

# ORDER

*Fair Work Act 2009*  
s.418—Industrial action

**Harbour City Ferries Pty Ltd**

**v**

**Maritime Union of Australia & Australian Maritime Officers' Union**  
(C2013/3463)

Maritime industry

COMMISSIONER CAMBRIDGE

SYDNEY, 19 MARCH 2014

*Application for an Order to prevent industrial action.*

Further to the Decision made in this matter, the Fair Work Commission Orders as follows:

**1. TITLE**

This Order shall be known as the *Harbour City Ferries Pty Ltd Industrial Action Order 2014 (No 1) (the Order)*.

**2. APPLICATION AND PARTIES BOUND**

**2.1** This Order is binding on and applies to:

- (a) Maritime Union of Australia (MUA) and its officers and members.

**3. INDUSTRIAL ACTION TO STOP, NOT OCCUR AND NOT BE ORGANISED**

**3.1** The MUA, and its officers and members bound by this Order must:

- (a) stop and not commence, engage in, or threaten to engage in any industrial action;

- (b) immediately stop organising any industrial action involving any of the Employees;
- (c) not organise, aid, abet, direct, procure, induce, advise, authorise or encourage any of the Employees to engage in industrial action; and
- (d) not facilitate any industrial action by any Employee.

#### **4. Definition of industrial action**

4.1 For the purposes of this Order “industrial action” means:

- (a) the performance of work by an Employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an Employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work by an Employee or on the acceptance of or offering for work by an Employee; and
- (c) a failure or refusal by Employees to attend for work or a failure or refusal to perform any work at all by Employees who attend for work;

but does not include:

- (d) protected industrial action within the meaning of section 408 of the *Fair Work Act 2009* (Cth);
- (e) action by employees that is authorised or agreed to by or on behalf of his or her employer; or
- (f) action by an employee if:
  - (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
  - (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

#### **5. Definition of Employee**

5.1 For the purposes of this Order “Employee” means an employee of Harbour City Ferries Pty Ltd (**HCF**) whose employment is covered by the *Sydney Ferries Maritime (AMOU and MUA) Enterprise Agreement 2012*.

## 6. Service of Order

6.1 It will be sufficient service of this Order upon the parties bound by this order if:

- (a) a copy is sent by facsimile transmission or email to each of the:
  - (i) National Secretary of the MUA;
  - (ii) State Secretary of the MUA;
- (b) a copy of this Order is placed on the notice boards usually used by HCF for the purposes of communicating with the Employees.

6.2 By no later than 9:00am on 20 March 2014, the MUA must post this Order in a prominent position on its website.

6.3 The MUA must take all reasonably practicable steps necessary and available to them under their rules or otherwise to:

- (a) immediately advise their members (including their delegates) engaged in connection with work for HCF that:
  - (i) any industrial action must not be engaged in, or threatened;
  - (ii) any industrial action must not be organised, aided, abetted, directed, procured, induced, advised, authorised, encouraged or facilitated; and
  - (iii) any direction, advice or authorisation by them to the Employees to engage in industrial action is withdrawn;
- (b) not later than 11am on 20 March 2014, provide a copy of this Order to their delegates engaged in or in connection with work for HCF; and
- (c) ensure that their delegates comply with this Order.

## 6. TERM AND DATE OF EFFECT

This Order shall come into effect at 5:00pm on Wednesday, 19 March 2014, and shall remain in force until 1 May 2014, unless varied or revoked by further Order of the Commission.



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