



INTERIM ORDER

Fair Work Act 2009
s.418—Industrial action

**Sydney International Container Terminals Pty Limited T/A Hutchinson
Ports Australia Pty Limited**

v

Construction, Forestry, Maritime, Mining and Energy Union and Others
(C2018/2164)

DEPUTY PRESIDENT BULL

SYDNEY, 26 APRIL 2018

Industrial action at Sydney International Container Terminals.

Having concluded that the Fair Work Commission (the Commission) cannot determine the application for an order under s. 418 of the *Fair Work Act 2009* (Cth) (the Act) within 2 days after the application was made, and being satisfied such an order is not contrary to the public interest, pursuant to s. 420(2) of the Act, the Fair Work Commission orders as follows:

1. TITLE

This order shall be known as the *Sydney International Container Terminals Pty. Limited. – Industrial Action Interim Order No 1 of 2018* (this Interim Order).

2. APPLICATION

This Interim Order applies to work and employment regulated by the *Sydney International Container Terminals Pty Limited (SICTL) and Brisbane Container Terminals Pty Limited (BCT) and Maritime Union of Australia (MUA) Enterprise Agreement 2015* (the Agreement) in respect of the operations of Sydney International Container Terminals Pty. Limited at 150-160 Foreshore Road, Port Botany in the State of New South Wales (the Port Botany site).

3. PARTIES BOUND

The parties bound by this Interim Order are:

3.1 Sydney International Container Terminals Pty. Limited (SICTL).

3.2 Employees of SICTL who are employed at the Port Botany site whose work and employment are regulated by the Agreement and named in Annexure A¹ to this Interim Order (named employee(s)).

3.3 The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), including its office-holders and those of its delegates who are employees of SICTL at the Port Botany site.

4. INDUSTRIAL ACTION MUST STOP, NOT OCCUR AND NOT BE ORGANISED

4.1 The CFMMEU its office-holders and those of its delegates who are employees of SICTL at the Port Botany site must not organise any industrial action involving the named employees during the period of operation of this Interim Order.

4.2 Each named employee must:

- (a) immediately stop engaging in, or threatening to engage in, industrial action;
- (b) not continue, recommence or organise any industrial action during the period of operation of this Interim Order.

4.3 For the purposes of this Interim Order, the expression “industrial action” means action of any of the following kinds:

- (a) a failure, or refusal by the named employees to work as directed in relation to the operation of shuttle carriers;
- (b) a ban, limitation or restriction on the performance of work as directed in relation to the operation of shuttle carriers;

but does not include the following:

- (c) protected industrial action within the meaning of s.408 of the *Fair Work Act 2009*;
- (d) action or conduct by the named employees that is authorised or agreed to by or on behalf of SICTL; or
- (e) action by a named 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.

¹ At the request of the Applicant and with the consent of the First Respondent Annexure A will not be published.

4.4 The CFMMEU must take all reasonable steps necessary and available to it under its Rules, or otherwise, to immediately advise employees who are its members and subject to this Interim Order, of the above.

5. SERVICE OF ORDER

SICTL is required to serve this Interim Order upon:

- employees named in Annexure A by email to their personal email address,
- the CFMMEU and The National Secretary Maritime Union of Australia Division, CFMMEU by way of email; and
- by placing this Interim Order on the noticeboards usually used by SICTL for the purposes of communicating with the employees named in Annexure A of this Interim Order and those of its employees who are delegates of the CFMMEU employed at the Port Botany site.

6. TERM AND DATE OF EFFECT

This Interim Order shall come into effect immediately and shall continue in force until final determination of the application as per s. 420(5) of the Act.



DEPUTY PRESIDENT

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