

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Two: Industrial Action Law

Dismissal where employees taking protected industrial action locked out

178. *Section 26* amends the protections for striking employees in section 238A of the 1992 Act by changing the length and scope of the protected period currently specified in the section. It does this by extending the period from 8 to 12 weeks and by providing for ‘locked-out’ days to be disregarded when determining the length of the period. As a result of the amendments made by this section, the period will in effect end when 84 days have passed since the start of the action on which no lock-out has occurred. This means, for example, that where a lock-out occurred on two days, the total period of protection becomes 86 days.
179. *Subsection (2)* introduces the term “protected period” into section 238A.
180. *Subsection (3)* inserts four new subsections, (7A) to (7D), into section 238A of the 1992 Act that have the effect of lengthening the period of protection when a lock-out occurs. New subsection (7A) states that the total length of the “protected period” equals the “basic period” plus any “extension period”.
181. New subsection (7B) defines the basic period as 12 weeks beginning with the first day of protected industrial action. New subsection (7C) defines the extension period. It means that the total period of protection is extended beyond the basic 12 week period by one day for each day on which the employee was locked out that occurred either within the basic period or within an extension period.
182. New subsection (7D) ensures that the period of protected industrial action can begin even though a lock-out might be in force on that day.