups</p>
Anti-Abortion (General)	<p>RELIGIOUS: <i>Catholic</i>: Catholics United for the Faith; Catholic Youth Council; Medical Guild of St. Luke; Cosmos; Domain; Centacare Family Services; Knights of the Southern Cross; <i>Others</i>: Christian Outreach Centres; Christian Pro-Family Forum; Tasmanian Council of Churches; Christian Alternative Movement; The Fellowship of the Least Coin; Humanity in Touch; Genesis Christian Life Centre; Life Ministries Inc.; Sound the Alarm of the Lord Ministries; Christian Pro-Family Forum; <i>Women</i>: Anglican Mother's Union; Australian Church Women; Catholic Women's League; Christian Women's Convention; Lutheran Women Concerned with Contemporary Affairs (SA); Women's Interdenominational Committee (VIC)</p> <p>ANTI-FEMINIST: Nelson Women's Group (TAS); Women's Action Alliance; Women for the Family and Society; Women Who Want to be Women</p> <p>POLITICAL: Call to Australia Party</p> <p>MEDICAL: Hospice Care Association of Southern Tasmania; Retarded Children Welfare Association</p> <p>CONSERVATIVE: Advisory Committee for the Southern Cross Crusade 2000AD; Anti-Treason Co-ordinate; Australians Against Further Immigration; Australian Community Movement; Australian Family Association; Australian League of Rights; Australian Recovery Movement; Australian Small Business Association; Citizens Electoral Council; Coalition Affirming Freedom in Education; Community Standards Organisation; Conference for an Independent Australia; Conservative Action and Victory Fund; Constitutional Heritage Protection Society; Electors Veto Association; Endeavour Forum Inc; Family Action Movement; Family Foundations (SA) Inc; Festival of Light; Gwyder Movement; Logos Foundation; Mortgage Revolt Group; Patriotic Lobby; Save the Family Movement; Society to Outlaw Pornography; National Civic Council; Parents and Friends Federation</p> <p>BIOETHICS RESEARCH: Dietrich Bonhoeffer International Institute for Bioethical Studies Inc. (SA); Foundation for Human Development (NSW); Foundation Genesis (NSW); Human Life Research Foundation (VIC); Southern Cross Bioethics Institute (SA); St. Vincent's Bioethics Centre (VIC)</p>

Although gathered from a number of sources this table owes much of its inspiration to Nicole Underwood, *Politics of Morality: The 'Pro-Life' Movement in Australia*, Unpublished Thesis (BA Hons.), (Department of Sociology, University of Tasmania, 1993).



## APPENDIX 9. List of Members: Australian Equal Pay Policy Subsystem Coalitions and Policy Brokers

	1969 Equal Pay Case (127 CAR 1143)
Policy Brokers	Australian Conciliation and Arbitration Commission
Pro-Equal Pay	<p>UNIONS: Australian Council of Trade Unions; Australian Council of Salaried and Professional Associations; the Council of Professional Associations; the Australian Journalists Association; the Australian Bank Officials' Association; the Australian Nursing Federation Employees Section; the Commonwealth Police Officers' Association; Commonwealth Public Service Association; the Association of Professional Scientists of Australia; the Federated Clerks Union of Australia; the Amalgamated postal Workers Union of Australia; the Association of Officers of the Commonwealth Scientific and Industrial Research Organisation; the Administrative and Clerical Officers' Association, Commonwealth Public Service; the High Council of the Commonwealth Public Service Organisations; and the Australian Meat Industries Employees Union.</p> <p>FEMINIST: Australian Federation of Business and Professional Women's Clubs; the Australian National Council of Women; the Australian Federation of Women Voters; and the Union of Australian Women</p>
Anti-Equal Pay	<p>COMMONWEALTH GOVERNMENT (Liberal/Country Party Coalition): Attorney General for the Commonwealth of Australia; and the Commonwealth Public Service Board.</p> <p>PRIVATE EMPLOYERS: the Meat and Allied Trades Federation of Australia; the Angliss Group; the Australian and New Zealand Bank; the Australian Council of Retailers; National Employers Policy Committee; Metal Industries Association; the Victorian Chamber of Manufactures and the Federal Council of Dry Cleaners of Australia.</p>

## APPENDIX 10. Major Equal Pay Policy Outputs: Australia and Ireland

	Australia	Ireland
Women as Workers	1969 <i>Equal Pay Case</i> (121 CAR 587) 1973 <i>Industrial Relations (Amendment) Act</i> 1974 <i>Minimum Wage Case</i> (157 CAR 299).	1972 Employer Labour Conference 1974 Employer Labour Conference 1974 <i>Anti-Discrimination (Pay) Act</i> .
Women as Women	1966 <i>Public Service (Amendment) Act</i> 1972-1975 Government support for work-related child care services 1973 <i>Maternity Leave (Australian Government Employees) Act</i> 1979 <i>Maternity Leave Case</i> (218 CAR 120) plus adoption leave (1984), parental leave (1990), and family leave (1994). 1983-1996 Government support for work-related child care services 1984 <i>Sex Discrimination Act</i> ; (as amended)	1973 <i>Civil Service (Employment of Married Women) Act</i> 1977 <i>Employment Equality Act</i> 1981 <i>Maternity (Protection of Employees) Act</i> (as amended) 1981 <i>Social Welfare (Amendment) Act</i> plus adoptive leave (1995) 1985 <i>A Worker v A Garage Proprietor</i> (EEO2/1985) 1991 <i>Long v Power Supermarkets Ltd. T/A Quinnsworth</i> (DEE15/1991) 1991 <i>Child Care Act</i> 1994 <i>National Code of Practice</i> in relation to sexual harassment
Women's Work Revalued	1972 <i>Equal Pay for Work of Equal Value Case</i> (147 CAR 172) 1987 <i>Private Hospitals Doctors and Nurses (ACT) Award</i> case Anomalies Decision 1985 Anomalies decisions regarding the APS Therapists (299 CAR 533) 1986 decision regarding the APS Social Workers case (unreported) Minimum Rates Adjustment in the <i>Child Care Workers Case</i> , 1990, 1991	1992 9 <i>Part-time Home-Helps (IMPACT) v North Western Health Board</i> (EP13/92)
Revaluing Women	1984 <i>Public Service Reform Act</i> 1986 <i>Affirmative Action (Equal Employment Opportunity for Women) Act</i> 1964 Department of Labour and National Service Women's Section (became the the Women's Desk in the Department of Industrial Relations in 1989 and the Equal Pay Unit in 1991) 1970s funding for non-government organisations: Melbourne Working Women's Centre and the Sydney Women's Trade Union Commission 1989 Department of Employment, Education and Training Women's Employment Education and Training Advisory Group 1990 Department of Industrial Relations Work and Family Unit established 1990s funding for non-government organisations: Working Women's Centres	1974 Women's Representative Committee 1986 Department of Women's Affairs 'Women in Industry' Campaign 1992 Department of Equality and Law Reform established

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