

# W G McNALLY JONES STAFF

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Our Ref: NK:TM:1403007

**Attention: Anastasia Kyriakidis**  
**Associate to the President, Justice Ross**  
Fair Work Commission  
11 Exhibition Street  
MELBOURNE VIC 3000

**By email: chambers.ross.j@fwc.gov.au; amod@fwc.gov.au**

Dear Associate,

**RE: AM 2014/241 – PORTS, HARBOURS AND ENCLOSED WATER VESSELS  
AWARD 2010**

We refer to conference before His Honour on 30 March 2015.

We confirm that we represent the Maritime Union of Australia in relation to this matter.

In the conference we indicated that we would provide our client's comments in relation to matters raised by the FWO in their letter dated 2 March 2015. For ease of reference we adopt the item numbers in the Summary of Proposed Variations Table published by the Fair Work Commission on 27 March 2015.

ITEM	CLAUSE	SUMMARY OF ISSUE
2	10.3(b)	<b>Casual loading –</b> It is unclear whether the casual loading is instead of or in addition to overtime and shiftwork rates

Clause 10.3(b) is in these terms:

A casual employee working within the ordinary hours of work pursuant to clause 18 will be paid per hour for the work performed plus 25% loading which incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances. (our emphasis)

**PRINCIPALS:** • W G McNALLY Acc. Spec. (Employment & Industrial Law) • D. T. TRAINOR Acc. Spec. (Personal Injury.)  
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The award is clear that the casual loading is not in substitution of either the overtime rates or the shift work allowances. The casual loading is in addition to the overtime rates or the shift work allowances. No amendment of the award is required.

We are concerned, however, that the FWO considers that the wording is unclear. In those circumstances and to ensure that the award is easy to understand we propose that the clause 10.3(b) be amended as marked below:

A casual employee working ~~within the ordinary hours of work pursuant to clause 18~~ will be paid per hour for the work performed plus 25% loading which incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances. Overtime and shift allowances are to be paid in addition to the casual loading.

ITEM	CLAUSE	SUMMARY OF ISSUE
4	18.2	<b>Ordinary hours</b> It is unclear under what circumstances an employee can work ordinary hours on a Saturday or Sunday, given clause 20.1(b) and 20.3 refer to ordinary hours worked on a Saturday or Sunday, whereas clause 18.2 states ordinary hours can be worked Monday to Friday.

The span of ordinary hours of work is set by clause 18.2. That clause is in these terms:

Ordinary hours may be worked between 6.00 am and 6.00 pm for up to eight hours per day, Monday to Friday inclusive.

This clause makes it clear that work on Saturday and Sunday falls outside the span of ordinary hours. Unfortunately the clauses providing for the payment of penalty rates on Saturdays and Sundays make reference to ordinary hours. We suggest that this contradiction be clarified by making the changes marked below:

<b>Clause 20.1(b)</b>	a loading of 50% of the ordinary hourly base rate of pay for all <del>ordinary hours and overtime</del> worked between midnight Friday and midnight Saturday
<b>Clause 20.3</b>	An employee will be paid a loading of 100% of the ordinary hourly base rate of pay for <u>any all</u> hours, <del>ordinary and overtime</del> , worked on a Sunday.

Yours faithfully,  
**W G McNALLY JONES STAFF**

  
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