# Senate Standing Committee Inquiry into the Fair Work Bill 2008

## Additional AHA Comments – 16 February 2009 (revised, 17 Feb 2009)

The AHA appeared before the Senate Standing Committee on the 16th of February 2009. During this appearance the AHA handed to the committee a document containing additional comments to our Senate submission of January 2009. The AHA has amended the document handed up at the Senate hearing as a result of requests from Senators for additional information/clarification. These amendments are "marked up" within this document.

The AHA makes the following specific comments in relation to our Senate submission plus provides additional comments on the low paid authorisations and the accrual of personal leave:

### Low Paid Bargaining Stream

1 We seek the removal of arbitration ("special low-paid workplace determination" – section 262) from the low paid bargaining stream. Not having arbitration as a feature of the stream is in accordance with the Australian Government Fact Sheet number 7 of the 17th of September 2008. It is also in accordance with statement made in the Forward with Fairness Policy (page 14 – "FWA may also facilitate multi employer collective bargaining for low paid etc ...").

2 We seek to limit the low paid stream to "small business employers" (ie those with 15 employees or less as per section 23 of FWB) as these are the types of businesses that are more difficult to organise and are more likely to lack the skills and resources to bargain.

3 We seek to limit the amount of employers who can be covered by an authorisation to six as per the example of how the stream would operate in Australian Government Fact Sheet number 7 of the 17th of September 2008.

### Better Off Overall Test

4 We seek the inclusion of the word "class" in the better off overall test wording (section 193(1)) in accordance with how the test will operate as explained in the Explanatory Memorandum (paragraph 818 – "FWA will generally be able to apply the better off overall test to classes of employees").

5 This will assist removing doubt about the operation of the test.

6 During our appearance before the Senate Committee the AHA made statements to the effect the Workplace Authority have failed collective agreements because one individual employee has not passed the no disadvantage test. The AHA is not aware whether this has occurred. The AHA's concern, as raised on many occasions with the Workplace Authority, is their policy approach to the no disadvantage test. Page 13 of the Workplace Authority's policy of April 2008 states: "a collective agreement will not pass the NDT if one or more employees is disadvantaged by the agreement".

7 The effect of an individual assessment on collective agreements is that if a single award condition is bargained by the parties (in return say for higher wages) an employer may fail the test if one employee works the arrangement bargained away.

8 We are pleased to see the Australian Government has gone a long-way to clarifying the position via its Explanatory Memorandum. It is for this reason we strongly endorse the wording at paragraph 818 of the Explanatory Memorandum and seek clarity by inserting the word "class" in section 193(1) of FWB.

## NES – Personal Leave Accrual

9 We seek the entitlement for personal leave in section 96 be expressed as 76 hours not 10 days as "day means different things to different employees" as explained by the SDA at paragraph 231 of their submission to the Senate Inquiry.

10 We note that if this change is not made there may be a difference between "progressively" accrued leave (section 96(2)) and 10 days leave (section 96(1)).

## Union Officials Access to Wage Records of Non-Members

11 A union should only have access to records of members, not non-members.

12 In this regard we seek the inclusion of the wording "(other than non-member records)" in section 482(c) of FWB. This change will mean the wording of 482(c) of FWB is the same as section 784(4) of the current Act.

13 In the alternative and as per our Senate submission (page 19) but for the inclusion of the wording underlined, "unions should be required to either seek permission from an employee who is a non-member or seek an order from Fair Work Australia after proving they have reasonable evidence to suspect a breach".

14 The request for this change is founded on our industries practical experiences over the last 12 months which indicates the union is working hard to gather employees' names - please note there is no suggestion the union are doing so in anyway improperly. Once the union has an employee's name its resources (at times) have been used to find out where an employee lives thereby allowing the union to visit the employee at home.

15 At the conclusion of the hearing we handed to the Senate a "pledge" that has been collected by the union in the hotel sector. In seeking an employee to "pledge" their support for a union campaign the union also seek a range of personal details including home address, mobile phone number and email address. We are concerned there is nothing in the "pledge" that informs a person how this personal information will be used.

## Unfair Dismissal – Conciliation Process

16 We seek the removal of the ability for FWA to decide "at any time (including before, during or after conducting a conference in relation to a matter) to hold a hearing in relation to the matter" (section 399(3)).

17 This could potentially lead to parties believing they are attending FWA to participate in a conference but find themselves in a hearing.

## Workplace Ombudsman

18 Towards the end of the AHA's appearance before the Senate Committee we were asked what efforts we have gone to in order to educate our members on their workplace obligations.

19 As part of our commitment to assisting our members understand their workplace obligations the AHA entered a Memorandum of Understanding with the Workplace Ombudsman (WO) in October 2007 (development on the MOU started in early 2007). The purpose of the MOU was to provide "the joint framework for both parties to work together to increase compliance through greater awareness and understanding of employers and employees of their rights and obligations under the Act, as well as the role of the Workplace Ombudsman". The MOU stated it was not intended to "restrain the WO".

20 At a meeting of the AHA and WO in December 2007 an agreement was made to conduct a cooperative campaign during 2008. The aim of the campaign was "for the WO to work in partnership with the AHA to improve education and compliance with the *Workplace Relations Act 1996* (WRA) and *Workplace Relations Regulations 2006* (WRR) in relevant hospitality industries group".

21 The campaign commenced with the AHA Branches conducting a "soft audit" of its members in the first half of 2008 followed by a "compliance audit" conducted by the WO in the second half of 2008. The "soft audit" involved the AHA working directly in confidence with its members whilst the "compliance audit" involved the WO conducting an audit of employers in the hospitality sector.

22 The WO is currently working on a report into the campaign. We will provide a copy of this report to the Senate Standing Committee should it be released prior to the end of February 2009.