



STATEMENT

Fair Work Act 2009

s.306W—FWC may make written guidelines about Part 2-7A

Guidelines in relation to the operation of Part 2-7A

(LH2024/24)

JUSTICE HATCHER, PRESIDENT

SYDNEY, 14 OCTOBER 2024

Creation of written guidelines concerning the operation of Part 2-7A of the Fair Work Act 2009 (Cth) – publication of draft guidelines – invitation to comment.

[1] Part 2-7A—Regulated Labour Hire Arrangement Orders was added to the *Fair Work Act 2009* (Cth) (FW Act) by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) and commenced operation on 15 December 2023. Part 2-7A empowers the Commission to make orders regulating certain labour hire arrangements. Section 306W of the FW Act provides for the Commission to make written guidelines in relation to the operation of Part 2-7A which, if made, must be in force by 1 November 2024.

[2] Section 306W provides:

306W Guidelines

- (1) The FWC may make written guidelines in relation to the operation of this Part.
- (2) Guidelines made under subsection (1) are not a legislative instrument.
- (3) The FWC must ensure that guidelines under subsection (1) are in force:
 - (a) by 1 November 2024; and
 - (b) at all times on and after that day.

[3] The [Revised Explanatory Memorandum](#) at [783] states:

New section 306W would require the FWC to make written guidelines in relation to the operation of Part 2-7A to assist with education and compliance, so that readers can more easily understand the new Part.

[4] I note that, notwithstanding what the above extract from the Revised Explanatory Memorandum states, s 306W(1) confers a discretion upon the Commission as to whether guidelines should be made.

[5] The Commission is today publishing draft guidelines on the operation of Part 2-7A. The draft guidelines explain the key provisions of Part 2-7A, including when the Commission may make an order and the obligations imposed by Part 2-7A when an order is in effect. It is intended that the guidelines, if and when made, will be updated over time to reflect significant decisions

under Part 2-7A and relevant changes to the Commission's process for dealing with these matters. I note that there has not yet been any Commission decision in relation to a contested application made under Part 2-7A.

[6] In keeping with the Commission's commitment to implementing legislative reform in an open and transparent manner, the Commission invites interested persons to comment on the draft guidelines (both as to their content and whether they should be made at all). Comments should be sent to consultation@fwc.gov.au by **12:00 pm (AEDT) on Friday, 25 October 2024**.

[7] If guidelines are ultimately made, they will be published by 1 November 2024.



PRESIDENT

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