



INFORMATION, ANALYSIS  
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Current Issues Brief  
No. 1 2002–03

## Free Votes in Australian and some Overseas Parliaments

ISSN 1440-2009

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Published by the Department of the Parliamentary Library, 2002

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## Free Votes in Australian and some Overseas Parliaments

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27 August 2002

## Acknowledgments

The authors would like to acknowledge the assistance of Scott Bennett, Peter Fowler, Cathy Madden, Marion Maddox, Jennifer Norberry, Maurice Rickard, Robyn Webber, Janet Wilson and the parliamentary libraries in Australian state and territory parliaments and the parliaments of Britain, Canada, New Zealand and Wales in producing this paper.

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## Introduction

In the Australian political party system members of parliament (MPs) nearly always vote in parliament along party lines. On the occasions when members do not they either abstain from voting, cross the floor to vote with the opposing parties or are allowed a free or conscience vote by the party.

The term conscience vote is most commonly used in Australia to describe votes on moral and social issues such as abortion, euthanasia and capital punishment (life and death issues). The term may also include issues on which the parties do not always have a formal policy such as parliamentary procedure and parliamentary privilege, where the term free vote is more appropriate. As the term 'free vote' can be used to encompass a conscience vote, it will be used throughout this paper. It is also the term commonly used in other Westminster parliaments.

Political scientist Professor John Warhurst has suggested that there is 'really no such thing as an absolutely free vote. Parliamentarians are never free, in any meaningful sense of that term, to do whatever they like. They are never really free from their community responsibilities or from their personal values or from their political parties'.<sup>1</sup>

The decision of the major parties to allow members a free vote on the Research Involving Embryos and Prohibition of Cloning Bill 2002 has raised again the issue of free votes in the Commonwealth Parliament. A newspaper report on the current parliamentary debate described the Bill as:

... capturing the attention of all parliamentarians. All who wish to speak may do so; there is no party line to tow; the minds of MPs are being exercised and community feeling, via direct contact with each MP, is having an impact beyond the broad polling and political interest in other debates.<sup>2</sup>

This paper surveys past and present practice in Australian political parties in allowing free votes in the Commonwealth Parliament, the practice in some overseas parliaments, and the conditions under which free votes are allowed. It does not analyse free votes in Australian state parliaments. The paper also provides some data on issues on which free votes have been allowed in Australian state and territory parliaments and some overseas parliaments (see Tables 1, 2 and 3, pages 16–19).

In Australia, unlike the United Kingdom (UK) and Canada, there has been very little analysis of the impact, frequency or use of free votes in parliaments. It is an area that would benefit from further research. A Canadian study on the voting behaviour of Canadian MPs on an abortion bill suggested that a 'complete understanding of the parliamentary free voting dynamic will require more non-British examples'.<sup>3</sup>

## Definitions

When MPs vote according to their conscience they may do it under two circumstances:

- Crossing the floor—'the act of a member of parliament who refuses to vote with his or her own party in a particular division, and crosses the floor of the parliamentary chamber to join the political opponents and vote with them. Such actions are rare in Australia due to the strong party discipline exercised on members of parliament'.<sup>4</sup> This is a highly political action, taken in defiance of the party, which can affect a member's career.
- Free vote (or conscience vote)—'a rare vote in parliament, in which members are not obliged by the parties to follow a party line, but vote according to their own moral, political, religious, or social beliefs'.<sup>5</sup>

In Westminster parliaments the decision to allow a free vote is a political one and is not a subject on which the Speaker can be asked to rule. The free vote can apply to one party, more than one party or all parties represented in the parliament.

It is common for Australian commentators to confuse the concepts of free votes and crossing the floor because both actions involve the notion of voting according to conscience. For example in June 2002 New South Wales (NSW) Opposition Leader John Brogden allowed Liberal members a free vote on the extension of a heroin injecting room trial in Sydney. *The Sydney Morning Herald* reported that Mr Brogden '... crossed the floor of the chamber and sat with the Government'.<sup>6</sup> Mr Brogden did vote with the Government but because he was free to vote according to his conscience his action did not involve the political act of crossing the floor.

## Why are free votes called for?

The reasons for calling for a free vote on an issue are varied but may include the following:

- To accommodate a member's personal philosophy or beliefs which make it very difficult or impossible to support party policy and a free vote is preferable to abstaining or crossing the floor.
- To embarrass or destabilise the other side. The party leader may announce that he or she will allow a free vote and challenges the other side to do the same. For example, the Leader of the Opposition, the Hon. Simon Crean, called on the Prime Minister to allow his party a free vote on the issue of the use of human embryos for stem cell research. Mr Crean said 'I've allowed a free vote on this and I hope the Prime Minister follows suit'.<sup>7</sup>
- To gain publicity or support for a particular stance on an issue. On 11 August 2002 four federal MPs and three church leaders addressed a rally in Sydney opposed to the use of human embryos in stem cell research. The Research Involving Embryos and Prohibition of



Human Cloning Bill 2002, which would permit this use, is currently being debated in the Commonwealth Parliament.<sup>8</sup> The MPs and church leaders hoped 'to make an 11<sup>th</sup>-hour exhortation to a crowd of about 950 to lobby their MPs to vote against the bill in a conscience vote later this month'<sup>9</sup>. A newspaper report the following day noted that 'there were no speakers in favour of the legislation to further that debate'.<sup>10</sup>

- To force an issue. The Australian Labor Party (ALP) has claimed that the Government's aim in suggesting amendments to the Sex Discrimination Act was to divide the Labor Party on the issue. In June 2001, Labor Shadow Attorney-General Robert McClelland said that the Party believed that the Government had dropped plans to restrict single and lesbian women's access to IVF treatment 'because there is not further political advantage in it. ... [the issue] was brought on initially very much as a divisive issue and now it's seen that it's failed in its attempt to divide the party'.<sup>11</sup>
- To defuse tensions within a party and avoid a damaging split within the party. David McGee, Clerk of the New Zealand House of Representatives, has described conscience issues as 'fractious, stimulating, moving and confusing by turns. They remain a necessary safety valve to handle those issues which cannot appropriately be treated as party matters'.<sup>12</sup>

## **Which issues have had a free vote?**

Free votes have been allowed on:

- 'Life and death' issues such as abortion, euthanasia and capital punishment.
- Social or moral issues such as family law, homosexuality, drug reform, war crimes and gambling.
- Human reproductive and scientific research issues such as in vitro fertilisation and stem cell research.
- Parliamentary procedure and privilege issues and standing orders.

See Table 1, page 16, for a select list of issues on which a free vote has been granted in Australian and some overseas parliaments.

Free votes may also be allowed on parts of a bill but not its entirety as suggested by Liberal Minister for Ageing, the Hon. Kevin Andrews, with regard to the stem cell research legislation. In April 2002 Mr Andrews said 'that doesn't mean there will be conscience votes on the entire package of the legislation or on whole a raft of other provisions in the Bill. I suspect it will be fairly narrow ... I suspect when we come to it that the issues will be fairly narrowly defined'.<sup>13</sup>

There is also a convention in the UK Parliament that free votes are granted on all private members' bills.<sup>14</sup>

Free votes are not usually allowed on economic issues or issues that have a significant impact on the budget although 'until 1936 tariff proposals were free votes in both Houses in the Australian Parliament'.<sup>15</sup>

Free votes are generally not allowed when a party has a definite policy on an issue. For example, although capital punishment is an issue that usually attracts a free vote, the ALP does not allow its members such a vote because the party has already adopted an anti-death penalty policy.

It is not uncommon for members to be allowed a free vote and, as in the case of the stem cell research bill, for the leaders to declare their positions.<sup>16</sup> John Warhurst has suggested that in this case a free vote is never straightforward 'because backbenchers are still faced with the prospect of disagreeing with their leaders. It is much easier to conform'.<sup>17</sup> In this situation it is possible that a de facto 'party view' could emerge for members to 're-coalesce around'.

Free votes may not be allowed on administrative amendments or provisions of a bill even though there could be a free vote on the substantive provisions of its parent Act. In 1985, the Minister for Resources and Energy, Senator the Hon. Gareth Evans, when asked if the Government would allow a free vote on amendments to the Family Law Act as had been allowed for in the original Act, said:

I am sure there is a very big difference between the substantive provisions of the Family Law Act which govern the basic ground rules for marriage and divorce and those provisions in the Act which concern the administration and enforcement of payments made under it. I doubt very much whether the latter would ever be construed as an appropriate subject matter for a conscience vote.<sup>18</sup>

## **Free votes and the party system**

Free votes are not common in the Australian Commonwealth Parliament. At the time of writing the last free vote for all major parties was in 1996 (see Table 2, page 17).

Any player in the political process may call for a free vote on any issue. This includes the public through petitions, letters to the editor and talkback radio; the media; special interest and lobby groups; individual MPs; Independent MPs; and the parties themselves.

It is usually the party leaders, the party room or, in the case of the ALP policy on abortion, the party's National Conference who decide whether or not a free vote will be allowed on an issue.

The Australian Democrats and some Independents have called on the major parties to allow a free vote on all issues, arguing that all issues considered in Parliament require the application of conscience.<sup>19</sup> This system is possible in the United States where votes do not bring down the government. The Budget deadlock between Democrat President Bill Clinton and the Republican-controlled Congress that led to the 1995 shutdown of the US Government did not bring down the President. But a Westminster government would never have survived this situation.

In the Westminster system every vote is seen as a vote of confidence in the government of the day. A government must win all votes on the floor of the House. In free votes members of parliament rather than the government make the decisions and if more free votes were allowed it would be members rather than government that should be held accountable.<sup>20</sup>

If political parties agreed to a relaxation of the rules governing confidence there would be a possibility of more free votes. In theory this would mean that 'no longer would defeat of government bills be tantamount to a motion of no-confidence, so government MPs would be able to vote against their party without fear that such a vote would bring down the government'.<sup>21</sup>

However, a Canadian political scientist has suggested that one compelling reason for not increasing the number of free votes is the impact this would have on the Westminster system of government. 'To expect much greater use of free votes would be to demand massive changes in the processes of representation and decision making in the parliamentary system.'<sup>22</sup>

Strong party discipline is largely accepted as necessary to ensure stable parties and government. The major parties use various means to enforce discipline including criticism, demotion, withholding promotion or endorsement at the next election, or the extreme step of expulsion from the party.

On most issues that come before Parliament, the significant debate takes place in the party room, not on the floor of the House during the passage of legislation. In his valedictory speech Labor Senator Barney Cooney suggested that:

... the party room in a certain way is the most essential part of the work that we do in this place because we come here ... with predetermined positions. We have to; otherwise the system would not work. But the party room is a place where we can do something, where people can get up and can come to different conclusions.<sup>23</sup>

Similarly former Liberal MP Fred Chaney was of the opinion that 'the failure of many members to have a view that they were prepared to articulate and argue for within the party forum was far more of a problem than excessive party discipline'.<sup>24</sup>

The party system is so strong that even when a free vote is granted on complex or major issues the outcome of the vote may not change. The Clerk of the New Zealand House of

Representatives observed that 'members tend to act in accordance with caucus decisions as part of their covenant with the electorate which returned them to the House as members of a political party'.<sup>25</sup> In the British Parliament an examination of voting patterns produced a similar situation, showing that 'the suspension of the whip on such votes does not diminish the primacy of party in structuring the outcome'.<sup>26</sup>

In a recent study on the voting behaviour of Canadian MPs on Bill C-43, which attempted to establish a federal abortion law, the authors found that:

... in general, Canadian MPs felt at greater liberty to vote as their consciences dictated when their votes mattered least ... when voting was most visible and outcomes most important, Canadian MPs re-coalesced around their parties.<sup>27</sup>

Another interesting aspect of this Canadian study was the conclusion that previous findings from the UK House of Commons 'are generalizable beyond the UK'.<sup>28</sup>

There does not appear to be evidence of public agitation in Australia for the introduction of more free votes in Australian parliaments, although within the ALP there have been calls for a greater use of free votes. These calls were particularly strong in 2001 on the Government's proposed amendments to the Sex Discrimination Amendment Bill (No. 1) 2000 which, if passed, would have allowed the States to withhold access to assisted reproductive technology for single women and lesbians.

Two Labor Senators published a dissenting view to the Senate Legal and Constitutional Committee's report *Inquiry into the Provisions of the Sex Discrimination Amendment Bill (No. 1) 2000*. In their report Senator Jacinta Collins and Senator John Hogg referred to the general issue of free votes which, they said:

... will need to be addressed more broadly by the Parliament than has been the case to date. In the past, when Australia was a more homogeneous society and the major political debates were on economic issues, divisions in society were reflected by the divisions between the parties. The position is less clear cut. Australia is a very diverse society and many issues before the Parliament are of a social or moral nature rather than an economic one. Divisions within society on such issues are reflected within parties rather than between them and this should be acknowledged through more frequent allowance of conscience votes.<sup>29</sup>

On the same subject, Mr Joe de Bruyn, National Secretary of the Shop, Distributive and Allied Employees Association and a member of the ALP National Executive, said that 'the issue of a conscience vote should be reviewed "as a matter of urgency"'.<sup>30</sup>

## **Free votes and Australian political parties**

Table 2, page 17, shows the position of the major parties on issues on which a free vote was allowed in the Commonwealth Parliament since 1955. The Liberal Party has at various times tolerated dissent in the form of crossing the floor. The ALP pledge makes it

very difficult for the party to tolerate members who cross the floor to vote against party policy.

## **Australian Labor Party**

The ALP has a formal pledge which binds all Labor members to support the Party Platform and accept the collective decisions of the Caucus. The colonial labour parties first adopted the pledge in the 1890s. The current version has not varied greatly from the pledge taken by federal Labor members in 1902 which read:

I hereby pledge myself not to oppose the candidates selected by the recognised political labor organization, and if elected to do my utmost to carry out the principles embodied in the Federal Labor Platform and on all questions affecting that Platform to vote as a majority of the Parliamentary Party may decide at a duly constituted caucus meeting.<sup>31</sup>

In the first 25 years after Federation senators and members of all parties expected free votes on Customs Tariff Bills and votes were more often cast according to personal beliefs or state loyalties than along party lines.<sup>32</sup> A Labor Party caucus resolution of 5 June 1901 stated:

That the members of the [Labor] Party have a free hand on the Tariff bill, or on any motion directly affecting the fiscal issue, but on all questions affecting the platform shall be bound by the majority vote of the caucus<sup>33</sup>

Labor Party members have often defended the implications of being bound by the pledge and in 1915 W. M. Hughes asked:

If we believe in certain principles, ought we not to do what we can to give effect to them? And if we are not ashamed but rather glory in our course, why should we not openly testify to its virtue and solemnly pledge ourselves to stand by it?<sup>34</sup>

Labor Party members have not been allowed a free vote on issues covered in the party platform and, by the 1920s as the platform expanded and included more detail, 'few issues were now outside the platform and the members voted together on almost every occasion'.<sup>35</sup>

In 1925 John Curtin listed some of the issues on which members were not bound to vote according to party platform:

the continuance or abolition of the supply of liquor is but one of them: the questions of lotteries, totalisators and bookmakers at racecourses are others; professional or amateur sports is also for those interested a controversial issue concerning which Labor says nothing.<sup>36</sup>

Abortion is one issue on which caucus members have been allowed a free vote. The 1984 National Conference decided that:

Conference resolves that the matter of abortion can be freely debated at any State or federal forum of the Australian Labor Party, but any decision is not binding on any member of the Party.<sup>37</sup>

The Party's approach to other issues such as euthanasia and stem cell research have not been decided at National Conference but rather by the Parliamentary Party. The rules of the Australian Labor Party make it clear that the Federal Parliamentary Party has the authority in properly constituted Caucus meetings to establish the collective attitude of the Parliamentary Party to any question or matter in the federal parliament, subject to:

no attitude being expressed which is contrary to the provisions of the Party Platform or any other decision of National Conference or National Executive<sup>38</sup>

## **Liberal Party of Australia**

The Liberal Party does not have a pledge which binds members to a party line. However, since the days of the early anti-Labor parties and the formation of the Liberal Party in 1944 there has been a tension between the need to inculcate discipline and the principles established in the first Liberal Party platform of 1909 that 'all representatives of the people should be directly and solely responsible to the people for their votes and actions'.<sup>39</sup>

This tension has led to periods of open dissent in the party characterised by members crossing the floor. It has not often resulted in members being granted a free vote on an issue.

When Robert Menzies created the Liberal Party in 1944 'the concept that an individual parliamentary member had the right to a conscience vote became central to party lore. Menzies did not particularly like real or potential internal dissidents. But he tolerated them ...',<sup>40</sup>

The importance of the individual member was supported by William McMahon in 1954 when he said that the 'Liberal party member is not prepared to surrender his personal judgment to the Party machine or to the corporate Parliamentary Party'.<sup>41</sup>

Under Prime Ministers Sir Robert Menzies and Malcolm Fraser the Liberal Party tolerated members crossing the floor on issues of conscience but during the 1980s this 'reached a point where the image of party disunity had become an electoral problem'.<sup>42</sup> In 1983 Liberal Party President John Valder attempted to set clear guidelines on the issue of personal freedom and party loyalty. The Valder report stated:

... it is important that it be recognised by all Liberal Parliamentarians that the general expectation is one of loyalty and support for the Party in the Parliament, and that crossing the floor is to be regarded as an exceptional act. It is a right which should be exercised only under the following conditions:

where the issue is one of personal conscience, and not merely a difference of policy or political judgement; and

where the member informs his parliamentary Leader and his Party colleagues beforehand of his intentions.<sup>43</sup>

Although the report acknowledged that there were occasions when a Liberal member may decide to cross the floor, Valder viewed party unity as an essential part of the political process. The report stated:

The effective performance of its leadership role requires that the Liberal Party maintain the highest degree of unity inside and outside Parliament, once decisions of the Party have been made.<sup>44</sup>

In an interview with *The Age* newspaper in 2000, Malcolm Fraser suggested that the traditions of the Party had changed and noted that:

Going back a long while—in the Menzies days to the end of my time—the party respected the right of people to exercise the conscience vote if they felt really strongly about something.<sup>45</sup>

Senator the Hon. Amanda Vanstone referred to the Party's approach to free votes and conscience votes when she said in the Senate:

There are rare occasions when the Liberal Party has a free vote. But I might remind you, Senator, that the Liberal Party is a party that, nonetheless, does—not necessarily willingly always—tolerate members who cannot in their own conscience abide by the team decision and cross the floor. I, myself, have done so in the past. It is not a very pleasant experience, but it is one thing the Liberal Party tolerates that the people over here never will.<sup>46</sup>

## **National Party of Australia**

Like Liberal Party MPs no pledge of any kind is required of National Party federal MPs.<sup>47</sup>

Nevertheless, as with the Liberal Party, the National Party does expect its MPs to support party policy. The National Party Federal Constitution states that:

Candidates endorsed to election to the Australian Parliament by Affiliated Parties or the Federal Management Committee shall abide by this Constitution and support the policies of the National Party of Australia as espoused by the Federal Parliamentary National Party.<sup>48</sup>

The Party's website outlines the relationship between the Parliamentary Party and the organisation:

The National Party does not rigidly impose the policy of the Party adopted through State and Federal Councils and Conferences on its Parliamentary Parties. However, the Parliamentary Parties are required to follow the policy of the Party as far as possible, and the Parliamentary Leaders are required to report to their respective Organisational Executives if there are occasions when they will not or cannot adopt a policy position that is consistent with that of the Party. The reason for this relative freedom is because Parliamentarians have to make policy decisions almost on a daily basis, and in light of changing political circumstances.<sup>49</sup>

The independence of the federal party has developed, in part, to allow MPs flexibility in dealing with the Liberal Party in coalition. There may be occasions when National Party MPs are required to accept policy decisions at odds with National Party policy.<sup>50</sup>

## **Australian Democrats**

The Australian Democrats' Constitution states that members should adhere to party policies but, where their views or duty to their electorates conflict with them, they may vote according to their conscience. However, when this occurs members are required to explain themselves in writing to their Division Executive.<sup>51</sup> While the Democrats' Constitution allows members a free vote, in reality this right is exercised on only rare occasions. Senator Natasha Stott Despoja, explained why this was the case:

I have mentioned on record my commitment to conscience votes, because in the Australian Democrats we have a conscience vote on every issue. It is true that that conscience vote is rarely exercised because on almost 99.9 per cent of occasions we agree. We are bound by like-minded policies and commitments to social justice, accountability, democracy, environment, et cetera.<sup>52</sup>

Since the election of the Coalition Government in 1996 the Australian Democrats have split their votes on only four issues: the GST, the Euthanasia Laws Bill 1996, interactive gambling and HIH Insurance (order for the production of documents). Only the Euthanasia Laws Bill was a free vote for members of the other parties.

Founder of the Australian Democrats, Don Chipp, recently reaffirmed the Party's approach to free votes when he said:

One of the things that I emphasised when I formed the Democrats was any person had the right to criticise party policy at any time. Everybody had the right, no, the obligation to vote according to conscience, not according to party dictates.<sup>53</sup>

## **Australian Greens (The Greens)**

*The Charter and National Constitution of the Australian Greens* states that an elected member of parliament will support the policies of the Greens except where:

in the opinion of the elected member, their duty to the constituents is in conflict with The Greens' national policy then elected Members may vote according to their duty to their



constituents ... and where the views of elected Members are in conflict with The Greens' policy, then the elected Member may vote according to their conscience.<sup>54</sup>

Members of Parliament who recognise a conflict between their conscience or duty to the electorate and The Greens' national policy or who vote against national policy are required to submit a statement accounting for their position to their electorate, the State Council of their home State and the National Council.<sup>55</sup>

Since 1 July 2002 the Greens have had two representatives, Bob Brown and Kerry Nettle, in the Senate. Press reports suggest that on the stem cell research bill 'the two Greens are the surprise converts to the no case and the only party not allowing a conscience vote'.<sup>56</sup> Senator Brown was also reported as saying that he was keen to see some regulation of stem cell research and his final vote would depend on the shape of the legislation when it reached the Senate.<sup>57</sup>

## **Independents**

Independent members of the House of Representatives, Peter Andren, Bob Katter, Tony Windsor, and in the Senate, Senators Brian Harradine, Meg Lees, and Shane Murphy, have by definition a free vote on all issues. These members and senators do not have a party organisation or party room through which policies must be filtered. Dean Jaensch has described all decisions taken by independents in the South Australian Parliament as 'taken without a party "security blanket"'.<sup>58</sup>

## **Practice in some overseas parliaments**

### **United Kingdom**

British Labour MP Richard Crossman described the mid-Victorian House of Commons as a place where 'the private Member was genuinely free to defy the Whip, genuinely responsible to his own conscience and his constituents and genuinely at liberty, within wide limits, to speak as he wished. It was this independence of the private member that gave the Commons its collective character and made it the most important check on the executive'.<sup>59</sup>

The growth of party discipline and the decline of the power of the individual member in the House of Commons is reflected in the proportion of 'true two-party votes'—that is, divisions in which the great majority of each party were on opposite sides. The proportion of these votes 'rose sharply in the [eighteen] nineties, and reached a new peak in 1903'.<sup>60</sup> The beginning of the twentieth century also saw parties organised 'into formal bodies, with regular meetings, elected officers, written rules in some instances'.<sup>61</sup>

In response to the Liberal Government's 1906 Education Bill the British Labour Party introduced a Conscience Clause into its constitution. This clause allowed members who

felt that, in conscience, they could not comply with a majority decision of the Party (in the case of the Education Bill, official Labour Party policy was to support secular education) to be absolved from doing so. Initially the Clause was open to a wide interpretation but, in time, came to be used more narrowly:

By the late 1920s most members of the Party seemed to have regarded it as a concession designed primarily for the use of Roman Catholics and temperance men and others with religious or semi-religious scruples ... and the issues upon which conscientious conviction was then generally felt to be acceptable were Religion, Temperance and Armaments or War.<sup>62</sup>

In 1929 the Party introduced standing orders which stated that membership of the Parliamentary Labour Party involved accepting decisions of the Parliamentary Party, though recognising that Members had the right to abstain on grounds of conscience.<sup>63</sup>

The practice of giving free votes on moral issues is established to the extent that MPs now:

possess the firm conviction that certain issues are conscience issues and that they are entitled to vote according to their consciences on those issues. A party which uses the whip for those issues will have to cope with the indignation, resentment and possible rebellion of its MPs.<sup>64</sup>

The use of the whipping system in the UK Parliament has given MPs some room to dissent on votes the party has deemed to be routine or of moderate importance. Whips indicate the importance the party attaches to a vote by underling the items of business once, twice or three times. Failure to comply with a three-line whip, the most important, is usually seen as a rebellion against the party and may eventually result in disciplinary action, such as suspension from the parliamentary party. In the case of a two-line whip, attendance is required unless a pair has been arranged and for a one-line whip attendance is optional.<sup>65</sup> In Australia, members may, as an extreme measure, abstain from voting but unless members are allowed a free vote all other votes are subject to an implicit three-line whip.

Party whips who bully or 'whip' MPs into line are often blamed for the high level of party cohesion but some observers argue that the whips are not responsible for this situation. An analysis of free votes in the UK House of Commons from 1979 to 1996 suggests that conscience issues:

are more likely to cut *down* party lines than *across* them. It is, even on conscience issues, more likely that the majority of one of the major parties will be found in the 'aye' lobby facing the majority of the other in the 'noe' lobby. Similarly, it is rare to find one vote where both major parties are significantly split.<sup>66</sup>

## **Canada**

Party cohesion has been one of the main features of parliamentary life in Canada and as a result free votes are relatively rare. In the Canadian system of representative government

the individual member is considered the weakest link in the process.<sup>67</sup> The dominance of the party system can be partly attributed to the small number of safe seats in the Canadian House of Commons, about twenty per cent. As a result 'usually forty to sixty per cent of members will be serving their first term'.<sup>68</sup> New members rely on the party to provide advice, support and direction while they are members of parliament. In this situation dissent from the party line is very unlikely.

The first free vote in Canada was in 1946 when the Liberal Government, supported by the opposition, proposed a free vote on a supply motion on milk subsidies. Free votes have also been allowed by most parties on major issues such as the national flag debate in 1964, a number of debates on capital punishment, on the abortion issue and on the prevention of discrimination against homosexuals. Because the National Democratic Party had adopted party policies on capital punishment and abortion, NDP members were expected to support these policies and were not given a free vote.

Party discipline has been criticised for limiting the power of individual members in the Canadian Parliament much more than in the UK House of Commons. It has also been suggested that the prominence and high visibility of the US congressional system, with the independence and power of individual members of Congress, is the impetus behind many demands for reform of the Canadian parliamentary system, including more autonomy for members.<sup>69</sup>

The 1991 Citizens' Forum on Canada's Future found that participants supported greater use of free votes and the relaxation of party discipline which was 'perceived as a major constraint on the effectiveness of elected officials in representing constituents' views and in controlling a government agenda which may be out of touch with citizens' concerns'.<sup>70</sup>

In a major policy speech during the 1993 federal election campaign, Prime Minister Kim Campbell announced a series of sweeping reforms designed to empower MPs. The package included more free votes in the House of Commons.<sup>71</sup> The package was not implemented because the Government was not returned to office and subsequent governments have not introduced the proposals for reform.

## **New Zealand**

Until the first 'party' government was elected in 1891, all votes in the NZ House of Representatives were in a sense free votes. Since the formation of parties, free voting has survived for issues such as liquor licensing, abortion, homosexual law reform, the abolition of capital punishment, gambling and the compulsory use of seat belts.

New Zealand governments recognise the importance of free votes as they 'invariably make the services of the Parliamentary Counsel Office available to members wishing to propose amendments on a bill which is subject to a free vote, for there is every likelihood that some private members' amendments to such a measure will be carried into law'.<sup>72</sup>

Select Committees may also follow the lead of the House in treating an issue as a conscience issue and allow members of the committee a free vote.

## **United States**

The US congressional system is based on different structures of power and representation compared with those in the Westminster parliamentary system. In the US power and responsibility are diffused through many legislative and executive bodies<sup>73</sup>. Members of Congress negotiate freely for support on votes. They cast their votes according to a range of influences including constituency interest, ideology, interest groups, the party and the President. Party is only one area of influence competing for members' commitment and it is often difficult for members to decide on a course of action when their party or committee leaders are divided.

The US system allows sectional interests a strong voice in decision making, 'but it also creates difficulties in articulating a more general national and public interest'.<sup>74</sup> The means for promoting the national interest are not well developed as strong local politics can often derail a national issue.

## **Conclusion**

The issues facing members of the fortieth Parliament are very different to those dealt with by members of the first Commonwealth Parliament 101 years ago. The issues will change rapidly over the coming decades. This makes it difficult to predict the subjects on which a free vote will be allowed in the future, although it is likely that developments in biotechnology will continue to raise 'conscience' issues that will attract a free vote.

In 2002 federal MPs will have a free vote on the use of human embryos in stem cell research<sup>75</sup> This legislation is one part of a cooperative approach that also envisages the states and territories enacting similar legislation. At least three state premiers have indicated that they will allow government members a free vote.<sup>76</sup> This appears to be the first time that free votes will determine the outcome of a cooperative legislative scheme.

Australian Democrat Senator Andrew Bartlett recently called for a free vote in the debate on Australia's involvement in a possible conflict in Iraq. He said:

On really serious issues like this, and you don't get much more serious in many ways than Australia committing itself to war, then parliamentarians should have that right to voice their own well-informed conscientious beliefs.<sup>77</sup>

In response to a recent e-mail poll conducted by *The Sunday Age* which asked federal members of Parliament 'would you support Australian military involvement in a pre-emptive US-led strike on Iraq?'<sup>78</sup> most of the 38 respondents either expressed outright opposition or the need to await a United Nations decision.<sup>79</sup> On ABC radio the Labor Member for Sydney Ms Tanya Plibersek (who had answered No) was asked what she

would do if the result of the vote in the ALP party room was contrary to her view. Ms Plibersek responded:

There are certain times when Labor Party members have a right to a conscience vote and they are always in things that are considered life and death matters such as euthanasia and abortion and I think sending our troops off to war is another area where you are talking of life and death.<sup>80</sup>

For some members the issue of war has strong ethical, moral and conscience aspects. For others budgetary, and defence and foreign policy implications will be of paramount importance. Yet despite similar calls in 1991<sup>81</sup> for a free vote on Australia's involvement in the Gulf War the issue of war has never been granted a free vote.

This issue illustrates the complex nature of free votes and the conflicting influences that must be considered by parties in deciding whether or not to grant members a free vote.

**Table 1: A select list of issues on which free votes have been allowed in Australian and some overseas parliaments**

<b>Issue</b>	<b>Commonwealth, State*, Territory* or Country</b>
Abortion	Cwth, SA, Tas., WA, Qld, UK, NZ, Canada, NSW, ACT
Euthanasia	Cwth, NT, UK, NSW
Death penalty	Cwth, Vic., UK, Canada
War crimes	UK
Homosexuality	Cwth, SA, Qld, UK, NZ, NSW
Sex discrimination	Cwth
Sexual relationships royal commission	Cwth
Prostitution	SA
Family law	Cwth, UK
Human fertilisation and embryology	UK
Stem cell research	UK, Cwth, (Vic, WA, SA proposed)
Racial discrimination	Vic
Republic	Cwth
National flag	Canada
Censorship	UK, SA
Defamation	UK
Drugs	NSW
Gambling	SA, UK, NZ
Hunting and wild mammals protection	UK
Liquor licensing	SA, NZ
Shop trading hours	NZ
Milk subsidies	Canada
Corporal punishment in schools	NZ
Dismissal of a judge	NSW
Fluoridation of Canberra water supply	Cwth
Daylight saving	Qld, UK
Road safety	UK
Tariffs	Cwth
Televising of Parliament	UK
Members' salaries and allowances	UK
Standards in public life	UK
Election of the Speaker	UK
Parliamentary Committee membership	UK, NZ
Parliamentary privilege	Cwth
Parliamentary procedure	Cwth
New Parliament House	Cwth

\*The list of free votes in Australian state and territory parliaments is based on information supplied by state and territory parliamentary libraries. The list is not comprehensive.

**Table 2: Free votes allowed by the ALP and the Liberal Party in the Australian Senate and the House of Representatives<sup>82</sup>**

Year	Type	Issue	Party
1955	Report	Privileges Committee—Browne and Fitzpatrick case	Labor Liberal? (no Liberal member voted against the motions proposed by Prime Minister Menzies)
1959	Bill	Matrimonial Causes	Labor and Liberal
1959	Bill	Parliamentary Allowances	Liberal
1961	Bill	Marriage	Labor and Liberal
1965	Motion	Fluoridation of Canberra water supply—proposed Referendum	Labor and Liberal
1968	Senate Bill (Bill did not proceed beyond 2 <sup>nd</sup> Reading in House of Reps)	Death Penalty Abolition	Liberal in Senate
1968	Motion as to site	New and Permanent Parliament House	Labor and Liberal
1969	Motion	New and Permanent Parliament House	Labor and Liberal
1970	Report, 10 June 1970	Standing Orders Committee (report included sitting days, time limits for debates and speeches, HoR quorum, amendment of standing orders 72 and 250)	Labor and Liberal
1970	Bill (Bill did not proceed after 1st Reading in Senate)	House of Representatives (Quorum of Members)	Labor and Liberal
1971	Report, 19 August 1971	Standing Orders Committee (sitting days)	Labor and Liberal
1972	Report, 20 March 1972	Standing Orders Committee (amendments of Standing Orders and changes in practice)	Labor and Liberal
1973	Motion as to site	New and Permanent Parliament House	Labor and Liberal
1973	Bill	Medical practice clarification	Labor and Liberal
1973	Motion	Sexual Relationships—proposed Royal Commission	Labor and Liberal
1973	Senate Bill	Death Penalty Abolition	Liberal
1973	Motion	Homosexual acts	Labor
1974	Private Member's Bill	Parliament Bill	Labor and Liberal
1974	Senate Bill	Family Law	Labor and Liberal
1974	Motion	New and Permanent Parliament House	Labor and Liberal
1979	Motion	Termination of Pregnancy—medical benefits	Labor and Liberal
1983	Senate Bill	Family Law Amendment	Liberal
1984	Senate Bill	Sex Discrimination	Liberal
1987	Motion	Procedure Committee (change to standing orders—quorum)	Labor
1996	Private Member's Bill	Euthanasia	Labor and Liberal
1999	Bill	Constitution Alteration (Establishment of Republic)	Liberal
2002	Bill	Research Involving Embryos and Prohibition of Human Cloning	Labor and Liberal

**Table 3: Free votes in some overseas parliaments**

Year	Issue
<b>United Kingdom</b>	
1907	Deceased Wife's Sister
1921	Deceased Brother's Widow's Marriage
1925	Summertime
1928	Transport Lighting
1937	Marriage
1938	Inheritance (Family Provisions)
1938	Hire Purchase
1952	Defamation
1959	Obscene Publications
1959	Legitimacy
1967	Sexual Offences
1967	Abortion
1969	Divorce Reform
1979	Abortion
1979	Death Penalty Motion (Capital Punishment)
1979	Road Traffic (Seat Belts)
1980	Televising of Parliament
1982	Criminal Justice (death penalty)
1983	Death Penalty
1984	Matrimonial and Family Proceedings
1984	Office, Secretarial and Research allowance
1985	Televising the House
1987	Criminal Justice (death penalty)
1988	Abortion
1988	Televising the House
1988	Criminal Justice
1989	War Crimes Inquiry
1990	War Crimes
1990	Human Fertilisation and Embryology
1991	War Crimes Bill Procedure Motion
1991	Armed Forces (Re-committal) (abolition of the death penalty)
1992	Wild Mammals Protection
1992	Members' Office Costs Allowance
1994	Criminal Justice and Public Order (capital punishment; age of consent for homosexual acts)
1994	Deregulation and Contracting Out (betting on Sundays)
1995	Standards in Public Life
1996	Family Law
1996	Members' Salaries



<b>Year</b>	<b>Issue</b>
<b>United Kingdom</b>	
1997	Wild Mammals (Hunting with Dogs)
1998	Crime and Disorder (age of consent for homosexual men)
1999	Sexual Offences (age of consent for homosexual men)
2000	Medical Treatment (Prevention of Euthanasia)
2000	Sexual Offences (age of consent for homosexual men)
2000	Medical Treatment (Prevention of Euthanasia)
2000	Stem Cell Research
2000	Human Fertilisation and Embryology (Research Purposes) Regulations
2000	Hunting
2001	Hunting
2001	Election of Speaker: Standing Orders
2001	Members' Pay and Allowances
2001	Select Committee membership
2002	Hunting with Dogs
2002	Modernisation of the House (committees)
<b>New Zealand</b>	
1970s	Abortion
1986	Homosexuality
1987	Casino control
1990	Casino control
1990	Corporal punishment in schools
2000	Casino control
2000	Homosexual relationships and property
2001	Age for being on licensed premises
2001	Appointing members of the Abortion Supervisory Committee
2001	Homosexual relationships and property
2002	Shop trading hours
<b>Canada</b>	
1946	Milk subsidies
1964	National flag
1966	Capital punishment
1967	Capital punishment
1973	Capital punishment
1976	Capital punishment
1978	Capital punishment
1987	Capital punishment
1988	Abortion

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