

# McNALLY JONES STAFF

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Our Ref: NK: 1410029

## Associate to Vice President Hatcher

Fair Work Commission  
80 William Street  
EAST SYDNEY NSW 2011

Email: chambers.hatcher.vp@fwc.gov.au

Dear Associate,

**RE: AM2014/196 & 197 – 4 YEARLY REVIEW OF MODERN AWARDS –  
COMMON ISSUES – CASUAL AND PART-TIME EMPLOYMENT -  
PORT AUTHORITIES AWARD 2010**

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We are the solicitors for the Maritime Union of Australia.

We refer to the statement of the Full Bench issued 22 December 2017 ([2017] FWCFB 6776). Attached to that statement was draft determination varying the Port Authorities Award 2010.

We are instructed to seek that the minimum engagement period for casual employees employed under the Port Authorities Award 2010 be set at 4 hours for the following reasons:

1. The view expressed by the Full Bench in [2017] FWCFB 3541 at [408] is only a preliminary view and the Full Bench invited interested parties to provide submissions concerning the proposal;
2. In rejecting the ACTU's claim for a standard 4 hour minimum engagement for casuals the Full Bench recognised that a 4 hour minimum engagement period might under some awards represent an appropriate balancing of the competing considerations. (at [407])
3. Whilst the Port Authorities Award 2010 does not currently contain a minimum engagement period for casuals, the modern award replaced a number of awards that did contain such provisions. One of those awards was the Tasmanian Ports

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**PRINCIPALS:**

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Corporations Award 2002. (AP819542) That award provided for a 4 hour minimum engagement for casuals.

4. The table below sets out the various entitlements of casuals to a minimum engagement for the awards that were replaced by the making of the Port Authorities Award 2010:

NSW Port Corporations Award 2001	<u>AN120376</u>	10.2.4 On each occasion a Casual Employee is required to attend work he or she is entitled to a minimum payment for two hours work.
Port Authorities Award - State 2003	<u>AN140213</u>	No provision
Ports of Victoria Consolidated Administration Award 1998	<u>AP792487</u>	11.3.4 On each occasion a casual employee is required to attend work he or she is entitled to 3 hours paid work.
Queensland Regional Port Authorities and Corporations Employees Interim Award 2000	<u>AP794137</u>	No provision
Regional Port Authority Officers' (Queensland) Award 1999	<u>AP794800</u>	5.3.3 On each occasion a casual officer is required to attend work, the casual officer is entitled to a minimum payment of three hours.
Tasmanian Ports Corporations Award 2002	<u>AP819542</u>	<b>25. MINIMUM ENGAGEMENT</b> The minimum term of engagement for any casual employee shall be not less than four hours.
Victorian Port and Harbour Services Consolidated Operational Award 1998	<u>AP802100</u>	12.3.4 A casual employee shall be provided with a minimum period of three hours work or be paid for a minimum of three hours at the appropriate casual rate.

5. In making this submission we acknowledge that the union has selected the highest of the entitlements that existed in the prior awards.
6. Accordingly the Full Bench should amend the draft determination so that the new clause 10.3(d) reads:
- (d) The minimum period of engagement for a casual employees is four (4) hours.
7. In the alternative the union submits that the minimum period of engagement for casual employees should be set at 3 hours. This would reflect the majority of the award entitlements that existed prior to the making of the modern award and not cause significant issues for the employers noting that in the enterprise agreements that apply to the Port Authority of NSW each provide for a minimum 4 hour engagement for casuals:
- a. Port Authority of New South Wales- Port Kembla Enterprise Agreement 2014- 2017 [2015] FWCA 7366 has a minimum engagement of 4 hours (clause 9.3(d))

- b. Port Authority of New South Wales - Newcastle Enterprise Agreement 2016-2019 [2017] FWCA 2510 has a minimum engagement of 4 hours (clause 7.2(a))
- c. Port Authority of New South Wales- Sydney Enterprise Agreement 2014- 2017 [2015] FWCA 5051 has a minimum engagement of 4 hours (clause 10.4(d))

Yours faithfully,  
**McNALLY JONES STAFF**



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