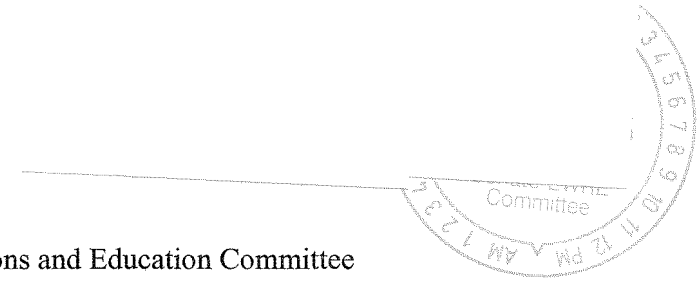

28 October 2005

Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
Canberra ACT 2600

BY EMAIL

Dear Sir / Madam,

RE: SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE

INQUIRY INTO WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

I make this submission to the Committee as a retail employee who, together with my fellow employees, feel that the proposed federal government changes to Industrial Relations will adversely affect us.

I am employed as a storeman in a bookshop that is owned and operated by Wollongong UniCentre Ltd ("UniCentre"). UniCentre also provides a range of other services to students at the University of Wollongong campus. I have also been a Delegate of Shop, Distributive and Allied Employees' Association ("SDA") for the last 8 years. I represent a small group of around 30 employees, the constitution of which are mainly young persons and women lack who have limited bargaining capacity and rely on the Union to bargain on their behalf.

The terms and conditions of our employment are governed by a State Award being the University Unions (State) Award and as such we will be captured by the transitional arrangements that form part of the proposed changes as UniCentre is a constitutional corporation which operates in the State industrial relations system.

By way of arguing against the proposed changes, I would like to draw the Committees attention to a recent experience that my fellow employees and I have had with our employer.

For the last 3 years we have sought to enter into good faith negotiations with our employer to establish an enterprise agreement with conditions on par with retail industry standards and also enjoyed by other employees employed by UniCentre. UniCentre has consistently frustrated all efforts to meet and amicably discuss terms

and conditions of an Enterprise Agreement that not only meets the needs of the employees but also the needs of the enterprise.

Earlier this year, borne out of sheer frustration, we the employees chose to participate in an information session to discuss the status of the Enterprise Agreement negotiations. UniCentre responded by issuing warnings to all employees, who attended the information session, threatening to terminate their employment. In addition, UniCentre notified a dispute before the NSW Industrial Relations Commission ("NSW IRC") pursuant to which the Commission directed UniCentre to meet us and enter into good faith negotiations with us.

Whilst UniCentre met with us it did not however, approach the negotiations with the requisite good faith. Shortly after the meeting UniCentre made it clear it did not wish to negotiate an Enterprise Agreement with us. Irrespective of UniCentre's decision, employees remained committed to entering into good faith negotiations with UniCentre and accordingly decided to wear generic badges calling for support from our customers to help us engage UniCentre.

We again met to discuss the status of our Enterprise Agreement discussions with UniCentre issuing warnings to all employees who attended the meeting. We were then suspended one at time, without pay, for wearing the badges.

UniCentre refused to permit us to return to work. The SDA notified a dispute before the NSW IRC and with the resulted in employees returning to their workstations some 2 days after they had been suspended. Despite the Commissions recommendations, UniCentre refused to pay employees for the period of their suspension and refused to remove warnings containing a threat of dismissal from employee records.

The SDA attempted to conciliate an outcome but all efforts to resolve the matter by conciliation were spurned by the Company. The SDA then proceeded to have the matter arbitrated by the Commission. Following the hearing the Commission handed down a judgement in our favour in both respects, i.e. it ordered UniCentre pay all employees for the period of the suspension and also ordered that UniCentre remove the warning from all employees' records.

This matter has highlighted that the proposed changes will have the following effect:

1. With respect to the Dispute Settling Procedure ("DSP") in an industrial instrument, our dispute before the Commission highlighted the importance of having a DSP which operates in combination with unfettered conciliation and arbitration powers in the *Industrial Relations Act* 1996. Such powers enable a party to invoke the Commission to arbitrate on a matter after all attempts at resolving the matter by conciliation have been exhausted. I am aware that the proposed Industrial Relations changes will mean that a prescribed DSP will be inserted into all federal Awards and Enterprise Agreements that enable disputes to be handled through private mediation and through the Australian Industrial Relations with the strict limitation that matters can only be conciliated. No power will be left within the Act equivalent to Section 99 of

the *Workplace Relations Act* 1996 or Section 130 of the *Industrial Relations Act* 1996 to properly resolve issues where the parties cannot reach settlement. This means the Commission has no power to make a determination at arbitration where the parties to the dispute cannot settle a matter by conciliation.

In our case this would have meant that the dispute would have continued to fester with a marked effect on productivity, efficiency on the one hand and unhappy and dissatisfied workers on the other, with the possibility of the dispute spiralling horribly out of control particularly in the context of a difficult and strained history relating to Enterprise Agreement discussions between the employees and UniCentre.

2. Secondly, it has highlighted the importance of having a strong independent umpire able to exercise all its powers in order to bring closure to a dispute. A Commission that has been stripped of its powers and/or is unable to effectively exercise its powers, including the power to arbitrate, will mean that disputes and disagreements will go unresolved. Matters will escalate and tensions will reach boiling point and spill over to create an environment of open hostility between employees and employers.

In light of our own experiences as disclosed above I urge the Committee to reject the *Workplace Relations Amendment (Workchoices) Bill* 2005.

I wish you all the very best in your deliberations.

Yours sincerely,

Peter Rattenbury
28 October 2005