

38 Hour Week Wage Principle [1983]

38 Hour Week Case

National Wage Case, September 1983

Print F2900, Moore, Williams, Isaac, Cohen, Booth, McLagan, 23 September 1983

Summary

In this decision the Australian Conciliation and Arbitration Commission introduced a package of 11 binding guidelines setting out what changes to award wages and conditions would be approved by it. It introduced a new 'Principle 5 Standard Hours' for the first time. This principle allowed the Commission to approve agreements for the introduction of a 38 hour week to replace the usual 40 hour week, provided that 'the cost impact of the shorter week should be minimized', and 'the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices'. The Commission would reject claims for a 38 hour week which were opposed, and would reject all claims for a reduction of hours below 38.

The new principle replaced the earlier approach of ad hoc consideration of agreements for the introduction of a 38 hour week, and to some extent formalised the approach taken by the Commission to such matters (see [Print F1600](#), guideline 4, p.9). This led to a large number of agreements for the introduction of a 38 hour week across the economy. Principle 5 provided:

5. Standard Hours

(a) In dealing with agreements and unopposed claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimized. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.

Opposed claims should be rejected.

(b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, should not be allowed.

(c) The Commission should not approve or award improvements in pay or other conditions on the basis of productivity bargaining. These improvements should only be allowed on the basis of the appropriate Principles.

In the [June 1986 National Wage Case decision \(Print G3600\)](#), the Commission removed the requirement that the introduction of the 38 hour week be the subject of agreement. The Commission would be willing in appropriate cases to arbitrate and order the amendment of the award to include the 38 hour week even if this was opposed by the employer. Other aspects of the principle remained the same. The new Principle 5 provided:

5. Standard Hours

(a) In dealing with claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimized. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.

(b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, should not be allowed.

(c) The Commission should not approve or award improvements in pay or other conditions on the basis of productivity bargaining. These improvements should only be allowed on the basis of the appropriate Principles.

The Commission said that it was not establishing the 38 hour week as a 'standard'. Gradually the remaining federal and State awards providing for a 40 hour week were amended.

The *Fair Work Act 2009* provides that the 38 hour week averaged over stated periods is a 'National Employment Standard' (see s.61), and this is reflected in the 122 modern awards established in 2010 (see also Work Choices s.62).