

97A. Meaning of “strike”

- (1) In this section —
 - “**award**” includes an order and an industrial agreement;
 - “**dispute resolution procedures**” means procedures provided for in an award that are to be followed in connection with questions, disputes or difficulties arising under that award;
 - “**relevant stop-work activity**”, in relation to a stop-work meeting referred to in subsection (5), means participation by 5 or more employees of the employer who are members of the organization in one or more stop-work meetings of employees of the employer that have not been approved by the employer by written notice given to the organization before each meeting.
- (2) For the purposes of this Part —
 - “**strike**” means any stoppage of, or ban or limitation on, the performance of work by 5 or more employees but —
 - (a) does not include action referred to in subsection (3); and
 - (b) only includes a stop-work meeting if the meeting is unreasonable within the meaning of subsection (5).
- (3) The following actions are not included within the definition of “strike” in subsection (2) —
 - (a) a ban or limitation on the performance of work by employees —
 - (i) that preserves the status quo;
 - (ii) that is permitted under, and carried out in accordance with, relevant dispute resolution procedures;
 - (iii) that is undertaken for the purpose of compelling or inducing an employer or employee to comply with any existing terms or conditions of employment; and
 - (iv) in respect of which the Commission has not made an order requiring the employer or employee to comply with the terms or conditions of employment that are in dispute;
 - (b) a ban or limitation on the performance of work by employees —
 - (i) that is permitted under, and carried out in accordance with, relevant dispute resolution procedures;
 - (ii) that is undertaken for a period that does not exceed 48 hours; and
 - (iii) in respect of which neither conciliation proceedings nor a hearing have commenced before the Commission;

or

 - (c) an employee's refusal to work if that employee has reasonable grounds, as determined under section 26 of the Occupational Safety and Health Act 1984 or section 72 of the Mines Safety and Inspection Act 1994, to believe that to continue to work would expose that employee or any other person to a risk of imminent and serious injury or imminent and serious harm to the health of that employee.

- (4) For the purposes of subsection (3) (b) (ii), if at any time during the 27 days preceding the day on which the ban or limitation occurs, the employees have taken previous industrial action in respect of the same matter, the ban or limitation is to be regarded as having begun when that previous industrial action began.
- (5) For the purposes of the definition of “strike” in subsection (2) a stop-work meeting in which 5 or more employees of the same employer who are members of the same organization participate is “**unreasonable**” if —
 - (a) the meeting has not been approved by that employer by written notice given to that organization before the meeting;
and
 - (b) there have been more than —
 - (i) 12 hours of relevant stop-work activity since the beginning of the calendar year in which the meeting is held; or
 - (ii) 4 hours of relevant stop-work activity since the beginning of the day on which the meeting is held.
- (6) In subsection (5) participation by the employees in stop-work meetings at the same time in different places is taken to be one period of relevant stop-work activity.

[Section 97A inserted by No. 3 of 1997 s.10.]