

the political censorship of student newspapers and the intimidation and repression of student editors

background information

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Distributed by the Student Unionism Network Defence Committee.

PO Box 146, La Trobe University Post Office 3083 Victoria.

Tel. (03) 9479 2976. Fax. (03) 9479 3550.

Introduction

This is an updated version of a briefing paper originally distributed by the La Trobe University Students' Representative Council in September 1995. We think that it makes clear that student organisations, and the La Trobe University SRC in particular, are facing the first major struggle in defence of independent student unionism since the 1994 campaign against the anti-student union legislation enacted by the Victorian and Western Australian Liberal governments. There are currently several very real and dangerous possibilities, such as:

- (a) a precedent being set for vastly increased federal government surveillance and control of student publications, initiated on no more basis than the mere assertion by one Minister that a student organisation had engaged in 'unlawful' activity;
- (b) a precedent being set for the use of the Victorian *Classification of Film and Publications Act* in an extraordinarily broad and repressive manner, because of contingent circumstances making it politically convenient for it to be so used, thus vastly extending the scope of censorship laws in this country;
- (c) officers of the La Trobe University SRC and possibly of other student unions being personally fined or jailed for carrying out their elected duties and in some cases explicit mandates from the members of the organisations in questions;
- (d) the related actions of police and of governments both state and federal amounting to an attempt to set up and formalise—on a more-or-less permanent basis—a new level of State surveillance, repression and control of nominally independent student organisations.

All those concerned with democracy in this country should be concerned about these current moves.

1. The SRC and State anti-student union legislation

In 1994 the Victorian Liberal government introduced legislation which, in effect, drew a line between what it regarded as acceptable and unacceptable uses for student fees. Until that time, the democratically elected student representatives within student organisations themselves largely determined what constituted 'acceptable' uses for the student fees levied by Victorian universities for expenditure by representative student organisations.

Despite claims to have 'student interests' in mind when establishing the *Tertiary Amendment Act*, the motivation for the legislation was most succinctly spelled out in a leaked Liberal Party document: "we do not want compulsory student monies flowing out to anti-Kennett and anti-Coalition campaigns and other fringe activities of the hard student left".

Among other things, the *Tertiary Education (Amendment) Act 1994 (Vic)* provided that compulsorily levied fees could only be used for services which were deemed to be of "direct benefit to students," and said that this referred *only* to facilities, services or activities relating to the provision of:

- (a) food and beverages;
- (b) meeting rooms;
- (c) sports and physical recreation;
- (d) child care;
- (e) counselling;
- (f) legal advice;
- (g) health care;
- (h) housing;
- (i) employment;
- (j) visual arts, performing arts and audio-visual media;
- (k) debating;
- (l) libraries and meeting rooms;
- (m) academic support;
- (n) personal accident insurance for students;
- (o) orientation;
- (p) support for overseas students.

Anything not on this list is, by inference, not of "direct benefit to students," and therefore could not be funded. The list of activities is notable in that there is no provision for funding for student representation, political activity, clubs and societies, research, publicity or the publication of student newspapers.

As was made clear at the time, the Victorian legislation was not an expression of any principle of "voluntary membership" of student organisations, but a very specific excision of "politics" in any meaningful form.

While student organisations have never enjoyed a completely free hand in how they spend student money (University administrations have always enjoyed the legal power to attach conditions to or withhold service fee income), this constituted a massive additional layer of control and potential intervention.

2. The Federal Government funding arrangements for student organisations affected by state legislation

In response to the Victorian legislation and the prospect of similar legislation in Western Australia, the federal government introduced amendments to the *Higher Education Funding Act 1988* which provided that the Commonwealth may pay grants directly to student organisations, to make up for any service fee income lost as a function of anti-student union legislation. The funding for this program, the Student Organisation Support (SOS) Scheme, is deducted from the annual Commonwealth grants to the states concerned.

While the federal legislation blunted the ultimate impact of the state legislation in Victoria and WA, the outcome is that student organisations now determine their activities and priorities from within an increasingly complex and precarious matrix of regulation and control. Whereas until recently it was merely the only occasionally interventionist University hierarchies that had the formal power to regulate student organisation activity, today there is significant competition between political parties and between levels of government for the right to determine, in quite precise detail, the legitimate activities of student organisations. The idea that the 'legitimacy' of an activity should be determined by the members of a democratic student organisation is increasingly under threat.

While Victorian and WA student representatives were quietly relieved by the breathing space that had been granted them by the federal legislation, there were significant concerns about the possibilities and prospects for federal government interference. This was taken up with the Minister for Employment, Education and Training, Simon Crean MP, in an interview which was printed in the 1994 Victorian Inter-Campus Edition of student newspapers (*VICE*):

VICE: There is a fear that there's a possibility that student unions themselves may modify their behaviour in fear of these arrangement being revoked. Now what sort of guarantees are there that there won't be any pressures from the federal government to say stop going to street protests, or whatever else...

Crean: Well that's the very purpose of this legislation, so that what the states are trying to do, is threaten or subdue, whether it's freedom of expression, or creative activity. These are the things that we've got to protect in university life.

VICE: There's a fear that a reliance on Federal funding may limit the effectiveness and autonomy of student organisations in their dealings with Federal legislation as well. There's been a suggestion that student reps may fear to take up certain issues because of their fear that the Federal government may seek, after 1995, to stop supporting them...

Crean: It might if the government changes, but it, well it won't under us. A deal is a deal.

Shortly afterwards in this interview, Crean drew an analogy with trade unions:

Trade unions express themselves—you know that—and student unions will continue to express themselves... Well all I'm saying is a commitment is there and there is no intention to renege on that nor to have people beholden to us because of it...

In the first *Rabelais* editorial for 1995, back in February, the editors anticipated the difficulties that might arise for them—having been elected on a platform of “generally extreme behaviour”—in the face of an ever-tightening regime of government control of student publications generally:

[D]o we continue this 'extreme' project, for which we were elected, of the ruthless criticism of everything existing, in search of a truly *critical* criticism? Such could risk the displeasure of the minister, Simon Crean, and thus could have drastic consequences for the student newspaper, for the La Trobe Students' Representative Council, and even possibly for all student organisations. [...] We have many reasons to be fearful and dishonest, and we could use many arguments to justify ourselves in taking safe options. Of course, the relevant Minister, Simon Crean, has vigorously denied that the ALP would ever take such action. 'A deal is a deal,' he said last year. We don't recall making any deals.

3. The article

The July edition of *Rabelais* included an article entitled “The art of shoplifting”. Many people have said many things about it. One reading of it is that it provides detailed

instructions, advice and information on how to steal goods from large retailers. Another reading is that it is an argument against the widespread internalisation of the sanctity of property rights. This point is emphasised in the text, and has since been repeated publicly by the editors and by others who have defended the publication.

4. The university

The Vice-Chancellor of La Trobe University, Professor Michael Osborne, responded to the media interest in the *Rabelais* article by issuing a statement which distanced the University from the article, called upon the “perpetrators” to apologise and, perhaps most ominously, raised the spectre of more direct University control over student publications and the SRC:

It is obviously now an urgent necessity to devise a process that will prevent small politically motivated groups of whatever persuasion from claiming to represent student views generally.

The Vice Chancellor’s vague threat was criticised by both the SRC and the National Union of Students, and, when challenged on the matter at a subsequent meeting of the University Council, he backed away from the threats and said that he was concerned about low student participation in SRC elections, and that it was a matter for the SRC “and for students” to address and see if anything could be done about it.

5. Media-spasm

The reaction to the publication of the article, as reflected in the mainstream media, was predictable in content if extreme in tone and volume.

The Retail Traders’ Association (RTA) said they were opposed to shoplifting, and they thought the article was “irresponsible and reprehensible”. They suggested that all copies of the edition should be pulped. Later, when *Catalyst* (RMIT) were proposing to reprint, the RTA announced that it was considering taking out an injunction to prevent it being printed.

Police spokespersons said that they had received complaints from concerned members of Neighbourhood Watch. The *Age* editorialised on 28 August with their concerns about “balance,” and criticising the editors of *Rabelais* for failing to give “equal weight to the case against shoplifting”. An article in the *Herald-Sun* claimed, absurdly, that identical arguments to those presented in “The art of shoplifting” could be used to justify rape.

6. The Minister steps in

The Minister for Employment, Education and Training, Simon Crean, first entered the debate over the article when being interviewed on talk-back radio with John Laws in Sydney. He announced in that forum that he would deduct the cost of printing the relevant issue of *Rabelais* from the grant the La Trobe SRC receives under the Student Organisation Support (SOS) Scheme.

It is not clear why the Minister chose to make this announcement. It is conceivable that he had not had any thoughts about it previously, and that, under pressure from the hectoring of his host, he made an impromptu gesture.

In a letter to the La Trobe SRC, the Minister said that he found the article "outrageous" and, on the basis of advice from within his Department suggesting that it may be unlawful, that he had decided not to authorise funding for that edition of *Rabelais*.

Given his previous promises not to intervene, the "legal" aspect was important for the Minister because it could be used to create the illusion that he lacked responsibility for the decision, though he had in fact pre-empted any court or legal process in cutting funds.

The Minister wrote to the Victorian Attorney-General, Jan Wade, urging her to prosecute the editors of both *Rabelais* and *Catalyst* for printing the article (Crean spokesperson quoted in "Retailers may try to stop uni paper" *Sunday Age*, 30 August 1995). The Victorian government has since fulfilled the wishes of the minister.

It is clear that the Minister has an interest in seeing prosecutions against at least one student newspaper proceed, in order to support his own argument for withholding SOS Scheme funding for any student newspaper in WA or Victoria which reprints the article.

When the Minister's office heard that *Metior*, the student newspaper at Perth's Murdoch University, was considering whether to republish the article, the President of the Murdoch Guild of Students received a telephone call from officers of the Minister's Department, making vague threats not only to funding for the particular edition concerned (the retaliation meted out to *Rabelais*), but potentially to all funding for *Metior* for the year, and perhaps all funding for the Guild itself in 1996. The Departmental officers emphasised that republication of the article would be "embarrassing to the Minister" and would "jeopardise the relationship [between the Guild and the Minister]".

7. Police

On Thursday 16 and Friday 17 of August, the *Rabelais* editors were requested to attend Preston CIB for questioning. They attended the police station where they were arrested. They were questioned. They were photographed and had their fingerprints taken. The editors were handed a photocopy of the definition of an "objectionable publication" under the *Classification of Films and Publications Act 1990* (see below), and told that they would "probably" receive a summons by mail within the following few weeks.

The Preston CIB advised a number of persons, including the Vice-Chancellors of La Trobe University and RMIT, that the editors of *Rabelais* will be charged under summons under the *Classification of Films and Publications Act*.

The Preston CIB subsequently sought to interview the President of the SRC, Ms Lynda Memery. Some of Ms Memery's relatives received telephone calls from persons purporting to be from "Lynda's physiotherapist" who "urgently" needed to contact her, and hence required her address. Ms Memery has never been to a physiotherapist. Others of Ms Memery's relatives, sharing her name, were visited by police at 7:30 in

the morning. These police demanded, on threat of arrest, that these relatives prove that they were not, in fact, the SRC President.

8. Criminal charges

When the editors of *Rabelais* were interviewed, they were advised by police that they may be charged under either the "objectionable publication" provisions of the *Classification of Films and Publications Act*, or "incitement" provisions of the *Crimes Act*. In January 1996 one of the editors, Michael Brown, received a summons. A parent of another accepted a summons for another, Ben Ross, who was out of the country. A third, Valentina Srpanska, received a summons in February. Those summonsed each have three charges under the *Classification of Films and Publications Act*.

The "objectionable publication" offences are summary offences, which would be heard before a magistrate. Under Victorian law, it is an offence to "advertise, sell by wholesale or retail or distribute an objectionable publication" (section 48), where an "objectionable publication" is defined (at section 3) as

an unclassified publication that—

- (a) *describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person; or*
- (ab) *lacks serious literary, artistic, political, educational or scientific value and describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that a reasonable adult would generally regard as unsuitable for children; or*
- (b) *depicts or describes in pictorial or other form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or*
- (c) *promotes, incites or instructs in matters of crime or violence; or*
- (d) *has been, or would be, refused classification.*

There is a broad range of persons who may be charged if associated with the distribution of an "objectionable publication". Any person who "advertises", "distributes," "possess[es] ... for the purpose of publishing," "exhibit[s] or display[s]," "deposit[s], or causes to be deposited ... in a public place," "print[s] or otherwise make[s] or produce[s]," or "cop[ies]... for the purpose of publishing" such a publication is guilty of an offence and liable for a fine of up to \$24,000 or up to two years imprisonment. There is no specific liability addressed to the "publisher" or "author" of an objectionable publication; the language of the Act may be broadly said to focus on any person who made even the smallest material contribution to the production and distribution of the publication.

The editors have been charged with publishing, distributing and depositing an objectionable publication. Multiplying the penalties for each offence, the maximum receivable penalty for these offences, should a conviction be recorded, would be six years jail and a seventy-two thousand dollar fine for each editor.

The *Classification of Films and Publications Act* 1990 (Vic) does not appear to have ever been used to restrict or regulate material such as that published as "The art of shoplifting" in the July edition of *Rabelais*. It has certainly never before been used to bring prosecutions against the editors or publishers of student newspapers. At the time of its introduction, the Act was widely understood to have the purpose of controlling childrens' exposure to violent or sexually explicit material

[T]his Bill strikes a balance between, on the one hand, the rights of adults in a free society to see what they wish and of creative artists to depict what they please without fear of intervention by the State and, on the other hand, constraints to be imposed on the exercise of these rights for the good of society as a whole. In particular, the Bill continues to protect children and young people from material likely to harm or disturb them.

– Minister's second reading speech to the Victorian Parliament (2 May 1990). The Hon Jim Kennan, MP, Attorney-General

There is no suggestion that the original purpose of the legislation has ever been to regulate the content of student (or other) publications, except in the narrow circumstances discussed above. The provisions themselves are extremely broad, however, so arguably there is nothing in law to rule out their use against such publications. This precedent would be a remarkable extension of the scope of censorship laws. The Victorian government has declared that many forms of protest around the Grand Prix are illegal. Will some from Save Albert Park be arrested and possibly jailed for producing a leaflet? Many strikes and pickets are technically illegal. Will union officials be jailed for producing a union journal?

9. Students

Students at La Trobe University, when given the broadest opportunities to express a view about *Rabelais'* publishing the article, have given strong support.

The present editors, when campaigning on the "Rescue Rabelais" ticket in the most recent SRC elections, promised "extreme behaviour" in general, as well as a specific promise of "a guide to shoplifting that tells it like it is". The "Rescue Rabelais" ticket was elected with a substantial majority.

The editors duly published an article when one appeared.

Later, following the media attention and the attacks on the editors from the Vice Chancellor and the federal Minister, but prior to any charges being laid, the SRC organised a general student meeting to discuss the matter. At the time of the meeting, the editors of other student newspapers, notably *Catalyst* at the RMIT Student Union, were considering republishing the article. The following motion was carried:

We give strong support to the reprinting of the "shoplifting" article in *Catalyst* and call on fellow student unions and associations to reprint the article in

solidarity. The article is to be accompanied with appropriate editorials to make the issues of VSU ['Voluntary Student Unionism'] and freedom of speech clear to all students. Further, we the students reject the role played by the police in the management of democratically elected student bodies. This motion is to be put at general student meetings at each campus where possible.

Similar resolutions were made on a number of other campuses.

10. Other student newspapers and organisations

In 1995 (ie. prior to any charges being laid) *Rabelais* circulated to all student organisations and student newspapers information about what had occurred. Almost a dozen student newspapers reprinted the article, and many more vigorously and publicly condemned the moves by the Federal government and the Victorian police. Those that have reprinted have taken this courageous and principled stand in the face of threats from Simon Crean and/or the possibility of criminal prosecutions. (As yet no one else has been charged with any offences related to reprinting the article, though student organisations have been fined by the federal government for re-printing.)

Following the laying of charges a substantial defence campaign has begun. The National Union of Students has vocally condemned the laying of charges. In Victoria the Student Unionism Network has taken up the issue, and has formed a SUN Defence Committee which will specifically focus on attempts to censor, intimidate and repress students and student activists.