

Engaging labour hire in aged care

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We'll cover:

1. Engaging a labour hire provider: the basics
2. Accessorial liability under the Fair Work Act
3. Duty of care and WHS compliance
4. Modern slavery obligations
5. FWO scrutiny: do your agreements protect you?
6. Case study: Barton Care
7. If you think there is a problem



"Choosing a health care provider isn't a procurement activity, it's a compliance activity."

\$669,120

Victorian penalty for a company host using an unlicensed provider

Personal

liability for directors and managers 'involved in' an agency's breach (s 550 FW Act)

Non-delegable

WHS duties to every agency nurse and carer on your site



Engaging a labour hire provider: the basics



Is the provider licensed where it needs to be?

Hosts commit an offence by using an unlicensed provider in a licensing jurisdiction. Check the public register before engaging, and keep checking.

Victoria

Labour Hire Licensing Act 2018

Stricter fit and proper and financial viability tests from 1 June 2026

Queensland

Labour Hire Licensing Act 2017

Licence required to supply workers in Qld

South Australia

Labour Hire Licensing Act 2017

Expanded coverage: newly captured providers licensed by 29 July 2026

ACT

Labour Hire Licensing Act 2020

Licence required to supply workers in the ACT

No scheme: NSW, WA, Tasmania and NT. In those states your contract and due diligence do all the work.

\$669,120

Maximum penalty for a body corporate host that enters an unlicensed labour hire arrangement in Victoria (2026-27). A licence can be suspended overnight.



1

Compliance responsibility

- Provider is the employer and bears primary responsibility for FW Act, award, NES and super obligations
- Provider bears WHS obligations as employer, plus cooperation duties with you
- Warranties of ongoing compliance

2

Insurances at the right level

- Workers compensation in every state where workers are placed
- Public liability and professional indemnity / medical malpractice
- Certificates of currency at signing and each renewal

3

Audit rights for you as host

- Access to time records, payslips, pay rates and super contributions
- Evidence of qualifications, registration, screening and visa work rights
- Short notice; obligation to cooperate

Also build in

- Immediate notice of licence changes and regulator investigations
- Fatigue limits and shift caps across all placements
- Suspension and termination rights for non-compliance
- Same job, same pay order compliance (if you have an EA)



Is the rate too good to be true?

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Build up the legal floor of an agency shift before you compare quotes

Award minimum rate

Aged Care Award 2010 / Nurses Award 2020,
incl. work value increases

Casual loading 25%

Most agency staff are casual

Penalty rates

Evenings, nights, weekends, public holidays,
overtime

Superannuation 12%

Paid with wages (payday super)

On-costs

Workers comp premium, payroll tax, leave, admin

Provider margin

Profit and overheads

Red flags

- Rate substantially below your current provider
- One flat rate regardless of day or time
- Reluctance to show pay rates or payslips
- Heavy reliance on student visa workers on long rosters
- Workers paid as 'contractors' or via ABNs

If the charge-out rate does not cover the floor plus a margin, someone is paying the difference. Usually the worker.



Your legal exposure



Could you be 'involved in' a breach?

A person 'involved in' a contravention is treated as having committed it. That includes aiding, inducing, conspiring or being knowingly concerned in it.

The test is actual knowledge of the essential facts (*Yorke v Lucas* (1985) 158 CLR 661). Deliberately shutting your eyes to the obvious can support an inference of knowledge.

Who is exposed

- **The host organisation** as a company
- **Directors and executives** personally
- **HR, procurement and facility managers** who set rates or rosters, or ignore warnings
- **Consequences:** civil penalties per contravention, back pay orders, reputational damage

10x

Serious contraventions attract ten times the standard maximum penalty

3x

Company penalties for underpayments can be three times the amount underpaid

10 yrs

Maximum jail term for intentional wage theft (s 327A, from 1 January 2025)



You can be personally liable

- **Fair Work Act, s 550:** if you're "involved in" an underpayment, for example by setting rates, signing contracts or ignoring warnings, you can face personal penalties
- **Wage theft, s 327A:** intentional underpayment is a crime, with up to 10 years' jail for individuals
- **WHS/OHS officer duty:** directors and senior executives must personally exercise due diligence on safety, including for agency staff
- **Labour hire licensing:** in licensing states, officers can be personally liable when the organisation uses an unlicensed provider
- **Corporations Act, s 180:** directors must act with care and diligence, which includes acting on visible risks

What "due diligence" looks like

- **Know** the risks of using agency staff
- **Understand** how agency workers are used across your sites
- **Resource** proper checks: licences, qualifications and audits
- **Make sure** processes exist to act on red flags
- **Verify** those processes are actually followed, and keep records

You can't delegate this away. Penalties can land on you personally.



WHS duties you cannot contract out of

Host and provider both owe the primary duty to agency nurses and carers. Each must consult, cooperate and coordinate.

s 19

Primary duty extends to workers you direct or influence

s 14

Duties are not transferable

s 46

Consult, cooperate and coordinate with the provider

s 272

No contracting out

Model WHS Acts. In Victoria, OHS Act 2004 s 21 extends employer duties to labour hire workers. Industrial manslaughter now applies in most jurisdictions.

Induct on day one

Site, emergency, residents' care needs, infection control

Verify competence

AHPRA registration, qualifications, worker screening

Supervise

Clear reporting line to your clinical lead on shift

Manage fatigue

Know hours worked at other sites; cap double shifts

Share hazards

Occupational violence, manual handling, psychosocial risks

Two-way incident reporting

Agreed in writing with the provider



\$100m

Annual consolidated revenue that makes you a reporting entity under the Modern Slavery Act 2018 (Cth)

Board sign-off

Each annual statement must be approved by the board and signed by a director (s 16). Below \$100m, customers will still ask the questions.

Coming: a criminal offence

- 16 July 2026: Government announced a 'failure to prevent' modern slavery offence for \$100m+ entities
- Defence: reasonable steps to prevent it
- Civil penalties proposed for reporting failures
- Not yet law: details subject to consultation

NSW procurement

- NSW agencies, councils and SOEs must take reasonable steps to keep modern slavery out of what they buy (Public Works and Procurement Act 1912 s 176(1A))
- Anti-slavery Commissioner guidance applies from 1 January 2024
- Supplying NSW Government? Expect model clauses and questionnaires to flow down to your labour hire providers



False comfort

- **Indemnity clauses:** only as good as the provider's balance sheet; worthless if it phoenixes
- **Warranties** that are never tested
- **Audit rights** never exercised
- **'They are the employer':** does not answer s 550 or your own WHS duties
- **A licence** is not proof of compliance

What actually protects you

- Documented due diligence at onboarding
- Rate checked against the award floor
- Periodic audits actually done, with records kept
- Red flags escalated and acted on
- Suspension and exit rights you are prepared to use

The FWO asks two questions: what did you know, and what did you do about it?



Case study: Barton Care



31 August 2026: Victoria's Labour Hire Authority suspended Barton Care's licence with immediate effect and moved to cancel it

~70%

of worker qualifications
reviewed were invalid

600+

healthcare workers on its
books

4

jurisdictions supplied: Vic,
NSW, Tas, ACT

9 days

after arrival, one worker
held a qualification that
takes 6 to 9 months

What the regulator says it found

- Payslips altered to hide student visa workers exceeding permitted hours
- Pay below Aged Care Award minimum rates
- Inadequate health and safety processes
- Qualifications from training providers ASQA had cancelled

Referred to

Fair Work Ombudsman, Aged Care Quality
and Safety Commission, ASQA

Hosts

Hundreds of workers placed in Victorian
aged care, reportedly including major
providers



1

Licences are point-in-time

Barton Care was licensed. Monitor the register; a suspension bites immediately.

2

Verify qualifications yourself

Check RTO status on training.gov.au and AHPRA registration. Do not rely on a warranty.

3

Audit pay, not just invoices

Reconcile your rosters and sign-ins with payslips. Altered payslips show up.

4

Watch visa workers' hours

Your rosters reveal excess hours. Treat them as an exploitation red flag.

5

Price is a signal

Below-floor rates suggest underpayment. That is what s 550 knowledge looks like.

6

Plan for overnight loss of supply

Keep a second provider and step-in rights so residents' care continues.



If you think there is a problem



1

Exercise audit rights

- Request payslips, time records, super and qualification evidence
- Reconcile against your own rosters
- Get legal advice early so the review is privileged

2

Protect residents and workers

- Check credentials of staff on shift now
- Replace anyone not qualified
- Do not penalise workers who speak up

3

Suspend or exit

- Stop new placements under the contract
- Use suspension and termination rights
- In licensing states, stop using a suspended provider immediately

4

Voluntary disclosure

- Self-report to the FWO: early cooperation weighs in your favour
- Consider the LHA, ACQSC and ASQA where relevant
- Make sure workers are back-paid

Document every step. Your record of what you did is your best defence.



Key takeaways

1

Check the licence before engaging, and keep checking

2

Put compliance, insurance and audit rights in the contract

3

Test the rate against the award floor

4

Use your audit rights: reconcile rosters with payslips

5

Verify qualifications and registration yourself

6

Act quickly on red flags, then document what you did



Questions and discussion



Thank you

to Chris Barnard Health for facilitating
this event

The logo for Chris Barnard Health, consisting of a dark purple square containing the text "Chris Barnard Health" in white, sans-serif font. A small yellow dot is positioned above the letter 'i' in "Chris".

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